

Farm Lease Discussion Guide

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NYS Agricultural Mediation Program

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Use this space to record the DATE of your next session and any information gathering AND/OR preparation that needs to be done:

Date of Next Session:	Time & Place:	Next Topics & Information to Bring:

Welcome to Facilitated Lease Discussion:

This is a process where landowner(s) and farmer(s) work together, to reach arrangements that meet the needs of both groups. A facilitator provides structure, to consider and create plans based on each groups' priorities.

Facilitators encourage you to communicate what is most important. Throughout discussions, facilitators will focus on understanding you and your context. They will also help you to clarify what you hope to make decisions about, and what your desired outcomes are, and will assist you in looking for answers that benefit all parties involved.

During the process, you may need to consult with outside experts and gather information to make informed decisions—for example, the advice of a tax expert or a business consultant.

Facilitators are trained to assist you with decision-making but do not offer legal advice. Therefore, you will want to run any decisions that may impact your formal lease agreement through an attorney.

After the sessions, we recommend a consultation with your lawyer to review any decisions that could affect your lease. We also recommend seeking their help in translating those decisions into legal language, which can then become a part of your formal lease agreement.

Facilitation Core Values for Lease Discussions:

NYS Ag. Program utilizes discussion facilitators who are also trained and experienced in mediation. They follow the same core values as a mediator, and create the same level of care, process, and outcome for participants.

Voluntary: This is a voluntary process. Everyone is choosing to participate and can therefore end the process at any time.

Multi-Partiality: The facilitator remains neutral or multi-partial. Facilitators do not take sides or pass judgement. Rather, it is the facilitator's role to conduct the session in a way that helps the group to focus on decision-making.

Confidentiality: All matters discussed during a mediation session are confidential and will be discussed only between the Agricultural Mediation Program facilitators and staff. Facilitators will take notes, which help them to understand the situation, and will draft written agreements. At the end of the process, and when no further sessions are scheduled, all the facilitator's notes will be destroyed.

Party Self-Determination: Parties choose what to discuss. They also make choices about the process throughout the sessions.

Process:

A facilitator will contact you for intake, scheduling, and information about the process, and will give you plenty of time to ask any questions.

The process moves forward after you sign the Consent Form, acknowledging that the session is confidential. The facilitator will then arrange a preliminary phone conversation and schedule your first joint session.

1. In the preliminary session, you can speak with a facilitator one-on-one about your situation. This gives facilitators the necessary background around your situation and concerns. The conversation is entirely confidential—the facilitator will not raise these issues in a session or share anything with the other party. The facilitator will ask preliminary questions to better understand the details of the situation but will reserve ample time for you to discuss whatever you feel is most important.
2. Prior to the session, you will receive a lease discussion guide to help you prepare. The guide may be used in its entirety, depending on participant's needs, or simply as a tool for reflection. Farmers(s) and landowner(s) will speak about any issues they select. Before and between sessions, we advise you to gather information that will aid your decision-making, including contacting outside experts, as needed.
3. Together, you will have the opportunity to develop plans that are clear, satisfying, and which both parties support. When these areas of agreement arise, they will be recorded in an Agreements Form.
4. Meeting sessions are scheduled in two-hour blocks. The time can be extended, though, if space is available and if the extension is agreed upon by everyone, including the facilitator.

How to Use This Discussion Guide:

This guide is meant to help participants gain the clarity needed for a strong farmer/landowner partnership. Our intention is that these discussions bring implicit assumptions to light and replace any assumptions with explicit and clear agreements.

This guide is designed both to coach you on how to address issues common in farmer/landowner lease partnerships, and to help you develop a good working relationship through thoughtful planning. There may also be issues *not* outlined in this discussion guide, which participants may choose to discuss.

This discussion guide is divided into two sections describing common issues that arise in a farmer/landowner lease relationship. Section I addresses WHO & WHY, and Section II focuses on WHAT, WHERE & HOW.

Each section identifies a series of discussion themes or topics, and you will find a brief description introducing each one. These topics are listed to help landowner and farmer think through issues and make clear agreements. Not every group will address every issue, and topics are not meant to be presented or discussed in a particular order.

