

EQUITY TRUST, INC.

GROUND LEASES AND EASEMENTS: SIMILARITIES AND DIFFERENCES

Structure of the property relationship

Farm preservation easement	Ground lease
<ul style="list-style-type: none"> Farmer owns the fee interest in the property subject to restrictions of the easement. Land trust or other institution holds easement permanently prohibiting development and requiring active farming. 	<ul style="list-style-type: none"> Land trust or other stewardship institution holds fee interest in the land. Farmers have a long-term (typically 99 year) inheritable lease to the land and have ownership of the buildings and other improvements.

Similarities

- Both models provide ways of sharing the rights and responsibilities of agricultural land ownership.
- Both these forms of “shared ownership” separate a “bundle” of rights so that farmers can purchase the rights they need at an affordable price while a land trust or other institution plays a long-term stewardship role.
- Both provide means for prohibiting or restricting non-agricultural uses and ecologically damaging practices as well as for *requiring* continued agricultural use and owner-occupancy.
- Both entail granting a purchase option that will give the stewardship institution significant control over transfers of ownership to ensure that the property will be passed on to other farmers for prices they can afford.
- Both instruments are highly flexible regarding what kinds of activities they regulate and the extent of regulation provided

Differences¹

Easement with option to purchase	Ground lease
<ul style="list-style-type: none"> “Runs with the land” providing <i>perpetual</i> restrictions. Uses a structure familiar to land trusts. Can be more difficult to renegotiate certain provisions (although a “Restrictions and Requirements Exhibit, with provisions for amendment, can be attached). Since drafting meaningful language that can last “forever” is difficult, language tends to be softer to allow for unforeseen needs in the future. May be more expensive for the farmer. 	<ul style="list-style-type: none"> When ground lease is given up by farmer, landowner can purchase improvements and revisit what requirements and restrictions will be applied to the property Lease provides some greater flexibility for renegotiating terms, if conditions change over time. Land trust is in a slightly stronger position with regard to enforcement of restrictions and requirements. May be more expensive for land trust.

¹ Note that these differences are relative and that selection of one or the other model depends very much on the specific characteristics of each farm project.