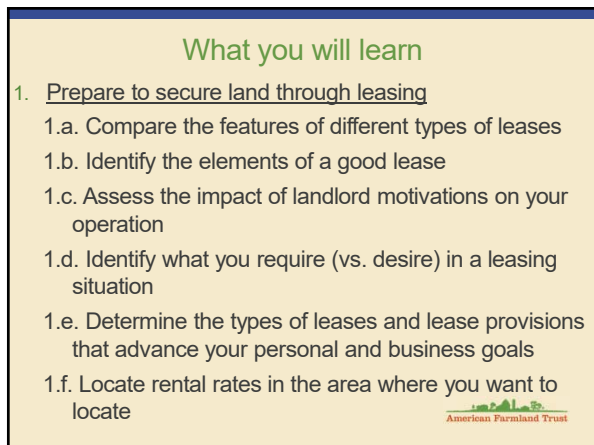
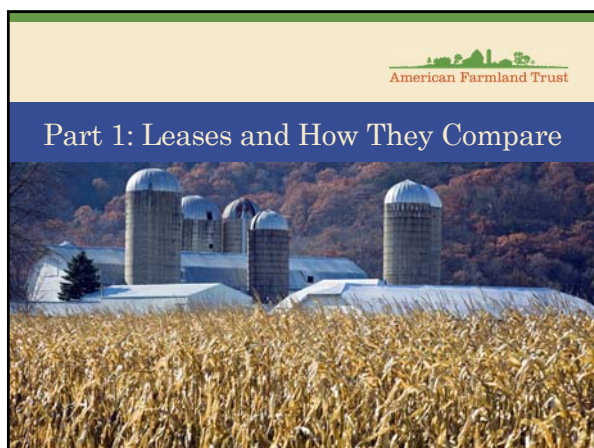


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What Is a Lease?

- A lease is a contract between a landlord and a tenant – or landlords and tenants
 - It identifies the parties and
 - Creates an agreement on the tenant’s control of the property and the return of rights to the owner at the end of the term
- Key elements of a lease include:
 - A property description
 - The length of the lease term
 - Payment terms/rental rate



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Leases May Be Oral or Written

- Written leases offer more protection to the tenant
 - Often are required by state law if they exceed one year
 - Provide security and clarity for both parties
 - Spell out: property description, time frame, rental rate
 - Require signatures of landowner and tenant
- Oral – or “handshake” leases are valid
 - But usually only for a year
 - Offer few protections



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Leases Come with Rights Subject to Lease Terms and Purposes


- For the Tenant:
 - To use a property, including land and potentially buildings and other infrastructure
 - To transfer the lease
 - To privacy
- For the Landlord:
 - To sell or transfer the property
 - To “encumber” – e.g., to take out a mortgage, sell or donate an easement
 - To enter the property and to exclude entry to others



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Public Policies May Affect These Rights


- States govern property rights
- Local governments regulate land use through ordinances and zoning
- Federal laws may further limit rights, e.g.,
 - Endangered Species Act
 - Clean Water Act



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Main Types of Leases


- **Cash Leases** require regular, predetermined cash rental payments in exchange for use of land and often agricultural infrastructure and/or housing
- **Share Agreements**
 - **Crop Share Leases** are based on production yields rather than a predetermined rental rate; operating expenses are shared between landlord and tenant
 - **Flex Leases** determine rent in direct proportion to yields received, market prices or both; operating expenses also are shared
- **Ground Leases** are long-term arrangements where the tenant rents the land but invests in and owns buildings and other improvements



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Pros and Cons of Cash Leases

- Pros
 - Simple
 - Allows for easy budgeting and record keeping
 - Tenants make all production decisions and receive all payments, including government payments
- Cons
 - Tenants assume virtually all the risk
 - Requires more working capital as rent is due throughout the growing season
 - Rental rates can be volatile and may need to be set every year
 - Conservation efforts must be capitalized into the value of the land



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Pros and Cons of Crop Share Leases

- **Pros:**
 - Landowner and tenant enjoy more of a partnership
 - Higher potential for revenue
 - Less risk since the lease is production-based and costs are split
- **Cons:**
 - Hard to manage as both the landowner and tenant must track costs
 - Requires more expertise, cooperation and a close relationship between landlord and tenant to make decisions and agree on crop share splits



