PLANNING FOR ON-FARM SUCCESS

A Workbook for Montana's Beginning Farmers and Ranchers

Module 8: Land Access

USDA

Community Food & Agriculture Coalition OF MISSOULA COUNTY

This workbook was developed by the Community Food & Agriculture Coalition in cooperation with Montana State University Extension, the National Center for Appropriate Technology, the Montana Community Development Corporation, and the Lake County Community Development Corporation, with funding from the United States Department of Agriculture. This publication was developed as part of USDA RMA grant no. 13-IE-53102-17, Crop Insurance and Risk Management Training for Beginning Specialty Crop Producer in Western Montana and USDA NIFA grant no. 2015-70017-22851, Building On-Farm Success: Resources and Training for Montana's Beginning Farmers and Ranchers.

This workbook draws heavily from the following publication, which can be viewed online at misa.umn.edu. In addition to a large amount of the body of the document, all worksheets, unless otherwise noted, come from the following publication:

Minnesota Institute for Sustainable Agriculture. *Building a Sustainable Business: a guide to developing a business plan for farms and rural businesses.* College Park, MD: Sustainable Agriculture Research and Education (SARE), 2003.


Photo: Dorothy Patent


Photo: Cathrine Walters


Photo: Pedro Marques

Editor
Annie Heuscher, Community Food & Agriculture Coalition

Contributors/Reviewers
Seth Swanson, MSU Extension
Tammy Hinman, National Center for Appropriate Technology
Amita Patel Greer, Montana Community Development Corporation
Jan Tusick, Lake County Community Development Corporation
Bonnie Buckingham, Community Food & Agriculture Coalition
Tara Beley, Risk Management Agency
Brianna Ewert, Farmer
David Wise, Community Food & Agriculture Coalition
Autumn Lee, Community Food & Agriculture Coalition
Cedar Brant, Nourish the Flathead

Additional Partners
Montana Farmers' Union
Alternative Energy Resources Organization
Western Montana Growers' Cooperative
Montana Department of Agriculture
Farm Service Agency

Module 8: Land Access

Across the country and certainly in Montana, land access is one of the primary issues facing beginning farmers. Land may be unavailable in your community or available but priced out of your range. Either way, it can be a major challenge to starting a farm. In some areas of the country, these challenges are causing farmers to stop looking for land to purchase and focus solely on leasing. Unfortunately, finding good farmland to lease may be as difficult as finding good farmland to purchase, and comes along with its own set of challenges. This module is designed to help you identify ways to find and evaluate land. It will also help you understand the types of arrangements that may be possible and offer tips on how to write a contract that will be good for you and the landowner.

Finding Land

The standard way of finding land to purchase is through a realtor. Realtor.com allows you to search for land available in your area and you can filter to select lands over a certain acreage and with or without housing. You can also seek out a realtor in your area who specializes in farms and ranches. Note that the realtor that is listed on any particular land listing is the seller's realtor and their main job is to advocate for the seller. You should find a realtor to work with because they will advocate for you through the process. In a typical sale, your realtor will be paid by the seller so don't worry about what it will cost you.

Did you know?

In Montana, landowners can receive a tax benefit for selling land to a beginning farmer! See Montana Tax Form 2, Schedule II, Line 30. For more info, contact the Montana Department of Revenue.

Other resources for finding land include Land Link, Craigslist, and farm newspapers/magazines. The Land Link program is run by the Community Food & Agriculture Coalition and is designed to connect beginning farmers with landowners who have a particular mission to lease or sell their land to a farmer, rather than to a developer. Their online database is a good place to start your search.

You may also find that people will respond to "reverse listings," ads about you and what you're looking for. These can be placed in small community papers, on Craigslist, in farm newspapers/magazines, or in county Extension or Soil and Water District newsletters. Contacting owners of a desirable property by personal letter and/or phone call can be effective too. Find names and addresses by zooming into the desired property on the Montana Cadastral site (http://svc.mt.gov/msl/mtcadastral/).

