



United States
Department of
Agriculture

National Institute
of Food and
Agriculture



Leasing Land



**BEGINNING FARMER AND RANCHER
DEVELOPMENT PROGRAM
AWARD: 2015-70017-23901**

Acknowledgments

Farmland for the Next Generation

is supported by a 4-year Educational Enhancement grant from the ***USDA Beginning Farmer and Rancher Development Program***.



United States
Department of
Agriculture

National Institute
of Food and
Agriculture

Award# 2015-70017-23901

Thanks also for support from the ***Farm Credit Contributions Program***, an Educational Enhancement Team of national experts in farmland access, and the members of ***American Farmland Trust***.



Who We Are

Cindy Roberts:

Development and Training
Coordinator



Charles, “Chuck” Roohr:

Farmland Stewardship
Program Manager



Farmland for the Next Generation

In New Jersey, one of the biggest barriers that beginning farmers face is access to land.

- Some beginning farmers can afford to buy land.
- Most turn to leasing when starting a new farm because of high land costs.
- However, finding secure, long-term leases can also be difficult.

This training is designed to help beginning farmers gain the skills needed to find and acquire land to start or expand their operations.

Part 1: Getting Started With Leasing



***What
is a***

LEASE
AGREEMENT



A lease is a contract between a landlord and a tenant – or landlords and tenants.

- It identifies the parties **AND**
- Creates an agreement – it describes how the tenant is being given use or control of the property (with conditions, time-period, compensation) and how the landlord gets these rights back at the end of the term.

Disclaimer: This presentation doesn't constitute legal advice.

Alpha Stock Images - <http://alphastockimages.com/>



Key Elements of a Lease

- Identification of parties
- A property description
- The length of the lease term
- Payment terms/rental rate

Farmland Leasing Resources

Leasing Farmland in New Jersey:

A Guide for Landowners and Farmers



N.J. State Agriculture Development Committee

Leasing Farmland in New Jersey

Farmer Worksheet: Planning for a Lease



[www.nj.gov/agriculture/sadc/
farmlink/resources/leasing.html](http://www.nj.gov/agriculture/sadc/farmlink/resources/leasing.html)

Leases May Be Oral or Written

- 
- **Oral (or “handshake”) leases are valid**
 - But usually only for a year
 - Offer few protections

Leases May Be Oral or Written



- **Written leases offer more protection to the tenant**
 - Provide security and clarity for both parties
 - Spell out: parties property description, time frame, rental rate
 - Require signatures of landowner and tenant

Leases Come with Rights, Subject to the Lease's Terms

Rights for the Tenant:

- To use a property, including land and potentially buildings and other infrastructure
- To transfer the lease (if included)
- To privacy



Leases Come with Rights, Subject to the Lease's Terms

Rights for the Landlord:

- To ensure proper conservation/stewardship of the land
- To “encumber” – e.g., to take out a mortgage, sell or donate an easement
- To sell or transfer the property
- To enter the property and to exclude entry to others

State, Local, Federal Laws (Public Policies) May Impact These Rights

Leases give tenants the right to use the land, but keep in mind there are other laws that may provide limits.

- State laws – may affect land use, e.g., wetlands, Uniform Construction Code, stormwater management
- Local laws – local governments regulate land use through ordinances and zoning (but in NJ, Right to Farm Act may apply)
- Federal laws – may further limit rights, e.g.
 - Endangered Species Act
 - Clean Water Act



State, Local, Federal Laws (Public Policies) May Impact Your Rights

For more information visit:

California Farm Link:

[Growing on Solid Ground-A Farmer's Guide to Land Tenure](#)

National Agricultural Law Center:

[Agricultural Leases: An Overview](#)

New Jersey State Agriculture Development Committee (SADC):

[New Jersey Farmland Leasing Guidebook](#)

[New Jersey Right to Farm Program](#)

Types of Leases

Cash Leases (most common) – require regular, predetermined cash rental payments in exchange for use of land and often agricultural infrastructure and/or housing.

Ground Leases – long-term arrangements where the tenant rents the land, but invests in and owns buildings and other improvements.

