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A Lease Agreements Guide for Landowners and Farmers

Do you have some land you want farmed? Or are

Poor land, small parcels, or land with poor



In some cases



for the farmer’s livestock. The spreading of

A Summary -- Types of Lease Agreements

Type of Agreement	Brief Description	Advantages	Disadvantages
Verbal Agreement	Also known as a handshake agreement, this is a verbal contract between two parties.	Easy to set up.	If either party backs out, agre

Verbal Agreement. Many acres of Vermont farmland are leased with the use of a verbal, “handshake” or “gentleman’s” agreement. They are very quick to put in place and in a majority of cases work extremely well for both parties. However, if you’re considering a verbal agreement, it is important to remember the adage, “a verbal agreement is as good as the paper it’s written on!” Obviously, no one plans for agreements to fail. However, many of the agreements that do indeed fail are caused by a lack of a clear and concise agreement. Because verbal agreements may not spell out the details (literally!) and often come down to “his word versus mine”, they are much more at risk for failure than other types of agreements--especially over the long-run.

In fact, Vermont’s statute of frauds will bar

Elements of An Agreement

as clear and concise about the terms of the agreement as possible--that way there should be no disputes about what the agreement does and doesn't include. Begin by including the start date of the agreement, and the names of the landowner (aka "landlord" or "lessor") and the farmer (aka "tenant" or "lessee") with addresses and phone numbers for both.

Lease Agreement. Should there even be a written agreement? For agreements longer than a year, definitely! Why? A signed, written lease agreement prevents misunderstanding among both parties. A good way to think of a lease is like the minutes of a meeting. It tells when you met, who was there, and what was decided. A lease leaves much less chance for misunderstanding and disagreements, and protects both parties should either die. If the income from this rental property is an important part of your farm cash flow, it is important enough to put it in writing. Many lenders, in fact, will require a written agreement.

Lease agreements are formal written documents, often drafted or reviewed by attorneys, witnessed and notarized. Leases for longer than one year should be recorded in the clerks office of the town where the farm lies, much like deeds. If not recorded and properly acknowledged, they bind only the tenant and the landowner and are of no effect against others who may have a subsequent claim to the land.

Leases have certain legal implications. When a landowner leases farmland, s/he, in essence, is giving up possession of the property for the lease term, but retains all the rights that are included in the lease agreement. For example, the lease may allow the landowner to access the property to inspect the land, make repairs, or collect rent but unless the agreement allows it the landowner cannot use the property for his/her own purposes without the permission from the tenant.

Rights and Obligations of Both Parties. This would include the right of entry by the landowner. The lease should specify purposes for which the landowner can enter the property and provide a minimum prior notice to the tenant. Some lease agreements contain “no right to sublease” and “lease is binding to heirs” clauses.

Land Use. How is the land to be used? Many leases specifically restrict the tenant to an agricultural use. You can also dictate a particular crop rotation or a detailed land use plan. Prohibited uses can also be listed, i.e., cutting timber or plowing pasture.

Expectations for Operation and Maintenance of the Land. Who takes care of maintenance, repairs and improvements on the land? For example, who pays for the fencing to be used by the farmer but stays with the property? Are any alterations allowed? In addition, any considerations of land fertility should be included here.

Termination Conditions. When does the lease expire and how must the tenant leave the property? How much notice will be required in order to terminate the lease and must it be in writing? Are any improvements necessary and who will pay for them?

Landlord Liens. Some leases include a lien on the tenant’s crop to secure the payment of rent. Neither Vermont statutes nor common law provide for an automatic landlord lien on the tenant’s crop in the event rent goes unpaid. Without a lien, the tenant’s crop is his/her personal property and the landowner has no right to seize the crop or other property of the tenant to sell or hold as security for unpaid rent. In the absence of a lien, the remedy for unpaid rent under Vermont law is to go to court for an “ejectment” and a judgment for the amount of rent in arrears.

Stewardship. You may want to include a provision requiring the tenant to farm in a “good and husbandlike manner” and/or require specific farm practices to protect the long-term productivity of the farm. Such provisions might include compliance with a government conservation plan, limits on the number of cuttings of alfalfa, and/or soil testing to inform the application of nitrogen or lime.

What If Things Aren’t Working Out

What happens if one or both parties are not happy with the agreement? This will depend upon the type of agreement you choose, and how willing you are to work it out.

All agreements should include a discussion about arbitrating differences--how are you going to handle potential disagreements. You may choose to discuss differences among yourselves or have a third party mediate. If the landowner or farmer is not doing what they agreed to, you will need to first discuss the situation and work out a solution. If you can’t seem to come to agreement, it may be wise to consult a mediator or an attorney.

Again, a thoughtful, thorough discussion before you enter an agreement

Resources

For information on linking with farmers and/or landowners in Windham County, please contact:
Windham County Natural Resources Conservation District
28 Vernon Street, #2, Brattleboro, VT 05302-8605
(802) 254-9766

For information on linking with farmers and/or landowners in other Vermont locations, please contact:
Land Link Vermont
University of Vermont Center for Sustainable Agriculture
590 Main Street, Burlington, VT 05405
(802) 656-0233
<http://www.uvm.edu/landlinkvt>

Additional Resources:
UVM Extension & Windham County Forester
157 Old Guilford Road, Brattleboro, VT 05301-3669
(802) 257-7967
<http://ctr.uvm.edu/ext/>

Vermont Farm Bureau
2083 East Main Street, Richmond, VT 05477
(802) 434-5646
<http://www.vtfb.org>

This publication was developed in collaboration by Land Link Vermont, the Vermont Farm Bureau -- Windham County, and the Windham County Natural Resources Conservation District. Land Link Vermont is a program of the University of Vermont Center for Sustainable Agriculture and connects farm seekers and farmland owners and provides them with information about farm transfer in Vermont. The Vermont Farm Bureau is the state's largest non-profit trade association of farmers and foresters with a mission to increase the profitability of our members and preserve Vermont's rural quality of life. The Windham County NRCD is a non-profit, non-partisan organization composed of local community members who are dedicated to the conservation and development of natural resources which improve the local economy and enhance the well-being of all Windham County citizens.

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