Stories from the Fields

We searched for three years for the right land. We were really picky. We checked property listings, real estate publications, really everything we could find. And we didn't find realtors as helpful as we needed. They don't necessarily get what a farmer needs and is looking for and you really have to do the work yourself. - Ian and Ellen Farm, Hamilton

Finally, finding land through your network is very common. Spread the word among your friends and family about what you're looking for and ask them for their help. If you don't yet live in Montana or don't have a big network, try using social networking or join a farm organization to build a network and spread your goals that way.

Although not specific to farming and ranching, first time homebuyer's courses are offered in communities across Montana and offer a huge array of resources, insights, and knowledge. They will help you understand the real estate process and make you a more savvy buyer whether you buy from a friend or through a realtor.

Once you find some possible properties, consider the soil type, drainage, and the many additional factors outlined throughout this module. It is important to find a site that matches the production requirements of the enterprise you want to develop.

To find information on soils, visit the NRCS Web Soil Survey (http://websoilsurvey.sc.egov.usda.gov). Like the Montana Cadastral site, it will allow you to zoom into your desired property and gather all kinds of information about the soil on site. You can use the information on the site to determine the vegetative productivity potential for non-irrigated and irrigated crops, livestock forage production potential, and more.

To learn about water on the property, there are a few different resources you should know about. Visit the Montana Department of Natural Resources and Conservation's (DNRC) water right query system http://wr.msl.mt.gov/default.aspx. The data on this site will help ensure that there are documented water rights associated with your land. The Montana Bureau of Mines and Geology (http://mbmggwic.mtech.edu/) will allow you to query well log information to obtain well depths, yield, and in some cases, even water quality. Use this tool to evaluate the wells on the property you're looking at and, if there are no wells on your property, use it to learn more about wells on neighboring properties. This can help you to determine water quality and quantity for domestic use or to support a livestock watering or irrigation plan. Finally, contact the local irrigation district for the property you're considering. Each irrigation district in Montana works a little bit differently and the means of drawing water out of the system may even vary dramatically within the same district. The irrigation district may also be able to provide you with historical information on production in your area and help you evaluate your parcel.

It's a good idea to visit with the local Extension agents and USDA office staff in your region. Extension and the USDA Natural Resources Conservation Service (NRCS) are great resources for conducting this research and can help you build a more in-depth understanding of the area and specific parcel you're interested in. Others may be able to connect you with financial resources, pest and weed management information specific to your area, and a wide array of other information.

Work through Worksheet 8A: Land Access to define your needs and goals for your future land.

Types of Arrangements

Much of the following section is derived from Agricultural Land Tenure: A Curriculum for Beginning Farmers and Farm Seekers.[1]

Although leasing and buying are the two most typical types of land access arrangements, there are many other ways to access land that are becoming more common in Montana and around the country. In addition, there are a lot of different ways to buy and lease land!

Classic purchase options

1. **Fee title purchase with conventional financing:** This is the standard means of purchasing a farm. In this scenario, the farm may be bought and sold between family members or unrelated parties. Sometimes the owner is willing to sell at a "bargain sale" price—less than the market price. It involves borrowing the money from a willing lender such as a bank, and paying the mortgage. The borrower will have to prove sufficient means to pay the monthly mortgage and sometimes a business plan may be required.

Frequently, a farm property includes a house, which makes it all the more expensive; however, given purchase terms, these days it may be quite a bit easier to buy land with a home on it than to buy bare land. Oftentimes, when lending on bare land, banks require significantly larger down payments and higher interest rates. It's worth talking with multiple lenders prior to beginning your search to understand whether buying bare land will be an option for you. If you talk to multiple lenders, don't let them pull your credit score until you've decided which lender you want to work with, as multiple credit reports in a short period of time may have a negative impact on your credit score.

2. **Fee title purchase with government financing:** The USDA Farm Service Agency and USDA Rural Development offer loan programs for beginning farmers and homebuyers, respectively. FSA has a suite of loan programs targeted to beginning farmers and they can loan to you directly or can guarantee an outside loan, which should reduce your interest rate. Both of these USDA programs can potentially be more time-consuming, but they can also offer great rewards for the buyer. Contact your local FSA and RD officers to learn more.

---

[1] Robin Kohanowich, et al. *Agricultural Land Tenure*, FarmLASTS Project, 2011.