Other Agreements (not common in NJ)

- **Crop Share Leases** – based on production yields rather than a predetermined rental rate; operating expenses are shared between landlord and tenant
- **Flex Leases** – rent determined in direct proportion to yields, market prices, or both; operating expenses also are shared



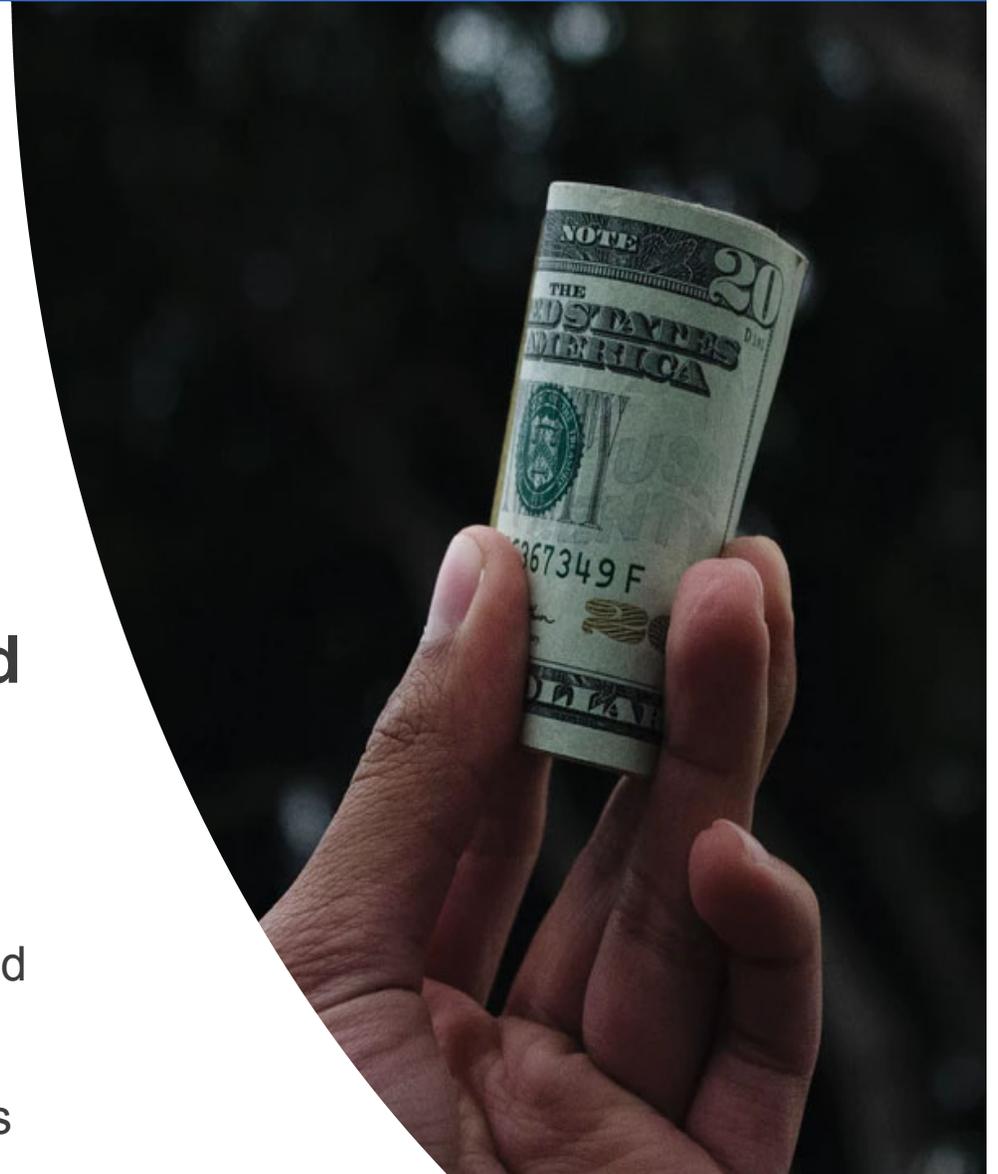
Cash Leases

Positives

- Simple
- Allows for easy budgeting and record-keeping
- Tenants make all production decisions and receive all payments (including government payments)
- Landlord has no involvement in your farm business

Other things to keep in mind

- Tenants assume all the risk
- Requires more working capital (rent is due throughout the growing season)
- Rental rates may change over time
- Conservation efforts must be capitalized into the value of the land
- Need to address infrastructure maintenance and cost of improvements



Lease with Option to Purchase

A Path Towards Ownership

Lease agreements may include provisions that the tenant has – or will have – the option to buy the property at some time in the future.

- They can apply just to the land that is leased or include agricultural infrastructure and other assets.
- Terms of the purchase should be specified in the lease – including the price, the time frame, and whether rent payments count toward the sale.
- May provide tenants with a way to build up equity over time.

