



L.1 LAND TENURE

PURPOSE OF THIS FACT SHEET

One of the most challenging and fundamental aspects of farming or ranching is securing access to the land. The more challenging it is to secure land, the more it helps to have many different tools at your disposal. The purpose of this fact sheet is to introduce basic concepts in land tenure and tools you can use to secure land tenure. Land tenure means the legal rights to access and use land. The right to access may be obtained by owning the land, or by being granted access to the land by the owner.

CONCEPTS

The “Bundle Of Rights”: In legal terms, ownership is usually described as a bundle of rights. Each of the rights in the bundle can be separated and transferred, like each of the sticks in a bundle of sticks can be taken out and also cut into smaller sticks. The *bundle of rights* in property ownership are:

- The right to use the property in any lawful manner;
- The right to possess or to exclude others;
- The right to transfer by sale, gift or through inheritance;
- The right to encumber meaning to use as collateral for a loan, or to transfer part of the rights, or burden with future restrictions or obligations on other rights;
- The right to enjoy or destroy, subject to the restrictions of law;

Separating Land Rights: Rights may be separated by type of use and transferred temporarily through a lease, or permanently by sale, gift or inheritance. For example, a land owner can make a temporary transfer of the right to access and use a portion of the land by leasing it to a farmer, and also permanently transfer to a neighbor the right to cross a portion of the property with a utility line, and yet still retain the other rights of ownership, including the right to enjoy living on the property and the right to transfer it to children through inheritance.

Owning Land: Two or more individuals may own property together as tenants in common or as joint tenants without forming a separate business, or they may form a partnership or a corporation for the purpose of owning land. When more than one person owns land each person has rights to the entire piece of land, rather than to a fractional part of the land, but the nature of the rights and the relationships between the owners depends on how the land is owned.

Tenants In Common: Tenancy in common (TIC) is the default type of joint land ownership in California and most states. Depending on state law a TIC agreement may specify the rights and obligations of co-tenants to contribute for things like property taxes, maintenance, and insurance, and how rents or profits from the land are to be allocated. Without such an agreement state law will be the default. Each co-tenant may transfer the interest through sale or lease or in their will. In most states if a member of a TIC dies without a will their interest will pass to their heirs according to state law. In most states a co-tenant may mortgage their share, and the mortgage may foreclose, causing

the share to be sold at auction. In some situations, other creditors may have rights to liquidate a co-tenant’s interest. Any owner may sue to have the TIC liquidated through the forced sale of the property.

Joint Tenants: A joint tenancy is another common type of joint land ownership, but it is not the default form in most states, so there is only a joint tenancy if the deed specifically creates it. The key distinction between joint tenancy and tenancy in common is that in a joint tenancy the interest of a deceased co-owner passes automatically to the other co-owners upon death, regardless of any will.

Owning Land Through A Business Entity: A corporation or partnership may own property, or an interest in property, in the name of the corporation or partnership. The corporation or partnership documents should describe how the partners or shareholders will be obligated to pay for things like maintenance, improvements, and taxes, and specify the circumstances under which the property may be mortgaged, and should have language to protect the property against liens related to personal debts of any of the co-owners.

Note that not all business entity types are equally advantageous for land ownership. Be sure to consult with a CPA or an attorney about the tax implications of any form of land ownership, especially corporate land ownership.

Leasing Land: In California and most states a land lease must be written if the lease term exceeds one year. A valid written lease must include:

- 1) a description of the property location
- 2) a beginning and ending date
- 3) the amount of rent
- 4) the signatures of both the landowner (lessor) and tenant (lessee)

In some situations multiple separate documents referencing each other may be compiled to constitute one written lease agreement.

The tenant has a duty to ensure the land and improvements are maintained according to the reasonable expectations of the landowner. An agricultural lease should specify the landlord’s expectations for how the tenant will farm and maintain the land.

Cash Lease: A cash lease is an agreement for the tenant to pay the landlord a cash sum in exchange for a lease on the land.

Crop Share Lease: A crop share lease is a type of joint venture between a landlord who provides most of the assets, and a farm operator who provides most of the labor. Typically the landlord provides the land and improvements to the land, and pays land maintenance costs, including taxes, insurance, and utilities. Rent is either in-kind as a portion of the harvested crop, or paid as a portion of the crop proceeds. The farm operator typically provides annual inputs, including labor and equipment. Crop share leasing is a commonly used model for tree and

other low-input crops. The model is less common in more complex operations such as diversified fruit, vegetable, and flower farms.

