

C. Commercial

Some aspects of a lease for niche, value-added, or direct marketing may have more commercial aspects. While its not likely the parties will intend the lease to be primarily commercial, some farm enterprises may have commercial aspects, such as processing of farm products, on farm sales to consumers, or agri-tourism. Such scenarios raise issues that are more commonly addressed in commercial leases. A few issues to consider addressing in either a farm or residential lease that allows limited commercial activity include:

- establishing the limits of the commercial activity,
- requiring insurance and indemnification for lawsuits that arise from such activity,
- requiring compliance with zoning, health codes, and other laws governing the activities

In short, it is critical for both parties to agree on the primary purpose of the lease arrangement, specify the primary purpose in writing, recognize the corresponding legal obligations, and communicate their specific goals and concerns with the licensed attorney drafting the agreement.

ADDITIONAL CONTACTS & RESOURCES

The Beginning Farmer Center at Iowa State University works with landowners, retiring farmers, and beginning farmers through one-on-one assistance as well as regular seminars to transition land to the next generation. They're on the web at www.extension.iastate.edu/bfc/, or they can be contacted at 877-232-1999.

SustainableFarmLease.org, a Drake Agricultural Law Center website made possible through funding of the Sustainable Agricultural Land Tenure Initiative from the Leopold Center for Sustainable Agriculture, contains additional information on developing lease arrangements that benefit landowners and beginning farmers. Visit the website or call 515-271-2205.

DirectMarketersForum.org, another Agricultural Law Center website, provides additional information on the legal issues surrounding direct farm marketing businesses. This site contains a feature that allows users to submit questions directly to the Law Center to be answered by Drake law students.

SUPPORT



LEOPOLD CENTER

This project was funded in part by the Leopold Center for Sustainable Agriculture.

Established by the 1987 Iowa Groundwater Protection Act, the Leopold Center supports the development of profitable farming systems that conserve natural resources. The Leopold Center is online at www.leopold.iastate.edu.



This project was funded in part by the USDA Risk Management Agency. Learn more at <http://www.rma.usda.gov>.

LEASING THE FARMSTEAD TO A NEW SMALL FARMER

A DRAKE AG LAW PRIMER



LESSON PLAN

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I. THE BENEFITS TO THEM AND YOU

Leasing land can help provide a start for any beginning farmer, as they can begin farming without access to the large amounts of capital needed to buy land. As many beginning farmers try to maximize their returns by growing and selling niche, value-added, or specialty crops directly to consumers, finding a farm to rent that meets the distinct needs of such operations can be critical.

Farmsteads, residential homes on farmland and the few acres that often surround them, can provide sufficient land and infrastructure, such as access to water, electricity, storage, and workshops that are often needed for niche production and value-added farm enterprises. They can also provide a place to live for a new farm family that's ready to engage in such a business.

If you have a farmstead that you're considering leasing to someone engaged in niche farm marketing, there are factors you may want to consider that are not normally addressed in a typical farm lease. These factors arise primarily from the mixed use of the rented property as both residential and agricultural, as well as any retail enterprises the tenants may engage in that could be considered a commercial endeavor.

This mixture of uses presents additional concerns to address in the lease, and it can also mean that the lease agreement is subject to different laws. This pamphlet describes how some of these additional considerations can be addressed in the lease contract and what the legal obligations of the parties may be.

II. THE PURPOSE OF THE LEASE & THE LAW

Establishing the purpose of the lease, whether primarily residential or agricultural, will determine the laws to which the lease arrangement is subject. Iowa Code § 562A governs residential lease contracts. Section 562A.5 excludes from the residential laws any "[o]ccupancy under a rental agreement covering premises used by the occupant primarily for agricultural purposes."

In Iowa, it's usually readily apparent if a lease arrangement is primarily agricultural in nature. Often, the arrangement deals with more than 40 acres, and potentially hundreds of acres of land, used for large scale commercial production, and the lease contract provisions focus almost completely on the farming aspects of the lease - often providing only one line stating that a residence is included and, perhaps, providing the address.

If the lease involves a residence with only a few acres, however, and the production may, to some at least, appear to resemble a large garden or a hobby farm, it may be more appropriate to expand on the precise purpose of the arrangement. If a dispute arises, the court will look first to the express intent of the parties, as manifested in a written lease. Language indicating the intent of the parties to rent the land primarily for agricultural purposes may look something like this:

This farm lease includes a residential dwelling located at _____. Inclusion of the residence is intended to allow the Tenant to reside in close proximity to the farm and provide for agricultural production. The leasing of the residence is subordinate to the agricultural purposes of the premises. In accord with Iowa Code § 562A, it is the intent of both parties that this lease is excluded from control of Iowa's Residential Landlord and Tenant Act.

The court will also look at the circumstances of the arrangement, or how the parties are actually using the leased premises. This makes it important to not only define the primary nature of the lease but to make sure both parties act accordingly. Even if the lease states it is primarily for agriculture, but the tenant doesn't sell any, or very few, products it still may be seen as a residential lease, making both parties subject to the more stringent residential landlord-tenant laws. There is no established test for what constitutes an agricultural lease, but if the farm endeavor is small or little revenue comes from the farm business, the parties may want to keep a record of how their actions correspond with the agricultural purpose of the lease.

We'll next look at some of the specific effects of the law on the arrangement depending on whether the lease is primarily agricultural or residential. We'll also look at how the parties can tailor their farmstead lease to meet the unique needs of niche and direct farm marketers' unique needs by addressing the agricultural, residential, and commercial characteristics of such operations.

A. Agricultural

We'll first look at leases with a primarily agricultural purpose. Again, if such is the case, the residential landlord-tenant laws do not apply. This significantly changes the legal obligations of the landlord to maintain the dwelling as well as some of the landlord's remedies, such as eviction, in case the tenant defaults on the lease contract. The landlord and tenant may agree to include such requirements, such as requiring the landlord to

maintain the house in a habitable condition or to replace the house, or at least allow the tenant out of the lease, if it is destroyed. These requirements will need to be in writing as part of the lease agreement.

Agricultural leases do have their own statutory requirements, found in Iowa Code § 562, that may be applicable to a farmstead lease. Perhaps the most significant are the requirements relating to notice of termination and the amount of notice required. Section 562.6 of the Iowa Code establishes that landlords of farm tenancies must provide written notice of termination by September 1 and that the notice must establish March 1 as the termination date. This statute was modified in 2013 to include farm leases for less than 40 acres unless used for an "animal feeding operation." So, both parties, if wishing to terminate their farm lease, even if for only a few acres, must abide by this termination law.

Another important aspect to consider if engaged in an agricultural lease are remedies in case one party breaches the contract. While residential leases are subject to specific statutory eviction requirements, farm leases do not have the same tenant protections. Iowa's farm lease termination statute actually states that "the tenancy shall not continue because of absence of notice if there is a default in the performance of the existing rental agreement." However, Iowa's Supreme Court has held that a landlord could not terminate a lease, despite a material breach, in the middle of a crop year. So, if a tenant breaches any aspect of the lease, the landlord may have to wait till after harvest to take back possession.

B. Residential

If the parties recognize that the primary purpose is residential and the agricultural aspects are subordinate, they should also state this in writing and be aware that this means the rights and obligations of § 562A apply. A few of the most relevant include:

- The landlord keeping the premises fit and habitable.
- The landlord maintaining an account for deposits.
- The right of the landlord to enter the premises with 24 hours notice.
- The tenant occupying the dwelling only for residential purposes, unless otherwise agreed.

This last requirement is particularly important. If the intent is for the lease to be primarily residential, any other approved activities should be written into the lease.