

Protecting Your Long-Term Lease Tipsheet

Three layers of resilience through a lease

Having a lease is one of the most powerful ways a farmer tenant can protect their investment in a piece of land and prepare for the future of their business. Farmers have power to make this agreement support their vision and needs. While having a lease at all is a phenomenal step towards resilience, there are even more layers of protection that farmers can put into place to ensure the agreement is honored. This becomes especially important for long-term leases (5+ years). As time passes, the ownership of the land may change hands. What happens to a lease agreement then?

There are three main ways that farmers can increase the likelihood that the lease agreement will be honored, even if the land they're on changes ownership.

1. Write down the lease agreement

It is much easier to protect the terms of an agreement when both parties have a record of what the agreement was! Verbal agreements are not easy to refer back to, and are challenging to defend in court if it comes down to it. Writing down a lease agreement, signing it, and storing a copy in a secure location (digitally or hard copy) is a great way to strengthen resilience as a tenant farmer.

2. Ensure the lease includes a binding-effect clause

Leases typically “run with the land.” This means that the lease remains in effect for the lease term even if ownership of the land changes. However, there is one fairly common clause that farmers can include in their leases to ensure that new landowners are legally obligated to respect the lease. This clause, called a binding-effect clause, states that the obligations of the contract apply to any successors or heirs who might subsequently own the land. Essentially, the responsibilities of the landowner who originally signed the lease will legally transfer to the new owners after the land changes hands.

3. Record the lease with the county land records office

Every county (or town, depending on your location) has an office that is responsible for tracking legal agreements associated with each parcel of land in the county. When farmers record their lease with this office, it means they are letting everyone know that there is a legally binding agreement for that piece of land. The county land records office will get information about sales and ownership transfers as part of the process of the land changing hands, but they won't automatically get information about leases or easements unless someone makes sure to add the agreement to the land record. This is called “putting people on notice.” When a lease is filed with a county land records office, you as a tenant have done everything you can to make sure everyone knows there is a lease agreement on the land.