

ELEMENTS OF A GOOD FARM LEASE

This list includes many of the important sections of a farm lease, but it is not comprehensive, nor does it constitute legal advice. Please use this document as a guide and always consult with an attorney when negotiating a lease.

1. **The Parties** – Be clear about the identities of the landlord and the tenant. The lease should specify whether the party is an individual, LLC, corporation, or some other entity.
2. **Description of the Property** – The description should be sufficient to allow a stranger to identify the location of the property. The description should include the address, a map, and relevant specifics about the parcels being leased. A description of the initial condition of the property, including any structures, might make sense. Sometimes it makes sense to create a separate agreement for a residence.
3. **Duration of the Lease** – The start and end dates, and options for extension or renewal. The lease should also state whether it stays with the property if ownership transfers due to sale or settling an estate.
4. **Rent** – Payment (known as the “consideration”) must be specified, even if it is no cost. There are various ways to calculate the rent. In a non-cash agreement, the type and frequency of services or the crop-share amount should be specified. If there are penalties (e.g., interest) for a late payment, those should be specified as well.
5. **Taxes** – Responsibility for property and any other tax payments should be specified.
6. **Utilities** – The lease should specify who is responsible for utility bills and what entity will be named on each utility account.
7. **Permitted and Prohibited Uses** – This is an important section. The lease should clearly define the permitted and prohibited uses of the property. What kinds of farming will be allowed? What counts as agriculture? Does a cordwood operation qualify as agriculture? Commercial composting? A corn maze? Aquaculture? Definitions and perceptions of farming evolve, so it’s important to be both clear and flexible. Address whether farm-related education or non-agricultural uses such as recreation will be permitted. A landowner may also prohibit certain activities, e.g., removing trees or gravel.

Landowners may want to specify whether the land is to be limited to certain types of production, for example, only pasture or hay land, or to other restrictions or requirements regarding uses appropriate to the soils or topography of the farm. A map indicating where certain practices are allowed or prohibited is useful. It’s recommended to include a process for the tenant to request permission or clarification regarding uses. For example, the lease may say that removing trees is prohibited except as approved by the landowner in response to a written request by the tenant.
8. **Entry** – The lease should specify whether the landowner has permission to enter the property, and if there are limitations to such entry. For example, requiring the landowner to give 24 hours notice about a visit. Can landlord’s family members walk or picnic on the leased property?
9. **Maintenance and Repairs** – The lease should specify who is responsible for maintaining and making repairs to the land and any structures included in the lease, such as fences, buildings, storage structures, roads and irrigation systems. Repairs and maintenance are fertile areas for disagreements and disappointments between landowner and farm tenant. The distinctions among maintenance, repairs and improvements should be spelled out as clearly as possible. Typically the tenant is responsible for basic maintenance and routine repairs. The landlord is usually responsible for major repairs, rehabilitation, and replacement of farm structures or systems. A process spelled out in the lease for the parties to decide when there is some question can save miscommunication and tension down the road.

10. **Alterations and Improvements** -- The lease should specify who is responsible for improvements such as new structures or major alterations, along with the process for approval, and who bears the cost. It should specify whether such improvements are considered permanent fixtures and become the property of the landowner (compensating the tenant or not) or whether they may or must be removed by the tenant at the end of the term.

11. **Stewardship and Conservation** – In this clause, the parties can specify what practices may be required or encouraged. Often it's good to reference a separate stewardship or conservation plan as an attachment to the lease. The plan can be reviewed and revised annually. A lease may specifically encourage or require the development of a nutrient management plan, a waste management plan, or a grassland habitat management plan.

12. **Subletting** – The lease may specify whether subletting is permitted and under what conditions. Farm leases typically do not allow subletting without some controls by the landowner such as prior review and approval of the sublease terms and sub-tenant.

13. **Termination** – The lease should indicate the conditions and procedure for either party to terminate the lease. Tenants should strive for a clear and reasonable exit option. The lease should specify if and when notice must be given. On longer-term leases, the ability of the landlord to terminate without just cause should be limited, otherwise the long-term nature of the lease is undermined.

14. **Default** – The lease should specify what constitutes default by tenant or landowner. Default means that one of the parties to the lease has violated a term by failing to do something or by doing something not permitted by the lease. The lease should allow for the party to remedy the default, such as to pay the late rent or clean up a pile of trash, and address any damages resulting from the default.

15. **Monitoring and Reporting** – The lease should specify how monitoring will be handled, whether there will be reporting between the farmer and landowner and what form such reporting would take. There may be a schedule of monitoring visits. The landowner may want someone more familiar with farming to do the monitoring—a farming friend or a professional, for example.

16. **Insurance and Liability** – The lease should require the tenant to carry liability insurance, typically indemnifying the landowner. The landowner may carry casualty insurance on the structures. The lease should specify what will happen in the event the property is condemned or destroyed by fire or other casualty.

17. **Dispute resolution** – A lease also may include a dispute resolution process, from a mutual commitment to engage in a facilitated conflict management process, to shared cost of formal mediation.



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