27% of Tennessee’s farmers lease land from others (21,490 farm operations)

Over 30% of Tennessee farmland is leased
What is a lease?

- A lease is a contractual agreement by which a landowner transfers to a tenant the right to use and possess land and/or other real or personal property for a limited period of time.

- In exchange for these rights, the tenant agrees to pay the landowner rent in the form of either a cash payment or a share of the crops produced.

- Leases for longer than a year must be in writing to be enforceable.
Before you lease...

- What do you have to offer?
  - Land, experience, equipment, facilities
- What kind of landlord will you be? Are you going to want to know each and every detail or just want a quarterly update?
- Who is the tenant/landlord? What is their history, experience, and reputation? Ask for references.
- What will tenant grow? Organic, conventional, farming methods?
- What do you do if the animals get out? Who is responsible for their return? Who do you call?
- Where and how do you want the tenant to access the land?
- What type of regular maintenance do you prefer and who will handle that?
Types of Leases

- **Cash Leases**
  - Fixed cash payment
  - Specified in the lease
  - Typically paid annually
  - Tenant bears all of price, yield and production risk/reward
Types of Leases

- **Flexible Cash Leases**
  - Formula for calculating rent is specified in lease
  - Rent calculations most often based on changes in
    - Crop or livestock prices,
    - Yields, and/or
    - Production costs
  - Landlord and tenant share price, yield and/or production risks/rewards
Types of Leases

- **Crop Share Lease**
  - Rent is a specified share of the crop produced
  - Landlord and tenant share expenses and income associated with crop and thus, price yield and production risks
Types of Leases

- Combination of any of the above
  - For example, rent could include both a fixed minimum payment and a percentage of gross sales above some amount
  - Allows landlord and tenant to share risks while guaranteeing landlord a minimum fixed payment
Advantages of a Written Lease

- While leases for less than a year may be oral or written, written leases are highly preferable.
- Written leases should be considered an accepted business practice, and not an indication of distrust or lack of confidence in the other party.
Advantages of a Written Lease

- Can help prevent future conflicts
  - Forces landowner and tenant to consider and explicitly agree to the terms of the lease
  - Provides a valuable guide in case either party becomes physically or mentally incapable (or just forgetful)
- Provides documentation for tax purposes
  - Report rental income or rental expenses
Lease Provisions to Consider

- Basic Provisions
- Land Use Practices
- Farm Operating Expenses
- Rights and Privileges
- Maintaining Records
- No Partnerships
- Settling Differences
- Default
- Additional Agreements and Modifications
All leases should...

- Provide a reasonably accurate description of the land and/or buildings to be leased;
  - Described legally and/or by address or popular name ("Ben Jones Farm", for example)
  - Additional descriptions can include the distance and direction from town, the road on which the farm is located and/or the rural mail route.
  - Hand-drawn maps can be attached to the lease to identify specific fields if something less than an entire farm is being leased.
All leases should...

- Identify the landowner (often referred to as landlord or lessor) and tenant (or lessee)
  - Names and addresses
- Specify rental rate or procedure for calculating the rent
- Designate time and place payment of the rent is to be made
  - Penalties for late payment, if any
All leases should...

- State a definite time period over which the lease is to extend
  - Can be any length of time agreeable to the parties involved
  - Most farm leases are in effect for at least one year. Very few have a term of more than five years.
  - Landowners may object to longer-term leases because they can be a problem if the farm is sold during the term of the lease.
    - Solution: Include clause allowing landlord to terminate the lease in the event the farm is sold.
All leases should...

- Be signed by both parties.
Other Provisions to Consider

- Landowners interested in maintaining or improving soil productivity should specify a land-use and cropping program in the lease, especially if it is a multi-year lease.
  - Conservation tillage, buffers, concerns for wildlife…
  - Organic vs. conventional
  - Animal agricultural vs. crops
  - Other conversation practices
Other Provisions to Consider

- For crop-share leases, the landlord and tenant should discuss, agree upon, and carefully specify the share of production costs that are to be paid by each party:
  - Fertilizer
  - Lime
  - Pesticides
  - Seed
Other Provisions to Consider

- Landlords who enter leased premises without their tenant’s permission can be held to be trespassing.
  