Stories from the Fields

Starting out with the Golden Yoke Dairy, Connie Surber and Laura Ginsburg accessed their land, a farm in St. Ignatius, through Land Link. Connie explains Land Link's advantages: "Land Link gives beginning farmers the opportunity to see what land is available. Usually the landowners let you know what they can offer and what you can do on their land. You get to know the landowner and you learn about what's happening on the land and what's happened in the past, as well as electricity, water, all those things. You're not committed to something fully, depending on the lease situation. Someone else is taking care of taxes, water rights, electricity to some extent. You're really given a canvas to do your thing on."

Connie and Laura corresponded with about six landowners and visited three or four landowners before settling on a spot to lease. Meeting the landowners, says Connie, was key. She explains, "You might have this really great connection with someone and you may not. Having that meeting, talking about what you want to do, seeing if it really lines up, that's what Land Link lets you do."

Ultimately, Connie and Laura bought a farm just about a mile away from the spot they leased through Land Link. Connie says, "The Land Link place let us figure out where we wanted to be. It helped us decide what we'd need to look for once we purchased a place. So it really gave us time to decide if continuing to rent was the best thing to do, or whether we should buy the place we were on. Land Link's really let us get our legs, kind of decide where our commitments should lie and what we wanted to do."

The lease arrangements available through Land Link vary. Connie and Laura visited a farm in Missoula on which the landowners preferred to be involved in the operation and would invest financially in their work; a farm with beautiful pasture and no infrastructure; and the farm the ultimately settled on in St. Ignatius. Commenting on how she and Laura decided which property made most sense for them, Connie explains, "In St. Ignatius we would be completely autonomous, right there in complete control. We felt that starting out we needed to give ourselves the opportunity to fall on our faces and not have anyone else have to pick us up. If we were to have farmed somewhere with a lot of help, maybe we would already be in business, but I feel like we chose right for us."

3. **Northwest Farm Credit:** The Farm Credit System is a federally chartered network of borrower-owned lending institutions that has been in existence since 1916. Northwest Farm Credit has a Young, Beginning and Small Farmer initiative that targets services and loans to beginning farmers and ranchers. These programs offer reduced interest rates and flexible terms, with additional rate reductions for pursuing educational programs like this one.

4. **Aggie Bonds:** Aggie Bonds are a federal-state partnership that can assist beginning, first-time farmers to purchase land, farm equipment, farm buildings and breeding livestock through reduced interest rate loans. Through an Aggie Bond program, the state coordinates the creation of a bond that allows lenders to earn federally-tax exempt interest income on loans to eligible beginning farmers and ranchers. The tax-savings allows the lenders to provide the loans at a reduced interest rate to the first time farmer, while the credit decisions and financial risk remain with the local lending institutions. Montana's Aggie Bond program is managed by the Montana Department of Agriculture and is titled the Beginning Farmer & Rancher Loan program.

5. **Land contract or owner financing:** A land contract sale is an agreement through which the seller (original owner) of the land agrees to finance the sale to a new buyer. The new buyer moves onto the land and begins making payments directly to the seller/owner based on an agreed-upon interest rate and other terms. The title remains with the owner until all payments are made. The contract may also provide for monthly payments for a number of years, followed by a balloon payment when the remainder of the sale amount is due. All of these terms are up to the purchaser and the seller and must be defined in the contract. Although you're working directly with the owner, it may still be worthwhile to bring in a realtor to advocate for you through the process and ensure that you clearly understand the terms you're agreeing to.

The 2008 Farm Bill included a program in which the federal government guarantees land contracts, making it more attractive (less risky) for the owner to enter into a contract sale. Because the Farm Bill has to be re-approved on a regular basis, it's worth checking with your state USDA office to identify whether or not these options are still available.

7. **Inheritance:** Property left to a relative or non-family member at the time of death. If the deceased had a will, it stipulates how assets are to be distributed. Sometimes the farm real estate goes to one child and other assets go to others. Sometimes the farm goes to all children and they have to figure out how to deal with that. Sometimes there is debt that accompanies the asset. Good estate planning is essential, and estate taxes can be avoided or minimized.

