



FARM COMMONS

Lease: Who's Responsible? Tipsheet

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Who is usually responsible for what under a farmland lease?

Farmers and landowners are pretty much free to divvy up key responsibilities in a farmland lease however they want. That's one of the benefits of having a written lease. How they choose to do so is influenced by many factors, including personal preferences, financial considerations, the length of the lease, whether it's a cash lease or crop share lease, and so on. The reality is that each lease arrangement is unique.

Nevertheless, knowing what is customarily done can be helpful during the negotiating process. If the landowner insists on something atypical, the farmer could in return ask for a rent reduction or some other accommodation to even out the deal. With this in mind, the following list highlights some standard ways that landowners and farmers allocate responsibilities in a basic farmland lease. These simply serve as guideposts. Keep in mind that most things can be negotiated, to an extent.

Landowner responsibilities

Property taxes and assessments

Most landowners will pay the property taxes and assessments. Sometimes landowners will factor some or all of these costs into the rental fee.

Property insurance

Who pays for property insurance coverage often depends on what type of insurance the landowner has. If the landowner already has a farm owner policy, she will often take care of the property insurance under the lease. However, standard homeowner policies will not cover property loss or damage once commercial activity takes place on the farmland.

Therefore, if the landowner only has a homeowner policy, she may be reluctant to take on the additional costs of getting a farm owner policy to cover the farmer's operation.

Repairs of major problems

Landowners often take on the responsibility to make repairs to major problems. These repairs require skill and expertise to fix and can include major structural, electrical, and plumbing repairs. Sometimes the landowner prefers that the farmer hire someone to do it, and then deducts the cost from the rent. Regardless, the following are some examples of major repairs that landowners often take on:

- Water supply systems, including well pump and irrigation equipment
- Structural components, including barns and fences
- Exterior siding and roofing on buildings
- Waste treatment systems
- Heating and ventilating systems

Maintenance of common areas

The landowner will often take care of maintenance of any areas that are shared by the landowner, the farmer, and/or any other tenants such as parking lots or entry ways. If the farmer is the only one who uses these areas, she will generally be responsible for keeping them in good repair.

Farmer responsibilities

Taxes related to agricultural production and sales taxes

If the farmer's activities are subject to any taxes, such as sales and use taxes for value-added products, the farmer will most likely be responsible for paying them.

Liability insurance

Most landowners will require the farmer to carry general liability insurance and to name the landowner as an additional insured during the period of the lease. The amount of coverage could vary anywhere from \$1 million to \$5 million or more, depending on the farmer's activities and use of the land.

Property insurance

Landowners who choose not to transfer from a homeowner policy to a farm owner policy will likely require the farmer to include property insurance on their general liability policy and name the property owner as an additional insured.

Repairs of minor problems and maintenance

Typically, the farmer is responsible for the expenses and labor associated with repairs that do not require skilled labor. The farmer is also often responsible for routine

Tip: Repairs, maintenance, and improvements are fertile ground for disagreements. Be sure to clearly specify who's responsible for what in the lease

● maintenance and upkeep to prevent deterioration of buildings and other facilities or amenities on the leased land. This includes minor repairs and maintenance of fences, terraces, ditches, trees, and so on and can include tasks such as annual servicing and repainting.

Utilities

The tenant is usually responsible for paying for the energy and fuel to run the farm operation. This includes electricity, gas services, telephone, internet connection, trash collection, snow plowing, lawn mowing, water, sewer services, and so on.

Noxious weeds

This includes taking measures to adequately control and destroy invasive plants.

Conservation practices

If a conservation action plan is in place through the USDA National Resources Conservation Service (NRCS), the farmer will likely be primarily responsible for abiding by the plan. In return, the farmer generally receives the Environmental Quality Incentives Program (EQIP) payments. Landowners are often willing to agree to a reduction in rent if the incentive payments do not completely offset any extra costs to the farmer, as ultimately the landowner receives the long-term conservation benefits to the land.

Organic certifications

If the farmland is not already certified organic, the farmer is most often the one that takes on the costs and efforts to gain certification. The farmer can try to negotiate a reduction in rent or another accommodation to offset these additional costs, if the landowner appreciates the long-term benefits of certification.

What about improvements?

There are several ways to handle the costs of making and maintaining permanent improvements to the farmland, such as constructing buildings, storage structures, greenhouses, and so on. One way is for the landowner to pay for agreed-upon improvements as part of the rental agreement with an understanding that the rent may be increased. Another option is for the landowner and the farmer to share the costs in some form. For example, the farmer may provide the labor to build a greenhouse while the landowner may pay for materials. Another option is for the farmer to pay for any improvements entirely.

How improvements are handled often depends on the length of the lease and the extent of the landowner's involvement. Generally, landowners contribute more to improvements with a crop share lease than with a cash rent lease. Conversely, farmers contribute more with a longer-term lease. Either way, if the farmer pays for any part of an improvement, it's a good idea for the lease to include a provision for the farmer to be reimbursed by the landowner for the undepreciated value of the improvement should the lease end before the useful life of the improvement is over. In other words, if the farmer pays for the greenhouse and then the lease is terminated early after only two years, the farmer should be reimbursed for the undepreciated value of the greenhouse at year two. Otherwise, the landowner gets a windfall.

● For more tips on negotiating a written lease, check out Farm Commons' guide *Drafting a Lease: Questions for Farmers and Landowners to Ask*.