

Crop Share Lease Agreements

Quick Notes...

1. Crop share lease agreements reduce risks for both parties.
2. Input costs are shared by both parties.
3. Local share percentages tend to become accepted as custom, although they may not be fair to both parties involved in a particular lease agreement.

The types of land rental agreements vary widely in each locality and from one farming area to another, and are often based on long-standing traditions. Landowners and tenants can choose from crop share, fixed-cash, or flexible-cash lease agreements.

The purpose of this publication is to help landowners and tenants make informed decisions and to develop "fair" crop share rental agreements concerning crop production. A sample crop share rental agreement can be found in section 4.6a.

What Is A Crop Share Lease Agreement?

A lease is basically an agreement which gives the use of an asset to a lessee for a specific period of time at a specified rate.

A lease does not transfer title of ownership nor an equity interest in the asset.

Labeling a document as a lease does not necessarily mean it is a lease according to the Internal Revenue Service (IRS). Questions concerning the IRS treatment of a lease should be addressed by a tax professional. Also, the legalities of the lease should be addressed by professional legal counsel.

A crop share lease agreement provides for a specified percentage of the crop to go to each the landowner and the tenant. The basic premise is for each party to receive income from the crop in proportion to what each party contributes to production.

Advantages of a crop share lease agreement over other types of agreements include:

1. Less operating monies may be tied up by the tenant due to the landowner sharing some production costs.
2. Management may be shared between an experienced landowner and tenant resulting in more effective and financially rewarding decisions.

3. Crop sales and input purchases may be timed for improved tax management.
4. Risks of low yields and prices are shared between the two parties. Profits from high yields and/or prices are also shared.
5. Landowner "material participation" may be more easily proved for use of government programs, estate purposes, building social security base, and income tax purposes than under the various cash rental agreements.

Disadvantages of a crop share lease agreement over other types of agreements include:

1. Landowner income will be variable because of yield and price variations as well as changes in costs of shared inputs to production.
2. Accounting for shared expenses must be maintained.
3. The landowner must make marketing decisions.
4. Landowner and tenant must discuss annual cropping practices and other management issues.
5. As prices change, the lease should be reviewed for fairness. Sharing agreements may also need to be changed.

Developing A Fair Crop Share Lease Agreement

Farming is a business in which land, labor, and capital are combined through the application of management. Where each

of these factors are owned or contributed by different parties, the payment for each factor should be equal to their value as an input to production. The lease should answer two primary questions: (1) how should the crop be shared? and (2) how should the costs of inputs be shared?

In a typical crop share lease agreement, the landowner contributes land and improvements, associated property expenses, and a certain share of the variable costs. The tenant usually contributes machinery, associated equipment expenses, and a certain share of the variable costs. Evaluation of the lease should be based on identifying all contributions of each party. A worksheet, such as the one on the following page, can be used to help discover a fair share percentage.

Valuing land is very difficult. Land costs represent a high proportion of total costs, and land usually appreciates in value over time. Land values should be based on fair market value for agricultural purposes with adjustments made for property taxes and insurance. Buildings and improvements should be evaluated on their contribution to the farming operating. Sometimes a cash rent is charged for buildings.

Machinery and equipment normally have a multi-year life, so their cost should be spread over several years. Contributions are often based on depreciation, taxes, insurance, repairs, housing, and some return on the investment. Custom rates for anticipated operations are sometimes used when other machinery and equipment costs are unknown.

Management is an important contribution to a successful lease arrangement. Its value is often a bargaining proposition between the involved parties.

CROP SHARE LEASE WORKSHEET

FIXED COSTS/A	DOLLAR AMOUNT	PAID BY		VARIABLE COSTS/A	DOLLAR AMOUNT	PAID BY	
		OWNER	OPERATOR			OWNER	OPERATOR
Interest on investment	_____	_____	_____	Pre-harvest	_____	_____	_____
Land	_____	_____	_____	*Seed	_____	_____	_____
Farm Buildings	_____	_____	_____	*Fertilizer	_____	_____	_____
*Equipment	_____	_____	_____	*Chemicals	_____	_____	_____
*Irrigation	_____	_____	_____	Repairs	_____	_____	_____
Depreciation	_____	_____	_____	Supplies	_____	_____	_____
Buildings, fences and other	_____	_____	_____	Fuel, oil, lube (equipment)	_____	_____	_____
Tractor, truck, auto and equipment	_____	_____	_____	*Irrigation fuel and repair	_____	_____	_____
Irrigation	_____	_____	_____	Labor (seasonal)	_____	_____	_____
General overhead	_____	_____	_____	Utilities	_____	_____	_____
Taxes	_____	_____	_____	Insurance (crop)	_____	_____	_____
Insurance	_____	_____	_____	Pick-up truck	_____	_____	_____
Conservation measures	_____	_____	_____	Custom work	_____	_____	_____
*Management	_____	_____	_____	Harvest costs	_____	_____	_____
Labor	_____	_____	_____	Custom harvest	_____	_____	_____
Unpaid	_____	_____	_____	Custom haul	_____	_____	_____
Hired	_____	_____	_____	*Other (drying/ginning)	_____	_____	_____
Other	_____	_____	_____				
TOTAL FIXED COSTS	=====	=====	=====	TOTAL VARIABLE COSTS	=====	=====	=====
				TOTAL COST	=====	=====	=====

Management may be valued as a percentage of gross returns, rate per unit of yield, or percentage of all non-land costs.

