Mediating Leases Webinar
Slide script:

Slide 2 – Handshake vs. Written agreement

- Currently in the US the vast majority of agricultural leases are made with an annual handshake agreement.
- Most farmland rental agreements are short-term and verbal. While there can be a strong, positive cultural context for such agreements (some handshake agreements last for generations), short-term agreements do not provide adequate security for farm operators. Tenants don't typically have ways to build equity off or in the land they farm.
- Haynes example – multi-generation handshakes and now transferring to a beginner farmer and farmer needs written leases to assure that the fields for grazing and hay cutting will still be available
- Most advisors will say "get it in writing". Banks or other funders and government agencies such as NRCS require a written lease to fund projects on leased land.

Slide 3 – map of rented lands

- According to the USDA Economic Research Service, about 40 percent of U.S. farmland has been rented over the last 25 years, ranging from 35 percent to 43 percent of all land in farms over the 1964-2012 time period.
- In recent times, "part owner-operators" are the largest segment of farmers in the U.S.; meaning they own some of the land they farm and rent some of the land they farm.

Slide four – Motivations for farmers to lease land

- Only about a quarter of the farmers in the Northeast own all the land they farm.
- Nearly two-thirds both rent and own.
- Eleven percent of Northeast farmers do not own any farmland.
- The smaller the farm, the more likely the operator is to own all the land.
- Increasingly farmers, especially new farmers, see leasing as a realistic and business-savvy option on their farming path.
- Leases can offer farmers affordable, flexible and secure access to farms, land, and buildings as well as higher net revenue during their start-up years.

Slide 5 – Land Values have increased dramatically

- Between 1997 and 2002, the value of farmland increased by a national average of 23 percent, with farmland values in some areas of the Northeast as much as ten times the national average.
- Escalating farmland prices, coupled with a lack of access to the capital necessary to purchase farm assets and declining farm profitability, are the biggest barriers to land ownership in the Northeast.

- Compounding the challenge are the difficulties farm seekers face in locating suitable property, and finding affordable and convenient housing.

Slide 6 – Financial Stresses in Farming
One of the things we've been talking about amongst the staff lately is exactly how much does it costs today for a beginner farmer to enter into farming. Obviously that is not a black and white answer as there are a lot of variables – including what type of operation does the farmer want to have.

- There is no simple number—it's going to be very different if a farmer is starting a dairy (large vs small vs value-added) or starting a vegetable operation (retail) vs vegetables (wholesale) or an orchard or maple operation and so on.
- A farmer can easily have 10's to hundreds of thousands in equipment, and 10's to 100's in livestock (especially in dairy).
- A typical "conserved" farm with a house and some sort of outbuildings/barns is going to cost between $300,000-$450,000 in some regions and closer to $600-$750,000 in other regions of New England – depending on size of home, amount of land and farming infrastructure. To purchase something that is not conserved or land where a farmer is building from scratch… the costs can be closer to a million plus.
- For young beginner farmers, a percentage also have their student debt that they're paying off.
- When we work with farm seekers who are looking to get started we tell people to start with the family living and work backwards—
    - If you need $50,000 to live and you have a 20% profit margin (which could be high for many types of farms, but can work for vegetables), you need $250,000 in gross sales. With retail vegetables, $15,000-$20,000/A is not unheard of (and higher).
    - Or at 10% profit margin (more likely for even the best run organic dairy), you need $500,000 in gross sales. With commodity organic dairy, you might gross $2000/A.
    - So the type of farming changes the land base needs and therefore the costs—
    - And as we saw in slide 5 – cropland usually costs more, pastureland less, but then dairy requires more infrastructure plus the investment in cows....

When you look at what it takes to get started – acquiring a home, land, equipment, supplies, and so on and needing enough to live on … leasing can make a lot of sense or be the only feasible option for a beginning farmer.

Slide 7 – Net cash income and net farm income

Net cash income, this is basically what you'd think of as the money a farmer gets to keep. It's the gross cash income—meaning, all the cash that comes in—minus any expenses, which would include raw materials, employees, and even payments on debt.

Net farm income It's the gross farm income minus all kinds of guesswork, including depreciation of land or equipment, household expenses, inventory changes, and more. It is an attempt to quantify the long-term prospects of a farm, which net cash income doesn't really do.

Slide 8 – USDA slide on US cash receipts for animals
Crops are expected to have a surplus this year, which is also not good for farmers

Slide 9 – Motivations for landowners to lease land

- Quote on slide – 80%... This means that many of the current and potential landlords may not be familiar with farming realities.

Slide 10 – ERS slide on land owned by non-operator landlords

- Today, nearly 40 percent of the productive agricultural capacity in the Northeast is owned by those who do not farm it.

Slide 11 – ERS slide on most farmers negotiate with multiple tenants

Slide 12 – ERS slide Most landlord tenant relationships are long-standing
Two things come to mind for beginner farmers:

(1) If established farmers have long-term leases on multiple properties it leaves less readily available farmland for new beginner farmers to get their start on.
(2) Also, if some of these beginner farmers are entering into leases that are ending quickly and not well, different from what this statistic shows, it would seem there is a need to work with this group on creating more solid leases.

Slide 13 – ERS slide 10% of farmland will transfer between 2015-2019

Slide 14 – Decision Tree for Farmers

Slide 15 – Principles of land Tenure

- **Access** - Access addresses the user's rights to get onto and control the land sufficiently to meet farming goals. If a farmer owns the land, he or she enjoys maximum rights and control. Tenancy offers a farmer access to the property, subject to the conditions in the agreement. In practical terms, access also means that the operator must be able to get to and onto the land without undue constraint. For example, if a landlord keeps the gate to the leased property locked or blocked, the tenant may have an agreement to use the land, but experiences barriers to access.

