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is on your side

Farmland ownership protection

agency guide

A guide to help you protect your clients' valuable farmland investment

Land

The single most critical component for the agricultural producer. It is a valuable, and finite, resource. Today, approximately 911 million acres in the contiguous 48 states classified as farmland.[1]

911M acres

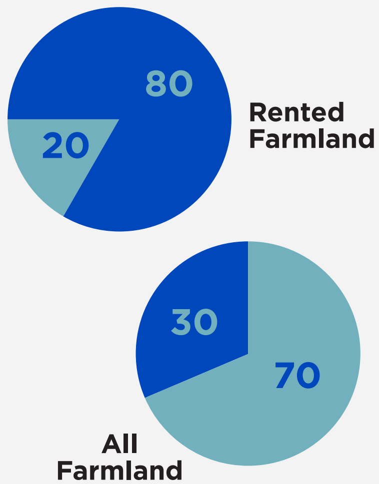
That's approximately 688,716,000 American football fields

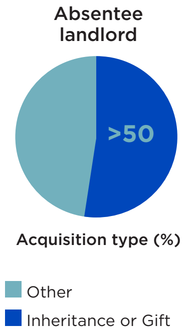
The majority of rented acres are owned by non-operator landlords. Eighty percent of rented farmland (283 million acres, or 30 percent of all farmland) is owned by non-operator landlords, those that own land used in agricultural production but are not actively involved in farming.

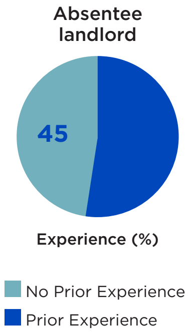
These non-operator landlords can take many forms:

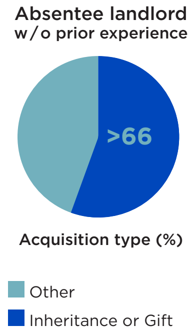
- A retired farmer no longer actively involved in farming but owns the land.
- A spouse who inherits the farmland and who may (or may not) have been involved with the operation.
- Children or heirs. These entities may or may not have a working relationship with the current farm structure.
- A non-farm owner. This could be a spouse, child, heir or investor. These entities may have ties to the land but treat the land as an investment.

U.S. Economic Research Service (ERS)









According to the ERS, non-operator landlords are more likely than operator landlords to acquire land through inheritance. These landlords acquired more than 50 percent of their farmland through an inheritance or gift. Of the 45 percent of landlords who have no prior experience with farming, more than two-thirds either inherited or received their land as a gift. Although a considerable fraction of non-operator landlords has not farmed, some familial or personal relationship to farming may exist.[3,4]

While more prevalent in the Midwest and Plains regions, non-operator leased farmland can be found throughout the United States. According to ERS data, non-operator landlords account for half of Illinois' total farmland ownership, while in California, 37% are non-operator landlords and in Pennsylvania, 26% are non-operator landlords.[2]

Additionally, demand for farmland and the value of farmland is strong. That is likely to remain so for the foreseeable future.[3,4]

Ties to the land can remain strong, whether the owner is one or several generations removed, and for good reason. Agriculture and farming are iconic components of rural America. Yet the opportunities to own farmland are becoming more and more limited, which offer unique opportunities for the landowner that can go well beyond the basic investment. What it means for you, as an agent, is that there will be clients, often with little to no farming background or experience, in need of a trusted advisor to help them fully understand and protect their valuable farmland assets.

Why farmland ownership transfer matters to you

The first thing any client will ask is: "Am I covered?" While the answer may be uncomplicated with conventional home or property insurance policies, the counsel you provide to the farmland owner is not as straightforward. That is because no one single answer fits every landowner, in every situation. The circumstances on how a new landlord acquires farmland and how that land may be managed are endless. Factors such as farm structure types, how the farm is operated, location of the land or lease contracts are only some of the critical decisions necessary to ensure a farmland's value and the landowner are protected. Coverage solutions may range from a Homeowners Policy Endorsement to a Farm Liability and Umbrella Policy. Nationwide® is here to provide the necessary tools to assist you as you protect your client's next as a farmland owner.