Variable expenses should be shared according to their nature -- yield increasing, true substitution, or both. Variable expenses which are yield increasing should be shared in the same percentage as the crop share. Such sharing encourages the parties to use that amount of the input which maximizes net returns to the total operation.

Substitution inputs are those that replace another input, such as chemical weed control replacing cultivation. Often times new technologies make substitution inputs available to the production process. Substitution inputs may cause yields to increase and/or be used to replace a currently used input. Yield increasing items should be shared in the same percentage as the crop. True substitution items should be paid by the party responsible for the item in the original lease. Items that both cause yield increases and are true substitution items are good reasons for redeveloping the lease.

Irrigation costs may involve special problems, so the landowner and tenant should be careful when agreeing whom is paying for which irrigation expenses. While government program payments are usually shared in the same proportion as the crop, the tenant normally takes care of tillage, seeding, and weed control on "set-aside" acreage.

It should be recognized that factors other than the relative contributions to production costs may affect rental agreements. Crop share percentages tend to become accepted as custom; hence, they are not easily changed. Also, local supply and demand conditions for rented land may affect the agreement.

Put The Agreement In Writing

It is highly desirable to put the terms of any crop share rental agreement in writing. A written lease agreement enhances understanding and communications between all involved parties, serves as a reminder of the terms originally agreed upon, and provides a valuable guide for the heirs if either the landowner or tenant dies.

Every lease should include certain items -- the names of the parties involved, and accurate description of the property being rented, the beginning and ending dates of the agreement, the amount of rent being paid and when and how it is to be paid, and the signatures of the parties involved. Furthermore, other provisions (such as the rights and responsibilities of both parties) which provide for most of the concerns of both the landowner and tenant.

Sources: "Crop Share or Crop Share-Cash Rental Arrangements For Your Farm", North Central Regional Extension Publication 105.

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CROP SHARE LEASE AGREEMENT

This crop share lease agreement form is designed to provide the landlord and tenant with a guide for developing an agreement to fit their individual situation. This form is not intended to take the place of legal advice pertaining to contractual relationships between the two parties.

Section 4, No. 4.6a

PARTIES INVOLVED

This lease is entered into this _____ day of _____, 2____ between _____, landlord, of _____ (address) and _____, tenant, of _____ (address) hereafter known as the landlord and the tenant, respectively.

PROPERTY DESCRIPTION

The landlord hereby leases to the tenant, to occupy and use for agricultural and related purposes, the following described property:

_____ consisting of approximately _____ acres situated in _____ County, Colorado with all improvements thereon except as follows: _____

GENERAL TERMS OF THE LEASE

A. Time period covered. The provisions of this agreement shall commence on the _____ day of _____ (month), 2____. This lease shall continue in effect from year to year thereafter unless written notice of termination is given by either party to the other _____ days prior to the anniversary date of the lease in any year of continuation.

B. Amendments and alterations. A written request is required for general review of the lease or for consideration of proposed changes by either party _____ days prior to the anniversary date of the lease in any year of continuation. Amendments and alterations to this lease shall be (1) in writing, (2) signed by both the landlord and the tenant, and (3) attached to all copies of this lease.

C. No partnership intended. It is particularly understood and agreed that this lease shall not be deemed to be nor intended to give rise to a partnership relation. Neither party shall have the right to bind the other without written consent.

D. Transfer of property. If the landlord should sell or otherwise transfer title to the farm, the landlord will do so subject to the provisions of this lease.

E. No right to sublet. The landlord does not convey to the tenant the right to lease or sublet any part of the farm or to assign the lease to any person or persons whomever.

F. Binding on heirs. The provisions of this lease shall be binding upon the heirs, executors, administrators and successors of both the landlord and the tenant in like manner upon the original parties except as provided by mutual written consent.

G. Compensation for crop expenses. The landlord shall reimburse the tenant at the termination of this lease for field work completed and for other crop costs incurred for crops to be harvested during the following year. Unless otherwise mutually agreed, current custom rates for the operations involved shall be used as a basis for settlement.

AMOUNT AND PAYMENT OF RENT

A. The tenant agrees to pay as rent for the use of the land the share of crops as shown in Table 1 of this section. The tenant also agrees to furnish all labor, machinery, and cash operating expenses except for the landlord's share (percent and/or dollar charge per unit) indicated in Table 1.

Table 1. Landlord's share (percentage and/or dollars) of crops and expenses.

