

# leasing

## 1. land-financing-leasing

### 1.1 Reducing Legal Risks Through Online Education



### 1.2 Untitled Slide

Provided by:



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### ***1.3 Land Financing and Leasing***

## Land Financing and Leasing

### ***1.4 Land Financing and Leasing***

#### Land Financing and Leasing

- Introductory video - Live
- Script here, to be written last
- Then, we'll transition to talking about purchasing land.

## 1.5 Land Financing and Leasing

### Land Financing and Leasing

We'll focus on the legal distinctions between different financing mechanisms and why the distinctions are important. If you're talking with your rich Aunt Bertha about your farm and she hands you several thousand dollars, the first thing you need to know is whether that's a gift, a grant, a loan, an investment or a partnership! Then, you can move forward with the legal details of that particular relationship.



## 1.6 Leasing Land: The basic

### Leasing Land: The basic

- We are going to start this section with a quiz.
- Legally speaking, a land lease is :
  - A piece of paper with the word Lease written at the top
  - The right to use someone else's land
  - An agreement involving land that spans one year
- In common usage, the word "lease" can mean many things including all three of the options above. But, when the law thinks about a "lease," it means number 2: The legal right to use someone else's land.



## 1.7 Leases Introduction

### Leases Introduction

- A person can have the legal right to use someone else's land without having a piece of paper and without having a specified length of time in which to use that land. At its essence, the lease is simply about the agreement.
- That being said, it's certainly best if the lease is written down! When we write a lease down, we have the best chances of enforcing the lease. Just as important, we have the greatest likelihood of avoiding problems because the parties involved understand their duties and have something written to consult if they forget.
- As a farmer, your job is to get your lease in writing and to make it thorough enough to avoid the kind of problems you are likely to encounter. Before we get to what to put in your lease, let's learn from a worst case scenario.



## 1.8 Leasing Land: Cautionary Tale

### Leasing Land: Cautionary Tale





## 1.9 Land Leasing: Writing the Lease

### Land Leasing: Writing the Lease

- We know we should write our lease down and get it signed before we make significant commitments. We also know that it should be thorough enough to prevent the kinds of problems the farm operation might face between itself and the landowner. But what does that mean? Here are the basic items to include in a lease:
  - Basics:
    - Who is leasing the land?
    - Where is the land located?
    - When does the lease begin and end?



## 1.10 Land Leasing: Writing the Lease

### Land Leasing: Writing the Lease

- Limitations on premises use:
  - Are customers, visitors, volunteers, or employees on the land?
  - Is animal production allowed? Is camping allowed, etc.?
- Production:
  - Are there any limitations on what can be produced, when, where, and how?
- Facilities:
  - Does the farm have access to any storage, irrigation, electricity, refrigeration or trash?
  - What if the facilities the farm has access to are damaged or reduced? Who fixes them or restores them to their capacity?
  - Can the farm make improvements to buildings and fences? Can the farm build hoop houses? If so, what happens to the value of these things after the farm leaves the land?
  - Is the farm compensated for any improvement in soil quality?



## 1.11 Land Leasing: Writing the Lease


### Land Leasing: Writing the Lease

Renewal:

- Does the lease have the possibility of renewal?
- How is that process handled?

Termination:

- Might the lease be terminated early by either party?
- Under what circumstances?



## 1.12 Activity:

### Activity: Land Leasing: Writing the Lease for your Operation

- Did you find yourself thinking, "Oh, good question!" to any of these?
- Did you find yourself saying, "Wow, I have no idea!" while reading the questions?
- Go back and mark the questions that are most significant to your farm operation.
- Next, reflect on a plan to get answers. How do you want to approach the landowner to discuss it?
- Can you begin by drafting your preferred procedures?
- Sketch some action points to help you move forward. For a full list of questions, consult the document entitled, "Questions for a Farmer and Landowner to consider when drafting a lease" If you need inspiration from a sample lease, check out the leases at [Ag Lease 101](#).