Ideally, you are one part of the team that a new farmland owner will consult. The intricate nature of farmland ownership means non-operator landlords need a full suite of advisors, which can include legal, accounting, financial planning and insurance. As a Nationwide advisor, you can draw upon our numerous resources, including our Land as Your Legacy program, risk management experts, Nationwide Farm Certified agents and others to assist you in developing the proper solution to protect the interests of the landowner.

This guide is designed to help answer the question: Am I covered? It is intended to raise awareness of the alternatives and provide basic coverage recommendations. It offers a road map to interact with new and existing clients who may not have a working knowledge of farmland, and the host of decisions necessary to ensure both client and asset are protected.

Contents

Risk exposures of farmland ownership

A complete understanding of the potential risks involved is critical when writing any policy. With farmland, to fully understand the risk potential, you must first collaborate closely with the client to understand the basics of the farm, and how different farm-related factors can impact risk exposures. Non-operator landowners may or may not have an active role in the farm's operational decisions. Lease arrangements can be detailed documents or a simple handshake. It may seem like digging into the weeds, but these are questions that landowners with no knowledge of farming may fail to understand, and you can help provide that guidance.

Farmland business entities and potential exposures

Farmland ownership can be a combination of longtime owners who are generations removed from the farm. Ownership structures can be complex, so it is important to understand how these business entity structures can impact insurance products and how policies are written.

Business entities could take the form of:

- **Sole Proprietor/ Individual DBA**
  John Smith dba Smith Farms
  or
- **Multiple Individuals DBA Partnership**
  Joyce and Carole Smith dba Smith Farms
- **Formal Partnership**
  Green Acres Partnership
- **Limited Liability Corporation (LLC)**
  Rolling Hills Farms, LLC
- **S-Corporation or C-Corporation**
  Happy Farms Inc.
- **Trust**
  Cows-R-Us Trust
- **A combination of the various business entities to protect against various exposures unique to the farming operation.**

It all comes down to ensuring the policy is written with the proper protections and limits in place. Policies for the landowner still involved in farming can be significantly different than policies for the landowner renting the land to tenants.

As an agent, it is imperative to understand how the landowner has structured the business, the level of involvement and the assets that the landowner wants to protect to ensure the best level of policy protection is in place.

Farmland uses and potential risks

The use of farmland presents unique risks that need to be identified by the landowner because it can impact their liability exposure. Because agriculture is among the most dangerous industries, each farm will come with its own set of risks. As a landowner leasing the land to a tenant, liability coverage is usually carried by the tenant. However, it is worthwhile for the landowner to know how the land is being used, and the potential risks, to ensure they are protected.

1. Livestock

Land used for livestock presents a variety of risk exposures that non-farm landowners may not fully understand. Landowners need to be aware of the risks associated with livestock and that the tenant carries the necessary liability insurance. That's because cattle in a pasture can wander through an open gate or broken fence, wandering onto a nearby road and risk being struck by a passing car. Likewise, an escaped animal venturing onto neighboring cropland can cause significant losses. In more suburban settings, you could see farms add additional attractions such as petting zoos where the public can get up close and personal with livestock of all shapes and sizes.

2. Dwellings/buildings

Farmland is not just the land itself. Often, buildings or structures are used in the farm's operation: a grain bin, outbuilding or a storage shed. Structures can also include houses used by past operators that are now rented. Each structure and its use can create a unique risk exposure. It will be important to understand how each structure is used and who is using it to adequately write a policy to cover them. For example:

- A house rented on the property can introduce a host of additional liability to the landowner, including injury to the renter's family or potential guests.
- Outbuildings like barns, corrals, pens, silos or grain bins create additional property exposure. It is important that issues like permission to use, associated hazards and insurance responsibilities are identified and assigned in lease contracts. Failure to do so opens landlords to additional liability risk.
- Tenants may use barns and outbuildings as venues (weddings, family gatherings), which creates added liability issues. Typically, tenants have policies in place to protect them, but it's imperative that information is known ahead of time.

