

## Farm Management

# Long lease assists estate plan

### Country Counsel

By PAUL L. WRIGHT

**F**ARM leases have received lots of press in recent months. Here is a different slant. Long-term leases are often put in place as farm succession planning gets attention.

There are a couple of reasons for a family to use long-term leases in farm

### Key Points

- Long-term rental agreements can play a role in estate planning.
- A rental agreement provides land for a farming beneficiary.
- It also provides income for a nonfarming offspring.

succession planning. First, many farmers have concentrated their investment

portfolio in farm assets, such as land, machinery and livestock. As a result, there is a limited variety of assets to be transferred to children. That means off-farm children may be distributed farm assets. The most common asset to transfer is real estate.

A second reason some use long-term leases is parents are trying to provide a land base for the child who desires a farming career. If off-farm children are given land to accomplish the asset dis-

tribution plan, then the farming child is likely to need that same land to farm. To provide the needed land base for the on-farm child, a long-term lease is often put in place. That lease gives the farming child needed land and gives the off-farm child who owns the land a rental income.

These leases are often written to allow the farming child use of the land until retirement. For example, if a farming child is age 55 when the second parent passes, the lease would possibly be for 10 to 15 years.

### File a memorandum

If a lease is for more than three years, it needs to be signed by the owner (off-farm child) and by the tenant (on-farm child) and notarized. Also, a memorandum of the lease should be filed with the county recorder. If a memorandum of the lease is not filed, then the lease is not binding on third parties. That means the off-farm child could sell the land and the new owner would not be bound by the lease. The memorandum usually does not discuss rental price, but does provide enough information to put third parties on notice of the contractual arrangement.

The amount of rent to be paid is often a controversial topic. Can the lease be structured so the rent keeps current with the market changes?

Here are some ways to try:

- Asking the parties to periodically review and adjust the rent being paid.
- Providing for an outside third party to determine the rent if the parties cannot agree.
- Using a share rental plan, such as a 50-50 sharing of costs and returns.
- Putting a flexible rent plan in place.

Adjusting the rent periodically might cause tension. Asking an unbiased third party to determine rent might be an expense both parties would like to avoid, and one or both of the parties may not be satisfied with the rent. A 50-50 share rental causes extra bookkeeping for the tenant. With this plan, the tenant needs to keep production input records on each landlord's property separate.

### Flexible rent option

A flexible cash-rent plan can allow for rents to change with yields, prices or both. Within the flexible plan, there are decisions to be made as the lease is written. The rent formula could be determined by price and yield, and the tenant retains possession of the entire crop. In this case, the price would best be set by the average local elevator price on two or three specified dates or over a time period. The formula could be determined by yield, with the owner of the land taking possession and marketing his or her share of the crop. The yield could be determined by county yields rather than the specific farm yields. Or, the yield and price could be determined by crop insurance information.

One of the reasons flexible leases are used with long-term leases is to reduce the tension of renegotiating the lease. There are other needed provisions in a lease agreement than rent determination; this is just a start.

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