## 1.13 Land Leasing: Commercial or residential

### Land Leasing: Commercial or residential

- Pretend you hammer out an agreement with the landowner on all the issues of importance to you and your farm, and you put it in writing.
- The first thing you do is pat yourself on the back, as that's a terrific accomplishment. But are we there yet?
- Not necessarily, we have a few more particulars to iron out.



## 1.14 Land Leasing: Commercial or Residential

### Land Leasing: Commercial or Residential

- Leases come in two flavors: commercial and residential.
- Commercial leases are for businesses and residential leases are for homes. The tricky thing about farming is that these two are often mixed- the home site is also the business site.
- Farmers leasing farmland combined with a home should be cautious about combining the terms for both the farmland and the home into a single document.
- Generally, tenants will want one lease for the house and one lease for the farmland. Keeping the leases separate ensures that the home is covered by federal, state, and local laws that cover residential housing leases. Residential housing leases give tenants certain protections like the ability to withhold rent payments if the house becomes uninhabitable and the right to eviction proceedings.

## 1.15 Land Leasing:

### Land Leasing: Commercial or Residential

- When a farm lease covers both the farmland and the house as a residence, the protections given to housing tenants can be lost.
- This is because farmland leases are generally seen as commercial.
- Commercial leases are not heavily regulated, like housing leases. Tenants under a commercial lease can sometimes be evicted with little notice and may not have the right to expect certain standards be upheld like access to running water or waste disposal.
- Now, that's not to say commercial tenants can't negotiate for certain standards or more lengthy eviction proceedings- they can and often should. But if they don't secure those rights in the lease, residential housing laws will not step in to protect them, as happens for residential leases.



## 1.16 Land Leasing: Taking it Across the Finish Line

### Land Leasing: Taking it Across the Finish Line

- It's always a good idea to sign the lease in front of a notary. Generally, a residential lease doesn't need to be signed by a notary while a commercial lease does. Because it can be hard to assess whether a farmland lease is residential or commercial, you're playing it safe by getting it notarized. There isn't a single drawback to notarizing a lease, either, aside from the inconvenience.
- It's always a good idea to register the lease with your county recorder of deeds, and it is often required for leases that last longer than 7 years. Find out if it's required for your lease by calling your county register of deeds office. Even if it's not required, think about doing it anyways. Taking this step makes it much more likely that your lease will survive transitions in ownership, whether by death, sale, or transfer to creditors.





## 1.17 Land Leases and

### Land Leases and an LLC or Corporation

- Many farmers become both tenant and landlord when they have an LLC or Corporation.
- As is recommended, many farmers choose to own their land personally, and then lease that land to the LLC or Corporation for use in the farm business. This is a good idea because if the land is an asset of the LLC or corporation, it is available to satisfy business liabilities.
- The idea of creating a lease where the farmer is both the landowner and the tenant (as owner of the farm business) can seem awkward. But, it's not unusual at all. Negotiating the lease is a straightforward affair, covering all the same details including parcel information, rental rate, renewal procedures and more as any other lease.
- Some farmers get the idea to charge exceptionally high rental rates to their LLC's, thus bringing in solid income to the farmer, personally, while avoiding the self-employment tax they'd incur if they made the money as profit for the farm business. This bright idea is not looked upon fondly by the IRS.
- Farm businesses can get in trouble if rental rates do not have a reasonable basis in reality. Look to market rates and the cost of owning the property for indications of a reasonable rental rate. Consult with an accountant and tax preparer for advice on tax management and rental rates.