Section III focuses on resources and includes links and suggestions with information for farmers and/or landowners.

An Appendix expands on topics like long-term equity building and conservation and includes preliminary information on leases.

This guide is designed to aid you in the process of reviewing, renewing, and exploring options within your lease relationship.

Lease Discussion Topics (Common Issues):

Section I: Who & Why

Identifying & Clarifying Decision-Making: Who are the decision-makers and what is the process for decision-making?

Potential discussion topics:

- Identify key decision-makers in the day-to-day as well as the long-term—for example, will the landowner's heir become a decision-maker?
- What are the key relationships around decision-making when there are multiple enterprises and/or tenants involved?
- How are decisions being made around access to land and/or infrastructure use, and who is included in that decision-making?
- Is there anyone who can veto certain types of decisions? If so, they might be a decision-maker.

Vision & Purpose: Articulating and identifying the farmer's and landowner's vision and purpose.

Potential discussion topics:

- What is important to you right now about this arrangement?
- What motivates you to lease?
- What value does this arrangement bring for you?
- For landowners, what are your short-term and long-term investment goals for this property?
- For farmers, what are your short term and long-term business goals?
- Does either party have tax, business, financial, or other constraints which may influence the nature of the lease relationship?

Stewardship Values: Stewardship as a value relates to "care" and might include conservation and/or specific practices in production. It might also

simply mean whether a property looks cared for visually, referring to upkeep of the property and a sense of beauty, cleanliness, and overall order of the farm operation and/or property. Ideas around stewardship are often subjective and implicit.

Potential discussion topics:

- Can you gain clarity on what stewardship means to each party?
- Refer to Conservation section in the Appendix for information on best practices.

Community Relationships: Exploring and articulating your needs and hopes around the farm's relationship to the community.

Potential discussion topics:

- Are there any existing issues, or concerns about potential future issues, with neighbors?
- Are there any issues around public access to land?
- Are there concerns around hosting educational or public events on the farm?
- How can you best maintain a productive relationship within the local community?
- Are there any concerns about CSA customers picking up shares at the farm, or concerns around farm stores or farmworkers? Or other issues around third-party access?
- Does the farmer have a plan to maintain positive relationships with neighbors, by keeping them informed about when manure is being spread; pesticides are being sprayed; and heavy equipment might be on the roads?
- Does the farmer have a plan around how to keep neighbors informed on seasonal times when farming operations may impact them?

Legacy: Clarifying the vision and intentions for the land and/or property and whether it's meant for, and/or maintained for, future generations.

Landowners are sometimes in the process of protecting the land for future generations with trusts or easements, especially if they plan to pass the land down to a family member. At other times, a retiring farmer and/or landowner wants to see the farm remain an active farm operation for years to come.

Is there any information to be discussed or shared here, around legacy?

Section 2: Where, What & How

Infrastructure Issues: Issues and expectations around water, access roads, buildings and structures, equipment, and residential buildings.

Potential discussion topics:

- Use of buildings and equipment
- Farm maintenance and repairs
- Capital improvements to the property
- Improvement projects—dollar contributions, labor, and timeframes.

The following definitions outlined by Land for Good can help when sorting through infrastructure issues:

Maintenance: General upkeep of the premises and fixtures that provides for a clean, serviceable, and safe environment. This includes actions preventing damage or unnecessary wear.

Repairs: Expenditures to keep the property in its ordinary, efficient operating condition, or to restore the property to its original operating condition after damage and/or breakage.

Improvements: Substantially improving the value of a property or significantly extending its life. Some improvements to the property

prepare it for a new or different use, while others are in the category of major (or capital) repair.

Regarding maintenance, repairs, and improvements the lease should include, at a minimum:

- Who is responsible for maintenance and routine repairs
- The process for determining and approving what is needed
- Guidelines for scheduling and monitoring maintenance and repairs
- Treatment of capital repairs and improvements—including the process for requesting and approving who contributes to the cost and who owns the improvement and its disposition (i.e., what happens at the end of the lease term).

