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Using a Lease to Support On-Farm Conservation and Ag Lease Builder Demo

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The Agriculture Law Education Initiative (ALEI) is a partnership of the Francis King Carey School of Law at the University of Maryland, Baltimore (UMB); the College of Agriculture & Natural Resources at the University of Maryland (UMCP); and the School of Agriculture and Natural Sciences at the University of Maryland Eastern Shore (UMES). ALEI is an initiative of the University of Maryland: *MPOWERING the State*, a strategic alliance between UMB and UMCP created in 2012 to significantly expand research collaboration, business development, and student opportunities at both universities.

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Disclaimer



This presentation is intended to provide general information and should not be construed as providing legal advice. It should not be cited or relied upon as legal authority. For advice about how these issues might apply to your individual situation, consult an attorney.

Conservation Practices on Leased Farmland



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- Approximately how much farmland in Maryland is leased?
- Conservation practices are less prevalent on leased acres.
- Why?
 - Communication
 - Leasing uncertainty
 - Knowledge deficit

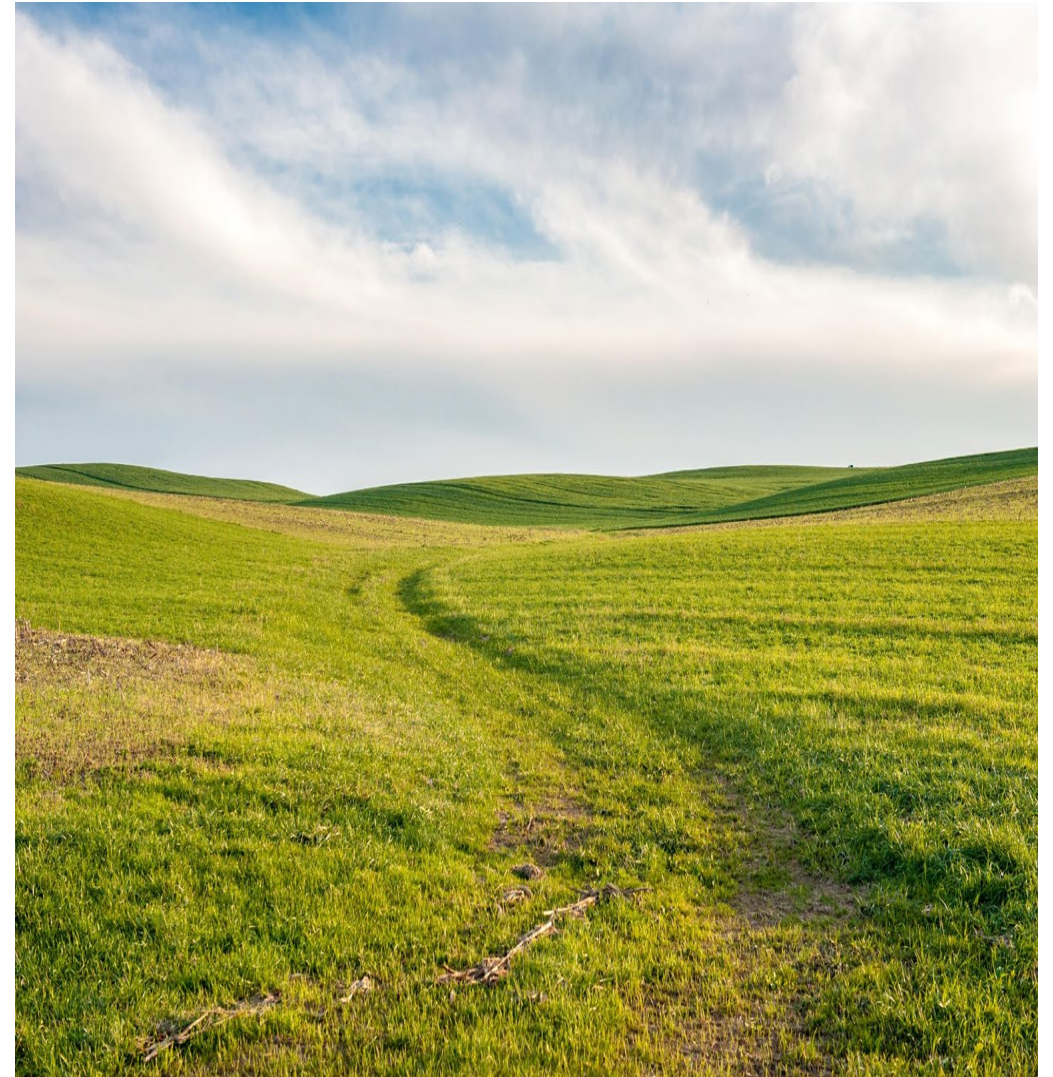


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Agricultural Conservation Leasing Project