3. Crop and environment (dust, chemicals, fertilizers)

Farming is often a dusty and dirty operation, and the tenant's production methods will impact liability exposures. Local or regional air quality laws can come into play if particulate levels reach certain levels. Agricultural chemical use is another danger, not only to the user, but it can cause possible environmental liabilities. For example, chemical drift can cause crop damage to another farmer's field or may violate federal regulations. Another example would be a large-scale dairy operation spreading manure on the land, leading to possible air quality complaints from neighbors. Issues like these are important if the land is located near a suburban area. As an agent, you need to understand if there is strong enough indemnification language in the lease, as well as if the tenant's policy limit is high enough to shield the landowner.

4. Accidents and bodily injuries

Debilitating injury and even deaths occur on farms every year. That is why it's important to understand the level of risk and how the landowner should be protected in case an unfortunate event occurs on the property. This includes mitigating hazards, being proactive about maintenance and understanding safety protocols used by the tenant. There's really no such thing as a simple accident on the farm. One emergency room visit can run into the thousands of dollars, which means your customers need to be protected. One of the more common claims seen are when slow-moving farm vehicles are involved in accidents with other roadway users. It's a significant issue in more suburban areas but can happen anywhere.

5. Hunting, recreation and agrotourism

Additional liability issues may arise from non-farming activities like hunting, recreational access or agrotourism. Again, circumstances surrounding the activity will impact the landlord's liability. Does the tenant allow friends and family to hunt on the property? Does the landowner have hunting access? Is the property posted to keep unwanted entities out? Does the public regularly access the property for yearly activities, such as picking vegetables or visiting a produce stand? Is the barn on the property going to be used for other activities (events, off-site storage)? Raising these questions will help you fully understand your client's exposures.

Farmland location exposures

One reason farmland has retained its value is quite simple: No more is being made. It is not uncommon to see a combine operating right next to the new subdivision, school or retail space. This can create additional liability concerns for the landowner who may not fully realize what hazards exist. There are other potential risks that can be directly tied to the location of the farmland.

Attractive nuisances

Farm ponds, which can be a magnet any time of the year, are perhaps the most common example of an attractive nuisance on the farm. Knowing these liabilities exist will help you provide the correct coverage.

Watersheds and waterways

Farmland can be in a sensitive watershed area that is subject to local, state and/or federal regulations. Lack of adherence to these regulations can result in stiff penalties and fines, even several years removed from the initial infraction.

Non-farm neighbors

Not all neighbors enjoy the sounds or smells of livestock, understand the need to operate machinery at odd hours or appreciate dust or chemicals needed to farm. While many farm operations are protected by right-to-farm laws, that does not protect the landowner from potential legal actions.

Tracts of land in multiple townships, counties or even states

Farmland does not have geographical borders, meaning one tract of land could cut through several governmental jurisdictions. A farm policy offers a means to cover this instance, where other policies may not. Knowing these nuances will help you select the best policy for your client.

Roadways, traffic

Getting in and out of farm fields with slow-moving farm equipment can be hazardous, especially onto busy roadways. Understanding issues like clearly defined sight lines or the location of field entrances and exits will be important.

II Leases and liability protection

Using leases as protection

Since most leased farmland is managed with a lease agreement, this is the first step to ensure liabilities are covered. Most new landowners will take the necessary steps to limit their liability. Some landowners leasing the land will use a farmland management company to help manage these affairs. Whether or not there is a company involved, lease agreements are a primary tool to ensure responsibilities are spelled out to limit your client's liability exposure. Here are some basics to know about lease agreements and how they impact liabilities.

1. Make sure a written, signed lease is in place

Lease contracts are developed to protect both parties, so every rental agreement should be backed by a signed lease agreement. Farmland owners should be advised on the types of lease contracts available and where they can turn for more information. County Extension agents and land-grant university experts (e.g., **Iowa State Extension Farm Lease**) can be tremendous resources to help new landowners understand the types of leasing arrangements, the features and benefits of various contracts and how the contracts could impact their protection needs.

