

# Sustainable Farm Leasing

## Quick Reference Guide



Drake Agricultural Law Center

[www.sustainablefarmlease.org](http://www.sustainablefarmlease.org)

**A duty of stewardship** regarding agricultural land can be a complex issue for any landowner. Leasing farmland can create additional concerns regarding stewardship. However, you and your tenant can work together to develop a lease arrangement that is both profitable and sustainable. This quick reference tool is meant to provide you with basic information on your role as a farm landlord and how your farm lease agreement can help promote the sustainability of your land.

### The Role of a Landowner



As a landowner, no one has a greater interest in the sustainability, or long-term productivity, of the land than you. After all, it is the owner of the land who will retain the property at the end

of a lease. As a landowner, you also have the most control of the land. Although your tenant operator is given possession and control of the property for a certain amount of time, you have the ability to require the property be farmed in a manner that protects the land's natural resources and ensures its long-term productivity. This can be accomplished through the provisions of your farm lease agreement.

While placing certain limits and requirements on how your tenant farms the land provides valuable protection, you can also use a lease agreement to encourage your tenant to adopt sustainable farm practices on their own accord. Doing so not only motivates your tenant to protect the farm's resources, but also helps establish a long and cooperative landlord-tenant relationship.

#### Support



The Drake Agricultural Law Center, part of Drake University Law School, is internationally recognized for providing opportunities to study how the legal system shapes our food system and influences the ability of the agricultural sector to produce, market and utilize agricultural products.



This project was funded in part by the Leopold Center for Sustainable Agriculture. Established by the 1987 Iowa Groundwater Protection Act, the Leopold Center supports the development of profitable farming systems that conserve natural resources.

Photos courtesy of USDA NRCS.

#### Disclaimer

The information in this Guide is intended for use as educational material to assist landowners and their advisors. The Guide is not intended, and should not be used, as a substitute for individual legal advice. Landowners and farm operators should consult a licensed attorney prior to entering a lease agreement. Reasonable efforts have been made to ensure the accuracy of the information contained in this Guide; however, the content and interpretation of laws and regulations are subject to change. The effect of future legislative, administrative, and judicial developments cannot be predicted. For these reasons, the utilization of these materials by any person represents an agreement to hold harmless the author, the Agricultural Law Center, Drake University and the Law School, the Leopold Center, and Iowa State University for any liability, claims, damages, or expenses that may be incurred by any person as a result of reference to or reliance on the information contained in this Guide.

## Farm Leases and Sustainability

This quick-reference guide first looks at several ways to encourage your tenant to adopt sustainable practices. These methods can be broken down into the following categories.

- ▶ Tenure Security
- ▶ Investment Protection
- ▶ Cost-sharing
- ▶ Risk-sharing
- ▶ Communication

Each of these methods has different costs and benefits, which will be examined, and your decision to use any of these tools should be based on your specific circumstances.

This guide will also examine some useful ways to help ensure the stewardship of your rented farmland through mandatory conservation provisions. These provisions can also be broken down into a few categories.

- ▶ Conservation Plans
- ▶ Thresholds and Monitoring
- ▶ Conservation Provisions

To properly protect the sustainability of your property a combination of encouragement and mandatory conservation provisions is probably the most beneficial route. Again, the exact provisions you use should depend on your specific circumstances, and consultation with a licensed attorney is recommended.

## Tenure Security

Tenure security basically means giving your tenant confidence that they will be able to farm the land long enough to receive the benefits from sustainable practices, such as soil conservation and nutrient management. This is primarily accomplished by providing a lease term of three years or more. The longer the lease term the greater the stake the tenant has in the sustainability of the farm.

## Additional Resources

### The Sustainable Agricultural Land Tenure (SALT) Initiative website

Located at [www.sustainablefarmlease.org](http://www.sustainablefarmlease.org) the site contains further information about promoting sustainable farming on leased land. Tools include:

- “The Landowner’s Guide to Sustainable Farm Leasing”
- The Landowner’s Interactive Decision Tool for Encouraging On-Farm Conservation
- Glossaries of farm leasing and sustainable agriculture terms and concepts.
- An inventory and explanation of select farm tenancy laws and their impact on sustainability
- Links to additional organizations and publications related to sustainable agriculture and farmland leasing.

### The Drake Agricultural Law Center

Located at [www.law.drake.edu/agLaw](http://www.law.drake.edu/agLaw) and directed by Neil Hamilton, the Center is a part of Drake University Law School. Links are provided to publications on beginning farmers, food policy, rural development, and sustainable land tenure.

### Iowa State University Extension

The Extension’s Ag Decision Maker site at [www.extension.iastate.edu/agdm](http://www.extension.iastate.edu/agdm) provides resources on the economics and business management of a farm operation, including leases.