	Example	CROP			
	Corn				
Share of Income:					
Crop	33%				
Government Payment	33%				

Share of Expenses:					
Fertilizer - Material	33%				
Application	00%				
Herbicide - Material	33%				
Application	00%				
Insecticide - Materials	33%				
Application	00%				
Seed	00%				
Harvest (Combine/Swath/Etc)	00%				
Baling	n/a				
Hauling (to: _____)	00% to town				
Drying	00%				
Storage	00%				
Irrigation Water	100%				
Tillage	00%				

B. The tenant agrees to deliver the landlord's share of crops at the place(s) and time(s) shown in Table 2.

Table 2.. Delivery sites and locations of landlord's share of crops.

Crop	Delivery Site	Delivery Time

C. At the landlord's request, the tenant agrees to store as much of the landlord's share of the crops as possible, using storage space reserved by the landlord and not to exceed _____ percent of the storage space not specifically reserved.

D. The landlord shall reimburse the tenant for the landlord's share of expense, according to the percentages and/or dollar amounts identified in Table 1, within _____ days after the tenant submits the bill. The bill shall identify the expense item, total cost, and the landlord's share of the cost.

E. Additional agreements in regard to rental payment are: _____.

IMPROVEMENTS

A. The costs of establishing hay or pasture, new conservation structures, or improvements (except as identified in other sections of this lease) shall be divided between the landlord and the tenant as follows:

_____.

B. The tenant agrees to provide the unskilled labor necessary to maintain the farm and its improvements during the tenant's tenancy in as good condition as it was at the beginning. Normal wear and depreciation and damage from causes beyond the tenant's control are excepted.

The landlord agrees to furnish all materials and skilled labor needed for normal maintenance and repairs to the farm and its improvements. The landlord shall pay for material purchased by the tenant for such maintenance and repairs in the amount not to exceed \$_____ in any one year, except as otherwise agreed upon. Reimbursement shall be made within _____ days after the tenant submits the bill.

C. The tenant shall not (1) erect or permit to be erected on the farm any non-removable structure or building; (2) incur any expense to the landlord for such purposes; or (3) add electrical wiring, plumbing, or heating to any building without written consent of the landlord.

D. The landlord shall replace or repair as promptly as possible the dwelling or any other building regularly used by the tenant that may be destroyed or damaged by fire, flood, or other cause beyond the control of the tenant.

E. The tenant may make minor improvements of a temporary or removable nature, which do not mar the condition or appearance of the farm, at the tenant's expense. The landlord agrees to let the tenant remove such improvements even though they are legally fixtures at any time this lease is in effect. The tenant shall have no right to compensation for improvements not removed except as mutually agreed.

OPERATION AND MAINTENANCE OF THE FARM

A. In order to operate the farm efficiently and maintain it in a high state of productivity, the tenant agrees to use diligence to prevent noxious weeds from going to seed on the farm. Treatment of noxious weed infestation and cost thereof shall be paid _____ percent by the landlord and _____ percent by the tenant.

B. The tenant agrees to control soil erosion as completely as practicable; to keep in good repair all terraces, open ditches, and drains; and to preserve all established water sources.

C. The tenant agrees to not plow permanent pasture, cut live trees for sale or personal use, or pasture new seedlings of legumes and

grasses in the year they are planted.

D. The tenant agrees to farm the land in such a manner as meets government agency (such as Natural Resource Conservation Services and Consolidated Farm Services Agency) regulations. The farm is covered in a cooperative agreement between the landlord and _____ Soil Conservation District, and the tenant agrees to operate the farm in accordance with the complete soil conservation and land use plan prepared under said cooperative agreement.

E. The landlord shall replace or repair as promptly as possible the dwelling or any other building regularly used by the tenant that may be destroyed or damaged by fire, flood, or other cause beyond the control of the tenant.

ARBITRATION AND DIFFERENCES

A. Any differences between the parties as to their several rights or obligations under this lease that are not settled by mutual agreement after thorough discussion shall be submitted for arbitration to a committee of three disinterested persons, one selected by each party hereto and the third by the two thus selected. The committee's decisions shall be accepted by both parties.

B. If either party willfully neglects or refuses to carry out any material provision, the other party shall have the right, in addition to compensation for damage, to terminate the lease. Written notice shall be given to the party at fault specifying the violations of the agreement. If violations are not corrected within 30 days, the lease shall be terminated.

RIGHT OF ENTRY

The landlord reserves the right, in person or by agent, to enter the farm at any reasonable time to: (1) consult with the tenant; (2) make repairs, improvements, and inspections; and (3) after written notification of termination of the lease agreement, do plowing, seeding, fertilizing, and any other customary seasonal work, not of which is to interfere with the tenant's ability to carry out regular farm operations.

EXECUTION

This lease agreement shall be executed in duplicate on the date above written. A copy of this lease agreement and subsequent alteration, each with original signatures, shall be given to the landlord and to the tenant.

Landlord

Date

Landlord

Date

Tenant

Date

Tenant

Date