Other Variations on Purchase Options

- Right of First Refusal
 - Installment Sale
 - Land Contract Sale
 - FSA Land Contract Guarantee Program for beginners and farmers from socially disadvantaged groups
- 
- A person is seen from behind, standing in a field of tall, green grass. They have their arms outstretched, looking towards a bright, hazy horizon. The overall scene is peaceful and evokes a sense of connection to nature and agriculture.

Part 2: Negotiating a Good Lease



Many Types of Landlords

Operators

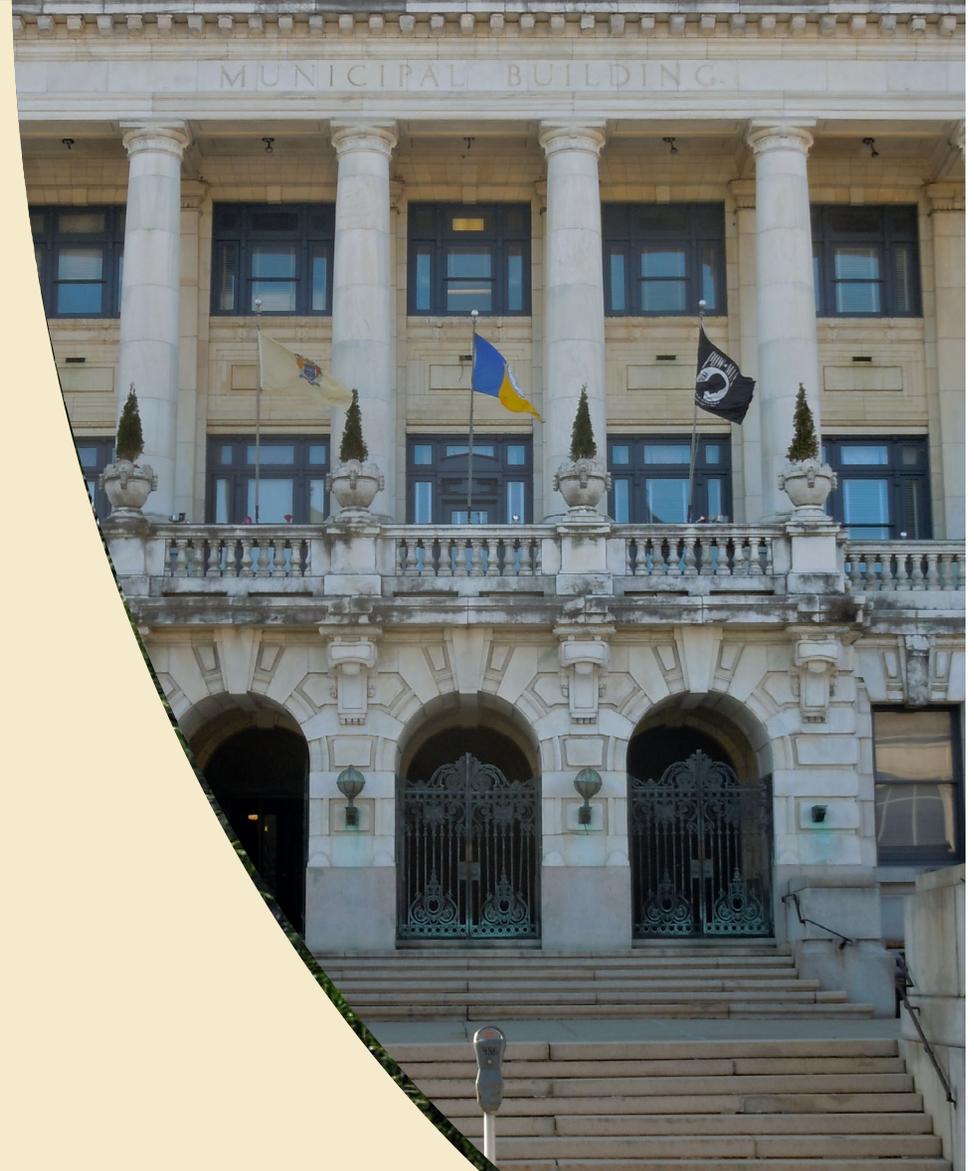
- Farmers and ranchers, often retired or retiring

Nonoperator Landlords

- Individuals
- Partnerships and trusts
- Institutions and organizations, including land trusts and nonprofits

