



AGRICULTURAL LEASES IN HAWAI‘I

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Hawai‘i Agricultural Mediation Program**

What / Who is HIAMP?

- HIAMP is the state-certified Agricultural Mediation Program
- USDA-funded program for Hawai'i (2011)
- 43 states have similar programs
- Environmental Mediation Center (non-profit) manages Ag Mediation Programs in Hawai'i, California, Vermont, and New Hampshire



Free Services for Many Issues

- Farm loans
- Credit issues
 - ag-related loans or credit cards
- Credit counseling (Certified Credit Counselor)
- **Leases – terms and conditions**
- Farmer–neighbor conflicts
 - noise, smells, fences
- Family–farm transitions
- NRCS grants – agreement terms
- Organic certification

Lease Considerations

New Leases

- Outright purchase of land is too expensive or not available
- Need new equipment and down payment and monthly costs would be lower on a lease.
- Farm may have fallow land that could generate income through a lease for pasture or crops.

Lease Considerations

Existing Leases

- Circumstances change – e.g., add livestock
- New owner – will the lease carry over?
- Behind in payments, can farmer assign or sublet
- Owner threatening to terminate or change the terms
- Dispute over the boundary or access

Lease: What is it

A contract by which one party conveys land, property, services, etc. to another for a specified time, usually in return for a periodic payment.

Terms: Lessor and Lessee

OR = giver EE = receiver

- GRANTOR / GRANTEE
- LESSOR / LESSEE – Landlord / Tenant

Contract

Negotiated Agreement

- Parties
- Mutual obligations
- Enforceable by law

Key elements of a Contract:

- Mutual assent (Agreement)
 - Offer
 - Acceptance
- Adequate Consideration (what is being promised)
- Capacity
- Legality

Lease Elements

Introductory paragraph

- **Parties:** (individuals or businesses) / Addresses
- **Date** of execution

Background

- Current ownership (verify)
- Location and legal description, size and TMK designation (attach legal description if available, maps)
 - License vs. lease, if less than entire TMK.
- Buildings and properties to be included (can be in Exhibit)
- Access description

Intent of the Parties

- Tenant desires to conduct certain farming or agricultural-related activities
- Landlord desires to lease the Property to Tenant for such activities

Lease Elements

Lease Term

- Beginning and ending dates (duration)

Expiration of Lease:

- Provisions for extensions, renewals, options to purchase, if any
- Return to initial condition
- Right to harvest crops - expires at termination

Improvements

- Foundations, fixtures, pit holes, ponds, dams, surface area conditions, debris

Lease Elements

Rent

- Monthly / Quarterly / Annual
- Basis: Cash per acre / Crop share
- Additional rent: Percent of gross/net revenues – based on what time frame and how calculated
- Taxes: basis, when, to whom)
 - Real property taxes
 - General excise taxes
 - Conveyance taxes
 - Income taxes
- Payment procedures / penalties
- Security Deposit: application and return
- Utilities (water, gas, communications, electricity, sewer, trash...)
- Proof of farm income may be required

Lease Elements

Use of Property (Permitted activities or “Quiet Enjoyment”)

- Vegetables, fruits, herbs, microgreens, sprouts
- Honey and/or honeybees
- Aquaponics, hydroponics, aquaculture
- Rotating / changing agricultural crops
- Land clearing
- Fallow land - plowed and tilled but left unseeded
- Dormant land (adverse market conditions or enrollment in conservation program or easement)
- Removing weeds or invasive species - methods
- Related agricultural operations
- Maintaining or repairing equipment or facilities
- Livestock breeding
- Value-added products - processing
- Hunting rights / trapping
- Farm tours and agricultural tourism
- Hosting farm-to-table dinners

Lease Elements

Prohibited Activities:

- Aquaponics, hydroponics, aquaculture
- Commercial uses, other than those expressly permitted
- Residential uses, including farm dwellings
- Tree removal
- Use of certain fertilizers or pesticides
- Planting genetically-modified crops
- Storing non-ag related vehicles or equipment
- Installing permanent fencing or structure

Lease Elements

Improvements, fixtures, equipment or property: AS-IS

Access

- Roadway
- Parking

Maintenance and Repairs

Tenant responsibilities:

- Improvements, fixtures, and equipment
- Reasonable wear and tear
- Electrical, gas, plumbing, sewage and septic tank fixtures or appliances
- Plumbing fixtures or lines
- Damage caused by Tenant, its guests, invitees, agents, licensees, visitors and others

Landlord responsibilities:

- Siding, roofing, heating systems, foundations

Lease Elements

Dwellings

- Residential Use
- Farm Dwellings

Security

Landlord Access

- Inspection / Notice / Process

Improvements

- Restrictions
- Removal upon termination (buildings, greenhouses, structures, fences)
- Optional list of permitted structures

Insurance

Assignment / Sublease

Lease Elements

Default: Omission or failure to meet provision of the lease

- Late rent (number of days)
- Failure to perform or comply with terms (number of days, or initiation of efforts to “cure” default)
- Legal proceedings that would affect the property
- Process for curing

Remedies (potential)

- Landlord can enter property to cure defaults with costs accruing to tenant
- Early lease termination (with written notice)
 - Reasonable use of property to harvest crops (length of time; notice required)

Dispute Resolution

- Mediation, arbitration, attorney’s fees

Examples

Issues raised: Landlord

- Livestock not well maintained (smells, sanitation)
- Unpermitted buildings
- Lights or smells from production
- In arrears for rent

Issues Raised: Tenant

- Fence installation – does it stay with the land upon termination
- Landlord requiring tenant to Landlord's processing facility
- Inadequate roadway access
- Boundary disputes, especially where < full TMK
- Water access issues
- Landlord not responsive to requests

Resources

- Lease template: <https://gofarmhawaii.org/wp-content/uploads/2021/12/Commercial-Farm-Lease-Template-Annotated-00391594-5xD39ED.pdf>
- Land for Good: Toolbox for Leasing Land: (includes Build-a-Lease Tool) - <https://landforgood.org/resources/toolbox/leasing-3/>

Toolbox for Leasing Farmland

Welcome to a toolbox of resources for farmers and landowners who are thinking about leasing land, or who want to improve their lease arrangement. Whether you're a new or established farmer, leasing farmland is an effective way for you to gain affordable, flexible, and secure access to farmland and infrastructure. For private or institutional landowners, leasing land to a farmer using a well-designed agreement can be a "win-win" for you, the farmer, your land, and your community. *Materials are most relevant to farming and farms in New England, but many may apply elsewhere.*

Resources are organized by audience:

Farm Seekers – For current and prospective tenants

Landowners – For current and prospective landlords (individuals or institutions, private or public)

Farmers & Landowners – For both parties

Additional sections of resources include:

Quick Fact Sheets

Lease Examples and Templates

Mahalo & Questions?

**Mahalo nui loa to
Go Farm Hawai'i and Feed the Hunger Fund!**

- **Contact information**
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