

Lease Mediation

presentation for Columbia Land Conservancy:
Down to Earth Workshop Series

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**NYS AGRICULTURAL
MEDIATION PROGRAM**

STRAIGHT TALK • FAIR SOLUTIONS

Motivation for Farmers to lease land:

- It's Economic!
 - Can't afford to buy land
 - Can't afford all of the land base that they need (own some, rent some)
- Or, want to put capital into the business assets and not real estate and make a conscious choice to lease.
- As one farm management professional states, "Control, not ownership, is the critical issue in efficient production."



“Finding and securing land can be a difficult task.”

*Derek Christianson
Brix Bounty Farm, MA*

Financial Stresses in Farming

- The best laid plans can still go south.
- Weather, health issues, changes in markets and regulations, and cost of production (fuel or grain price spikes), can make it difficult for a farmer to follow through with their plan.



Motivations for Landowners to lease their land:

- Retired farmers without successors who want to keep the land active
- Many landowners have their land as part of a family legacy
 - The land gets handed down to non-farming heirs, who sometimes don't even live in the same state, but want to keep the land in active use.
- Primary and vacation homeowners who bought the place for the rural aesthetic, but don't want to farm
- Business owners who bought commercial property with ag land attached
- Investors looking to make money off of ag land through rent or appreciation
- Non-profits/community groups/public entities who bought land to keep it in agriculture.
- Public entities who own land for other purposes
- Watershed protection, future cemetery expansion, public park/access but want to keep land active
- All of the private landowner groups are often motivated by property tax breaks from keeping land active and/or they don't want the land to grow to brush/trees.

80% of all
rented
farmland is
owned by
non-farming
landlords

Principles of Land Tenure


- Access
- Security
- Affordability
- Legacy
- Stewardship



What is a lease?

- It is a contract between the property owner and property user.
- It specifies the rights, limitations, and obligations of both parties.

lease

/lēz/ 

noun

1. a contract by which one party conveys land, property, services, etc., to another for a specified time, usually in return for a periodic payment.

synonyms: rental agreement, [leasehold](#), [charter](#), [rental](#), [tenancy](#), [tenure](#), period of occupancy

“The relationship between the landowner and the farmer is always more important than the written document...”

(From Farmland Tenure and Leasing, A Legal Guide by UVM Center for Sustainable Agriculture).

Types of leases

- **Short-term** (annual to 3-5 years)
- **Long-term** (5-99 years)
- **Ground lease** (long-term, where tenant rents the ground and owns the improvements)
- **Rolling term** (term “rolls forward” so that it’s always, for example, 3 years)
- **Residential lease** (preferably separated from the lease for land and farm structures)

Advantages of leasing



The ability to get on with farming without the enormous capital investment required to purchase land.



Some farmers like short-term lease arrangement because they can experiment with new enterprises or locations without a long-term commitment. This flexibility is particularly useful for start up farmers.



A short-term lease can enable a farmer to test whether her farm plans are financially feasible or whether he is comfortable with his landlord. It allows both parties to decide if a longer-term arrangement would work.



A short-term lease also allows the tenant to limit financial risk.

Disadvantages to leasing

- Insecurity of tenure can lead to disruption of the operation and difficult in making long-term business plans or personal decisions.
- Inability to build equity in the land.
- Lenders may balk at financing long-term assets such as equipment or livestock if the borrower does not have a written lease covering the loan period.
- Tenants may have less financial incentive to invest in longer-term conservation practices or install conservation structures.

Things that can go wrong

- Breaking up is hard to do....
- Addressing issues too late.

Stewardship Issues-

- Unclear or unreasonable expectation
- Unarticulated assumptions that farmer or landowner have

Communication Issues

- The gap between farming realities and the ideas that non farming landowners may have about farming.
- The seasonal issues, challenges and time pressures that are different each year dependent on weather patterns.

Unclear relationships

Best Practices for Avoiding Problems

Work for **clarity** in **communication**.

- Capture all agreements and decisions in writing.
- Check for understanding.



Action language

- Are agreements doable and specific?

Best Practices for Avoiding Problems

Use measurable standards.



Best Practices for Avoiding Problems

Anticipate problems that COULD come up and pre-plan procedures for dealing with them.

- Schedule regular meetings (at least annually).
- Annual report - what happened on the property in the past year & what is in the plans for the upcoming year.
- Establish a method for communications that fall between formal meetings.

Best Practices for Avoiding Problems

Keep business businesslike.

- Separate friendship from business.
- Never make a decision based solely on an informal conversation.
- All binding changes to the agreement should occur at a formal meeting .
- These changes get recorded, in writing, on the lease document with the date and signatures of all.



Lease Mediation Pilot Project

- Funded by a NE SARE Partnership Grant



When to contact NYSAMP

- Conflict feels stuck, unproductive or is escalating.

What happens when you call NYSAMP for a free confidential consultation?

- We will listen to understand specifics of the situation.
- We will give you information about the mediation process and principles and answer questions about these.
- We will help you figure out if mediation is the right tool for your situation.
- We may refer you to other services if mediation is not appropriate for the situation.

How quickly can we get a mediation scheduled?

- Approximately 2-3 weeks depending on complexity of situation and participant availability

Other Resources: landforgood.org/toolbox

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Toolbox for Leasing Farmland

If you're a new or beginning farmer, leasing farmland may be an effective way to overcome one of your biggest challenges to getting on the land. Leases can offer affordable, flexible and secure access to farms, land, and buildings. If you're a landowner who wants to make land available for farming, leasing land with a well-planned approach can be a "win-win" for you, your land and your community.

This Toolbox contains materials most relevant to farming and farms in New England. It includes practical articles about what's in a lease, types of leases, what to look for in a lease and how to negotiate a good lease. You'll also find "thought pieces" that address the interests of the community in long-term farm leases, and landlord-tenant relations.

For farm seekers

- [New England Farm Leasing Tutorial](#)
- [Nuts and Bolts of Farmland Leasing](#), a webinar with Land For Good, New Entry Sustainable Farming Project and Legal Services Food Hub
- [Farmland Tenure and Leasing](#), *A Legal Guide to the Business of Farming* Chapter 3, UVM Center for Sustainable Agriculture*

For landowners

- [A Landowners Guide to Leasing Land for Farming](#)
- [Leasing Land to Farmers: A Handbook for New England Land Trusts, Municipalities, and Institutions](#)

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