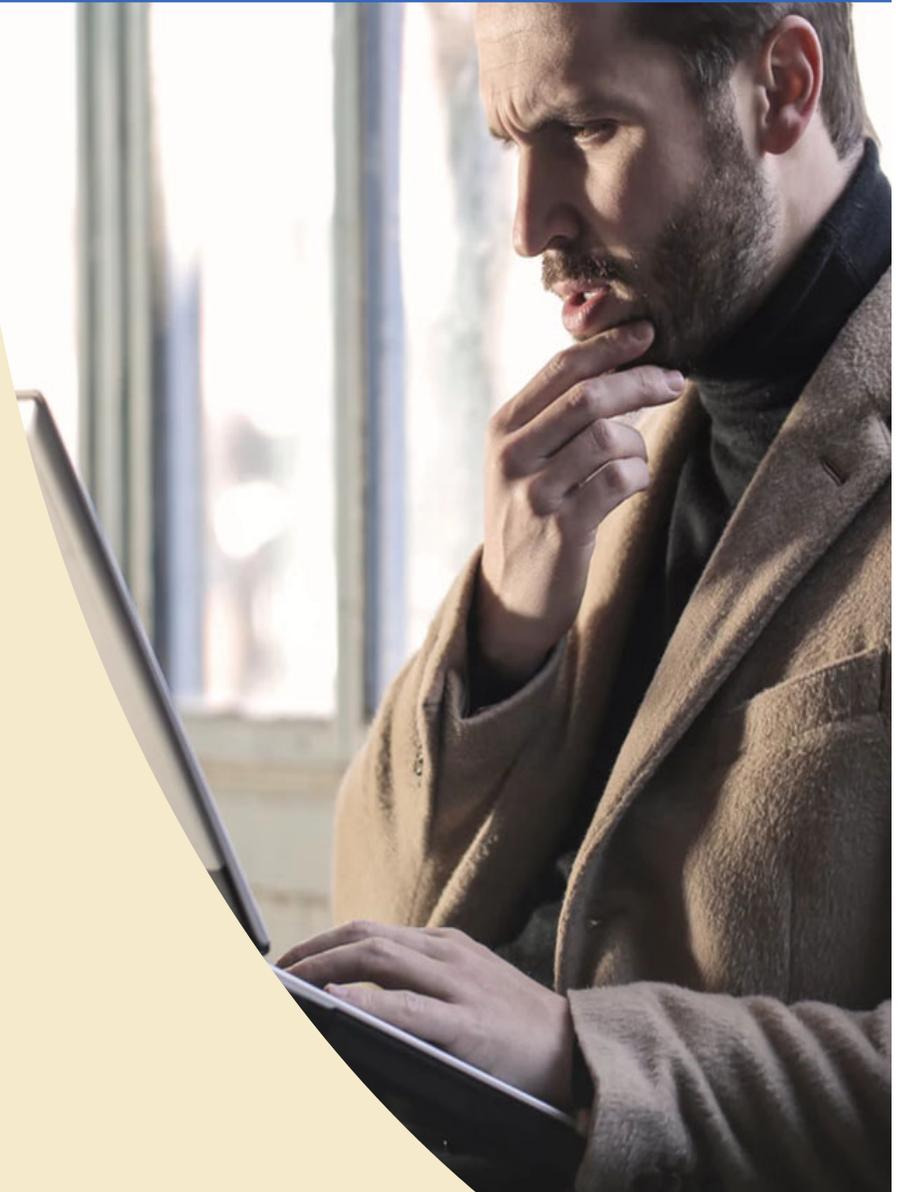
Public Agencies

- State agencies
- Local governments



Landlords Have Various Motivations

- A retired farmer may want to age in place but see his land managed as it has been.
- A nonfarming landlord may be unfamiliar with agricultural management or conservation practices.



Landlords Have Various Motivations

- A nonprofit or institution may want a well managed landscape, enhanced conservation measures and/or be opposed to intensive production.
- A public agency may have a public purpose associated with leasing land that requires specific types of operations, public access or conservation practices, or may limit construction of agricultural infrastructure.



What's Covered in a Good Lease?