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Pros and Cons of Flex Leases

- **Pros:**
 - Longer lease terms are easier to get as there is no need to renegotiate rent
 - Tenants make production decisions but share some risk
 - Improves working capital since the flex portion of the rent isn't paid until harvest
- **Cons:**
 - Requires excellent record keeping
 - Can be hard to agree on the accuracy of yields, which may create tension with landlords
 - Basing leases only on yields or markets can increase risk



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Pros and Cons of Ground Leases

- **Pros:**
 - Security: longer terms allow for better planning and investment
 - Can build equity in improvements
 - May increase borrowing capacity
 - Leases are renewable and inheritable
- **Cons:**
 - Still being tested for agriculture
 - More complex and harder to negotiate terms
 - Greater investment may make it harder to end lease early
 - May be harder to secure financing



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Lease with Option to Purchase

- Lease agreements may include provisions that the tenant has – or will have – the option to buy the property at some time in the future
 - They can apply just to the land that is leased or include agricultural infrastructure and other assets
 - Terms of the purchase should be specified in the lease – including the price but also the time frame and whether rent payments count toward the sale
 - May provide tenants with a way to build up equity over time



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Other Variations on Purchase Options

- Right of First Refusal
- Installment Sale
- Land Contract Sale
- FSA Land Contract Guarantee Program for beginners and farmers/ranchers from socially disadvantaged groups



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Part 2: Negotiating a Good Lease



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Many Types of Landlords

- Operators
 - Farmers and ranchers, often retired or retiring
- Nonoperator landlords
 - Individuals
 - Partnerships and trusts
 - Institutions and organizations
 - Including land trusts
- Public agencies
 - Federal
 - Tribal – often through Bureau of Indian Affairs
 - State and local governments



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Landlords Have Various Motivations

- A retired farmer may want to age in place but see his land managed as it has been.
- A nonfarming landlord may be unfamiliar with agricultural management or conservation practices.
- An institution may want a well managed landscape but be opposed intensive production.
- A public agency may have a public purpose associated with leasing land that requires specific types of operations or conservation practices, or may limit construction of agricultural infrastructure.



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What's Covered in a Good Lease?

- Identification of the parties entering into the lease
- A property description
- Length of lease term including termination and renewal provisions
- Payment arrangement/rental rate
- Conservation provisions
- Agreement on who is responsible for maintenance and improvements
- Clearly defined landlord restrictions and/or other special provisions



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Property Description Considerations

- The more detailed the property description, the better. Make sure you detail features including:
 - Property boundaries
 - Acres of crop, pasture or other land
 - Access to water – irrigation, water rights, etc.
 - Agricultural infrastructure: barns, fencing, irrigation
 - Housing



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Time Frame Considerations

- Ideally, the length of your lease should be tied to your personal and business goals
- Short or long
 - Short can be year to year, typically less than 3 years
 - Less risk but also less stability and security
 - Long-term are more than 3 years but can be as many as 99 years
 - Allow for investment in soil quality and infrastructure
 - Provide flexibility in types of crops and production
 - Allow participation in conservation programs
 - Rolling renewal provides some of the benefits of each
 - Use value assessment may require minimum terms



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Payment Arrangements and Rate


- Determining rent is a tricky business. Above all else, it requires negotiation with the landowner
 - Learn about their motivations and ownership costs
- It is easier to find information in some parts of the country – and easier for cash rents
 - You can get a sense of rental rates from NASS
 - In some places, rental rate calculators are available
- Know what you can afford to pay



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Conservation Provisions


- Conservation plans – required for participation in some farm programs – address issues such as soil health, erosion, nutrient management, water quality
 - Best when developed by both landlord and tenant in consultation with NRCS staff
- Conservation provisions – instead of mandating specific practices, provisions can be more flexible, requiring thresholds are met or objectives achieved
- Good husbandry provisions – encourage tenants to farm using the highest standards of good husbandry ensuring natural resource conservation



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Other Considerations

- Is subletting allowed?
- Are there any limits on types of crops or livestock?
- Who is responsible for routine maintenance?
- Who is responsible for maintaining infrastructure?
- Who will pay for and own improvements?



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