



# Extension FactSheet

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## Farm Rental Agreement Checklist

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It has been said that a “contract is no better than the word of those who sign it.” On the other hand, a written contract is still an essential business practice when leasing farm property. It forces detailed consideration, communication, and understanding by both parties. It serves as a handy reference in case details are forgotten or there is a death of the tenant or landlord.

The contract should encourage the most profitable, long-term operation of the farm and be beneficial for both parties. Are the returns proportional to the contributions both tenant and landlord make to the business? Will the lease prevent or discourage a tenant from operating the farm in the same way a well-financed owner-operator would run it? Are the best farming methods, conservation practices, and/or environmental practices utilized? What is the plan for needed improvements? Every contract or lease agreement will one day terminate; how is termination to be handled? What method(s) will be used to settle accounts?

The following checklist will assist tenants and landlords to consider components of a well designed lease agreement. It is advisable to have an attorney for one party prepare the lease, with a review by the attorney for the other party.

### Parties to Lease and Description

- \_\_\_\_\_ Date the lease is entered into.
- \_\_\_\_\_ Names and addresses of the landlord and tenant.
- \_\_\_\_\_ Legal description of the leased property.
- \_\_\_\_\_ Signatures of the landlord and tenant.

### General Terms

- \_\_\_\_\_ Time period of the lease, including beginning and ending dates.
- \_\_\_\_\_ Rental amount for cash lease; respective shares and contributions if a crop-share lease.
- \_\_\_\_\_ When and how rent will be paid and penalties for late payments.
- \_\_\_\_\_ Who will carry insurance on the property and the crop.
- \_\_\_\_\_ Statement that the landlord and tenant do not intend to create a partnership by entering into the agreement. Neither party will obligate the other for debts/liabilities or damages.
- \_\_\_\_\_ Conditions under which the tenant may or may not sub-lease the property.

- \_\_\_\_\_ If the land is enrolled in an agricultural district, providing protection against nuisance suits over farm operations and additional review if land is taken by eminent domain.

### Termination

- \_\_\_\_\_ When and how the lease may be terminated and requirements for notice of termination.
- \_\_\_\_\_ Reimbursement provisions for crop nutrients, lime and/or completed fieldwork upon termination of the lease.
- \_\_\_\_\_ Acts of the tenant that would constitute default of the lease.
- \_\_\_\_\_ Tenant's rights if the property is transferred or condemned during the lease period.
- \_\_\_\_\_ Reimbursement provisions for a crop still in the ground when the lease is terminated.

### Operation and Maintenance

- \_\_\_\_\_ Desired or prohibited farming practices, including types of chemicals that may not be used on the property.
- \_\_\_\_\_ Process of measuring and maintaining soil fertility and pH levels.
- \_\_\_\_\_ Which party is responsible for controlling noxious weeds.
- \_\_\_\_\_ Which party is responsible for maintaining fences.
- \_\_\_\_\_ Whether the tenant has the right to make improvements and be compensated for improvements.
- \_\_\_\_\_ Whether the tenant has the right to utilize improvements made by the landlord.
- \_\_\_\_\_ Provisions for soil-conservation practices.
- \_\_\_\_\_ Statement regarding the existing environmental status of the property and responsibility to minimize activities that may cause contamination.
- \_\_\_\_\_ Use of non-cropland, garden plots, trees, buildings, grain bins, pasture or other areas not rented for cropland.

### Landlord Rights and Government Payment

- \_\_\_\_\_ Landlord's right to enter the property for specific purposes.
- \_\_\_\_\_ Landlord's right to a security interest in the crops or other provisions for ensuring payment.
- \_\_\_\_\_ Statement of which party will participate in federal farm programs, including responsibility for eligibility and receipt of payments.

\_\_\_\_\_ Nature of landlord participation in management. This may relate to issues regarding income and self-employment, taxes, social security payments, and estate planning.

### Arbitration of Differences

- \_\_\_\_\_ Provision that any amendments must be in writing and signed by both parties.
- \_\_\_\_\_ Procedure for resolving disputes, including the applicable state statutes.

### Crop-Share Provisions

- \_\_\_\_\_ General agreement, sharing of crops and tenant's contribution of machinery and labor. Each party should share returns in the same proportion as resources are contributed.
- \_\_\_\_\_ Sharing of operating expenses, generally variable expenses are shared in the same percentage as the crop share; if there are adjustments for no-till, custom application, liming or any new technologies adopted.
- \_\_\_\_\_ Storage and/or delivery of landlords share of crops.
- \_\_\_\_\_ Compensation upon termination of the lease.
- \_\_\_\_\_ What records are to be kept by whom and how will this information be shared.

### Summary

If the term of the lease is for more than one year, it must be written to be legally enforceable. It also should be reviewed each year to ensure the terms are still desirable. Multiple year agreements require the following:

<i>Term</i>	<i>Legal Requirements</i>
Up to 1 year	Verbal can be enforceable
1 to 2 years	Must be in writing and signed by the parties.
2 to 3 years	Must be in writing, signed by the parties, notarized, and recorded in the county where the land is located.
3 years or more	Must be in writing, signed by the parties before two witnesses, notarized, and recorded in the county where the land is located.

This checklist does not include all possible considerations for flexible-cash rent provisions or a number of other items that tenants or landlords may want to include in the written agreement. Furthermore, each state has different statutes and local communities have unique customs. This fact sheet is not intended to take the place of sound legal advice required by any party entering into a contractual relationship.

Use the checklist as a guide to judge an agreement as to the components normally required or advisable to be included within a leasing contract.

### References

- Moore, John E., *Test of a Good Farm Lease*, Ohio State Extension.
- Legal and Management Aspects of Ohio Farmland Leases*, Fact Sheet FR-0001-01, Ohio State University Extension, 2000.
- NCR75: *Fixed & Flexible Cash Rental Agreements*
- NCR105: *Crop Share Rental Arrangements*
- Producer Bulletins on Farm Leasing, National Center for Agricultural Law Research & Information, University of Arkansas.

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