Grazing Permits: are similar to leases and allow grazing on public lands, usually Forest Service or Bureau of Land Management Land. Grazing permits may also be issued for the use of State or Tribal land.

HOW TO BUY LAND

All states regulate the sale of real estate including issuing licenses for agents and brokers to represent buyers and sellers within a transaction. In California and many other states the sale of residential real estate is regulated differently from the sale of commercial real estate. You will need assistance from someone knowledgeable about real estate law in your state to determine how the sales of mixed use residential and commercial/agricultural property are regulated.

If a seller has offered their property for sale, you can either accept the offer, or make a counteroffer. Usually the acceptance or counteroffer is open for a period of time while the buyer obtains inspections and title assurances and financing, and then if all goes well the offer is accepted and a purchase agreement is signed. The purchase agreement contains all of the terms of sale, including price, deposit, closing date, disclosure requirements, additional inspections, and the fees each party has agreed to pay. Once the purchase agreement is signed the sale goes into escrow, which is a process for a third party to ensure that each of the terms of the purchase agreement are fulfilled before the money and the deed transferring title are exchanged. It is important to understand who is responsible for damage to the property while the property is in escrow. In California and many other states once the buyer takes possession of the property they are responsible for any losses, so property insurance should begin at that time. Once all of the terms of the purchase agreement have been fulfilled and the money and documents exchanged, the escrow, or sale, is closed.

Purchase Subject To A Mortgage: In a mortgage-financed transaction, the seller receives the sale price and the buyer owes money to the financial institution. The financial institution takes a mortgage on the land. This is a legal instrument that allows the financial institution to force the sale of the land and take the proceeds up to the amount owed if the borrower does not pay back the loan. State law protects borrowers in a number of ways, including limiting the financial institution's ability to force a sale, and ensuring that if the property is sold the borrower receives their equity in the property after the mortgage is paid.

Land Sale Contract: In a seller-financed sale, also known as an installment sale or a land sale contract, the landowner retains title to the property until the buyer has made all the payments agreed to. State laws vary regarding buyer protections under this type of agreement. In some states this can be a very risky way to purchase property. In California a buyer is similarly protected using either a mortgage or a land sale contract for financing.

HOW TO LEASE LAND

Commercial and agricultural real estate brokers often also assist in finding tenants. FarmLink organizations and other farm education and advocacy organizations often have listings for land available for lease. Most farmland is leased through word of mouth and personal connections, so the best way to find land to lease is to be involved in activities with other farmers or ranchers in your community.

A lease for land should always be in writing and you should have an attorney review the lease before you sign it.

WHERE TO GET HELP

In California contact California FarmLink. There are FarmLink programs in several other states as well. Land for Good and American Farmland Trust both have program resources to help you secure land for farming or ranching.

Many local land trusts have programs to help farmers and ranchers secure land tenure.

A licensed real estate agent or broker is someone licensed by the state where they do business after completing a certain number of hours of required education and passing a difficult examination.

A Certified Public Accountant (CPA) is someone who is licensed by the state where they practice. The license authorizes the CPA to issue an opinion attesting that the financial statements of a company have (or have not) been prepared according to generally accepted accounting principles. The requirement for licensing in most states is a four-year degree with a certain number of units in taxation, business law, and accounting, a passing score on a difficult multi-day examination, and a certain number of hours of worked under the supervision of someone already licensed as a CPA. Many CPAs are deeply experienced in business planning and financing complex transactions and can assist you in thinking through the financial implications of various scenarios, both in terms of immediate cash flow and in terms of long term tax savings and tax costs. Most CPAs work closely with licensed attorneys, particularly on complex issues related to land purchases and business formation.

An licensed attorney is someone who is licensed by the state where they practice law. The license authorizes the attorney to represent clients in a court of law, or in an administrative appeal with a state or federal agency, including a state taxing authority or the IRS. The requirement for licensing in most states is a four-year degree, an additional degree from an accredited law school, a passing score on a difficult multi-day examination, and a background check. Some attorneys specialize in business issues including entity formation, contracts and taxation.

ADDITIONAL RESOURCES

California Farm Link's Land Tenure Guide

Land for Good

FARM AND RANCH BUSINESS HEALTH ASSESSMENT

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The Business Health Assessment and all related fact sheets are available on the Resources section of the California FarmLink website www.CaliforniaFarmLink.org

