



# FAQ: Land Leasing for Your Sustainable Farm Enterprise

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**DISCLAIMER:** This guide does not provide legal advice or establish an attorney-client relationship between the reader and author. Always consult an attorney regarding your specific situation.

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The best lease between a farmer and a landowner is one that accounts for the unique needs and expectations of the parties involved. Ideally, a lease is the product of communication and understanding between the parties, and it creates pathways to solve problems that might arise. Here are some common questions about leases and the legal risks that need to be managed.



## **The owner of this farmland and I get along great! We don't really need a written lease, do we?**

We really think you do need a written lease. No matter how well you think you get along with the other party, a written lease can benefit you both. Even if you don't think you'll have any legal disputes with the landowner in the future, a written lease helps preserve everyone's memory as to the details. The process of writing the lease is helpful as it encourages the parties to explore contingencies such as responsibilities for maintenance and repairs and how you will resolve disputes if they should occur. There's really no downside to creating a written lease.

If you don't have a written lease, you should be aware of the default assumptions the law makes about your land agreement. Each state has its own set of default rules for when terms are not explicitly addressed in an agreement. Unwritten leases are also more difficult to enforce in court.

**FOR MORE INFORMATION:** *Farm Commons has several guides, checklists, and media presentations on the importance and details of written leases, including Drafting a Lease: Questions for Farmers and Landowners to Ask (a downloadable checklist), the "Farmland Leases Built to Last: Content and Legal Context" webinar, and the podcast episode "Write It Down!"*



## I'm afraid the owner of my farmland will want to terminate the lease early. What can I do about that?

Make sure you have a written lease that specifies exactly when and how the lease can be terminated early. Make sure you are comfortable with the details, including conditions (when is it okay to terminate early?) and obligations (what does each party need to do for the other in the event of early termination?). Clear processes and expectations will help ease your fears and can also help you prevent it altogether, as both parties understand the costs.

Length of lease and conditions of termination are critical components of a written agreement. If the agreement doesn't specify the length of the lease, the lease can be terminated "at will" by either party. This generally means that the landowner can terminate the lease at any time so long as proper notice is given. If a lease is not in writing, or the writing does not specify the time period, default laws establish how far in advance a party must notify the other if they want the lease to end.

Other important components include a protocol for either renewing or ending the lease at the end of the agreed-upon term, and provisions for what happens to any improvements on the land—including unharvested crops and tillage—if the lease is terminated.

**FOR MORE INFORMATION:** *Farm Commons' Lease Termination tipsheet explains situations where early termination may occur and what preventative measures are available, as well as other ways to manage the risks of early termination.*



## Who normally takes care of things like property taxes, insurance, water, etc., in a farmland lease arrangement? Is it the owner or the farmer?

Normally, the landowner takes care of property taxes and assessments, property insurance, major repairs, and the maintenance of common areas on the land (especially if other parties have access to the land). And normally, the farmer takes care of taxes on agricultural production and sales, property and liability insurance, minor repairs, maintenance, utilities, conservation practices, organic certification, and other such operational details.

Of course, we said “normally.” Farmers and landowners can come to whatever agreement works best for them. Every farm, farmer, and landowner is different. The best way to make sure everyone is on the same page is to communicate those expectations, work through any differences, and put it all in writing in the form of a clearly written lease.

**FOR MORE INFORMATION:** *Farm Commons has a Lease: Who's Responsible? tipsheet that addresses these questions.*



## I want to make significant improvements on the farmland I'm leasing. How can I protect my investment if I do this?

Talk with the landowner about the compensation you might need as a result of your investment. Come to an agreement with the landowner about how you will be compensated if your investment improves the value of the landowner's property. There are many possible arrangements for paying for improvements. The owner could agree to compensate you for the true, long-term value (also called the undepreciated value) of the improvements. You could agree to pay for the improvements and the owner could agree not to increase your rent. The owner could provide the money for the improvements and you could provide the labor, or vice versa.

The important thing is for both parties to communicate their needs, so that everyone knows what they are agreeing to before beginning improvements. And again, putting those agreements in writing is the best way to preserve the memory of each sides' expectations and commitments.

**FOR MORE INFORMATION:** *Farm Commons' media presentations, such as the podcast episode "Write It Down!" and the "Farmland Leases Built to Last: Content and Legal Context" webinar, explain how improvement provisions work. An additional resource is the Lease: Who's Responsible? tipsheet, also available on the Farm Commons website.*



## Ultimately, I want long-term land tenure. How can my lease agreement protect my investment in a piece of land over the long term?

A long-term agricultural lease may be best for farmers in a wide variety of circumstances. A lease of 5–10 years, or some other length suitable to you and the owner, can be a win-win situation for landowners and farmers. For farmers interested in agroforestry, permaculture, or another long-term investment in productivity, a long-term lease is a necessity.

Creating the right long-term lease for you requires good communication with the owner, so both parties can feel good about the eventual written lease. Having an attorney look at the lease is also a good idea. The lease also needs to be “recorded” by a county clerk or recorder to make sure the lease continues in the event a new owner takes over the property.

**FOR MORE INFORMATION:** *Although it contains a lot of information specific to agroforestry leases, Farm Commons' Inspirations for Creating a Long-Term Agricultural Lease for Agroforestry has detailed information on the legal issues and practical steps of all long-term agricultural leases. Drafting a Lease: Questions for Farmers and Landowners to Ask is an additional Farm Commons resource to consult when constructing a long-term lease.*

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## About Farm Commons

Farm Commons is a nonprofit organization dedicated to empowering sustainable farmers with the legal resources they need. We create practical, user-friendly educational resources. We also support sustainable farmers in proactively implementing legal best practices, collaborating on innovative legal solutions, and encouraging each other as leaders creating the change they seek.



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