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Creative Leasing for Livestock Farmers



- PRESENTED BY -

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FACT

Food Animal Concerns Trust

Introductions



Food Animal Concerns Trust (FACT) is a national nonprofit organization that advocates for the safe and humane production of meat, milk, and eggs.



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FACT's services for livestock and poultry farmers include:

- **Fund-a-Farmer Grants**
- **Conference scholarships**
- **Free webinars**
- **Humane Farming Mentorship Program**



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Creative Leasing for Livestock Farmers

Esther Akwii

CAFS

- Est. 2012 - supports scholars, practitioners, and students in producing innovative research and legal tools for use by the food and agriculture community.
- Several projects such as the Farmland Access Legal Project. For more, <https://www.vermontlaw.edu/academics/centers-and-programs/center-for-agriculture-and-food-systems/projects>

THE OPINIONS AND CONTENT PRESENTED DURING THIS WEBINAR DO NOT CONSTITUTE LEGAL ADVICE. FOR LEGAL ADVICE, CONSULT A LICENSED ATTORNEY IN YOUR STATE.

Webinar Overview



- Leases, types of leases and basic terms
- Creative lease arrangements
- Legal resources ([Farmland Access Legal Toolkit](#), [Working with Lawyers](#))

Leases

Lease?

- A oral or written agreement between a landowner and a tenant farmer.
- Grants the tenant farmer the right to use the farm property.
- A binding a contract between the landowner and the farmer tenant

Types of leases

Oral / Handshake deals

- Many, based on “trust.” Lend themselves to uncertainty and misunderstanding.
- Often, cannot create a legally enforceable lease.

Written leases

- Reduced into writing, all the terms spelt out.

Basic Terms



- Landlord and tenant names and contact information
- Description of the land to be rented, including a description of what is on the land that is included in the lease (like a barn, milking parlor, etc.)
- Rent amount and when rent is to be paid
- Signatures of both the landlord and tenant
- Date the lease started and when it will end

Recap – questions?

- Parties
- Details of the property
- How long will the lease last?
- Termination
- Rent
- Permitted activities
- Repairs and routine maintenance
- Insurance
- Disaster clause
- Indemnification clause
- Dispute resolution
- Stewardship
- Communication
- Use of the farm property
- Attorney



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Creative Leasing

Creative Leasing

- Creatively address their individualized needs and limitations.
- Unique and valuable benefits to farmers, landowners, and farmland alike, including the opportunity for tenant farmers to build equity in the leased farm, or the incentive to use environmental conservation measures in farm management.
- Extent of creative leasing arrangements is limited only by the imaginations of the landowner and the tenant farmer (and by certain legal limitations)

1. Ground Leases

- Rent only the farmland (not the building on the property).
- Option to purchase existing buildings on the land (or build their own buildings on the rented land)
- Lowers the amount of up-front money (Renting not buying)
- 50, 75, or 99 years.
- Allows a new farmer to build equity by owning or constructing farm buildings on the rented land over time.
- Compensation clause in the lease
- Appraisals to determine the value

2. Equity – Building Provisions

- Equity - value that has built up in a property.
- Unless a lease says otherwise, equity in a property always belongs to the landowner
- Lease provisions that require tenants to be paid back for some of the investments
- Advantage - Increased incentive to invest in rented farmland; and an equity-sharing arrangement benefits the landowner as well

3. Lease – to Own

- Option to purchase the property within a specified period of time at a price or by a formula that is set at the time of signing the lease agreement.
- Incorporates the sale into the lease
- Option to purchase or a right of first refusal (the ability to be first in line to purchase when the property comes up for sale).
- Long term (10 – 99 years) or short term (1 – 10 years)

Special Considerations – For Lease To Own Agreements

- Will the landowner simply collect rent and move off the farm during the lease, or will the landowner mentor the tenant farmer and/or have an active role in the management and operation of the farm? (Note that there may be tax implications of landowner involvement.)
- How long should the lease be to allow both parties to generate enough income before the transition is complete?
- Will the landowner allow the tenant farmer to continue to use any business name or label attached to the land or farm?
- Will the landowner's agricultural equipment and/or livestock be included in the lease-to-own arrangement, and if so, how?
- Where will the landowner and tenant farmer live? Is there room for both on the farm?
- What will the landlord-tenant relationship look like?

4. Land With Conservation Easements

- Conservation easement - voluntary legal agreement that restricts the development of land to fulfill conservation values.
- Lower the fair market value of the property
- Permanent easements - conservation easement restrictions stay in place even after the land is sold.
- Advantage - reduced rental price.
- Requirements of any conservation easement on the land.

How Conservation Easements Work

- Full ownership of land comes with a variety of ownership rights.
- A conservation easement transfers some of these rights to the lessee.
- The landowner still has many of the rights, such as the right to farm, and the conservation easement holder has other rights, such as the right to limit commercial development in favor of conservation.

Conservation Easement Deed

- A conservation easement is a property right, transferrable from the landowner to the conservation easement holder through a written deed, typically called a Conservation Easement Deed.
- Recorded publicly within the land records.
- Binding on all current and future landowners and users.
- “Runs with the land”
- New farmer is not allowed to negotiate new terms with the conservation easement holder.
- Understands the limits and will be able to comply with them without undue economic harm.

Perspectives

- Saving up-front costs and recouping investments for tenant farms and retaining control for the landowner.
- Require more negotiation between the tenant farmer and the landowner upfront.
- May not be appropriate for very new farmers.



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How An Attorney Can Help

How An Attorney Can Help

- Thinking about starting a farm business
- Looking for land
- Negotiating a lease
- Draft a farm lease
- Review a farm lease that you have drafted or the other party has drafted
- Navigate a dispute that might arise during the course of a lease relationship
- Enforce a lease agreement if a relationship falls apart, including helping farmers avoid eviction
- Lawsuit or court order
- End of lease term

How To Find An Attorney

- Talk to other farmers
- Ask a trusted farm organization
- Ask another lawyer
- Call a law school clinic related to food or farming.
- State bar organizations.

<https://farmlandaccess.org/>



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About

Contact



Helping farmers and landowners affordably
access, transfer, and conserve farmland.

Thank you!

Connect with **FACT**

Food Animal Concerns Trust

Upcoming webinars

- **January 29:** New Zealand Method of Sheep Shearing
- **February:** Three part series on parasites in sheep & goats
- **March 6:** Making a Living Doing What You Love
- **March 13:** Pulled Pork – Mobile Housing for Pigs
- **March 19:** Managing Face Flies on Pastured Cattle

Grants, Scholarships, Mentorship & More!

- **Mentorship program applications – deadline is January 31**
- **Scholarships accepted on an on-going basis**

Sign up for emails @ foodanimalconcernstrust.org/farmer/

Join us on social media

