The Term
Leasing Fact Sheet

This fact sheet does not address all legal concerns and is not a substitute for legal advice.

Introduction

The term of a farm lease means the period of time—or duration—that the lease will be in effect. The word *term* can be confusing because the *terms* of a lease can also mean the provisions and stipulations spelled out in the lease.

Regardless of the type of lease or length of the term, it is important to specifically name the beginning and ending dates of the agreement. Every lease should state whether and how the lease may be extended or renewed. If the lease "runs with the land"—meaning that the lease remains in effect even with a change of landowner—the termination (end) date is still valid, even if the property has changed ownership during the term. See Termination and Default Fact Sheet and also Lease-to-Own Strategies Fact Sheet.

In certain circumstances, a month-to-month lease may be adequate. It allows the tenant or landlord to terminate the lease at any time. Month-to-month leases are generally self-renewing, meaning they just keep going, month-to-month.

Length of the Term

Agree on the term. Technically, a lease can be of any duration, subject to pertinent state laws. (Some states set a limit to the length of a farm lease term.) Some leases, such as ground leases with a community organization as the landlord, run 99 years, although this is not common.

The term has implications for both parties to the lease. Will the tenant be motivated to adopt conservation practices? Will the tenant invest in leasehold improvements? Is the lease term sufficient to qualify for farm programs?

There are situations in which a ***short-term lease*** is desirable. Short-term is not a precise time period, but it generally means one or two years. Farmers and landowners might choose to start with a short term as a kind of "trial period." If both parties are happy with the leasing relationship, they could transition to a longer term. Other reasons for a short-term lease include if the future of the property is uncertain, or if a farmer wanted to test the property's fit for his or her operation. A beginning farmer might want to see if farming is a profession that he or she will want to continue. An established farmer may need additional land for a season or two.

One major drawback of a short-term lease is that it does not provide much land security to the farmer. The farmer is less likely to invest in the land and infrastructure, and to make long-range plans. It means less security for the landowner, too; he or she may have to search for a new tenant and establish new relationships. Another relative disadvantage of shorter-term leases is the transaction costs. A year-to-year lease requires annual renegotiation.

Longer-term leases can run five years or longer. Some states limit the length of a farm lease term. Longer-term leases provide more security and stability for both parties; the farmer can invest in the land and the landowner doesn't need search for a new tenant for a

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long while. This security for both parties is good, but it comes with a commitment that reaches into the future. The farmer is better able to borrow capital, plant perennials or invest in soil improvement.

Other advantages of a longer-term lease include:

- Covering the term of a farm loan, typically of 5-7 years
- Depreciating improvements (typically over 5-10 years)
- Capturing a return on tenant's investment (property improvements and other farm business investments)

Regardless of the term, a lease of any duration can and should address early termination as well as changes to the lease along the way. See Termination and Default Fact Sheet. See also this section at Drake University Agricultural Law Center on The Lease Term and Tenure Confidence.

Extension or Renewal

Clearly describe how the lease may continue beyond the initial term. Lease renewal and lease extension may have the same practical effect, and the terms are commonly used interchangeably. But there is a legal difference, and it's advisable to get legal advice on this detail.

At any time during the term of the lease, both parties can agree to extend the lease by changing the end date to a later date. It is a continuation of the original lease, without interruption. All lease provisions would stay the same, with the only difference being that the agreement would extend further into the future. (That said, a good lease will enable the parties to negotiate changes to the lease at any time along the way.)

From a legal perspective, a renewal is a new lease agreement. Technically, a lease is renewed at the expiration of the previous one. In this case, changes can be made in any of the provisions and a new lease term set.

If desired by both parties, an option to renew or extend should be written into the lease. Options to extend or renew give the tenant the ability, prior to the conclusion of the lease term, to continue leasing the premises. An option to renew or extend the lease means that upon the tenant's exercise of the option (choice), the provisions of the agreed-upon option are adopted for the defined term. The terms of the option can include the length of the new term, a change in rent, and other modifications.

If the option rests with the tenant to ask for a renewal, the landlord is obligated to agree under the terms of the option. If there is no option to renew in the agreement, then there is no obligation for either party to renew the lease. Without the tenant's option, the tenant can ask to renew or extend; the landlord may—but does not have to—grant it.

It doesn't make legal sense for a lease to say either party has the option to renew or extend. If the landlord wants to retain the right to not renew, s/he should not grant the tenant the option.

The option typically delineates the timing of notification for renewal or extension, what the rent will be or how it will be negotiated, the number of permissible extensions or renewals, how long each extension will be, and which, if any, of the original terms of the lease will be excluded from the extension.

Rolling Lease Term and Evergreen Lease

Consider these less-traditional approaches to the term. There are two methods to address lease continuity—a rolling lease or an evergreen lease. These approaches to the lease term give added security and stability to the leasing arrangement. They enable the farmer to think somewhat longer-term, although not with the same guarantees as a long-term lease.

These terms do not have fixed legal definitions, and sometimes they are used interchangeably. So it's important

to focus on the language in the lease rather than the name of the method itself.

Both methods automatically renew the term without any action by the parties to the lease. Generally, an evergreen lease means that the lease automatically renews at the end of the original term for another term of the same length, or on a month-to-month basis. So, a 5-year evergreen lease automatically resets to another 5 years at the end of the term.

A "rolling lease" most commonly means the lease automatically extends during the term for another full term, therefore pushing back the end date of the lease. Thus, the lease is said to have "rolled over" for another full term. For example, at the end of the first year of a three-year lease, the lease rolls over for another three years, therefore pushing forward the end date of the lease.

In either case, the lease would specify the conditions under which these automatic continuations would not occur—for example if either party defaulted. And the lease would need to specify how terminations are enacted.

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