### The Leopold Center for Sustainable Agriculture

Found at [www.leopold.iastate.edu](http://www.leopold.iastate.edu), the Center provides resources on the ecological, marketing, and policy issues related to sustainable agriculture.

### USDA, Natural Resources Conservation Service

Located at [www.ia.nrcs.usda.gov](http://www.ia.nrcs.usda.gov), this agency provides financial and technical support to help landowners and farmers protect natural resources.

Other relevant links and resources on topics discussed in this quick reference guide are located in the corresponding blue boxes found below.

A lease for more than one year must be in writing. The essential elements of a written lease include:

- ▶ The Names of the Parties
- ▶ A Description of the Property
- ▶ The Rental Amount
- ▶ The Length of the Lease
- ▶ Signatures of both Parties

There are many additional provisions that can be used to promote the sustainability of your leased farmland. A few are discussed here. Additional information can be found at the SALT website described on the previous page.

Despite the importance of tenure security, the majority of farm leases in Iowa are for only one year. One of the reasons for these short lease terms is a desire by landowners to renegotiate the rent each year. This is, of course, a valid concern as the rental amount should reflect the value of the land, which more often than not changes from one year to the next. Discussed below are a few ways to enter a long-term lease and still adjust rent each year.

#### *Rent Adjustment Index*

A rent adjustment index can be completed using a variety of factors. These factors often include the market price of specified commodities, land values, and the price of farm inputs such as fuel and seed. It is important for the parties to agree on which factors are to be used; decide how the values of each factor are determined, or which market and what date will be used; and put the agreement in writing.

#### **Sample Provision**

Option for Indexing: After the first year, the annual cash rent for a particular lease year shall be the Fixed Rent identified above, but adjusted annually after the first year as follows:

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#### *Flexible Rent*

Using a flexible rent provision requires the tenant to pay a rental amount based on farm yields, prices, or both. For instance, if the farm has a high yield in a given year, then the rent will be accordingly higher; or if the price for a commodity is particularly low in a given year, then the rent will be accordingly lower. This means that the rent does not have to be adjusted each year as the amount of rent is based on the production or revenue from the farm.

#### *Crop-share Lease*

Using a crop-share lease also decreases the need for yearly negotiations. The rent in a share lease is a specified share of the crop, which makes the rent inherently subject to fluctuations in farm yield and market price.

Crop-share and flexible cash leases can also impact farm program payments, taxes, social security payments, and estate planning. These aspects are discussed further in the section on risk-sharing found below.

#### **Resources**

More information and sample crop-share and flexible cash rent leases can also be found on Iowa State University's Ag Decision Maker Leasing page at <http://www.extension.iastate.edu/agdm/wdleasing.html>.

#### **Investment Protection**

The provision found below is an example of a table used to reimburse tenants for any unused portion of their investment in the property. Typically, any non-removable improvements made on the land by a tenant become the property of the landowner. A tenant is, therefore, not likely to make sustainable investments unless they are assured that any unused portion of their investment will be reimbursed to them. In addition to, or in place of, a long-term lease you might consider a provision that requires compensation for any unused portion of

## Sample Provision

**Landlord Approval Required:** The Tenant will not, without written consent of the landlord, erect or permit to be erected on the farm any non-removable structure, building, or other improvement.

**Reimbursement:** The two parties will carry out new conservation practices and measures and make other improvements, and share contributions and costs necessary for completing such practices and improvements as set forth below. The tenant will be reimbursed by the landlord when the practice, measure, or improvement is completed, or will be compensated for its unexhausted value when the tenant leaves the farm, according to the table below:

Conservation Practice or Improvement	Tenant's Net Cost	Annual Rate of Depreciation	Date Depreciation Begins	Signatures and Date Signed
				L:
				T:
				L:
				T:
				L:
				T:
				L:
				T:

improvements built by the tenant. Of course, you will also want to ensure that all improvements are approved of prior to construction.

## Cost-sharing

Another way to encourage your tenant to adopt sustainable practices is to share the costs of the operation. This can be especially useful if the desired sustainable practices cause additional expenses. You can share costs in a couple ways.

You can simply pay a share of the farm inputs and improvements. This is very common in crop-share leases. It can be a particularly useful option if your tenant lacks the capital needed to invest in the desired conservation practices.

There are a variety of expenses the parties might consider sharing. These range from typical farm inputs, such as seed and fertilizer, to specialized equipment and costs associated with organic certification. A table outlining the contributions of each party for specific expenses should be included in the lease.

You can also reduce the rent to ease any burdens the tenant might have that are associated with certain sustainable practices. Practices such as no-till farming and extended crop rotations are

perceived by many to lower the potential yield of the land. To encourage sustainable practices despite this perception there are a few provisions to consider regarding reduced rent.

