

Law Bulletin



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Law you need to know from OSU Extension's Farm Office

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The Farmland Owner's Solar Leasing Checklist

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Entering into a long term solar lease is a big decision. Whether you're just starting to think about leasing your land for solar energy development or already have a lease offer awaiting your signature, the best time to make sure that a solar lease is in your best interest is now, before you sign.

This law bulletin provides a number of things to do, issues to consider, people to consult, and questions to ask before and after signing a lease. The checklist is not an exclusive list. It's a starting point to help you get organized and to spark other questions about your situation. We've provided additional lines for you to add your own questions to the checklist.

Before Signing a Lease

1. Read the Farmland Owner's Guide to Solar Leasing.

Our online guide is intended to help you understand solar energy development in Ohio, initial considerations for leasing, legal documents used in leasing, and common solar lease terms. It can help you have the conversations you need to have before deciding if you want a solar energy project on your land. The guide is available for viewing or downloading at no cost on the OSU Extension Farm Office website at <http://www.farmoffice.osu.edu/>.

2. Assemble your team of experts. You don't have to make an important decision like this on your own. Include the following on your team of experts who can help you make an informed decision: attorney, accountant, insurance provider, lenders, Extension educators, family members, business partners, neighbors.

3. Research the solar energy developer. It's always a good idea to know who you're dealing with in a business transaction. Research the developer who's contacted you about a solar lease. Does the developer have a good reputation with other leasing landowners, the Better Business Bureau, Public Utilities Commission, and Attorney General? Does it have other solar energy projects pending or in existence, and any problems with existing projects? Your own research and your team of experts can help you answer these questions.

4. Talk to your family. A solar lease can take a lot of land for a long period of time. Consider the following questions to make sure that you understand what this lease would do to your land, your family, and your plans for the future.

- How would the land and farm operation be impacted by this lease?
- What are the family's long term goals for the farm, and does this lease interfere with or support those goals?
- How does the family feel about not being able to use the land for a long period of time?
- How does the family feel about seeing and living with a large scale solar development on the farm?
- _____
- _____

5. Seek out Extension experts. OSU Extension has expertise that can help guide you in the decision making process. Check out OSU Extension's Energize Ohio website, https://go.osu.edu/utility_solar, for information about solar energy. A few questions Extension experts might help with include:

- Is there any data on rental values and crop damage payments in my area for solar leases?
- Are you familiar with this solar energy developer or its reputation?
- Can you connect me with other landowners in the area who have or are considering solar leasing?
- _____
- _____

6. Read all documents carefully and with professional assistance. The documents a solar developer gives to you can be legally binding once you sign them. Don't sign anything you don't understand. Make sure your team of professionals know about these documents, and let them help you review them.

7. Consider the terms of the solar lease. On the first read through, you don't have to understand everything in the lease. Note anything you don't understand so that you can ask questions and gain a clear understanding of what the lease proposes. Specific terms in the lease to review include these, which we explain further in the *Farmland Owner's Guide to Solar Leasing*:

- ___ Accurate description of the property and parties
- ___ The term of each lease period, when each period begins and ends, and the total length of the lease
- ___ Whether renewal is permitted, how to renew, and length of renewal periods
- ___ Rental payments, inflation adjustments, and how each will be calculated
- ___ Whether farming and similar activities can continue prior to construction of the facility
- ___ Who pays for penalties for withdrawal of land from CAUV and government programs and termination of farmland leases
- ___ How to deal with existing mortgages
- ___ How damages to crops, improvements and drainage will be addressed
- ___ The types and extent of easements granted
- ___ Obligations of the landowner, such as non-interference and confidentiality requirements
- ___ Post-construction clean up obligations
- ___ Limitations on owner improvements such as new buildings, fences and tree plantings
- ___ Responsibility for maintaining vegetation, weeds, access points, driveways and fences
- ___ What happens if either party terminates early
- ___ Clean up and restoration of the property at lease end, including set aside funds for clean up
- ___ Landowner's hunting and recreation rights
- ___ Potential interferences with mineral rights
- ___ Indemnity and insurance provisions
- ___ How conflicts will be resolved, including requirements for arbitration and waiver of jury trial
- ___ How weather and acts of God affect obligations
- ___ Handling of proceeds from eminent domain actions
- ___ Payment of attorney fees if disputes arise

8. Meet the solar energy developer. Entering into a solar lease means entering into a long term business relationship with a solar energy developer. It's important to determine early on what kind of business relationship you would have

and to review important lease provisions with the developer. The following questions can help.