8. **Gift**: Real estate can be gifted from the owner during his or her lifetime to another party such as a beginning farmer who may or may not be a family member. Contact your accountant to better understand the tax implications if you're planning on pursuing this option.

9. **Work-in:** In this scenario, a young farmer joins the senior farmer's operation, typically starting as an employee and working up to an equity position as a partner or member of the farm business company. Assets (and management) are transferred gradually.

Lease options

1. **Short-term rental:** Typically one to three years in length, short-term leases can offer both flexibility and some stability. There are disadvantages too, such as lack of security and inability to build equity. Renting land rather than owning it means that farmland cannot serve as collateral, so some loans may not be available. Further, even if your operations are not profitable, you may still be contractually obligated to continue paying rent. Some less traditional lease models address some of these shortcomings. Most short-term leases are between private parties, and sometimes within families.

2. **Long-term lease:** Long-term leases typically last for a minimum of 5 years and can be up to 99 years, allowing assured continuity and more opportunity for tenants to plan and invest in the farm business and the farmland. In some states long-term leases may be inheritable or the tenant may sell the lease to another individual. Longer leases allow farmers to introduce long-term planning into their operation (even intergenerational, if it is inheritable) and could give beginning farmers not only the opportunity to make long-term plans for their farming businesses, but could also improve banks' willingness to provide loans to them. Long-term leases are typically more complex documents and it's advisable to involve an attorney before finalizing.

3. **Lease-to-Purchase Arrangements:** There are two basic types of agreements that enable a tenant to acquire ownership of the rental property in the future. In a Lease with Option to Purchase the lease grants the tenant an option to purchase the property at a time in the future. Usually the price and the terms of the purchase are set forth at the outset. The option may run for the length of the lease or for only a portion of the lease period. The lease payments are not part of the consideration of the purchase price unless the terms specifically allow for that. In a Lease-Purchase Agreement, the tenant leases the property and is obligated by the terms of the lease to buy the property. Here too, the rent can go toward the purchase price. Details on the purchase of the property should be written into the lease agreement.

4. **Sharecropping/Sharemilking:** In a sharecropping agreement, a new farmer operates a farm on behalf of the farm owner for an agreed share of farm income and expenses. The arrangement offers young farmers a way to build assets and dairy management skills without requiring a large amount of capital input at the beginning of their careers. For more information regarding crop share leasing please refer to: http://www.extension.iastate.edu/agdm/wholefarm/html/c2-30.html

New landlords and new partners

Many farm landlords are farmers or former farmers themselves. These landlords are familiar with farming and understand rental agreements. Some handshake agreements endure for many years—sometimes across generations—based on trust and mutual understanding.

As land become less available, especially in urbanizing areas of the country, the pool of available land is not sufficient or affordable for entering farmers. At the same time, communities are increasingly concerned about the sources and quality of their food, and about the preservation and management of agriculturally capable and other open land. This makes for new win-win arrangements between farmers and citizens, community groups and public entities—landlords who do not farm and who don't know much about farming. At the same time, they may be relatively unfamiliar with farming practices and realities. Who are these new landlords?

a. Widows and other heirs (children)

b. Second home and estate owners

c. Land trusts and other conservation organizations

d. Conservation buyers

e. Churches and religious orders

f. Municipalities with open space

g. States with institutional properties with an agricultural history or capability (e.g., state mental hospital and corrections facilities), state-owned open space properties, and state-owned parkland

h. Federal lands such as parkland, rangeland, forest land and Tribal lands

i. CSA members

j. Intentional communities (e.g., co-housing)

k. Agriculturally focused subdivisions

l. Schools, universities, and non-profits

m. Incubator farms

Alternative models

As land ownership changes, more and more landowners do not have a farming background. With these less traditional landlords comes the possibility for new and different land use agreements. The following are examples of innovative arrangements that can offer unique benefits to both landowner and operator.

1. **Lease from public (federal, state or municipal) entity:** Farmers may not normally think of investigating institutional or non-individual landlords. However, landowners such as towns or municipalities, religious organizations, and colleges and universities hold lands that they may be willing to make available for leasing, such as parks, roadways, or other lands that were historically owned by the government but under-utilized. Such leases may be short- or long-term agreements. The lease agreement on public land does not automatically mean public access. In some areas, the agreement is a license, not a lease, and its term (number of years) is limited by law.

