

# SUSTAINABLE LAND TENURE AND FARM TRANSITIONS

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# SUSTAINABLE FARM LEASES

- Big Caveat
- Nuts and Bolts of a Lease Contract
- Some Important Laws
- Using a Contract to Build a Sustainable Relationship
- A Word About Advisors

# NUTS AND BOLTS OF FARM LEASES

They are contracts: Legally enforceable promisess.

## Bare Necessities    Other Provisions

- Parties
- Land
- Term
- Rent

- Purpose & Uses
- Conservation
- Maintenance
- Improvements
- Liens
- Termination
- Transfers
- Dispute Resolution

## SOME RELEVANT LEASE LAWS. THEY ARE STATE SPECIFIC.

- Nearly All Default
- In Writing?
- Term Limitations
- Termination –  
Cuts both ways
- Good Husbandry
- Breach
- Right of Entry
- Residential Rules?
- Recording  
Requirements
- Crop Residue
- Federal Programs

# HISTORICAL VIEWS OF TENANCY

“[H]e must be too improvident a man to be a good farmer, who should invest in the land capital sufficient for high cultivation, without some security that a change in the ownership of the estate . . . may not at any moment bring a notice to give up farm, improvements, and capital, and leave it all, uncompensated, to a stranger.” — **George Wingrove Cooke, Attorney, 1850.**

“Tenantry is unfavorable to freedom. It lays the foundation for separate orders in society, annihilates the love of country, and weakens the spirit of independence. The farming tenant has, in fact, no country, no hearth, no domestic altar, no household god. The freeholder, on the contrary, is the natural supporter of a free government; and it should be the policy of republics to multiply their freeholders, as it is the policy of monarchies to multiply tenants.” — **Senator Thomas Hart Benton, 1854**

“The tenant who expects to remain but a short time on a farm has little incentive to conserve and improve the soil; he has equally little incentive to maintain and improve the wood lot, the house, barn, shed, or other structures on the farm.” — **Report of the President’s Committee on Farm Tenancy, February 1937.**

# KEY CONSIDERATIONS FOR CONSERVATION LEASES

Again: Big Caveat!

Tenure Security

Cost-Sharing

Risk-Sharing

Communication

Mandatory Provisions

# KEY CONSIDERATIONS FOR CONSERVATION LEASE CONTRACTS

## Protect Tenant Investments

- Tenure Security
  - Long-term leases
  - Indexed rental adjustments
  - Rolling Leases
  - Option to Purchase
- Reimbursement for Improvements
  - Structural improvements
  - Soil health

# TENURE SECURITY: IMPROVEMENTS

Should it stay  
or should it go now?

- Real Property
- Fixtures
- Personal Property





# KEY CONSIDERATIONS FOR CONSERVATION LEASE CONTRACTS

## Cost-Sharing

- Benefit: Decreases costs of implementation
- Crop-share arrangements
- May be included in cash rent as well
  - Leasing of specialized equipment or custom labor
  - Costs and labor for organic certification process
- Lower rent for certain practices
  - Based on crops
  - Based on rotations
- Rent is reduced by a set amount in year 1
- Graduated rent increases each year

# KEY CONSIDERATIONS FOR CONSERVATION LEASE CONTRACTS

## Risk Sharing

- Allows the tenant to take increased risk, or even just perceived risk.
- Crop Share Arrangements
- Flexible/Adjustable Leases
  - Yield
  - Price
  - Both
- Talk to your FSA official

# KEY CONSIDERATIONS FOR CONSERVATION LEASE CONTRACTS

## Communication

- Required Reports
  - Status of the Farm
  - Crop Insurance
  - Periodic Soil Testing
- Required Meetings
  - Both Parties
  - NRCS or other Conservation Service Provider



# MANDATORY CONSERVATION PROVISIONS

- Standard Provisions
  - Tenant will not commit waste
  - Tenant will maintain waterways
  - Tenant shall not remove crop residue
  - Tenant will operate in a good and farmerlike manner (The Good Husbandry Clause)
  - The Tenant will abide by laws and regulations



# MANDATORY CONSERVATION PROVISIONS

## Soil Conservation/Nutrient Provisions

- Tenant shall not conduct fall tillage
- If fieldwork is done in the fall, at least two-thirds of the soil will be left covered by crop residue.
- Tenant shall employ contour farming
- A cover crop shall be seeded on corn ground harvested for silage.
- At no time shall manure be spread on frozen ground or between the dates of \_\_\_\_\_ and \_\_\_\_\_.

# KEY CONSIDERATIONS FOR CONSERVATION LEASE CONTRACTS

## Flexible Mandatory Provisions

- Thresholds
  - Establish your own soil loss limits.
  - Establish periodic soil testing and base level for nutrients.
- Conservation Plans
  - Incorporate a third party conservation plan into the lease with periodic reviews.
  - Ensure the third party understands your priorities and isn't doing the bare minimum.

# KEY CONSIDERATIONS FOR CONSERVATION LEASE CONTRACTS

## Enforcement

- Right to enter and inspect
  - Designation of an agent
- Provide Reports
- Termination
- Liquidated Damages
  - Reasonably related
  - Cannot be a penalty

# AN EXAMPLE OF INCORPORATING A SUSTAINABLE PRACTICE

## A Closer Look at Cover Crops in Leases

- What are the costs?
  - Seed – Labor – Expertise – Equipment - Yield?
- Who pays?
- Who reaps the benefit?
- What are the party's rights in the cover?
  - Limitations on the Type or Implementation?
  - When can it be destroyed?
  - Can it be harvested?
  - Can it be grazed or subleased?
    - To whom – When – Liability – Fences?



# ACCESS ISSUES AND BEGINNING FARMERS

- Many of the Same Considerations
  - Tenure Security
  - Cost Sharing
    - Rent
    - Equipment
  - Risk Sharing – See Custom Farming Below
- But, some different
  - Security with Escape Clause
  - Easements and Development Rights
  - Housing
  - Mentoring and Transitions
- Custom Farm Arrangements
  - Graduate to Lease and then to Ownership

# A WORD ON LEGAL DOCUMENTS & ADVISORS

- Be Careful with Sample Leases
- Provide tools to save time with advisors, and
- Inform Advisors
- Legal advice is like an insurance policy.



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THANK YOU!