- How long has your company operated in Ohio?
- How many similar projects have you completed?
- Can you refer me to other landowners that your company has partnered with?
- What is your timeline for this project?
- Do you intend to sell the solar facility after it's constructed?
- Will your company cover my expenses to have an attorney review the lease?
- What ingress and egress paths will be needed for construction and post-construction?
- How frequently will your agent(s) be on site?
- What will my land look like after the project has ended and been cleaned up?
- What are your procedures for cleanup?
- How do you handle property maintenance, and are there opportunities for grazing or haying on the site?
- What happens if or when someone from your company causes damage to my crops?
- What happens if or when someone from your company causes damage to my drainage tile?
- Will you notify me and neighbors when construction will begin?
- Do you take precautions to protect nearby lands from harm during construction, such as organic farms and home businesses?
- How can I contact your company?
- How quickly can I expect a response to a question or concern?
- Will you add verbal promises to the written lease?
- _____
- _____

9. Review the lease with your attorney. An attorney can ensure that you understand the lease. An attorney with experience in advising agricultural clients may have additional insights into provisions farmland owners should negotiate to include in their leases, such as crop damages and land use rights.

- How many solar energy leases have you reviewed?
- How much do you charge to review and negotiate the lease?
- Are you familiar with this solar energy developer or its reputation?
- Can you answer these specific questions I have about the lease provisions?
- What protections for me, my family and my farm are missing from the lease?
- How does this lease affect my estate plan and farm transition plan?

- How does this lease affect my long-term health care plan or options for health care?
- How does this lease affect my property taxes, government programs, and existing farm leases?
- _____
- _____

10. Check in with your accountant. Your accountant is your numbers expert who can analyze financial implications and consequences. Ask the following questions:

- What will the lease pay me for rental, and are the damages compensations calculated fairly?
- What are the tax consequences of signing this lease?
- _____
- _____

11. Consult with your insurance provider. Leases almost always include provisions about how much liability insurance each party must carry. Ask your insurance provider to determine whether you need additional coverage, and how much that will cost.

- Do I have the type of liability coverage that this lease requires me to have?
- What type and level of coverage do you recommend for this situation?
- _____
- _____

12. Talk with your neighbors. Neighbors will be impacted by the construction and long-term existence of a utility-scale solar development in the neighborhood. Some neighbors, such as organic farmers or home-based businesses, may have needs for special protections. Others may react negatively to a proposed solar development. Knowing your neighbor's views and concerns can help you determine whether and how to proceed with a solar lease.

13. Review the survey or aerial maps provided by the solar energy developer or its surveyor. It's important to know what land would be affected by a proposed lease. If a survey has not been conducted, then you may need to contact a surveyor to obtain an accurate understanding of the land that would be affected by the lease.

14. Ensure that you have good title. Solar energy developers prefer to lease property that is free and clear of third party burdens such as liens and similar legal interests. Conduct a search of your property records online or at your county land records office to ensure that no surprise encumbrances have been recorded.

15. Re-read your documents. By now you should have a firm grasp of what your lease and other documents say, what signing the documents would mean for you, your family, farm, and community. If you read something again and have more questions, be sure to find an answer before signing.

After Signing a Lease

1. Store all documents and agreements in a secure location. Maintain both a hard copy and a digital copy of all documents associated with the solar lease.

2. Set up accounts and procedures for rental payments. Keep records to ensure that you receive all payments due under the lease.

3. Document any instances of property damage or other violations of the lease agreement. If the developer or its agent causes unauthorized damage, document when and how the damage occurred and the extent of the damage. Photographs or videos serve as important pieces of evidence.

4. Track your option period. If the developer doesn't notify you or begin construction by the end of the option period, the lease likely terminates. Know when the option period ends and you'll know if the lease continues or terminates.

5. Contact the developer for any permissions as required in the lease. Your lease may have included provisions requiring that you seek permission when engaging in certain activities like hunting, building structures, or planting trees near the project site. If permission is required under the lease, engaging in that activity without such permission would constitute a breach of contract.

6. Follow the dispute procedures in the lease. If you have a dispute about the lease, make sure that you refer to the lease to ascertain how you are to handle a dispute. If you don't follow the procedures outlined in the lease, you could lose certain rights to continue to dispute the issue.

FOR MORE INFORMATION FROM OSU EXTENSION'S AGRICULTURAL & RESOURCE LAW PROGRAM:

- Visit our website at <http://farmoffice.osu.edu>.
- Sign up at <http://farmoffice.osu.edu/blog> to receive our blog postings by e-mail with timely articles on legal issues of importance to Ohio agriculture.
- Contact us by e-mail at aglaw@osu.edu.