Churches and religious orders with land holdings are often interested in land uses that meet their stewardship ethic. In addition, some prioritize farming, food security and/or opportunities for socially disadvantaged, minority and other populations. This can include beginning farmers. As with public or institutional lands, these properties are not owned by a single person or family. This adds another layer to the negotiation, and must be taken into account when attempting to secure land arrangements with them.

2. **Purchase of land with an agricultural conservation restriction:** A conservation easement (also known as a conservation restriction) is a legal agreement between a landowner and a conservation land trust or government agency that permanently removes the right to develop the land. A conservation restriction may impose additional limitations and/or affirmative obligations to protect the natural, scenic, open-space or productive values of real property. The easement is held by the government or by a qualified conservation organization. It is recorded with the deed, and future owners are bound by its terms in perpetuity. The land remains privately owned and on the tax rolls, but at a lesser tax valuation because it cannot be developed.

Beginning farmers benefit because without development potential, the value of a property is theoretically its agricultural value, and therefore more affordable, although this is not always the case. There can also be additional challenges related to farming on land with a conservation easement depending on the restrictiveness of the easement, i.e. whether it restricts temporary/permanent housing structures, outbuildings, or other farm improvements.

3. **Fee title purchase and sale of conservation restriction (easement):** In this scenario, a buyer of a farm property negotiates the sale of a conservation restriction at the time of purchase. This serves to simultaneously preserve the property and provide the buyer (a new farmer) with an infusion of capital to offset the market rate purchase of the property.

4. **Community land trust:** A community land trust (CLT) is a non-profit organization that owns real estate for the benefit of the community. The CLT is democratically controlled and serves to provide long-term affordable housing and land use opportunities. Most CLTs focus on housing, but some also hold and lease farmland. A CLT makes land more affordable because the common land is held by a trust while individual families or farmers hold long-term leases on a plot of land. They negotiate long-term (99 year) renewable ground leases, while the farmer purchases the house and other farm structures on the leased land. (This is not dissimilar to a condominium situation in which the occupant owns the home but not the land under it.)

The CLT places affordability limitations on the leasehold and on the deed to structures on the leasehold so that both land and buildings remain affordable to subsequent lessees and owners. There are formulas to calculate future price as well as the owner's equity contributions. When the farmer wants to move on, he or she sells the house, and transfers the lease to the next lessee. One CLT in Montana is the North Missoula Community Development Corporation, which is considering beginning to work with farmers through a partner organization that is just getting started, Trust Montana.

5. **Shared equity arrangements:** In a shared equity agreement, the operator shares ownership with others (investors) who share appreciation in the value of the property. The investors may receive a return on their

investment by the future sale of their portion of property (to the operator or to the next owner-partner). Ownership may be structured as an LLC or a corporation.

6. **"No-cost" lease or barter agreements:** These may be in-kind exchanges or barter. The landowner may pay some maintenance (lime, fertilizer) and/or barter for plowing services, wood, mulch hay, vegetables/other product, etc. In some situations, landowners receive tax advantages from having their land in active agriculture, so they are happy to have a farmer use the land without charge. There are examples of private landowners and utility companies paying farm operators to keep land (for example under power lines) grazed.

Writing a Good Lease

Farm leasing goals

An effective farm lease agreement must help both the owner and the operator accomplish their goals for leasing the land. Farm landlords commonly have some of the following goals:

- Earn a competitive return on their investment.
- Maintain the productivity of the land and improvements.
- Maintain the appearance and usefulness of buildings and improvements.
- Maintain financial risk at a level that is compatible with financial security and comfort level.
- Minimize conflicts with tenants.
- Contribute to better environmental conditions.
- Minimize decisions about property maintenance and related costs.
- Help younger farmers and/or family members get started in farming.
- Reduce income, social security, property and estate taxes.