## 1.18 Land Leasing: So you didn't write it down...

### Land Leasing: So you didn't write it down...

#### ▪ LIVE with Ryan - Video with the following script :

- Lets say you are like most people and, despite the best of intentions, you don't get around to writing down your lease agreement with your landowner and... bad things happen.
- Let's say the landowner dies and the land passes to his daughter.
- Let's say the landowner goes into bankruptcy and the land is sold at auction
- Let's say the landowner cuts a deal with her friends who want to open a race track... next month
- Let's say you plant garlic anticipating that the leasing relationship will continue, and it doesn't... leaving you with \$20,000 worth of seed garlic in ground that you don't own.
- What happens? Well, the bottom line is that farmers in situations like this, need to consult with a qualified attorney as soon as possible.
- When we don't have a lease, we have to turn to state laws. State leasing laws serve as a source of "default" law when individuals didn't come up with an agreement of their own. The problem is that state leasing laws are complicated and especially difficult to apply to casual agreements, to say nothing of farmland leases that mix residential and commercial components. Determining which default state and even municipal laws may apply is real work.
- An attorney will need to ask detailed questions like when the lease began, how often rent is paid, whether the lease had an end date, and whether the parties assumed the lease will renew or explicitly agreed to renew each year, as well as how much notice the farmer was given that the relationship would be ending.
- You can almost feel the headache coming on, right. Avoid this by writing down your lease agreement.
- And with that, we'll transition to financing and documentation for a land purchase.

## 1.19 Activity: Define Basic Options

*(Drag and Drop, 0 points, unlimited attempts permitted)*

**Activity:**  
**Farm Financing and Purchase: Defining basic options**

Let's make sure we're on the same page with the definitions of some common farmland purchase financing strategies. Click on each icon, hold and drag it to the appropriate definition.

Gift	Grant	Mortgages	Loan	Partnership	Investment
Putting money in now for a return of the profit later, without participating in the business.	Loan given with the title to the property held as a security in repayment.	Putting in money or time now, for a return of the profit later, while participating in the business.	Something given freely, with no expectation of return.	Money given with the expectation it will be returned, with interest.	Money given to your business for a distinct business purpose.

Drag Item	Drop Target
Gift drop	Hotspot Gifts Drop
Loan drop	Hotspot Loans Drop
Mortgage drop	Hotspot Mortgages Drop
Investment drop	Hotspot Investment Drop
Partnership drop	Hotspot Partnership Drop
Grant drop	Grant-hotspot drop

Drag and drop properties
Return item to start point if dropped outside any drop target
Snap dropped items to drop target (Tile)

**Feedback when correct:**

That's right! You selected the correct response.

## Feedback when incorrect:


You did not select the correct response.

## Correct (Slide Layer)

**Activity:**  
**Farm Financing and Purchase: Defining basic options**

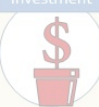
Let's make sure we're on the same page with the definitions of some common farmland purchase financing strategies. Click on each icon, hold and drag it to the appropriate definition.

**Gift**



Putting money in now for a return of the profit later, without participating in the business.

**Investment**



Money given to your business for a distinct business purpose.

**Correct**

That's right! You selected the correct response.

**Continue**

with the title to the property held as a security in repayment.

money or time now, for a return of the profit later, while participating in the business.

given freely, with no expectation of return.


the expectation it will be returned, with interest.

## Incorrect (Slide Layer)

**Activity:**  
**Farm Financing and Purchase: Defining basic options**


Let's make sure we're on the same page with the definitions of some common farmland purchase financing strategies. Click on each icon, hold and drag it to the appropriate definition.

**Gift**



Putting money in now for a return of the profit later, without participating in the business.

**Investment**



Money given to your business for a distinct business purpose.

**Incorrect**

You did not select the correct response.

**Continue**

with the title to the property held as a security in repayment.

money or time now, for a return of the profit later, while participating in the business.

given freely, with no expectation of return.


the expectation it will be returned, with interest.

## Try Again (Slide Layer)

**Activity:**  
**Farm Financing and Purchase: Defining basic options**


Let's make sure we're on the same page with the definitions of some common farmland purchase financing strategies. Click on each icon, hold and drag it to the appropriate definition.