- **Security**: For tenants, security means that the farm operator is (relatively) free from fear that he or she will be arbitrarily kicked off the land, or that the terms of use will be altered without due process. It also means that the length of the lease agreement is sufficient for the farmer to meet his or her goals. While shorter leases offer flexibility (which has advantages), the longer the lease, the more secure the tenure. While the research is inconclusive, a common thought is that the longer the lease, the more likely the tenant is to treat the land well, rather than mine it for short-term gain. Longer-term agreements are more likely to foster longer-term conservation practices such as crop rotations, fallowing and application of certain soil amendments.

- **Affordability**: Housing is often a bigger challenge in terms of affordability than the land. Sometimes the house is part of the farm property and sometimes the farmer can find appropriate housing nearby. Certain non-traditional arrangements address the affordability issue. For example, some long- term and ground leases build in affordability provisions, so that the land is affordable for farming in perpetuity. Easements can reduce the price of a property. Share-lease agreements remove some of the risk from rental payments, making them more affordable. Owner financing and new mission-driven investor financing can offer friendlier terms for farm purchasing.

- **Legacy**: If you own a farm, you can arrange for it to be passed on – within the family, or however else you might choose. Sometimes a farm family will pass the farm to a non-family member, or to a charity such as the church or a land trust. Long-term leases can be inheritable. Ground leases also are inheritable. In the case of a ground lease, you can pass on the improvements you own, as well as the lease itself.

- **Stewardship**: Stewardship implies both values and responsibilities. Most farm property owners feel responsible for making sure that the land is cared for and not abused. Of course, people have different ideas about what constitutes use and abuse. If the owner is the operator of the land, her uses will correspond to her values and goals for it. If the user and owner are different entities, there needs to be an agreement about how both parties' stewardship goals and values are addressed.

Slide 16 – What is a lease?

Slide 17 – Types of Leases

- Short-term (annual to 3-5 years)
  - There is a long tradition of oral handshake agreements
- Long-term (5-99 years)
  - 99 years is the legal limit for a lease, anything longer means ownership is assumed.
- Ground lease (long-term, where tenant rents the ground and owns the improvements)
  - Allows farmers to build equity. When the lease terminates, the tenant sells the improvements.
- Rolling term (term "rolls forward" so that it's always, for example, 3 years)
- Residential lease (preferably separated from the lease for land and farm structures)

Slide 18 – Lease to own models
See slide

Slide 19 – What's in a lease
See slide

Slide 20 & 21 – Other items to include in a lease
See slides

Slide 22 – Advantages of leasing

Slide 23 – Disadvantages to leasing

Slide 24 – Advantages of short-term leasing

Slide 25 – Disadvantages to short-term leasing

Slide 26 - Long term leases

Slide 27 - Advantages of long term leasing

Slide 28 – Disadvantages of long-term leasing

This section may be review for mediators. I decided to include it because these are things we at Land For Good really think about and do generate a lot of questions and reality-testing when helping clients craft a lease.

Slide 29 – Best practices for avoiding problems
Clarity and communication

Slide 30 - Best practices for avoiding problems
Use measurable standards

Slide 31 - Best practices for avoiding problems
Anticipate problems that COULD come up and pre-plan procedures for dealing with them.
* I would say that with an absentee landlord meeting once a year is likely sufficient with communication in between, whereas with a landlord that is more actively involved with their property, there is likely to be more scheduled meetings and communication. I know a farmer who lives on the same farm as the landowner (there are 2 homes) and they have quarterly formal meetings and meet weekly to discuss smaller matters.

Slide 32 - Best practices for avoiding problems
Keep business businesslike.

Slide 33 – Vignette One
The story

Slide 34 – Vignette One
The approach to situation

Slide 35 – Vignette Two
The story

Slide 36 – Vignette Two
The approach

Slide 37 – Vignette Three
The Background

Slide 38 – Vignette Three
The team

Slide 39 – Vignette Three
The conversation

Slide 40 – Vignette Three
Insights

Slide 41 – Vignette Three
Insights

Slide 42 – Other discussion points

The long term picture:

Discuss how we help farmers have the conversation about the long-term picture. Many farmers wants to know about the long term, but are too afraid to rock the boat and bring up the conversation.

If a farmer starts asking, especially if it has been a successful handshake arrangement for many years, then there is the real concern that the landlords reaction will be:

- What is the problem?
- Don't you trust us anymore?

Or, the farmer's frame of mind is concerned that if they bring it up, the landowner will end the deal altogether.
-It's all in how the conversation gets brought up.
- Refer to landowner questionnaire prior to initial mediation

How do you resolve conflict with an organization (who is the landowner that the farmer is leasing from)?

One issue that comes to mind is that if there is not a clear point of contact, who has some authority to make some unilateral decisions (this can be the same issue with a private landlord, with multiple adult member owners), the farmer gets torn by mixed responses, too many responses from multiple organization members/staff or no clear decision-making process.

Identity/Stewardship: How do you talk about relationship with the land from the perspective of the landowner and the farmer? How do you bring together the ideas and values of each side so that it is not a source of conflict in an on-going lease?

Year to year leases don't always promote good stewardship since the farmer can be hesitant to invest in fertility and infrastructure and maintenance (of hedgerows, roads, drainage systems, irrigation systems, buildings) since they don't know if they'll be there the next year.
- Refer to questionnaires for farmers and landowners

Slide 43

Slide 44

By Cara Cargill, Land For Good