Use photos and maps, when helpful, to provide clarity for agreements. Use invoices, receipts, logs, and any other concrete information that can help to make the agreement clear. – *from Land for Good's Toolbox*

Water Issues

- Repair and maintenance of well-pump and/or existing wells
- Developing water infrastructure—like hydrants for greenhouses, animal pastures, and/or new wells
- Irrigation—use of the well, ponds, streams, and any restrictions
- What happens during a drought?
- Are there any drainage issues?
- Is the water potable?
- Shared use of well, ponds, and streams with multiple tenants and/or between tenants and landowners. For example, are ponds and streams used recreationally? Do animals have access to ponds and/or streams?

Access Roads

- Road repairs and maintenance
- Building a new road or driveway for farm access
- Snowplowing
- Parking areas and maintenance

Buildings & Structures

- How do you allocate costs for repairs and improvements to any infrastructure that already exists?
- What is the approval process, for the farmer, to build permanent and/or temporary structures?
- Who is responsible for major repairs (above \$500) and minor repairs (under \$500)?
- What are the expectations around labor, for the maintenance of buildings and structures?
- What are the agreements around maintenance or removal (at lease's termination) for any structures that farmers install or construct?
- How can you gain clarity around financial costs for the repair and maintenance of farm buildings?
- Who is responsible for developing farm-specific infrastructure—such as cold storage, processing space, permanent pasture fencing, and/or livestock-handling infrastructure?

Residential Structures: For farmers and/or farmworkers, we suggest that landowners have a farm lease that is separate to their residential lease. We also recommended that you clarify a residential exit timeframe if your farm lease should be discontinued.

Equipment: Arrangements may or may not include equipment.

Potential discussion topics:

- How should we track usage, when equipment is shared, to be able to split the costs of use and maintenance?
- For small tools that are shared, what happens if something breaks and who oversees the repairs?
- Is there equipment that is not available for use by farmers?
- For large equipment, like tractors, who is responsible for the maintenance and repairs?

Equity & Exchange: What is a fair and practical exchange for access to land and other infrastructure?

Is there an exchange of money, labor, and/or farm products for the use of:

- Land?
- Office structures, equipment storage, processing, and product storage?
- Equipment usage—for things like tractors, greenhouses, fencing, and small tools?

If so, clarify whether these can be quantified and described. Also clarify:

- What is the process for rent increases, over the term of the lease?
- Can farmers sublet to other farmers, for assistance with their rental fees?
- What is a fair way to split up utility costs when utilities are shared?
- What is the difference between the value of improvements or capital projects in a farmer's operation, versus the value of a landowner's stewardship and aesthetic goals? Try to establish a way to determine fair "farm value".

Access to funding: A bank will require a written lease for loans and may require that the lease agreement be at least as long as the terms of the loan itself.

Long Term Equity:

- How does a farmer gain equity over time on leased land?
- If the farmer invests in infrastructure and soil improvements, paying for them out of pocket, is there a way to hold on to that investment long-term?
- Is there a short-term gain because the rent is set at a low annual rate, allowing the farmer to receive an annual value? For instance, perhaps the farmer invests money that would otherwise go to a land mortgage in an IRA or a house?

There are no easy answers and few models that answer the long-term equity question, but this is a question worth discussing early in the lease relationship.

See Appendix for more info.

Multiple Enterprises Sharing the Same Farm Property:

- Does landowner live on the farm property, or close to the farm operation?
- Do farmers live in on-site residential spaces?
- Does the farm rent housing to farmworkers?
- Does the landowner run their own business on the farm property and, if so, is there anything that needs to be discussed or clarified?
- Are there any relationships that need to be clarified, relating to multiple enterprises sharing the same location?
- Are there ways where multiple enterprises are synergistic or build value by association and, if so, does anything need to be discussed?

Multiple Tenants:

- Are there overlapping uses or shared resources that need to be coordinated?

- How does a tenant gain access, over time, to more ground and/or infrastructure use?
- Are there restrictions for land use when two businesses require the same ground?

