

Considering Leasing Land to a Solar Energy Company?

Do Your Homework! Kathleen McCormick, Agriculture Educator

New York State's commitment to obtain 100% of its electricity from renewable sources by 2040 has put solar energy companies in the market for farmland. Leasing land to a solar company can be lucrative, but it's a long term commitment. Do your homework to make sure it's a commitment that's right for you.

Talk to Your Town Building Department

The first thing you need to do is find out whether your town allows solar arrays. Your town building department can tell you. The building department can also tell you what zoning restrictions apply, whether you will need to apply for a variance, and what permits will be required for construction.

- Does the town have any zoning laws that apply to solar arrays?
- What permits will be required?

Talk to Your Town Assessor

The typical lease term is 25-30 years. The steady income is very attractive, but it isn't free. Solar arrays are considered real property and subject to property taxes. You may be able to delay paying property taxes on the array for fifteen years if you live in a town that grants the New York state property tax exemption for solar installations. Find a list of town and school districts that have opted not to grant the exemption here: <https://www.tax.ny.gov/research/property/legal/localop/487opt.htm>. If your property is receiving an agricultural assessment, you may have to pay a conversion penalty for converting land from an agricultural use to non-agricultural use. A solar array can be considered an improvement and may increase the taxable value of your property. Your assessor can help you understand how your property taxes will change if you decide to sign a lease.

- How will a solar array affect my agricultural assessment?
- Will I pay a conversion penalty?
- Will I be eligible for the 15-year property tax exemption?

Check Up on the Solar Company

Signing a lease will put you in a relationship with a company that will visit your property on and off for the next 20 to 25 years. The first visits will be to conduct feasibility studies that can disturb soils and disrupt operations. Then your farm will become a major construction zone. Access roads will be constructed, the site graded, arrays installed, trenches dug, and cable laid. Transmission poles may be installed. After the arrays are up and producing, the solar company will need periodic access for inspections and maintenance.

Solar arrays have a limited life span. When it is reached, the panels will need to be replaced or removed, and the land brought back into production. Doing your due diligence will help you decide whether the company is one you want to do business with.

Contact the Secretary of State to find out whether the company is registered to do business in New York. Call the Better Business Bureau to find out if there are any complaints about the company. Ask the company for references. Talk with references about their experience with the company. Ask the company for insurance information and financial statements. Make an appointment with a librarian at the Buffalo and Erie County Library to help you do a deep dive into the company's financial health. Doing due diligence on the company is time consuming, but it's nothing compared to the time and money it will take to clean up the mess left by a solar company that declares bankruptcy. The effort is worth it for such a long-term commitment.

What to Look For in a Solar Lease

The solar company may present you with a letter of intent, a lease option, or a lease. The letter of intent outlines the proposed terms of the lease agreement and describes what needs to be done before the lease agreement can be signed. The letter of intent can be binding or non-binding. A lease option gives the solar company the right to lease the land after it completes a feasibility study of the property. The solar company pays the landowner for this right. In exchange, the landowner agrees not to lease to another solar company until the first company makes its decision. The lease option agreement should spell out how long the company has to make a decision, how much the landowner will be paid, which party will pay the property taxes, and how the property will be restored if the solar company decides not to lease the land. A lease should have terms that address the feasibility study, installation, maintenance, and removal.

All agreements must be in writing and easily understood. Don't be afraid to ask for plain language. **After reading the agreement, you should have answers to these five main questions.**

- How will my land be affected?
- How will my operation be affected?
- What are my obligations?
- How will I be compensated?
- What happens at the end of the lease?

For More Information

Ohio State University Extension published an excellent guide to help farmland owners understand the process of solar leasing. Much of the first chapter is specific to Ohio, but the other chapters are relevant to farmland owners everywhere. https://farmoffice.osu.edu/sites/aglaw/files/site_library/Farmland_Owner%27s_Guide_to_Solar_Leasing.pdf

North Carolina State University Extension published a clear and concise description of lease terms. https://content.ces.ncsu.edu/landowner_solar_leasing_contract_terms_explained



LEASE TERMS

Look for lease terms that address the following:

Feasibility Study

- Does the lease document pre-testing conditions with photographs and written descriptions?
- Will the property be restored to pre-testing conditions after the feasibility study?
- Does the restoration include weed control?
- Will you be paid for crop damage done during feasibility testing? How will the value of damage be established?

Compensation

- How are rent payments calculated? Flat fee based on acreage or variable fee indexed to megawatts produced?
- Will rent payments increase by a certain percentage at regular intervals?
- Who pays the property taxes?
- Will the solar company pay for any increase in property taxes caused by the array?
- Will the solar company pay the conversion penalty for converting land to a non-agricultural use?

Siting

- Are the locations of access roads specified?
- Will the access roads interfere with farm operations?
- What material will be used to surface the access road? Will it interfere farm operations?
- How will run-off from access roads be managed?

- Is the location of the array specified? How will it impact farm operations?
- How much productive land will be lost?
- Can the land below the array be used? How?
- How will the array affect use on the surrounding land?
- How will run-off from panels lined up in rows be managed to prevent erosion?
- Where will the transmission poles go? Will they interfere with farm operations?

Solar Array Lifespans

- How often does the company need access for inspections and maintenance?
- How will the array be accessed?
- What will be done during inspection and maintenance visits?
- Will the equipment be removed at the end of the lease term?
- Will underground structures be removed to a depth of four feet to prevent damage to tillage equipment?
- Will the land be restored after removal? What will be done to restore the land?
- Who is responsible for removal and restoration?
- Will the company put up a bond or establish an escrow account to pay for the costs of removal and restoration if the company goes out of business?

Never sign any kind of agreement without having an attorney review it. Sound legal advice can keep you out of the “too good to be true” deal.