2. Transfer risk to the tenant

It is possible for the lease contract language to transfer legal liability from the landowner to the tenant. The lease can require the tenant to add the landlord to their insurance policy. Furthermore, the contract can dictate the minimum coverage and limits required. If it is a cash-rent arrangement, the landowner may further protect rent payments by requiring the tenant to purchase crop insurance in the event of a catastrophic loss. An attorney should be consulted for lease language.

3. Ensure every detail is included in the written lease

Clearly delineate risk and responsibilities surrounding the farmland. There can be many: invasive species removal, repairing drain tiles, recreational use of the land, building maintenance or road repair, to name a few. Details extend to permissions for buildings, hunting rights or other non-farming-related activities on the property. Unless your landowner wants to be called every time a fence is damaged, make sure the responsible party is clearly spelled out in the contract. An attorney should be consulted in all lease matters.

Protecting against liability exposures

It is quite possible that even with the best measures put forward, landowners can be exposed to lawsuits. Increasingly, landlords may be named in lawsuits even if they are not active in the operation. Given that the business of agriculture can be fraught with potential hazards, protecting the landowner from losses is always necessary. Landowners need to know the protection necessary when it comes to liability coverage.

1. Personal injury

A landowner could face allegations that they:

- knew or should have known the condition of fences prior to cattle escaping and causing a roadway accident with a motorcyclist; or
- knew or should have known the narrow width of the driveway/culvert entrance where a truck/trailer overturned while entering a field; or
- the landowner was aware that the field entrance was located just over the crest of a hill and could have been located more safely elsewhere prior to a motor vehicle accident.

These examples may not necessarily show negligence, but increasingly, landowners are included in lawsuits and arguments such as permission, awareness, lack of training, and lack of supervision and are being leveraged to pull additional people and their funds into lawsuits.

2. Property permission and associated hazards

If your client knows about a specific hazard, it needs to be identified and mitigated. Otherwise, there could be situations where a tenant may sue the landowner for personal injury or property damage due to the landowner's failure to make repairs or improvements. This liability can extend to injury to the tenant's family members. Means of egress, railings and tripping hazards are some of the things that need to be considered and corrected. Attractive nuisances (e.g., a farm pond) unique to the farm must also be addressed.

3. Landlord involvement

There may also be situations in which the landlord is still involved in the operation. This often occurs when a current landowner is passing the operation to the next generation. The landlord may assist with planting or harvest to support the tenant. Maybe the landlord is handling some managerial activities, such as purchasing or selling decisions.

They might just want to borrow a tractor to clear brush on the property, or even take part in a local parade. Activities like these may require additional coverages. Certain insurance products, like Homeowners, may not apply in some situations. It is easy to see that every situation is different, which requires careful evaluation.

4. Environmental pollution

There are environmental liabilities to consider. Pesticide spray drift or violation of federal regulations, like the Clean Water Act, are real concerns. There must be strong indemnification language in the lease, and as an agent, you need to ensure that policy limit is adequate to shield the landowner.

5. Livestock nuisance

Livestock offer another exposure risk. Nuisance lawsuits, especially from non-farm neighbors, are becoming more common. While many state and local regulations offer some protection, they are not absolutes. And they do not protect against a tenant's negligence. Often, those pursuing relief seek out the landowner first.

6. Hunting activities

The shrinking amount of public land available for hunting activities has also brought another potential income stream to landowners, and with it added risk exposure. Of course, hunting access can change over time, but it is an exposure that needs to be clearly discussed with the landowner. Who is allowed? Are waivers signed? Who is responsible for accidents? Will hunting dogs be used or provided? Do parties clearly understand hunting regulations and know the property boundaries? Asking questions to gain better understanding of hunting activities will help you decipher how to best insure your client's liability exposure.

Understanding farm programs

The USDA Farm Service Agency (FSA) manages a myriad of farm programs that range from conservation and farm loan to disaster assistance programs. For some government programs, crop insurance is required. As a non-farming owner, you don't need to understand every detail of farm programs, but you may find they can benefit you. For example, depending on the lease arrangement, crop insurance programs can protect your rental payments in case of total, or even partial, crop loss. Knowing what programs are available, and how they can be used, will help you develop a sound plan. While Nationwide is not a crop insurance provider, many of our Farm Certified agents offer this service and counsel.