### *Graduated Rent*

If the tenant is concerned about an initial decrease in yield, a graduated rent can be used to alleviate these worries by providing a lower initial rental amount that will gradually

## Sample Provision

The total rental amount for the first year shall be reduced by 20%. This reduction shall be applied to the total for each subsequent year, but the reduction shall be decreased by 5% each year until the full rental amount is being paid.



increase in the years after sustainable practices are adopted and yields improve. This type of provision can also be useful in assisting a beginning farmer by slowly bringing the farmer up to full payments.

#### *One-Time Rent Reduction*

Another option is to simply reduce the rent by a specific amount in the first year to account for the tenant's cost in improving the land.

#### **Sample Provision**

The first annual Lease fee, due on \_\_\_\_\_, will be reduced by \$\_\_\_\_\_.

#### *Rent Reduction to Reward Specific Practices*

Yet another way to share the costs of building up the soil and improving the resources of the farm is to reduce the rent to encourage specific practices.

#### **Sample Provision**

The rent for cropland acres planted in hay shall be reduced by 20%.

### **Risk-sharing**

Farming can be a risky business, and the more a farmer can reduce the amount of risk they face the more willing they may be to use alternative practices. One way you can help reduce your tenant's risk is by basing the rent on the farm's yield, the revenue received, or both. A crop-share lease or a flexible cash rent option can be used to do this.

#### *Crop-share Lease*

A crop-share lease is one method of distributing the risk between tenant and landowner. Because the rent is simply a portion of the crop produced on the property, which the landowner then must sell on the market (or have the tenant sell), the landowner assumes a portion of the risk for both the farm's yield and the price received for that yield. This means if the farm produces a poor yield or prices are low, the tenant doesn't pay as much rent.

There are additional considerations that must be taken into account when entering a crop-share lease. Typically, landowners contribute a share of the farm

inputs and are more involved in land use decision-making. This can affect social security payments, taxes, estate planning, and the distribution of farm program payments. Basically, you will be more likely to be viewed as self-employed and more likely to be eligible for a share of any farm program payments if you use a crop-share lease.

#### *Flexible Rent*

Again, flexible cash leases provide rent based on the crop yield, the crop price, or a combination of these attributes. The risk in these arrangements can be based on the actual yield and revenue received from the farm or it can be based according to a county yield average and the price of a predetermined market at a set time. If the tenant perceives added risk stemming from the adoption of sustainable practices, you will most likely want to ensure that the rent is based on the actual farm yield. This will more accurately reflect the tenant's increased risk. However, just as with the crop-share lease, this will impact the division of farm program payments between you and your tenant. If the rent is adjusted based on actual farm production, then the lease will likely be treated as a share lease and the farm program must then be divided.

### **Resources**

Again, more information and sample crop-share and flexible cash rent leases can be found on Iowa State University's Ag Decision Maker Leasing page at <http://www.extension.iastate.edu/agdm/wdleasing.html>.

### **Communication**

Increasing the quantity and quality of communications can impact your tenant's confidence in their tenure security and, therefore, further encourage the adoption of sustainable practices. While communications can be informal, such as letters at holidays, there are also lease provisions that require a certain amount of communication. One example is annual or semi-annual reports on farm operations. For instance, a provision might require your tenant to send you a report explaining the year's

crop plan detailing how many and which acres will be planted to different crops. Provisions can also require monitoring of soil nutrients or soil loss with subsequent reports

## Conservation Plans

While the methods discussed above provide needed encouragement for your tenant to adopt sustainable practices, it can also be important to include mandatory provisions addressing certain sustainable issues or practices. One way to do this is through the incorporation of a conservation plan. The USDA's Natural Resources Conservation Service (NRCS) will work with landowners and tenants to develop a conservation plan based on the priorities of the parties and the characteristics of the land.

### Sample Provision

The Landlord and Tenant agree to prepare and comply with a Conservation Plan under the guidance of USDA Natural Resources Conservation Service (NRCS) personnel. This plan shall be attached to the lease and signed by both parties. The parties agree to review and update the conservation plan on a yearly basis.

## Thresholds and Monitoring

You can also use a lease to establish specific thresholds regarding the sustainability of the land but leave how to meet these requirements up to the tenant. This provides protection for your farmland but also gives the tenant more independence in how the land is farmed. The following is an example of how this can be used to prevent soil erosion.

Form leases typically require soil loss limits that comply with local, state, and federal regulations. While these may be useful for preventing some soil

### Sample Provision

The Tenant will implement soil erosion control practices to keep soil erosion below soil loss tolerance (T).

erosion they may not be adequate in ensuring the sustainability of the land.

