

**Leases Overview: Start Here**

**What is a Lease?**

**A lease is a** contract that specifies the terms under which one party agrees to allow another party to occupy their land. This lease will guarantee the tenant use of the land and in exchange, guarantees the landlord any agreed rental income.

A lease should be made in writing. This allows for both the landlord and tenant, to have a clear understanding of what their rights and obligations are in relation to the land. The lease should specify the start date and length of the lease, the area to be let and the rent (although these are not an essential requirements). The property is returned to the owner when the lease comes to an end.

**Why a lease may be needed:**

A lease may be needed for various reasons.

1. Firstly, having a lease, in particular a written lease, will help avoid any misunderstandings and allows both the landlord and tenant to be clear about what they have agreed, their rights and their obligations. Each party therefore knows what they can and cannot do under the terms of the lease and also, who is responsible for what. This will also assist in avoiding disputes.
2. If one party allows another to use its land without a formal agreement it can lead to uncertainty. In some circumstances tenants can also accidentally acquire certain statutory rights if nothing has been agreed in writing and landowners will want to avoid this.
3. Community groups should have a lease because you must seek permission if you want to use land that does not belong to you.
4. Some community groups may be looking to secure charitable or grant funding. Some organisations make having a formal lease in place a condition of providing this.
5. Another reason is spending; if a tenant plans on investing a lot of money in the land, having a lease ensures they have a guaranteed period of occupation.

**Lease or Licence?**

A licence is a personal permission granted by a landlord for someone to use their land. It does not give the licensee a legal interest or exclusive use of the land but is a quicker process than the creation of a lease and therefore may be beneficial for short-term land agreements, e.g. restoration projects.

Under a licence, you do not have the right to exclude all others (including the landowner) from the land, whereas under a lease, the landlord's right to enter the land is restricted.

A licence can normally be terminated at relatively short notice which gives you very little security regarding use of the land, as oppose to a fixed term under a lease. Some licenses do include fixed or periodic terms but this will not always be the case. If the land is sold by the landlord, your rights to the use of the land under a licence will not bind the purchaser and in this instance, you would have to vacate the land.

If you are still unsure whether a lease or licence will best suit your needs, speak to CLAS or seek legal advice.

**What terms need to be agreed:**

* A clear description of the land;
* Length of lease: fixed (specific amount of time) or periodic (for a specific period that can be continually repeated until one party gives notice bringing it to an end although periodic leases are rare);
* Rent and any other outgoings (service charge, insurance);
* The intended use;
* Rights granted with the property (i.e. access over paths or land the landlord is retaining);
* Regulations (things you should and should not do);
* Tenant’s obligations (what you are responsible for i.e. repair);
* Access (the owner will usually still have rights of access to land for specific purposes (inspection, repair, etc.)); and
* Landlord’s obligations (what the owner is responsible for).

For more valuable or complicated sites other details may need to be included. The essentials that have been listed above are usually set out in a document known as 'Head of Terms' which are agreed by the parties before the lease is prepared. On the website there is a suggested template with guidance.

**Different types of leases:**

* Agricultural Tenancies: a specialised form of lease for use where a farming business is involved. This type of lease is lengthy and complex however, it is unlikely you will need one of these if you simply wish to grow on a small scale.
* Leases of land or buildings – business or non business use.
* Leases of allotments: tenancy agreements will vary between allotment providers. Many sites will have additional or specific rules created by the allotment provider.

For any more information on what constitutes a lease or the different types available, please seek legal advice or speak to CLAS.

**Who can sign a lease?**

* Generally, a lease is signed by the landlord and tenant. Exactly who must physically sign the lease will depend on what type of legal entity the parties are. A lease can only be signed by a legal entity. Legal entities have the legal capacity to enter into contracts or agreements, assume obligations, incur and pay debts, sue and be sued, and to be held liable for their actions. Private individuals are legal entities so a lease between Mr A and Mr B would be signed by them both personally. Other legal entities include:
	+ Partnerships;[[1]](#footnote-1)
	+ Companies; and
	+ Charitable organisations/societies[[2]](#footnote-2).

**Partnerships:**

A partnership can be formed by two or more individuals. In a partnership, you and your partner (or partners) personally share responsibility for the business. The partners are jointly and severally liable for each other’s actions in the ordinary course of business. Most partnerships will have a written partnership agreement setting out the terms of the partnership, but this is not a requirement.

**Companies:**

A company is a separate legal entity that is distinct from its owners, which means that the law considers the whole company to be a single person in the same way as an individual. Owners of a company do not need to be directly involved in the management of the company but can be involved by carrying out various roles such as director or management committee member. Trustees of companies are also generally not liable for the actions of the company, provided that they have not acted negligently.

**Charitable Organisations/Societies:**

There are many other structures a community group can take, these can be incorporated or unincorporated depending on the purpose of the community group. Additional types of legal structure available are:

* Charitable Incorporated Organisations (CIO);
* Unincorporated associations;
* Charitable trusts;
* Cooperative Societies[[3]](#footnote-3); and
* Community Benefit Societies.

**Incorporating your group:**

It is possible to register your group as a legally recognised entity through a process called 'incorporation'. An unincorporated group is legally understood as a collection of individuals, namely the management committees, and the members of the group are personally liable for the group’s actions. An incorporated group, on the other hand, is its own legal entity and has legal standings similar to that of an individual. By incorporating your group, the liability imposed on the individuals involved in the group will be limited to the assets of the incorporated body. Thus, the group itself will be largely responsible for the group's actions rather than the individuals managing it.

If you are unincorporated and have an intention to trade, raise large sums of money, employ people or conduct other higher risk activities such as entering into legally binding contracts, you should seriously think about incorporating. Alternatively, if your group is informal and not undertaking higher risk activities, you might not need to incorporate.

When an incorporated group enters into a lease, the lease is signed by representatives on behalf of the group. It is the group that is party to the lease as oppose to the individuals who sign. If the individuals who sign as representatives leave in the future, the lease continues as the incorporated group still exists and is the party to the lease. In the case of a company, two directors of the company or one director and the company secretary would sign as representatives.

**Do we need a lawyer?**

You do not need a lawyer to enter into an agreement, but it is always advisable to take legal advice before entering into any agreement, especially one with responsibilities, levels of risk and financial consequences over a period of years. Not everyone feels they need a lawyer, though not everyone can manage without one- it is largely dependent on the case. In practice, however, the longer a lease is to run, the more complicated it can be. CLAS can help in the early stages of putting a lease together and helping to agree terms but it is nearly always advisable to seek legal advice before signing a lease.

The lease templates found on the CLAS pages of the Social Farms & Gardens website may be useful as a negotiation tool when beginning to agree the terms of use for the land. Once the terms have been discussed between the landlord and the tenant. Should you choose to use a lawyer, let them know your agreed terms and instruct them on this basis. They will be able to clearly explain your rights and responsibilities in relation to the proposed lease and any relevant law. In addition, they will also check whether the landowner actually owns the land in question and whether they are in a position to grant a lease. They will also be able to consider the legal status of a community group and their ability to enter into a lease.

1. <https://www.gov.uk/set-up-business-partnership> [↑](#footnote-ref-1)
2. <https://www.gov.uk/guidance/charity-types-how-to-choose-a-structure> [↑](#footnote-ref-2)
3. <https://www.uk.coop/developing-co-ops/grow-your-co-op/understanding-co-operative-and-community-benefit-societies-act> [↑](#footnote-ref-3)