Gift



✘  
Incorrect  
That is incorrect. Please try again.  
  
Try Again

Investment



Putting money in now for a return of the profit later, without participating in the business.

with the title to the property held as a security in repayment.

money or time now, for a return of the profit later, while participating in the business.

given freely, with no expectation of return.

the expectation it will be returned, with interest.

Money given to your business for a distinct business purpose.

## 1.20 Farm Financing and Purchase:

**Farm Financing and Purchase: Gifts, Grants, and Loans**

- Remember at the beginning of this section, we introduced rich Aunt Bertha? Let's revisit Bertha as we discover how classifying her money has real-world implications in the law.
- Let's say you are at a family reunion and, over slices of watermelon, you talk with Aunt Bertha about how much you need a new tractor to really gain efficiency on your farm. You tell her how your buddy is selling the model you really want for just \$16,000, and you're planning an online crowd funding campaign to raise money. A couple days later, you find an envelope from Aunt Bertha in your mailbox with a check for exactly that amount.





## 1.21 Farm Financing and Purchase:

### Farm Financing and Purchase: Gifts, Grants, and Loans - 2

- Was this money given to you as part of your crowd funding campaign? Perhaps Aunt Bertha was giving you money to buy your tractor. In this case, the money might be a grant, given for a specific business purpose. If it is, grant funds received must be reported as revenue to the farm business.
- But on the other hand, was Bertha's money a gift? Did she send you \$16,000 because you are her favorite niece/nephew and your birthday is next week? In most cases, gifts are not reported as revenue to a business or as self-employment income to an individual. Rather, Bertha is the one responsible to account for gifts to the IRS, which she should arrange with her accountant.



## 1.22 Farm Financing and Purchase: Gifts, Grants, and Loans

### Farm Financing and Purchase: Gifts, Grants, and Loans

- How do you find out which it is? You have to ask. Once you find out, you should document it in writing. For example, send a thank you note to Bertha that restates the gift's status. Urge Bertha to be in touch if you misunderstood. Just keep a copy of your letter for yourself, so you have some evidence of it.
- Now let's say that Bertha encloses a note with her money indicating that she's offering it as a low-interest loan. In that case, you might want to reach out to Bertha to get more information on her expectations. You want to know what Bertha expects in terms of when she wants repayment, the exact interest rate she's charging, how she wants payment made. This is also your opportunity to advocate for your needs- do you want the ability to pay her back in farm products or landscaping services? Discuss the many details. Before you cash that check, draft up a promissory note that outlines all expectations, as explained in our [Guide to Writing a Promissory Note](#), which is included in the resources.



## 1.23 Farm Financing and Purchase: Gifts, Grants, and Loans - 2

### Farm Financing and Purchase: Gifts, Grants, and Loans - 2

- Let's do one more scenario... perhaps Bertha's note goes on to say that she expects the tractor back if you aren't able to pay her back. In that case, Bertha and you also have a security agreement. Again, get the details ironed out. Statutes and regulations address how our houses are foreclosed upon if we don't make payments. But, security agreements for equipment are more flexible- you can't rely on state laws to step in for your interests, necessarily. Get on the same page with Bertha beforehand and write out a security agreement that works for the both of you .
- In the next segment, we'll look at Bertha's money from 3 more directions.



## 1.24 Farm Financing and Purchase:

### Farm Financing and Purchase: Investments and Partnerships

- Now, let's switch up the facts a bit with our Aunt Bertha. Let's say that Aunt Bertha is a fabulously successful orchardist. You are also going into fruit production. As Bertha opens up the conversation about giving you money, you tell her you would be happy to accept, and you'd also like her help in the business. Perhaps you'd like Aunt Bertha to help you out as a key advisor on important issues like where to market your fruit, how to manage pests, and assessing land for expansion. You know that with her help, you could make more profit and you anticipate sharing that with Bertha.
- In this case, you are imagining a partnership. A business partnership is where two people go in together to make a profit. Generally, the partners both invest some money in the venture, allocate responsibilities, and split profits on the basis of what each invests. Occasionally, a partner invests just time and expertise, and not dollars. In either case, we have big issues to talk about, and the issues are more complex than the simple gift, grant, or loan we were imagining before.



