Women in Sustainable Agriculture Conference, Portland, Oregon 2016

Land Access:
Legal Tools to Create Affordable, Stable & Equitable Land Tenure

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November 2016
Current State of Affairs:

✧ Number of farms dropped from 6 million in 1935 to 2 million farms.

✧ 60% of farm operators own their land and are 58 years old.

✧ Many of these aging operators do not have a succession plan for their farm upon their retirement.

✧ Nearly 40% of farmers in the U.S. lease the land they work.

✧ Average cost of farmland: $3,020 per acre.
The Resulting Situation:

“Access to land is one of the biggest challenges facing agricultural producers, particularly beginning farmers.” Mary Bohman, USDA Economic Research Service Administrator.
Farmland Access Legal Toolkit

- Three-year project
- Grant funded by USDA NAL
- In partnership with Land Law, PLLC and Jambor Heyman LLP.
- Farmland Tenure Online Resources Guide: http://forms.vermontlaw.edu/farmlandtenure/
Creating Equitable Tenure

* Tenure: “to hold.”

* “Land tenure is the perceived institutional arrangement of rules, principles, procedures, and practices, whereby a society or community defines control over, access to, management of, exploitation of, and use of means of existence and production.”
Our Focus – through the use of case studies, we are examining:

a) **Leasing** – how can we create lease terms to facilitate a farmer’s ability to build equity in the land over time, ensuring an investment return?

b) **Innovative models of land access/ownership** – how can we use different forms of ownership to access land; what are the challenges and legal barriers to these models?

c) **Farm succession** – how can wills, trusts, estate planning, conservation easements, LLCs, leases, and collaborative enterprises be used to facilitate farm transfers?
Land Access Tools: Ground Leases

Ground lease: farmer purchases & owns buildings/structures but rents surrounding farmland on a long-term basis.

- Typically, the farmer would own any improvements made to the house, barn, or other structures on the land.
- The main benefit to a ground lease arrangement is that the farmer gains equity in the buildings or structures and owns any improvements he/she makes to the buildings or structures.
Land Access Tools: Ground Leases (cont)


Land Access Tools: LLCs

- Members own “interests” & control business.
- Limited liability protection for members.
- Pass-through taxation
- Can assist farm transfers by acting as a long-term, interest-free loan.
- Allows new farmers to gain equity.
Land Access Tools: LLCs

Year One of LLC Ownership

- Senior farmers own 90% of interests
- Junior farmers own 10% of interests
Land Access Tools: LLCs

Year Two of LLC Ownership

- Senior farmers own 70% of interests
- Junior farmers own 30% of interests
Land Access Tools: LLCs

Year Three of LLC Ownership

- Senior farmers own 50% of interests
- Junior farmers own 50% of interests
Land Access Tools: LLCs

Year Four of LLC Ownership

- Senior farmers own 30% of interests
- Junior farmers own 70% of interests
Land Access Tools: LLCs

Year Five of LLC Ownership

- Senior farmers own 10% of interests
- Junior farmers own 90% of interests
Land Access Tools: LLCs

- Junior farmers can buy out senior farmers.

LLCs can be structured so that the junior farmers:

- pay rent to use the property and the rent is paid to the LLC. In this way, the LLC functions as a lease-to-own and the junior farmers are building equity with each passing year as they gradually come to own more interests.

- are expected to purchase a set number of interests with their profits each year.

- purchase their interests by working the land, rather than by making monetary payments to the LLC. The parties to the arrangement determine ahead of time how many interests a certain amount of farm labor is worth.
A conservation easement is “a voluntary legal agreement between a landowner and a land trust or government agency that permanently limits uses of the land in order to protect its conservation values.”

- Fair market value of the land: $400,000
- Value of a conservation easement: $250,000
- Agricultural value of the land: $150,000
Putting it all together: Caretaker Farm, MA

- **The Major Players:**

<table>
<thead>
<tr>
<th>Name</th>
<th>Role/Description</th>
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<tbody>
<tr>
<td>Sam &amp; Elizabeth Smith</td>
<td>Senior Farmers</td>
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<tr>
<td>Don &amp; Bridget</td>
<td>Junior Farmers</td>
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<tr>
<td>Equity Trust</td>
<td>Organization dedicated to developing alternative land tenure models</td>
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<td>Williamstown Rural Lands Foundation (WRLF)</td>
<td>Nonprofit land trust in MA</td>
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<td>Commonwealth of MA</td>
<td>Purchased the APR from the Smiths</td>
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Caretaker Timeline:

- Feb 12, 2003: Smiths sold APR to MA

- March 17, 2006: The Closing steps
  - Smiths sold property to Equity Trust
  - Equity Trust sold main farm house & buildings to Don & Bridget (subject to agricultural ground lease)
  - Equity Trust leased the land to Don & Bridget
  - Equity Trust sold the other residence to the Smiths (subject to a residential ground lease)
  - Equity Trust leased the land to the Smiths
  - Equity Trust sold the land (and transferred lessor status) to WRLF.
Caretaker: Next Steps

- LLC status – exploring succession options.
Resources


- 2014 Tenure, Ownership, and Transition of Agricultural Land (TOTAL) report


Questions?

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