LP3 Land Tenure Options Information Sheet

Land tenure is the way people hold their land. It is a broad concept that includes legal, political and business considerations. For beginning farmers and ranchers, it boils down to owning and/or leasing land and the associated rights to access and use the land. For landowners, responsibilities and rights are defined by land use laws. For tenants, responsibilities and rights are spelled out in lease agreements.

Land access is the path to securing suitable land to start and/or expand agricultural operations. It involves land seekers and landowners who may be operators or non-operator landlords. It also involves agricultural educators and service providers, community members, local governments, policy makers, real estate markets, etc. In this way, land access is more than an issue for individual operators, it is a farming systems issue.

Many beginners get started by leasing some or all of their land. Arrangements may be very informal or may involve complex, long-term lease agreements. In most cases, renting is a shorter time commitment than owning. It requires negotiation with an interested landlord and an ongoing landlord–tenant relationship. When negotiating leases, it is important to consider that time commitment, be clear about who is responsible for improvements and other things, and make sure that both landlord and tenant have adequate liability insurance.

Beginning farmers and ranchers also may own some or all of their land. They may inherit it or they may buy it. Ownership includes “title”—or the rights and restrictions associated with owning property—often called a “bundle of rights.” These include the rights to hold and control, transfer or sell, and otherwise enjoy the property. The title is legally recorded with a deed to the property. Ownership is usually a long-term commitment. Buying land requires negotiating with an interested seller or realtor and usually involves financing. Buyers may be able to take advantage of state and federal financing opportunities, and landowners often can take advantage of federal income tax benefits.

Secure access to suitable, affordable land is an essential ingredient to success for beginning farmers and ranchers. It can be hard to figure out which kind of land tenure arrangement is best at what stage of an agricultural enterprise. But this is one of the most important decisions beginners must make. It involves balancing land requirements for the specific farming or ranching operation and the financial relationship between them. This information sheet briefly explains a variety of land tenure options to inform that decision-making process.

Options for Leasing Land

Many beginning farmers and ranchers lease—or rent—some or all of their land. They can be short-term rentals with verbal “handshake” agreements or long-term formal agreements with complex written documents. They can be with public or private landowners who may be operators or non-operator landlords. A lease term refers to how long the lease will last.

Short-term leases typically last for one to three years, with renewals based on annual agreements—often verbal. They are a good entry point for a trial period as they require less upfront investment. Long-term leases usually last at least five years and may last as long as 99 years. These tend to be more complex, written documents. Longer-term written leases are more secure, especially for beginners ready to make expensive improvements in the land or property.

An agricultural lease compensates the landowner for the tenant's ability to access land (and often water and infrastructure) for farming or ranching. There are two main types of leases: a cash rent lease and share agreements where both the landowner and the tenant share income from crop production, as well as expenses related to that production.

It is important to note that leases may just be for land or they may include barns, fencing, irrigation and other improvements. They also may include housing – including farm labor housing. When leasing land, it is important to know your rights and the landowner's rights to avoid misunderstandings. For example, landowners may lease portions of their farms or ranches for hunting or other recreation. This may affect the farm/ranch tenant's operation. Or they may lease to an oil or gas company for extraction or a wind or solar company for energy generation that would affect a tenant even more.

Share Agreements

Cash Lease: Cash leases are common and based on an agreement between the landowner and tenant on annual rental rates. The payment schedule usually is negotiable. Cash leases require regular, predetermined cash rental payments in exchange for use of land and often infrastructure.

Crop Share: Crop Share leases are based on production yields rather than a predetermined rental rate. In a crop share lease, operating expenses are shared between landlord and tenant. Rental payments do not have to be in cash but can also be a share of the crop (or even livestock sales). This can be an attractive option for cash strapped beginners and is a good way to share the benefits and risks including production costs and profits.

Flex Leases: Flex leases are similar to Crop Shares. Rent is calculated in direct proportion to yields received, market prices or both. In a flex lease, operating expenses also are shared.

Ground Lease: Ground leases are long-term arrangements where the tenant rents the land but may invest in *and own* buildings and other improvements. The ground lease defines who owns the land and who owns the building and improvements on the property. The tenant leases the land but owns the improvements (e.g., house, barns) upon the land. In some states, the length of a lease term is limited by state law (i.e., cannot be longer than 15 years).

Lease with option to purchase: Some leases write an option to buy the property into a formal lease agreement. The price and terms of the purchase are spelled out in the lease. This may include specifying if rental payments can count toward the purchase payment. There are two common forms: the "straight option" and the "right of first refusal."

