



# 70 Considerations In a Land Share Agreement

The following questions cover all the aspects that both Farm Seekers and Farm Opportunities should be prepared to answer. These are best used as a guideline for each party to work through separately, identifying their own answers and preference. It is unlikely that all the questions will be relevant to your situation and note, there are variations across the provinces and territories. These questions are adapted with permission from the publication Learmonth, P. (2011). "[Accessing Land for Farming In Ontario](#)". FarmStart & Everdale Environmental Learning Center. It is not intended to provide legal or financial advice.

## SECTION A: BASIC INFORMATION

1. What is the name and address of registered owner of the land?
2. Is the owner a citizen or permanent resident? If not, the renter may have to withhold 25% of any cash rent for the Canada Revenue Agency.
3. Does the owner have a spouse/partner? The spouse may have to sign any agreement that affects the use or enjoyment of the owner's personal residence on the farm.
4. Is the owner a HST registrant? If yes, HST will be charged on cash rents.
5. What is the legal name and address of land users who will be on the agreement?
6. Is the land user a citizen or permanent resident? If not, they may not be able to sign the necessary forms to obtain the Farm Property Class tax rate for the land owner.
7. What is the address, legal description/PID/PIN number of the opportunity?
8. Has a sketch been done of the area? Great idea to include with as much detail as possible (if less than the whole property owned by the owner at the location above is being rented).

## SECTION B: TIMEFRAME FOR AGREEMENT

9. How long is this agreement intended to last? Think about months and seasons, as opposed to simply years.
10. If this period ends and the renter has been unable to take off a crop, will they be able to return to do so? For how long? Will the landowner require the use of the property to prepare for the following season as of a certain date?
11. When will the renter and owner sit down to talk about extending the agreement for a further period and/or modifying it? Think about how soon this would have to be done in order for the renter to plan electively for the next crop year or plant a fall cover crop.
12. How can the agreement be terminated before its agreed expiry date? By whom? On what notice? What if the renter has a crop in the ground, or has already prepared the ground for the next crop?
13. Will the renter have the right to sublet to another land user? Note: It is usually recommended that this not be allowed without the permission of the owner, and with the specific agreement that the owner can arbitrarily withhold permission.
14. If the land is sold, do the parties intend that the renter will continue to have the right to farm there? If so, this can decrease the value of the land at sale.
15. If the land user dies, is it intended that the right to farm there will continue (i.e. be passed on to an heir)?
16. If the landowner dies, is it intended that the agreement continues or comes to an end?

## SECTION C: TERMS OF ACCESS

*In many cases today, the land user is accessing property where the land owner actually lives. The renter also may need to access the property on a continuous and intensive basis (compared to taking off the hay twice a year). This creates a need for realistic discussion about what the implications will be for the day-to-day interactions between the parties. This subject has the potential to become a real irritant if not thoroughly canvassed in the beginning and recorded on paper.*



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17. Precisely what areas of the property will the renter have the right (or not have the right) to freely access? (e.g. laneways, buildings, crop areas)
18. What areas are private areas of the owner?
19. What restrictions (if any) will be placed on the hours or days the renter will be allowed to access the rented areas? Think about late-night loading of livestock, early morning harvesting, etc.
20. In exceptional circumstances, what notice will be given by the owner that normal access must be restricted? What types of things might be exceptional circumstances?
21. Who may the renter bring on to the land and for what purposes? Think about apprentices, staff, volunteers, and friends.
22. Will there be restrictions on how many people will be brought on the land at any one time?
23. Will the renter be permitted to send other people on to the land when she is not there? If so, how will those people know what the terms of access are?
24. Will people unknown to the owner be required to introduce themselves before entering? If the owner lives on the property, it can be disconcerting to have unlimited access by unknown persons.
25. If members of the public are to be invited by the renter (e.g. for a farm tour), is notice to the owner required? How much notice?

## SECTION D: SPECIFIC ACTIVITIES

26. What is the understanding between the parties as to business activities of the land user? (e.g. vegetables, livestock, field crops, processing)
27. Are there any activities that are not acceptable to the owner? (e.g. stocking rates, fuel storage, spreading biosolids, use of chemicals or pesticides)
28. If applicable, who is responsible for manure removal and management?
29. If the renter is going to undertake an activity that could affect the owner's enjoyment of his property, what sort of notice or agreement will be required? (e.g. spreading manure)
30. Will the renter require specific permission to erect farm related signage?
31. Does the renter require assurance that the land is suitable for his purposes? Proof of current organic certification? Who will pay for this? Does the land qualify for certification? How soon? Will the landowner support the renter in obtaining certification? Is the land subject to flooding? Are soil tests available?
32. Are there any general production practices or stewardship standards that the owner requires the renter to follow? How will this be monitored and enforced? This is an important topic, but is easily overlooked. The value of land for farming is in the soil. If the soil is in good condition when the rental starts, it is to the advantage of the renter. If it is improved over the course of the rental it is to the advantage of the owner. However, if the soil is depleted by removal of crops and no nutrients are returned, the owner's asset will be less valuable at the end of the rental period.
33. Does the landowner have any certification, regulatory or contractual constraints that the renter should be aware of? For example, if the land is certified organic, the renter should understand what this means so that his actions do not jeopardize certification or if the owner has signed a conservation, the tenant should be aware that proper stewardship of selected areas is mandatory.
34. What "housekeeping" standards will be adhered to? (e.g. tidy appearance of rented areas). In this respect, once again, it should be remembered that the owner might live on the property and take pride in it. At the same time, normal farming activities cannot be restricted.