## Conservation Provisions

The inclusion of provisions relating to specific practices can also be useful, particularly where the landowner has special concerns. Listed below are a variety of provisions addressing many aspects of conservation. Some of these provisions are

### Sample Provisions

- The Tenant will not commit waste on, or damage to, the farm and will use due care to prevent others from so doing.
- To Tenant shall yield possession to the Landlord at the termination of this Lease in as good order and condition as when same were entered by the Tenant. Loss by fire, tornado, or forces beyond the Tenant's control and ordinary wear and tear are excepted.
- No permanent pasture shall be plowed without the written consent of the Landlord.
- The Tenant will keep open ditches, tile drains, grass waterways, and terraces in good repair.
- The Tenant shall not cut live trees without the written consent of the Landlord, and shall take proper care of all trees, vines, and shrubs, and will prevent injury to the same.
- The Tenant shall develop a system for growing green manure crops that can be planted in the fall and incorporated into the soil prior to spring planting.

### Resources

Information on the benefits of specific practices, how to implement them, and sources of financial and technical assistance can be found at your NRCS Service Center. Find your service center at <http://offices.sc.egov.usda.gov/locator/app>.

## More Sample Conservation Provisions

- The Tenant will conduct annual soil tests and amend the soil accordingly. The Tenant will test for residual nitrogen and phosphorous.
- The Tenant will figure credits for manure and previous legume crops before applying additional nutrients.
- The Tenant will keep the lease premises neat and orderly. The Landlord and Tenant recognize the possibility of weeds as the result of certain practices that promote the conservation and long-term productivity of the lease premises and will take this into account regarding the appearance of the farm.
- The Tenant will use mechanical and non-chemical means of control as the primary methods of controlling weeds on crop ground.
- When possible, the Tenant will delay the mowing of road ditches, field edges, grass waterways, set-aside acres, and other areas of vegetation until after the nesting period for game birds and songbirds has passed.
- Tenant agrees to minimize use of herbicides by employing integrated weed strategies as the primary means of weed control.
- Tenant agrees to minimize use of insecticides by employing pest management strategies as primary means of pest control.
- The Tenant will employ contour farming on any slopes that will experience soil erosion if farmed another way, even if classified as non-highly erodible land (NHEL).
- No fall tillage should occur on soybean ground.

commonly found in form leases from University Extension Offices or State Bar Associations while others are used less often. These provisions are provided merely as examples. Additional provisions may be needed to address your particular concerns, and many of the provisions included here may not be applicable to your situation.

### *Removal of Crop Residue*

Provisions regarding crop residue deserve particular attention. Crop residue, the part of the plant remaining on the soil after harvest, plays an important role in the sustainability of the farm. It helps prevent excessive runoff and soil erosion, retains needed moisture in the soil, and

#### **Sample Provision**

The Tenant will not burn or remove any crop residue, including but not limited to cornstalks, corncobs, leaves, straw, stubble, and stover, without the written consent of the Landlord.

replenishes important nutrients. However, the off-farm value of crop-residue is increasing due to its potential as a resource for the production of biofuels. Iowa recently passed a statute that allows tenants to remove any portion of the above ground part of the plant after harvest, unless the parties agree otherwise and put this agreement in writing.

### *Statement of Purpose*

A statement of purpose helps ensure both parties understand the nature of the lease agreement and can provide evidence to a court of the intent of the parties if a dispute should arise.

#### **Resources**

The below Statement of Purpose is derived from Land for Good's Sample Multi-year Lease Agreement found at <http://www.landforgood.org/assets/pdfs/Lease%20example%20multiple%20yearBB.pdf>.

**Sample Provision**

Whereas both parties share an interest in the long-term health and productivity of the agricultural lands and improvements thereon; whereas the Landlord wishes to offer a secure and affordable farming opportunity to the Tenant; and whereas the Landlord wishes the property to be farmed according to high standards of stewardship, the parties agree as follows:

*Compliance with Laws and Regulations*

Leases often contain provisions requiring compliance with certain laws and regulations. These can aid in promoting the sustainability of your land, protecting you from liability for your tenant's actions, and keeping the farm eligible for farm program payments. However, compliance with conservation and environmental laws and regulations does not necessarily ensure the sustainability of the property.

For instance, the sample provision here, a fairly common one in form leases, requires compliance with the soil loss standards at all levels of government.

**Sample Provision**

The Tenant will implement soil erosion control practices to comply with the soil loss standards mandated by local, state, and federal agencies and shall maintain all requirements necessary to qualify current and future farm operators to participate in federal farm programs.

However, these government standards do not necessarily require sustainable soil loss limits and may not even apply to all agricultural land.

Therefore, while you may consider such a provision to ensure your tenant is abiding by all laws and regulations, it is also important to understand the limited nature of some laws and to protect the sustainability of your farmland through additional provisions where necessary.

The provision below, dealing with manure application provides an example of how you can ensure

compliance, but also address issues that might be left unaddressed by the law.

**Sample Provision**

The Tenant will haul and spread all manure on appropriate fields at times and in quantities consistent with environmental protection requirements. At no time shall manure be spread on frozen ground.

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