Transfer Comparison

Find this chart and more in the Farmland Access Legal Toolkit (farmlandaccess.org), a project of University of Vermont Law School's Center for Agriculture & Food Systems

	LLC	Lease-To-Own	Contract for Deed	Traditional Sale (With a Bank Mortgage Loan)
Time To Transfer	Could occur quickly or slowly, depending on the terms of the LLC operating agreement. However, this option is attractive for farmers interested in a more gradual transfer over a number of years.	Could be short-term or long-term depending on the lease terms, but are often longer term.	Depends on the contract, but generally quite long term (e.g., 10 years or more).	Short term; land transfers at time of sale closing.
Ownership	LLC members each own a percentage interest in the LLC adding up to a total of 100 percent. In an LLC-based farm transfer, the senior farmers can gradually transfer ownership to the junior farmers over time. Eventually, the junior farmers aim to own 100 percent of the LLC.	The tenant owns only the option to purchase or right to purchase, depending on the lease terms. Some leases may include a purchase and sale agreement where the tenant makes a firm, up-front agreement to buy the land at the end of the lease. An option to purchase, in contrast, allows tenants to make the purchase decision at the end of the lease term.	Seller retains legal title until all payments are made under the contract for deed. Buyers risk losing access to the land entirely if a contract for deed payment is missed.	Buyer gains legal ownership at time of sale.
Ownership Interest	Members own a "percentage interest" in an LLC. Ownership in an LLC can be separated from control of an LLC by separating ownership rights from voting rights. This can allow senior farmers to maintain some control of a farm operation while still transferring ownership.	Tenant may have the option to purchase or may make a firm agreement to purchase at the end of the lease term.	Buyer does not have a legal ownership interest until all payments are made. Depending on state law, the buyer may have an "equitable interest" in the property to the extent payments have been made under the contract, but the buyer would likely have to go to court to enforce this right.	Buyer gains ownership at time of sale. However, the bank that provided the mortgage loan will generally use the land as collateral for the mortgage loan, and the bank can foreclose on the property if the buyer gets too far behind on the mortgage payments.
Taxes	LLCs are automatically subject to federal "pass through" taxation, meaning that LLC members generally pay taxes on their percentage of LLC profits on their personal tax return. However, LLC members can also elect to be taxed as an S-corp if that is more financially advantageous.	Tax responsibility may vary depending on the landowner's involvement in the operation and the terms of the lease.	Often, contract for deed buyers agree to pay property taxes, but the terms of the contract itself will determine tax obligations.	The buyer is responsible for property taxes.
Startup Costs	LLC-based farm transfers require government filing fees and attorney fees for LLC set up and for drafting the LLC operating agreement. These costs could be split between the senior and junior farmers, if desired. The junior farmer may need funds to purchase initial percentage interests, make installment payments, or cover other costs. However, the LLC members could also agree that sweat equity could be used as full or partial startup payment.	Leases typically require rental payments, so the farmer leasing the land needs funds to pay rent on the schedule agreed upon in the lease.	Contract for deed installment payments are generally similar to those of a lease or mortgage loan (although interest rates are often higher). The contract for deed buyer needs funds to make regular payments on an agreed upon schedule.	Generally requires a cash down payment, cash for closing costs, and regular monthly mortgage loan payments to the bank.
Interest Rates	No formal interest rate, unless otherwise mutually agreed upon in the LLC operating agreement.	Generally no formal interest rate, but lease term may be set to provide the landowner with a profit (after paying any taxes, operating expenses, and mortgage expenses).	Generally higher than traditional bank interest rates to account for greater contract for deed buyer credit risk (and risk of buyer non-payment).	Determined by credit rating of mortgage loan applicant. Generally tied to federal reserve rates; may be variable over time.
Cancellation Risks	Arrangements for a potential LLC member exit should be a high priority item for the LLC operating agreement. This is often called a "buy-sell" agreement, and can help ensure the farm operation remains whole or within the senior farmers' family even after an exit.	The leasing farmer may choose not to buy the farm, so the landowner farmer should have backup plans in case the landowner still owns the farm at the end of the lease period.	If the contract has a forfeiture clause, the seller may have the right to cancel the contract and keep all of the buyer's previous payments. Buyers may protect themselves from this result by including specific protective contract provisions or by later enforcing state equitable interest laws.	The sale generally cannot be cancelled after closing, but if the buyer fails to make mortgage payments the bank could repossess and sell the home via a foreclosure process.
Back Up Plan	Dissolution arrangements for potential LLC member exits should always be included in the LLC operating agreement.	The leasing farmer (tenant) may choose not to buy the farm, so the landowner farmer should have backup plans in case the landowner still owns the farm at the end of the lease period. The backup plan could be a new lease or an outright sale.	Buyers and sellers should consider including provisions in their contracts that address their rights and obligations in the event of contract cancellation, non-payment, or breach.	In the event that a buyer cannot make mortgage loan payments, the property would likely be sold. After the foreclosure, the buyer would likely owe the bank any difference between the sale proceeds and the remaining balance on the mortgage loan.
Protections/Legal Recourse	State law has default rules that govern LLCs, but LLC members can develop individualized protections and requirements for LLC members via an operating agreement. LLC members also have limited liability protection for actions and debts of the business.	Only those within the lease itself, and any state laws that regulate leases.	Some states provide specific protections for contract for deed buyers, and the contract itself can provide protections if properly written. In the event of missed payments, some states provide buyers and sellers rights similar to traditional foreclosure protections.	State and federal laws regulate property sales, bank lending, and foreclosure.