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## SECTION E: USE OF FACILITIES & INFRASTRUCTURE

35. Will the renter have exclusive use of any buildings or structures on the property? If so, for what purposes? Who is responsible for maintenance and repairs?
36. Will the renter share use of any buildings or structures with the owner? For what purposes and how much space? Who is responsible for maintenance and repairs?
37. Will the owner have the right to enter and inspect the rented land and buildings?
38. Are there septic or washroom facilities available to the renter? Who is responsible for maintenance?
39. Is fencing in place that is required by the renter for his or her business? If so, who is responsible for maintenance?
40. Does the renter plan to (and have the right to) build any non-moveable infrastructure? If so, are there arrangements for compensation when the agreement ends?
41. Is the renter entitled to the use of electricity? On what terms and how will this be monitored?
42. If there are fuel tanks on the property, will the renter have the right to use them? On what terms and how will this be monitored?
43. Will the renter have the use of any equipment belonging to the owner? How will this be valued?
44. Is there a source of water available to the renter? Is it adequate for the needs of both the renter and the owner in a drought? Is there a backup plan? Who is responsible for any repair costs?

## SECTION F: OTHER BENEFITS TO RENTER

45. Will the owner perform any services for the renter? How will these be valued? (e.g. if the owner is a farmer, he or she might agree to spread manure or do tillage)
46. If the owner is a farmer, will he or she provide formal mentoring to the renter? How will this be valued?
47. Is the property certified to any standard that benefits the renter? (e.g. organic certification) How will this be valued?
48. Will the owner be providing a right of first refusal to the renter if the property is to be sold?
49. Will the renter be given an option to buy the property at a certain time and price?
50. Will the owner be prepared to have the agreement survive a sale to a new purchaser? If so, this could decrease the value of the property.

## SECTION G: INSURANCE, TAXES & LEGAL FEES

51. Who is responsible for carrying insurance? For what purposes? What about liability for personal injury to the renter or others she invites on the land? Be sure to consult your insurance company as well.
52. Who is paying the property taxes?
53. How will any jointly agreed legal fees be divided and paid?

## SECTION H: HOUSING

54. Is there housing available on the property for the renter? If so, it is strongly recommended that a separate lease be prepared for this purpose. There are a number of important legal differences between an agreement to rent land and an agreement to rent a house or apartment. Consult a lawyer for more information. Consider what the implications will be if the rental of the land is terminated and the rental of housing is subject to different rules about termination.

## SECTION I: FINANCIAL ARRANGEMENTS

55. The financial arrangements between the renter and the owner can take many forms. The important question is whether each party believes that they have received fair “value” for what they have given in the



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relationship. If either party feels that the agreement is not fair, it will not last. In some cases, cash may not change hands, as the parties have agreed that other forms of payment are more appropriate for their circumstances. In any contractual relationship, some form of value (called “consideration”) must flow in each direction. Every situation is unique, and so the best way to start is by doing an “inventory” of your relationship. Go back through Sections E, F, G and H. Make up a spreadsheet to show what is flowing in each direction. What is the “value” of each item? Can they be valued in dollars? In attempting to value some items, OMAFRA’s [\*Guide to Custom Farmwork and Short-Term Equipment Rental\*](#) may be helpful.

56. In addition to use of the land itself, what is the owner offering to the renter? Is non-cash value flowing from the renter back to the owner? (e.g. traffic that may also benefit the owner’s woodworking/craft/ other business on site, the owner’s feeling of supporting something good and important)
57. Is more value flowing in one direction than the other? What is left “owing”?
58. How will this be “evened up”? Through a cash payment? Are there other creative solutions?
59. Is a variable payment suited to your situation?
60. When will the agreed upon compensation be payable? Think about the annual cash flow of the renter – will the money be available at the time the payment is due?
61. What do the parties agree will happen if the cash rent is not paid on time? Not paid at all?
62. What will happen if unforeseen circumstances beyond the control of the parties make the rented area un-farmable or unproductive?
63. Will the renter perform any services for the owner? How will this be valued?
64. Will the renter supply the owner with any product of his farm enterprise for consumption? How will it be valued?
65. If the renter has a Farm Business Registration Number (and the owner does not), will she sign the required tax form so that the owner’s property taxes can be reduced? What is the value that this represents?
66. Will the renter actively improve the soil or pay for improvements to fences or structures? Will this impact the rental payment in any given year?
67. Anything else you can think of?

## SECTION J: ENFORCEMENT

68. If one party does not do what they have agreed upon, what rights should the other have? Financial compensation? The right to force the other to comply? (i.e. to do something like permit access or perform work). What if the reason is something beyond that person’s control? Explore fully and record your thoughts on this topic. This is the time it can be discussed calmly and logically, making decisions easier down the road if things go wrong.
69. If the parties are unable to resolve differences down the road, what will happen? Sometimes, a provision for arbitration is inserted in leases.

## SECTION K: WRITING AN AGREEMENT

70. This guidebook encourages you not to be restricted by standard lease agreement forms, and to draft an agreement that best suits your particular situation. However, it can be very helpful to look over sample agreements, see FarmLINK’s resource section for agreement templates. If you have worked through the guidebook to this point and drafted an agreement, lawyers can then look over what you’ve written and include additional legal requirements.