Communication: Use this space to determine how best to have an effective communication process:

- Communication preferences—what is the type and extent of communication that each party prefers, over time?
- What is a process that best suits your preference for levels and impact of interaction, as well as overlap between landlords and tenants?
- When may it be important to include the next generation of owners, and when is it appropriate to inform, educate, and get to know the next generation?
- What is the best process and timeframe for changing and updating your plans and agreements?

Ongoing Communication:

- Inform and educate—particularly for absentee or nonfarm landlords. For example, could farmers send landowners a farm newsletter or occasional seasonal updates via email?
- Provide cost information—landlords should be regularly updated regarding any expenditures that might fall into their wheelhouse, thereby minimizing unexpected costs.
- Alert the lessor to problems—you must immediately alert your lessor when on-farm problems occur or come up.
- Document in writing—if decisions are made regarding items outside the scope of those provided for in your lease, be sure to document them, in writing, with a letter summarizing the agreed-upon action.

Examples of Structured Communication Plans:

Annual Check-In: Least amount of communication and therefore best for minimal overlap.

- Farmer presents landowner with the information needed for landowner to acquire agricultural exemption.
- Farmer then keeps landowner informed about any operational changes happening on the farm.
- Landowner also keeps farmer informed about any changes, on an ongoing basis.

Annual Review and Planning Meeting: Moderate communication for moderate overlap.

- Farmer presents an overview of challenges and successes from the previous year, and then an update explaining any changes they will be making for the next production year.
 - Will the business grow, shrink, or remain the same?
 - Are there any new on-farm marketing enterprises being proposed?
 - Are there any new needs that relate to infrastructure, land, or water use?
- Landowner shares any major changes or new challenges.
- Landowner and farmer look through current agreements and make any necessary new agreements.

Quarterly or Monthly Meetings: Structured communication, best for multiple overlapping relationships—either multiple enterprises operating out of the same location, multiple tenants on the same farm, or a landowner’s house being in proximity to a farmer’s primary operation.

- Predictable and scheduled times to communicate throughout the season give farmers and landowners a structured time to address challenges, conflicts, and stressors when a high level of coordination

is necessary, and when the potential impact of either party's action on the other is high.

Stewardship Responsibilities:

- What are the strategies, for both the landowner and the farmer, that enable you to meet your stewardship goals?
- Who is responsible for what?
- What is the expected timeframe?

Landscaping:

- Who mows and maintains the grounds, and to whose benefit and aesthetic taste?
- Who manages building improvements?
- Who restores existing infrastructure and/or buildings and decides what is both functional and cost-effective?
- Are there any issues around deer management and/or hunting?
- Are there issues to discuss around soil health and/or the ecosystem health of the farm?

Tenure: Security & Access

Security: Achieved when the farm operator does not have to worry about being kicked off the land, or that the terms of use will be randomly altered. Can also mean that the length of the lease agreement is sufficient for the farmer to meet their goals.

Potential discussion topics about security:

- Does the farmer want to find out more about the landowner's long-term plan for the property?
- Is the farmer wondering about the possibility of putting an easement on the property—making the land more affordable for the farmer,

and enabling them to potentially purchase it from the landowner in the future?

- Is there security around the possibility of the land being sold to another property owner, or any agreement stating that it won't be developed on—thereby increasing the chances of the property continuing as a farm?
- Do farmers hope to extend their lease to a longer timeframe?
- Do farmers want to know what might be possible in the long-term, such as a 99-year lease or buying the farm outright?

Access: The farmer's ability to control the land sufficiently, so that their farming goals are met.

Potential discussion topics about access:

- What is the farmer's access to the property, subject to the conditions in the lease agreement?
- How often, as a farm's business moves from startup to a growth phase, do farmers need more land or infrastructure to keep their operations viable?
- As farming goals develop over time, do the farmer's needs change?

Access discussions can also relate to a farmer wanting to expand operations, wanting more acreage, and/or wanting to improve and/or build infrastructure for a business.

Exit Strategies: What happens if the farmers stop farming, and how does the current relationship end if either party wants out?

Potential discussion topics about exit strategies:

- How should the farmer leave the land?
- What is a realistic timeframe for the farmer to move their operation, should they need to relocate?
- What happens to a residential lease if the farmer stops farming the land?

