Agricultural Conservation Leasing

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Benefits of Written Lease

- Protects both parties
- Avoids misunderstandings
- According to law, leases for a term longer than one year should be in writing.
- Needed for Federal and State conservation programs
To be valid a lease needs to be/have:

1. Valid contract (legal names of parties, an offer, and acceptance of the offer for consideration($))

2. Description of the extent of the property to be leased

3. Definite lease term

4. Definite rental rate

• A good lease is specific, delineates responsibilities fairly and prevents conflict.
Leasing 101

• There is very little Maryland law pertaining to ag leases.
• This means parties have to communicate about priorities and work together to form leases.
• Leases don’t have to be and should not be complicated.
Leasing 101

• Don’t sign a lease you don’t understand.
• Do have an attorney review the lease.
• If it matters do put it in the lease—oral agreements and side arrangements not in the lease will not be allowed in court.
Leasing Resources

- General leasing law and examples of leases: *Agricultural Leasing in Maryland*, available at umaglaw.org
- Fillable versions of the leases also available at umaglaw.org
Agricultural Conservation Leasing

• In Maryland, 42% of agricultural acres are in a formal or informal lease arrangement.
• Conservation practices are less prevalent on leased acres.
How Can a Lease Help You?

- Think of a lease as a tool to protect your business and a way to implement conservation practices.
- By communicating and using simple lease language, landowners and farmers can establish the necessary foundation to implement conservation practices on leased land in a mutually beneficial way.
The Guide has communication tools and leasing strategies and sample language for common conservation practices.

Conservation Leasing Resources

Agricultural Conservation Leasing Guide available at umaglaw.org
Value of Communication in Leasing

Most lease disputes arise out of a misunderstanding.

Open communication:

• Sets expectations;
• Delineates responsibilities; and
• Reduces the likelihood of conflict.
Landowners and farmers
- assess their own priorities and
- recognize where interests align and differ
Use a Conservation Plan as a tool

• Reviewing, updating, or creating conservation plan can:
  – initiate a conversation about conservation practices
Landowners- Questions to Ask Yourself

How will conservation practices benefit your land?

Can you make agricultural conservation choices:

• independently
• collaboratively with tenant?
Questions for a Landowner to Ask the Farmer

What impact will new practice or structure have on farmer’s bottom line?
• input costs,
• reduced yields,
• etc.

How can we collaborate to make the implementation and maintenance of conservation practices equitable?
Farmers- Questions to Ask Yourself

• What conservation practices would improved the leased farm?
  – soil erosion,
  – surface water runoff,
  – soil fertility
  – etc.
Farmers- Questions to Ask the Landowner

• How much, if any, time and/or will you contribute?

• Non-monetary approaches:
  – Graduated rent to compensate for decreased yields?
  – Extend Lease term
  – Right of first offer for land sale
Maintaining Communication is the key

• A good lease reflects the parties’ understanding and circumstances are bound to change over time.

• Maintaining landowner/farmer communication ensures leasing arrangement remains mutually beneficial.
Using Lease Terms to Support Conservation

Term of Lease

– The longer the term- the more invested the farmer will be.
– A renewal provision allows for the parties to agree to extend the original term.
– You can agree to use a set formula or rental adjustment index to reach future rental rates.
Using Key Lease Terms:

Term of Lease

- A rent adjustment index to calculate rent on a formula that accounts for a variety of factors including commodity prices, land values, and the cost of farm inputs.
- Such an index should specify the particular market and time to be used and should be written in the lease agreement.
Using Key Lease Terms:

Term of Lease

- In some cases longer terms are unattractive options because of fear they will chill a sale.
- A possible solution is to include a right to termination, within a certain amount of time, if the property is listed for sale.
Terms: Right of First Offer/Refusal

- Alternatives to longer term:
- Right of first offer gives the farmer the first opportunity to purchase the property before the landlord offers it to third parties
- Right of first refusal gives the farmer the opportunity to match an offer made to purchase the farm
Using Key Lease Terms:

Type of Lease

– If a conservation practice will pose risk.
– A flexible cash lease or a crop share lease may be appropriate to share the risk.
Proration of Costs

- Use the lease to allocate costs of initial implementation and ongoing maintenance of the conservation practice
Sample lease provision: To compensate Tenant for the time and expenses contributed towards the creation of a __________, rent in year one of the lease shall be reduced by $_______ or %______.