Stories from the Fields

I met the owners of land parcels I was interested in a while back and befriended them and what it really comes down to is relationships. They had told me some of the problems they'd had in the past and it really came down to trust. They trust me, and that was my foot in the door. A lot of these landowners get lots of people asking them for things and I never really asked them for anything. I offered to help them. When they trust you and you're offering to improve their land, it's a way easier sell for them. If you just want to go in and graze cows and not tend to them and not tend to the fences, you'll be pretty short lived. I've got a year-to-year, a special deal with another landowner, and a long-term lease with another, but the truth about it is I don't own the land so there are no guarantees for tomorrow. But I really don't worry about that because of the relationships I have with these guys. - Oxbow Cattle Company, Missoula

Farm tenants also have goals. Many of them are compatible with the owner's goals, but some may lead to conflicts that have to be resolved:

- Earn a competitive return on their labor and investment in machinery and inputs.
- Reduce their financial risk.
- Increase the security of being able to operate the property in the future.
- Maintain a scale of operations that utilizes their time and resources efficiently.
- Enjoy managerial freedom
- Have access to land for farming without going into debt by purchasing
- Explore farming and/or marketing systems, location and farming lifestyle without committing to a property

In fact, goal setting is the first and most important step for each party to a lease agreement. You have already worked on setting your goals for your farm operation in Module 1. Now you'll need to consider what your goals are specific to farm tenure and you should ask your landlord to consider his or her goals as well.

Ideally, landlord and tenant set forth their own goals in consultation with family and professional advisors. Once the goals of each party have been articulated and shared, the next step is to develop a written lease agreement that will combine the goals and resources of the owner and tenant into a package. The agreement should encourage use of the optimum levels of technology, capital, labor, and management for profitable operation of the farm.

Consideration should also be given to yield and price risk and who will bear them. The division of risk is key in determining what kind of lease is acceptable to both parties. Finally, the question of what costs or resources are contributed by each party must be answered. The terms of a lease contract should be viewed in total to determine fairness to both parties involved. Individual provisions should be written so that they contribute to the equity of the lease as a whole.

New production technology, changes in USDA farm programs, new environmental and safety regulations, and markets for new products may require modifying lease terms. Also, each party might modify goals or plans over time. The lease agreement should be reviewed and discussed at least annually. Written lease forms are available from various sources. One sample is provided at the end of this module. Such forms are valuable as a starting point, but need to be customized to fit each individual situation.

Calculating lease fees

When setting a lease, there are several variables to consider. One variable is the going rates in your region, which is sometimes difficult information to obtain. Many landlords and farmers may not be willing to share the amount of their fees. However, it may be possible to derive an average rate by doing some research. Some good ways to research the going rate is to look at what people are charging on an anonymous site like Craigslist. One obvious limitation may be that you may not be able to tell the quality of the land, but it might give you a good starting point. Then try asking friends and mentors about their lease rates. Finally, you can check with Extension and USDA staff in your community because they may know about what is standard. In particular, the Farm Service Agency may have helpful information because they regularly look at farmers' financials.

Several other variables are key to consider; the following come from *Considerations in Setting a Cash Rent.*[2]

- Land Quality - It is important to know the soil types on a farm and the natural productive capability of the land.
- Fertility - Soil fertility levels are often overlooked. Farms with high soil test levels for phosphorus and potassium will require considerably less fertilizer for crop production, and thus may have more rental value. Similarly, farms with low fertility levels may require extra applications of phosphate and potassium to raise nutrient levels to an acceptable level. If the tenant is responsible for the cost of building the fertility level of the farm, this will lower the rental value of the farm. The removal of crop residues such as corn stalks or wheat straw is removing additional nutrients. These nutrients should be replaced through heavier fertilizer applications. The pH level and the party responsible for this expense is also an important consideration.
- Use of Facilities - Use of storage units, machinery storage, livestock buildings, and other facilities can add to the cash rent value on a farm unit. In some cases, the use of these facilities is included in rent paid for the tillable land. In other cases, lease terms call for a separate rent to be paid for facilities.
- Expected crop returns - The potential profit or net return from crop production is a major determinant in the rental rate for a farm. This will likely only be applicable if there is recent production on the farm that is similar to what you have planned.
- Services provided by tenant – In many cases, tenants perform services for which they are not paid. These may include such things as providing the labor, fuel, and equipment to mow road ditches, repair tile lines, make building repairs, remove snow, maintain lanes and roadways on the farm, etc. These services need to be recognized in establishing the lease amount.