- What communication needs to be in place during an exit phase (i.e., meetings and timeline)?
- Can the farmer's business and/or improvements be sold to the next tenant farmer and, if so, how will everything be valued?
- Is there another way for the farmer to recoup their investments, for any unmovable infrastructure and, if so, how will that be valued?
- What is a crop farmer's timeline for recouping their investment on fertilized and/or planted fields, and how can an exit strategy honor that investment?

Section 3: Resources

Land for Good: An excellent collection of resources for farmers and landowners. Check out their Toolboxes and, if you're putting a lease together, look at the Build A Lease Toolkit.

Landforgood.org

Farmland for a New Generation, New York: They help both farmers who are seeking land and landowners who want to keep their land in farming. The resource section has a great collection of information, for both farmers and landowners, on a wide range of related topics.

nyfarmlandfinder.org

Pace Food and Law: The Food and Beverage Law Clinic (the "Clinic") of John Jay Legal Services, Inc. (JJLS), is a not-for-profit organization located at the Elisabeth Haub School of Law at Pace University in White Plains, NY. They provide free, transactional legal services to farmers and can review the drafting and negotiation of contracts, including leases.

<https://law.pace.edu/food-and-beverage-law-clinic>

California FarmLink has a great resource section:

<https://www.californiafarmlink.org/resources/growing-on-solid-ground-a-farmers-guide-to-land-tenure/>

Appendix

Lease Basics:

Have a written lease: Lease agreements for farmland and/or real property assets should always be in writing.

Many traditional landlord/tenant relationships have been governed by oral leases. Oral, informal, and handshake agreements provide very little guidance and protection to parties when, or if, disagreements occur.

A written lease, on the other hand, encourages parties to consider all aspects before the lease period begins. Therefore, decisions can be made *before* the problems occur. In subsequent years, it also provides a basis for changing provisions when, or if, conditions change.

The document should meet, at minimum, the following requirements:

- An accurate description of the property
- A definite period within which the lease is to run
- The kind and amount of rent due, when it is due, and the preferred method of payment.

There are many kinds of leases to consider. Here are some links to examples and more information:

<https://www.californiafarmlink.org/resources/elements-of-a-good-lease/>

<https://aglease101.org/>

Some information that answers common questions:

https://farmcommons.org/sites/default/files/FC_FAQ_Land_Leasing_Final.pdf

Conservation Practices:

The Farmland Information Center (FIC) is a clearinghouse for information about farmland protection. It serves people who work to save farmland and ranchland for agriculture. It is also a project of American Farmland Trust (AFT), maintained on behalf of, and with support from, the USDA Natural Resources Conservation Service (NRCS).

farmlandinfo.org

Long-Term Equity Building

The long-term financial success, for families and individuals, relies on solid equity building strategies. When a farmer owns a farm, their property is a means of building equity as the property's value increases over time. When a farmer leases, they can build equity outside of property ownership by contributing to a 401(k), a house, or by some other strategy.

There may be advantages to an equity-sharing arrangement, for both the landowner and farmer tenant. For example, the arrangement could incentivize the farmer to invest in improvements.

Equity in a property tends to increase as infrastructure, and production capacity, is built on the land. Improvements such as greenhouses; irrigation systems; improved soil; fencing; and/or on-farm markets like a farm stand or CSA could all add value to the property.

Improvements to the farm property can also increase the viability of a farm enterprise, and a potential lease arrangement long-term with the current farmer, or another, should the farmer choose to relocate.

Below are examples of some possible ways to create an equity-sharing arrangement:

- A lease-to-own model where, if landowner sells to farmer at the current market price, then the “rent” paid over time gets taken off the sales price. Sometimes, but not always, a lease-to-own model includes setting a market value at the time that the agreement was first made.
- Right of first refusal or an “option to purchase” can be written into the lease if property is ever listed for sale.
- Option to sell business to an incoming tenant farmer if current farmer decides to relocate or leave the business of farming.
- Option to sell the value of the infrastructure improvements to another lessor, should the farmer decide to leave, and another farmer begin to rent the property.
- Long-term leases can become renewable and inheritable, enabling a farm family to become multi-generational.