Alternative: The rent for the first year of the term will be reduced by 15% and the reduction shall diminish by 5% each year until the full rental amount is due and owing.
Using Key Lease Terms:

Depreciation Schedule
- Helps safeguard the farmer’s investment in case the lease ends before the practice is developed
- A depreciation calculation allows farmer to be reimbursed by the landlord if the lease is terminated

<table>
<thead>
<tr>
<th>Conservation Practice</th>
<th>Tenant’s Net Cost of Installation</th>
<th>Annual Rate of Depreciation</th>
<th>Date Depreciation Begins</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grassed waterway</td>
<td>$1,250</td>
<td>10%</td>
<td>8/1/2017</td>
</tr>
</tbody>
</table>
Establish Conservation Standards

- Define Standards of good husbandry
- Maryland Courts have not recognized an implied covenant of good husbandry.
Tenant shall follow good agricultural practices in farming of the Premises. Tenant shall follow any farming recommendations of the United States Department of Agriculture, Maryland Department of Agriculture and/or the Soil Conservation District for the County in which the Premises is located. Tenant agrees to obtain and comply fully with Soil and Water Quality Plan(s) developed for the Premises during the term of this Lease.
The Agricultural Conservation Leasing Guide contains considerations and sample lease language for common practices.

For example, the use of cover crops
Considerations for Cover Crops

• Who will enroll in the cover crop financial assistance program?
• Who will pay for cover crop seed, labor, and equipment if state/federal payments are inadequate to cover costs? If the farmer and landowner plan to share payments at what percentage will they be divided?
• When cover crops are done growing will they be destroyed, suppressed, or used for livestock?
• Who pays the costs of terminating a cover crop?
“Tenant is encouraged to plant a fall cover crop on all fields planted the previous season and participate in the state or federal cover crop program for each year of the lease. If Tenant is awarded state or federal cover crop cost-share funding, he shall have the right to all cost-share funding. If cost-share payments from a state or federal source do not completely offset the cost of the planting and spraying or harvesting of cover crops, the Tenant shall be responsible for all overages.”
Troubleshooting

- Trust but verify
  - A landowner may want to reserve right to either receive or inspect the farm and take soil samples
  - These rights must be in the lease
“Tenant shall provide to Landlord copies of soil tests to confirm continued fertility of the soil.

Landlord may also collect soil samples for testing from the Premises at all reasonable times.”
Right to have a copy of the Nutrient Management Plan (NMP)

“Tenant shall be responsible for compliance with all laws, regulations, and policies related to nutrient management planning, including but not limited to, complying with nutrient application setbacks, if applicable, filing Annual Implementation Reports (AIRs) and ensuring the farm’s NMP is current. A copy of the NMP and AIRs shall be provided by Tenant to Landlord within ten (10) days of submission to MDA.”
Troubleshooting

- Include conservation maintenance provisions
  - Responsibilities for maintenance should be written into the lease
  - Farmer and landowner should be aware of what practices may damage or interfere with the conservation practices
Example of Maintenance Lease Language

Sample riparian buffer provision:

- *Tenant shall maintain the vegetative buffer, in accordance with SCD and NRCS standards, by mowing and/or applying recommended herbicides to control noxious weeds and/or invasive species.*
Sample riparian buffer provision:

• To compensate Tenant for the buffer maintenance, Tenant shall receive ___ % of the annual CRP rental payment received by Landlord.
Troubleshooting

• Maintain Landowner/Farmer Communication
  – Establish a requirement to meet and walk the farm annually

• Consider including a conflict resolution provision
  – MDA offers low-cost mediation for agricultural disputes
You will be contacted in the months following this presentation by the Hughes Center/ALEI and asked whether you have taken any steps towards:

- Initiating communication about conservation leasing goals
- Efforts to use conservation practices on leased acres.
  - Examples- agreeing to follow the terms of a conservation plan, applying for cost-share funding or technical assistance for a practice, entering into a new lease with conservation practice provisions, amending an existing lease to include conservation practices, using an agricultural conservation practice or expanding the use of an agricultural conservation practice.
  - If you take any of these steps, please let me know!
Thanks

Questions?

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