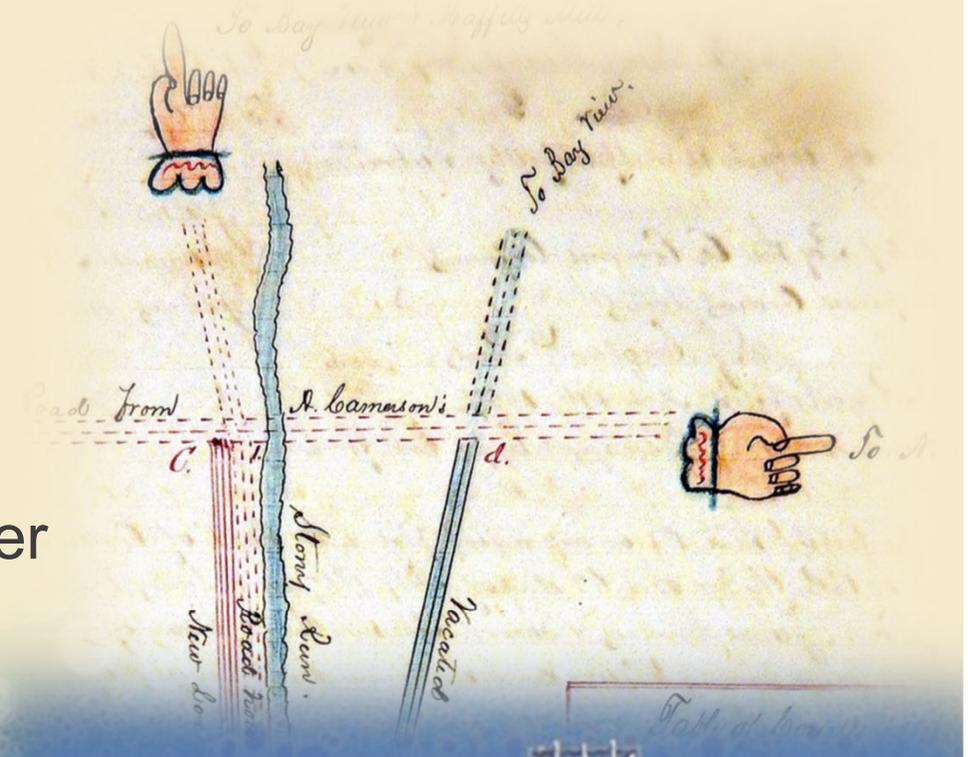
- Identification of the parties entering into the lease
- A property description
- Length of lease term including termination and renewal provisions
- Payment arrangement/rental rate
- Conservation provisions
- Agreement on who is responsible for maintenance and improvements
- Clearly defined landlord restrictions and/or other special provisions
- Insurance requirements
- Hunting and woodland management



Property Description Considerations

The more detailed the property description, the better. Make sure you detail features including:

- Property boundaries
- Acres of crop, pasture or other land
- Access to water – irrigation, water rights, etc.
- Agricultural infrastructure: barns, fencing, irrigation
- Housing



Time Frame Considerations

Ideally, the length of your lease should be tied to your personal, business and production goals

**Short
or Long?**

Short Term

Short Term can be year to year, typically less than 3 years

- More flexible but less secure.
- They are a good way to provide a trial period as you grow your operation.

Long Term

Long Term is more than 3 years but could be 10-20 or more years

- Allows for investment in soil quality and infrastructure
- Provides flexibility in types of crops and production
 - Organic Certification
 - Orchard/Grapes
- Allows participation in conservation programs

Rolling Renewal

Rolling renewal provides some of the benefits of each:

- Good in situations when the tenant or landlord is not ready or willing to commit to a long-term lease.
- Renewed automatically at the end of each year of the lease unless the tenant or landlord decides otherwise.

Payment Arrangements and Rate

Determining rent is a tricky business. Above all else, it requires negotiation with the landowner

- **Learn about their motivations** and ownership costs

It is easier to find information in some parts of the country – and easier for cash rents

- You can get a sense of rental rates from **NASS**
- In some places, rental rate calculators are available
- Local Rutgers Extension agent
- Ask farmers in the area

Know what you can afford to pay

Conservation Provisions

Conservation plans required for participation in some farm programs – address issues such as

- soil health
- erosion
- nutrient management
- water quality

Best when developed by both landlord and tenant in consultation with NRCS staff



Conservation Provisions

Conservation provisions – instead of mandating specific practices, provisions can be more flexible, requiring thresholds are met or objectives achieved

Good husbandry provisions – encourage tenants to farm using the highest standards of good husbandry ensuring natural resource conservation



Other Considerations

- Is subletting allowed?
- Are there any limits on types of crops or livestock?
- Who is responsible for routine maintenance?
- Who is responsible for maintaining infrastructure?
- Who will pay for and own improvements?
- What other operations are occurring on or adjacent to the farm?
- What happens if the farm is sold?