



Kate:

Hey all! It's Kate here, bringing you a short sweet and punchy episode today. Here at Farm Commons one of our most basic best practices for farmers is to write down their lease agreement. There's lots of good reasons for this that we won't actually get into today. Instead, this episode is going to take that best practice of getting a written lease and level up. Because a written lease is fine and good, but what happens if the landowner who signed the lease dies? Or sells the land? This is especially relevant for farmers and ranchers who are signing long-term leases that extend 5+ years into the future. A lot can happen in 5+ years! How do you ensure that you still have access to the land if the ownership changes? Of course I've got Rachel here with me to walk us through this. Hi, Rachel!

Rachel:

(Says hello)

Kate:

First question for you: is a lease still valid if the landowner who signed it dies, sells their land, or goes bankrupt and loses their land?

Rachel:

This is such a great question. The not so short answer is....it depends! There are a few different tiers of resilience that farmers and ranchers can use to protect their access to the leased land. First tier of resilience: have a written lease, and write into the lease your desired terms! Do you want the lease to continue if the landowner dies? Specify that and get the owners commitment. Do you want the lease to continue if the landowner goes into bankruptcy and a creditor takes the land? Specify it and get the owner's commitment.

Kate:

Is it that easy? You just write into the lease that you want the lease to continue through these contingencies?

Rachel:

Yes! Now, we can make it sound fancier than that, of course. Lawyers like to call this the binding effect clause, - it 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. This is a very common clause in a lease, so odds are your lease

already includes it (but always good to double-check!) In attorney speak, leases “run with the land”-- meaning, the agreement applies to the property regardless of whether the current landowner is the person who originally signed the agreement.

Kate:

Here’s what I’m picking up from this conversation. The baseline is to make sure your lease says that it transfers to a new landowner, regardless of death, bankruptcy, what have you. But I’m also picking up a lease that doesn’t have a binding effect clause may still transfer to a new owner.... Because it runs with the land, huh?

Rachel: Exactly, you got it. It’s a reasonable expectation that all leases run with the land but ....but let’s not open any doors for the doubters and folks who want to make our lives hard. Let’s close that door to doubt. the layers of resilience are kinda like closing the door and then locking it and then wedging a chair in front or something?

Kate:

Haha, yes, it’s like that. Let’s get to the locks and chairs, right? I know what comes next: Make sure it is signed by both parties and stored, digitally or hard-copy, in a safe place. It is much easier to defend your rights in an agreement if that agreement is written down.

Rachel:

Right on. Lock the door by making sure your lease is in writing and signed. But now, let’s get to the heavy furniture we’re also going to push in front of the door:: record your lease with the county land records office.

Kate:

Record the lease with the county what what??

Rachel:

The county land records office! As the United States was pushing westward and taking Native held land by treaty or by force, that land was made available to private property owners. Counties became the governmental body in charge of managing records of how parcels were divided up and who received ownership. Each county has an office that holds all the information about the parcels of land in that county: their past owners, history of sales, and any legally binding contracts that are attached to that land. For example, a lease agreement. Or an easement.

Kate:

I am picturing a small office in the basement of an obscure building, filled with filing cabinets. Do you think that's an accurate image?

Rachel:

It might be, depending on the county! But I think the image of filing cabinets is helpful. If the county is doing its job, each parcel of land has an existing record in that physical or digital filing cabinet. You could ask to see the record for a given parcel of land and then be given a file. If that record has been updated, that file might be thick: full of history of sales and past owners and other legally binding agreements that apply to that land. If you are considering purchasing a piece of land, it's actually a GREAT idea to go and get the record at the county land records office to see if there are any surprise agreements attached to the land that you would be obligated to fulfill as the new owner.

Kate:

Sounds curious. But let's get back to our point. So what does it mean to record a lease with the county land records office?

Rachel:

Essentially, it just means that you 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 get information about agreements like leases or easements unless someone makes sure to add that 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.

Kate:

So how does a new landowner know about a lease on the land?

Rachel:

They are supposed to do their due diligence. They might proactively request the land record from the county land records office. But more likely, they work with a title company (which they will need to if they are borrowing money to purchase the land) then the title company will check the county land records as part of the process of issuing insurance and it might get discovered then, on their behalf. But honestly, it may not happen. New landowners may not discover a lease at the county land records office- maybe they never

checked at the office or bought with cash and didn't get title insurance or the title insurance company didn't bring up the lease.

Kate:

So sure, it's filed but the new landowner doesn't know. a The new landowner could still do whatever they want, right? A tenant farmer might not even know that the ownership of the land is changing hands until they show up to work one day and find a new padlock on the gate, for example. What then? Is the recorded lease just a helpful tool for winning a potential legal battle?

Rachel:

Yes! If the new landowners do something that breaks or threatens the terms of the lease agreement, the tenant has the legal authority to do things like: call the sheriff! Or file an injunction (basically a court order to get the landowner to stop doing something). Sooo much of our legal system exists to protect private property. Now this is usually used to exclude people who aren't landowners...but in this case, having a written lease on record with the county land office actually grants the tenant access to some of the many resources available to enforce the rights of private property owners. And if a tenant farmer gets into a legal battle with a landowner who is disregarding their lease agreement, then having a recorded lease with the county land records office with GREATLY support their case. The more you've got on your side, the faster and cheaper it becomes to win. You can tell the sheriff, Look, my lease is on file with the county!

The law wants clarity and predictability.

Kate:

Oh wow! And since recording a lease is a big part of "putting people on notice" and a best practice, is it every actually required?

Rachel:

Well, the state of New Hampshire requires any leases of 7 years or more to be recorded with the county. And this is specifically so that the tenant is protected against third parties who do not know the lease exists. So it really is in the best interest of tenants, especially long-term tenants, to record their lease with the county. Folks can check their state laws to see when a recorded lease is required. This will cost some money- maybe \$5-10 per page.

Kate:

Gotcha. Huh, okay....interesting. I did a quick google search for "county land records offices New Hampshire" and I am actually seeing a few different potential names for this office. One county has a "County Office" but I am also seeing a "Registry of Deeds" which seems to be separate from the "Land Records office"... do you have any tips on what people should look for when seeking out this potentially obscure office?

Rachel:

If it doesn't pop up fairly quickly in a google search for any of those terms, I always recommend asking you favorite neighbor or your county Extension Educator. If that fails, go to your local public library. Not only can they get you the right name, they might also help you access the records online, if available.

Kate:

So I'm randomly choosing to search for the land records office in Hillsborough County, NH. It looks like the county as a whole has a website, and there is an option to search county records on the webpage. So in this county it looks like the general county office is where land records live, not necessarily in a specific county land records office.

Okay so clicking into the link that says "search county records"....and I have to agree to pay a copy fee of \$2.05 per page. Okay...but I am not seeing a way to add a lease to a land record online. But the office does have a contact number! Probably the best place to get started with questions about how to record a lease.

Rachel:

Yes, I think getting to a human will be most helpful when trying to navigate county processes. I also want to mention: people might feel resistance to recording a lease because leases contain sensitive information- like how much you are paying to access land. If that is a concern for any listeners, you should know that you can file a short-form or redacted lease that does not include information like prices.

Kate:

Awesome tip. So just to recap: get a written and signed lease! Make sure it includes language that makes the lease binding to heirs and successors! And, record your lease with your county land records office (or equivalent). We want to see you stay on your land for the long term! Anything else Rachel?

Rachel:

Nope, that's all.

Kate:

And that's all! Thanks everyone. Bye!