## 1.25 Farm Financing and Purchase:

**Farm Financing and Purchase: Investments and Partnerships**

- What exactly is the division of responsibility? What exactly are we contributing and what do we get back out of it? Bertha and you have wide latitude to come up with a plan that works for you. If you don't come up with one, state law has a backup for you. But the better idea is to be proactive and work through the details yourself. Legally, you need to know that if you are in a partnership with Bertha, you share legal liability for the business. You also need to do your taxes appropriately.
- Now let's imagine a slightly different scenario. Bertha decides she's done with making orchard decisions and wants to take it easy. She's still happy to invest money, and still wants a share of any profit you make in return, but no responsibility. In this case, you're talking about an investment. If these conversations progress, you want to talk with a lawyer as soon as possible. You may be subject to state and federal laws that require you to give Aunt Bertha disclosures of information before you even talk with her further about the investment opportunity. This subject is difficult to sort out in an educational context. So, meeting with an attorney is essential if these options are on the table.



## 1.26 Farm Financing and Purchase: Matching Options with action steps


(Drag and Drop, 0 points, 1 attempt permitted)

**Activity:**  
Drag the options below to the action step we should take under that classification. Click submit when finished.

  
Gift

  
Loan with Security

  
Partnership Contribution

  
Grant

  
Loan

  
Loan

**Farm Financing and Purchase: Matching Options with action steps**

As we learned in the previous section, Bertha's intentions in giving the money determine its classification, and thus the action steps appropriate to protect the farmer from the legal ramifications.

**Action Steps:**

Write, sign, and understand the promissory note and the security agreement

Write a strong partnership agreement

Write, sign, and understand the promissory note

Send a gift acknowledgement

Manage expenses with revenue appropriately

Work with an attorney

Drag Item	Drop Target
Gift	Hotspot gift

Loan-s-drag	Hotspot-ls
Loan ns	Hotspot-ns
Grant	Hotspot-grant
Investment 1	Hotspot invest
Partnership 1	Hotspot partner

Drag and drop properties
Return item to start point if dropped outside any drop target
Snap dropped items to drop target (Snap to center)
Allow only one item in each drop target
Delay item drop states until interaction is submitted



## 1.27 Whether leasing or purchasing:

### Whether leasing or purchasing: Know the limitations

- Before getting settled on a piece of property, farmers should make sure they understand the land's usage limits. Although the production of crops is rarely disallowed outright, there may be limitations on animal production, construction, marketing methods, and farm events.
- Do you plan to do any of the following on your farm?
  - ✓ Offer tours
  - ✓ Host festivals
  - ✓ Conduct classes
  - ✓ Process farm products
  - ✓ House interns, workers, or family members
  - ✓ Construct new buildings or sheds
  - ✓ Erect hoop houses or high tunnels
  - ✓ Launch a prepared food venture (for example, dinner on the farm)
- If you checked any of the above boxes, it is especially important that you explore the zoning ordinance for your property. Zoning ordinances are a community's primary means of controlling what can and cannot occur on a specific piece of property, including farm property. Often with the goal of protecting the viability of agriculture as a whole, farm retail, commercial, or manufacturing ventures might be disallowed. Where non-farm ventures are allowed, permits may be required first.
- Learning the zoning code can help farmers understand if a specific parcel is right for their needs.
- Zoning will be explored in detail in the Agritourism section



## 1.28 Untitled Slide

Complete  
Congratulations!  
You've completed  
the Workers  
Module!  
Please proceed to  
the next module:

**Tourism  
And Zoning**