  Solution: leases should specifically grant landlord the right to enter upon and inspect the leased premises but not to unreasonably interfere with tenant’s use of the property.
Other Provisions to Consider

- The lease should describe how the making of improvements or the erection of temporary buildings or fences by the tenant is to be handled
  - Is the tenant allowed to make improvements or erect temporary buildings or fences? If improvements are made, will the tenant be compensated? Will the tenant be allowed to remove improvements at the end of the lease term?
- Agreements regarding other property rights such as crop residue grazing, fishing, hunting, recreation and forestry land should be specified in the lease.
Other Provisions to Consider

- If the agreement is a share lease, one party will need to keep records
  - The recordkeeping requirements may be minimal, especially if the landowner does not share in the crop production expenses.
  - The tenant should probably keep the records since he or she is closer to day-to-day farm operations.

- Even in a cash lease, however, the lease should provide that records will be maintained and made available by the tenant to the landlord.
  - Production records, for example, are necessary in determining the level of government program payment support, and the landlord should have access to those records.
Other Provisions to Consider

- Leasing arrangements in which the landlord shares in production expenses and returns and/or management decisions can be construed as a partnership or joint venture.
  - If the farming operation is construed as a general partnership, then each party can legally obligate the partnership and each party can be held liable for the debts and obligations of the partnership.
  - Thus, share leases should explicitly provide that the parties do not intend to operate as a partnership or joint venture.
Other Provisions to Consider

- Most matters involving differences of opinion can generally be settled by discussions.
  - If differences of opinion between the two parties cannot be settled easily, the lease can provide that the parties will try to use disinterested persons (usually three) to settle differences in a friendly manner rather than through legal proceedings.
Default

- Leases often include provisions spelling out remedies in the event that either party fails in a substantial way to carry out the terms of the lease.
- These provisions generally allow the defaulting party a reasonable time to cure their default after they have been notified by the other party.
- However, this right-to-cure does not typically apply to the payment of rent.
Another common remedy is to allow the party who is not in default to terminate the lease by serving a written notice which cites the areas of default and the effective date of termination (usually several days after the notice is served).

Landlords should use caution in terminating a lease, though, as it can limit their ability to collect rent for the remainder of the lease term.

Note: Landlords in Tennessee have statutory liens on growing crops to secure the payment of rent.
Additional Agreements and Modifications

- It is often necessary to change or add to existing agreements.
- Any changes made after the original lease is signed should also be made in writing and signed by both parties, even though both parties are in oral agreement.
Lease Termination

- A lease may be terminated upon:
  - A default by the other party or
  - Voluntary surrender and acceptance (landlord or tenant offers to terminate the lease and the other party agrees)
Lease Termination

- In some situations a tenant may be granted the right to harvest crops that were planted during the lease term after the lease term expires or is terminated
  - Crops must be a product of the tenant’s efforts
  - Termination must not be the fault of the tenant
  - Tenancy must have been for an uncertain term
Renewals

- Oral agricultural leases in Tennessee are presumed to be one year leases with automatic one year renewals.
  - To prevent renewal, either party must provide the other notice at least 6 months prior to expiration.
Landlord – Tenant Relationship

- A *handshake is not enough*...for *strangers, friends or FAMILY*!
  
  - Two parties considering a farmland lease arrangement should fully consider the terms of their agreement and reduce the agreement to writing.
  
  - A carefully planned written lease will prove its worth for both the landlord and the tenant.
Landlord – Tenant Relationship

- Don’t go away and forget it!
  - Once the lease is in place refer back to it when questions arise.

- Don’t let it expire if you don’t want it to.
  - If the relationship continues beyond the term of the written lease, you will be operating under an oral lease.
Landlord – Tenant Relationship

- Keep the lines of communication open.
  - Ask what is the best method of communication, i.e. phone call, letter, email, or personal visit.
  - If you have issues or questions talk directly with tenant or landlord.
  - Quarterly updates or at least an end of season update will help landlord stay aware of activities, improvements, and the agricultural industry.
Future of Program

- UT Extension will be releasing a new publication series on farmland leasing and other tools in 2013:
  - Publication Series:
    - Introduction to Farmland Leasing
    - Cash Lease
    - Crop-share Lease
    - Pasture Rental Arrangements
    - Custom Farming Contracting
    - Communication between Landlord and Tenant
  - Lease Templates
  - Online Decision-aid Tool
    - Calculate equitable rates
    - Choose between types of leases