

## Farm Leases

You may think of a lease as mostly a consumer issue—applying to renting an apartment or automobile. However, it is a vital part of creating a successful business and avoiding some of the inherent risk associated with farming.

### *What happens if I do not have a lease? Can we just have a “handshake deal”?*

A lease in farming is a contract that can cover use of land, equipment, or buildings. A lease clearly spells out the expectations of each party to the agreement with regard to length of term, maintenance, and other items that can become areas of disagreement if you do not have a written lease.

In the absence of a written lease, however, a landowner cannot destroy crops when they are in the ground—and is still required to give notice before asking tenant to leave. The length of notice required is based on the tenancy, or the length, of the lease.

### *Why should a lease be written?*

In North Carolina, any agreement that impacts the use of land for more than 3 years must be in writing. NCGS § 22-2 If the term of the lease agreement is longer than three years, it should also be filed with the county Register of Deeds office. NCGS §47-18 Secondly, it is useful in shaping a discussion so that you and the landowner can think through areas of potential problems before they become issues. For example, who is responsible for fixing irrigation? What chemicals can or cannot be applied to the land? Are you trying to convert to organic production? Who pays for improvements or maintenance to permanent structures like barns or sheds? Are there structures that cannot be used?

Items that must be in the lease:

- The parties to the lease and their contact information.
- A description of the property to be used. If there are buildings that are (or are not) to be used, they should be listed.
- Length of the lease
- Amount to be paid for rental, when payments are due and method of payment.

### *Types of Leases*

There are different kinds of leases that can be used in the agricultural contexts that may provide flexibility in payment arrangements and time. Of course, because a lease is a contract between the tenant farmer and the landowner, individually drafted leases can take into account all of the particularities of your unique situation.

**Fixed cash lease:** Annual rent is paid per acre. This is relatively straightforward and common. The landlord rents out the property and is not involved in the day-to-day operating decisions. Cash rents do not reflect costs of production or a rate of return.

**Flexible cash lease:** Rent is calculated based on annual yield and the market price available for the particular product being produced. This makes it flexible and variable. The rental rate could include consideration of insurance or government payments because it is based on gross revenue, but it may provide some protection in situation of low yields or decreasing market prices. It also opens the discussion for consideration of inputs by the producer (production costs).

Crop-share lease: In this type of lease, the landowner receives a portion of the crop produced in lieu of payment. In this situation, although buildings might be provided as a part of the lease, the owner may pay a portion of the cost for inputs such as fertilizer, seed, or pesticides. This creates more of a partnership between landlord and tenant, as well as a financial investment by both parties. Both parties would have to agree on management techniques, such as pesticide application and harvesting. With regard to food safety regulations, it would be key that both parties follow the same management plans.

### *Special considerations for certain NC counties*

In certain counties of North Carolina, the lease term (written or unwritten) should begin and end on December 1 of the calendar year. This applies to Alamance, Anson, Ashe, Bladen, Brunswick, Columbus, Craven, Cumberland, Duplin, Edgecombe, Gaston, Greene, Hoke, Jones, Lenoir, Lincoln, Montgomery, Onslow, Pender, Person, Pitt, Robeson, Sampson, Wayne, and Yadkin. NCGS § 42-23



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**About the Land Loss Prevention Project** The Land Loss Prevention Project is a non-profit law firm that offers legal representation of clients, community education, and professional outreach in the effort to promote wealth, land preservation, and rural livelihoods [www.landloss.org](http://www.landloss.org)

**About the W.K. Kellogg Foundation** - The W.K. Kellogg Foundation (WKKF), founded in 1930 as an independent, private foundation by breakfast cereal pioneer, Will Keith Kellogg, is among the largest philanthropic foundations in the United States. Guided by the belief that all children should have an equal opportunity to thrive, WKKF works with communities to create conditions for vulnerable children so they can realize their full potential in school, work, and life.

The Kellogg Foundation is based in Battle Creek, Michigan, and works throughout the United States and internationally, as well as with sovereign tribes. Special emphasis is paid to priority places where there are high concentrations of poverty and where children face significant barriers to success. WKKF priority places in the U.S. are in Michigan, Mississippi, New Mexico, and New Orleans; and internationally, are in Mexico and Haiti. For more information, visit [www.wkkf.org](http://www.wkkf.org).

**About the Local Food Promotion Program** The Local Food Promotion Program (LFPP) of the Agricultural Marketing Service, USDA, offers grant funds with a 25% match to support the development and expansion of local and regional food business enterprises to increase domestic consumption of, and access to, locally and regionally produced agricultural products, and to develop new market opportunities for farm and ranch operations serving local markets. For more information, visit <https://www.ams.usda.gov/services/grants/lfpp>