Lease from public or Tribal entity: Leasing from public or Tribal entities may be short- or long-term agreements. Agreements may or may not require public access. In some states, the agreement is a license, not a lease, and its term is limited by law. Eleven Western states allow grazing on state land, with specific use regulations. Hawaii has a system of "agricultural parks" where the state offers long-term leases to parcels organized like an industrial park, with utilities brought in by the state. At the federal level, approximately 2/3 of federal lands under four separate agencies allow grazing rights by private individuals. Leases involving Tribal lands are subject to Tribal regulations and oversight.

"No-cost" lease or barter agreements: Not all leases require monetary transactions. Some are in-kind exchanges or barter arrangements. The landowner may pay some maintenance (lime, fertilizer); 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. Sometimes private landowners or utility companies pay farmers and ranchers to keep land grazed (e.g., under power lines or for fire suppression).

Paths to Land Ownership

Beginning farmers and ranchers also may own some or all of their land. Sometimes they inherit the property, sometimes they buy it. Purchasing land can involve various approaches and conditions.

Fee title purchase: Buying land outright is the most basic way to purchase a farm or ranch. Typically it involves working with a realtor to find the property and negotiate a price. Other ways to find land include FarmLink programs, newspaper ads, websites or even Craigslist. Purchasing land usually requires borrowing money from a willing lender, such as a bank, Farm Credit institution or Farm Service Agency, and paying off a mortgage. Borrowers must prove they can pay the monthly mortgage and have a solid business plan. Both can be difficult for a beginning farmer or rancher.

Fee title purchase with a conservation easement: This approach includes purchasing a farm that has been protected with a conservation easement. A conservation easement is a voluntary deed restriction landowners place on their property to protect resources such as productive agricultural land, ground and surface water, habitat, historic sites or scenic views. It may cover an entire parcel or portions of a property. **Agricultural conservation easements** specifically keep land available for farming or ranching. Protected properties typically are more affordable than land sold at its full market value.

Fee title purchase and sale or donation of a conservation easement: Beginners in states with public Purchase of Agricultural Conservation Easement (PACE) programs, can purchase land in fee and then sell an easement to a qualified government agency on conservation organization. The buyer may negotiate the easement sale at the time of purchase or afterwards to protect the property and provide an infusion of capital to offset the market price of the property or pay off a mortgage. As of 2016, 28 states and at least 95 local governments have funded PACE programs. Agricultural conservation easements also can be donated to qualified entities, which can result in tax benefits. Qualified entities include non-profit conservation and community land trusts.

Conservation land trusts hold the easement for an individual landowner whereas **community land trusts** own real estate for the benefit of the community. Most community land trusts focus on housing, but some hold and lease farmland, typically with a long-term renewable ground lease.

Gift: Real estate can be gifted during a landowner's lifetime to a beginning farmer who may or may not be a family member. In 2017, the *annual federal gift tax exclusion* was $14,000, meaning an individual can give $14,000 in cash, real estate or other assets to up to four different people without reporting it or being taxed by the federal government. Since gifts can be split between spouses, together a married couple can give a total of $28,000 to each recipient. In addition, each individual has *a lifetime gift tax exclusion.* This is the total amount someone can give away over his or her entire lifetime that will be free from gift taxes. In 2017, the lifetime gift tax exclusion was $5.49 million dollars. So, if a farm's free market value is less than this threshold, no gift tax would be due.

Inheritance: Property left to a child, other relative or non-family member at the time of death. If the deceased had a will, it stipulates how his or her 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 must figure out how to deal with that. Sometimes debt accompanies the asset.

Land contract or installment sale: An installment or land contract sale is an agreement through which the landowner 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. This option can be played out between family generations or unrelated parties.

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.

Much of this sheet is drawn from *Agricultural Land Tenure: A Curriculum for Beginning Farmers and Farm Seekers*. The FarmLASTS Project (2007-2010) pages 13-17 https://farmlandinfo.org/publications/agricultural-land-tenure-a-curriculum-for-beginning-farmers-and-farmer-seekers/

Other sources include:
Finding, Assessing, and Securing Farmland: A Plain Language Guide from the New Entry Sustainable Farming Project

Finding Ways to Farm: 6 Ways to Secure Farmland, ATTRA

https://www.ncat.org/

Land Tenure Options and Strategies, Unit 9.0, University of California Santa Cruz

Planning for ON-FARM Success: A Workbook for Montana's Beginning Farmers and Ranchers, Module 8: Land Access, Community Food Agriculture Coalition of Missoula County