[2] Craig Dobbins, *Considerations in Setting a Cash Rent.* Purdue University, 2008.

- Previous History – The reputation of the tenant or landlord and/or the working relationship and previous experiences between landlord and tenant is often an important factor in determining final cash rental rates.
- Payment Dates - The payment dates for cash rental payments can change the "Net Rental Rate" due to interest on the payment. For example, the "Net Rental Rate" is $5.00-$6.00 per acre higher if 100% payment is required in the spring rather than only 40% - 50% percent, with the remainder due in the fall.
- Tillage System – The long-term use of conservation or no-till systems can often improve soil structure, organic matter content, and overall productivity of the farm. These attributes may have a positive influence on the value of the property when it is sold.
- Logistics of crop movement – A good set of lanes on the farm and/or roadways next to the farm is a great asset, allowing your product to be quickly moved from the field to storage or market.
- Size and Location of Farm – Since the amount of time required to move product to market or machinery to a farm is the same regardless of its size, a farm with a small number of acres will likely be less attractive to a new farmer in the area. A farm next to or close to another farm already operated by a tenant in the area may be more attractive. Location relative to streams and rivers is also an important consideration.

What's in a lease?

A written lease or agreement is a good idea whether you are paying rent, working on shares or permitted to use the land free of charge. In the past, many farmers worked off a "handshake agreement" and it may seem like an awkward conversation to have when you're first making plans with a landlord. However, should something go awry, you will be very glad that you have it. A lease will specify the terms under which the renter and the owner will operate. The main goal of a lease is to develop a fair agreement understood by both parties. Landowner and tenant needs and goals should be identified.

At minimum, the following key provisions must be included for the lease to be a legal document:

- Description of the land and buildings to be rented, and equipment if applicable. An accurate assessment of the conditions at time of rental is a good idea, including photos to document.
- Rights of each party: owner and tenant access and use. Spell out any restrictions.
- Term of the lease (start and end dates)
- Improvements that will be made and who pays for these. If buildings are involved, specify who pays for improvements like roofing, painting, etc. that are normal infrastructure, versus improvements made specific to the farm enterprise.
- Agricultural practices to follow – outline organic or agronomically sound practices to be used, specify that fields be planted to a cover crop after use, list prohibited practices
- Condition of land at end of lease - common practice calls for land to be left in the same condition as when first rented. However, land that has not been farmed for some years prior to the lease may actually be left in better condition. In this case consideration should be given to the cost of those improvements.
- Payment terms under normal growing conditions and in the event of a crop failure. Payments should be based on the value of the property for farming purposes only (not for development).
- Lease payment: leases can be paid in cash, in crop or livestock shares, or in some cases, landowners are willing to forgo fees if the tenant makes improvements.
- Bringing land back into production - if land has not been actively farmed in many years, the cost of bringing land back into farming is considerable. Consideration needs to be given as to who should pay for these costs. The owner benefits in the long run from improvements that are made.
- Length of the agreement and terms of renewal. A one-year renewable lease might be a good starting point for annual crops, or if planting perennial crops, a 3-5 year lease is preferable.

- Early termination if initiated either by the owner or tenant and the consequences.
- Insurance paid by owner (for land, buildings, equipment) and paid by tenant (for crops/livestock and production-related improvements made by tenant).
- Taxes are the responsibility of the owner.
- Provisions for arbitration in the case of disagreements.
- Signatures of all those involved in the lease agreement

Leases may also include sections on the following:

- Repairs and maintenance
- Means for establishing and modifying rental rates
- Payment requirements and schedule
- Permitted and prohibited uses of the property and any land use restrictions
- Capital improvements to facilities and/or the land (i.e., what is permitted, process for approval, ownership)
- Subleasing and assigns
- Insurance and liability issues
- State and Federal lease law considerations
- Reference to easements and/or other liens on the property

Some questions to address when developing a lease. The answers to these questions depend in part on the tenant's personal and business goals.

✓ Do I fully understand what I am agreeing to do?