III Solutions to cover client and assets

Your answer to the question "Am I covered?" will depend on the risks involved, and how you develop a policy that entails the complexities of the farming operation. The broadest and most secure coverage may be a Farm Policy. There is more to consider, including covering assets of the farm and individuals involved, the relationship with the lease holder, the structure of the farm, lease contract requirements, or the ability to afford related premiums. These will dictate how the best solutions are structured for farmland landlords. Here are some basic recommendations to cover your new or existing farmland landowners.

Preplan farmland transitions with Land As Your Legacy®

The best option is to preplan farm transition. Whenever possible, preplanning helps ensure smooth transition of land use. Perhaps the new landowner wishes to remain connected to the land for decades. If so, they may want to consider long-term planning for subsequent successions to heirs. Alternately, the landowner may want to develop an immediate transition plan to the next generation. **Nationwide Land As Your Legacy®** resources are available to help you and your clients transition farmland ownership smoothly.

Select the right solution to match the risk

There is no one correct policy that fits every client. Once the legwork is done, it is time to consider the policies available and which one (or even combination) provides the best protection.

1. Add a farm endorsement to the existing homeowner's policy with or without a personal umbrella

This is the most basic option for operations with annual gross receipts of $40,000 or less. If there are more than $40,000 in gross receipts, other options need to be considered. Homeowners policy, H 02 12, revised in 2018, changes the base policy to remove the business exclusion specific to farm liability. This policy applies to incidental farming activities (e.g., leased land for hunting) and is not appropriate for full-scale operations. This policy is appropriate whether receipts are generated through farming activities or cash rents. A personal umbrella covers the homeowners policy and this endorsement. This solution is applicable to individuals and trusts. These policies are limited in their protection offerings.

2. Transfer risk and be added as an additional insured to tenant's policy

A lease ensures that the tenant is liable for risks associated with the farmland and its operations. Contractually, risk is transferred to the tenant and the landowner is added as an additional insured to the tenant's policy. In some cases, this may be a suitable solution. However, it often will not go far enough to protect all entities. If the landowner is added to the policy, liability limits may not be enough to protect all assets. Also, if the policy lapses due to nonpayment of the premium, the landowner is not protected. The concern in using only this solution is that the landowner's protection is subject to the coverage and limits of the tenant's policy. Because these limitations give the landowner little control over the coverage, this approach should be used only in rare circumstances.

3. Issue a farm liability policy (with or without property coverage) OR a general liability policy (with or without a commercial property policy) with or without a farm umbrella

Hands down, a farm liability policy offers the best protection because it has the most comprehensive suite of tools for the broadest coverage and limits, with or without a farm umbrella policy. This option allows landowners to select coverages tailored to protect themselves and the farm, as well as the ability to choose the coverage limits desired. A farm umbrella will extend over the farm liability or general liability policies. With this option there should also be contractual language requiring the landlord be named as an additional insured on the tenant's policy. This option applies to all business entities.

IV Protect your next

The dynamics of farmland ownership continue to change in today's agricultural marketplace. And as the average age of the farm sector increases while the number of people involved in agriculture declines, more individuals will come to Nationwide Farm Certified agents to seek advice and counsel. It is incredibly important to understand that this group of landowners won't likely fit the traditional ag-market customer nor the typical homeowners market. In fact, it is very possible that it's the first ag-specific insurance policy they've discussed.

But with the value of farmland at historic highs, the need for a policy that protects these clients is more important than ever. Our job as trusted advisors is protecting the next venture of your client. How we best protect them is subject to decisions made only after careful consultations. We offer additional resources to help you talk to your clients.

There's an unmistakable draw to farmland ownership. For some, it's their own way of creating a legacy. For others, it's owning a piece of ground that is a critical part of American agriculture. There are numerous benefits to owning farmland, but with it also comes the need to protect owners from the risks associated with the farm.

If you have a client who is new to farmland ownership and is searching for solutions on how to best protect their risk exposure, please reach out to your Nationwide Underwriter or Farm Certified Team. To become a Farm Certified agent, please visit the agent center or call your Nationwide sales manager.

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