✓ Can the agreement be modified once it is signed?

✓ What portion of income do I receive?

✓ What portion of costs do I contribute?

✓ What portion of the risk do I bear?

✓ What crop and land management practices will be followed?

✓ What will be the condition of the land after the term of the lease?

✓ Do the lease terms meet my goals for farming this land?

✓ Can I afford to rent this land?

✓ How long will the agreement run and how can it be terminated or extended?

✓ Is the term long enough to meet my objectives?

✓ Who will decide if I have satisfied the terms of the contract?

✓ What will happen if a dispute arises? Will it go to court or does the contract include some form of alternative dispute resolution such as mediation or arbitration?

✓ Is there a satisfactory exit provision (in case things don't work out)?

✓ Are there any other lease agreements in place that could impact my operation?

Make sure you have a signed copy of the contract or lease in your possession, in language that you understand.

For more resources on finding land and securing a good lease arrangement, see the NCAT publications, *Tips for Farm Leases and Contracts and Finding Land to Farm.*

Sample Lease Agreement

The following lease agreement comes from the Guide to Farming in New York State.[3]

A simple lease follows as a starting point. Consult an attorney when you are ready to write your own lease to make sure it reflects your needs and local laws.

This lease is entered in this ____day of______________ between ___________________, landlord, and _____________________________, tenant. The landlord leases to the tenant to use for agricultural purposes _________ acres of pasture and _______ acres of cropland, and the following building: (list or attach a list) located in the Town of ____________ and County of____________ and commonly known as __________Farm.

The tenant will pay the landlord $________ per year (or other specified time period) with payment to be made as follows:________________________________. The tenant will also pay all the costs of planting, growing and harvesting crops grown on the land. The tenant will be required to maintain and repair fences, tile drains, and diversion ditches, and make ordinary repairs to maintain buildings and equipment used, and pay for utilities such as electricity and water (if relevant) during the period of the lease.

The landlord will pay the taxes, fire insurance on buildings, major repairs or improvements, such as new fence, ponds, drain tiles, diversion ditches, etc. The tenant will follow recommended conservation and agronomic practices in working the land. No green or growing timber may be harvested from the property by the tenant. The landlord has the right to inspect or enter the property at any time. This lease shall be for ___years beginning (date)_____________________ with automatic renewal for (how long):________(years) unless either party gives written notice to the contrary at least 3 months (90 days) before the expiration of the current rental period. The rental rate may be adjusted annually to account for increases in taxes, insurance or other costs of ownership. Any meadow land plowed for annual crops will be re-seeded to a perennial forage crop at the end of the lease period (unless the lease has been automatically renewed).

Any differences between the landlord and tenants as to their rights and obligations under this lease that are not settled by mutual agreement shall be submitted to an arbitrator or other such person who has authority to make a final decision.

It is agreed that the stipulations of this lease are to apply to and bind the heirs, executors, administrators, and assigns of the respective parties and is made and executed in duplicate. In witness whereof the parties have signed this lease on this date of________________.

Landlord_________________________________ Witness__________________________________

Tenant___________________________________ Witness__________________________________

[3] Monika Roth, et al. *Guide to Farming in New York State.* Cornell University, 2014. http://www.nebeginningfarmers.org/resources/guides

Worksheet 8A: Land Access

Consider your plans for your farm and your personal goals and values. Answer the questions below to build a better understanding of what you are looking for in a piece of land to purchase or lease. Use this information to build a picture of your dream land access scenario and those you could live with.

What kinds of soil and water am I looking for? ______________________________

____

____

What types of infrastructure do I need (fencing, buildings, machinery, etc.)? ______________________________

____

____

What types of infrastructure am I willing to develop on the farm myself? ______________________________

____

____

What are the optimal types of agreements for me? ______________________________

____

____

What kind of relationship do I want to have with the landowner (if leasing)? ______________________________

____

____

What are the most important things to me about any piece of land I buy or lease? ______________________________

____

____

____

What are the things I would like to have, but that I can live without? ______________________________

____

____

____

What are the things I definitely don't want to deal with on my land? ______________________________

____

____

____

Plan for finding land: ______________________________

____

____

____

____

____