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Value of leases

Preserve the leasing relationship

Reduce misunderstandings and legal conflict

Set expectations

Good business practice

Protect both parties

Very little MD law to fall back on

Often required for federal cost-share programs

Certainty = Investment

Conservation Leasing



- Conservation Leasing Project –
 - Funded by NE SARE
- Developed Agricultural Conservation Leasing Guide
- Trained ag service providers
- Service providers educated 167 farmers and 184 landowners
- 58 farmers made efforts to use conservation practices on leased acres
- go.umd.edu/conservationleasing



Structuring a Lease to Support Conservation



- Communicate to assess goals and reach consensus
- Consider the lease term
- Define farming standards
- Understand restrictions and easements
- Address specific practices
- Consider the costs and compensation
- Define landowner's right to entry
- Agree to review and revise



Leasing as a Tool



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Conservation Practices
Resources About Contact



Build a Lease



www.agleasebuilder.org

- **Build a Lease Tool** to support on-farm conservation
- **Who**- the roles of the state and federal players and contact info (UME, NRCS, SCD, NGOs)
- **What**- leasing and communication strategies for each party to consider
- **How**- sample lease language to support specific practices

Communication



- To the Landowner: What are your plans for the farm?
- To the Farmer: Are there characteristics of the farm that could be improved?



In any leasing arrangement, landowners and farmers need to recognize where their interests align and differ. Both parties may have something to gain from using agricultural conservation practices that safeguard the future health and profitability of farmland.

Landowner Strategies

A landowner should start the communication process by considering his or her own stewardship values and priorities, and then consider how they relate to the farmer's. The following is a list of initial considerations for a landowner.

Kick starting Communication



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- How could conservation practices benefit the land?
 - Refer to or update a soil conservation and water quality plan
 - Seek help from NRCS/SCD/Extension
- How can we make implementation and maintenance equitable?



Type of Rent



- Conservation practices may impact profitability
- A crop share rather than fixed cash lease may be appropriate to share the risk

A screenshot of a document titled "Rent" from the University of Maryland. The document discusses different types of lease arrangements for landowners and farmers. It includes a "Continue" button at the bottom left and a "Powered by Typeform" button at the bottom right. The text is as follows:

3 → Rent

For leasing parties accustomed to using fixed cash rent, one way to allocate risk is to consider a flexible cash lease or a crop share lease.

A flexible cash lease allows the landowner to receive a rate based on acreage, but the rate may fluctuate based on crop yields or market prices. A flexible cash lease may be appropriate when the parties to a lease fear adopting a conservation practice will reduce yields.

In contrast, a crop share lease provides the landowner with a percentage of harvested crop profits for land use, though the farmer must also share the cost of inputs. With a crop share lease, the landowner may be classified as self-employed for tax purposes, which could lead to higher taxes. Anyone with concerns about tax consequences should consult their accountant.

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Length of Lease



- How does the length of a lease impact on-farm conservation?
 - Farmers are not guaranteed a long-term interest in the leased land
 - Conservation practices often take time to create yield results
 - A year-to-year lease doesn't give farmer assurance that he/she will benefit from the practices



Farm Lease Term



- If conservation practices are present, parties may want to consider a lease that matches the life of the practice.
- An alternative to a long-term lease may be a right of first offer or refusal.

A screenshot of a document titled "Lease Term" from the University of Maryland Agriculture Law Education Initiative. The document is displayed in a browser window with a dark border. The text is as follows:

2 → Lease Term

In this section we will cover the start date of your lease, the term, and a number of details that include termination and renewal. This section will consist of a total of five questions. The lease term can impact the types of farming practices used on the farm. A short-term lease gives a farmer little motivation to examine the sustainable management and long-term health of natural resources on the farm.

A longer-term lease gives a farmer more security to make a return on his/her investment in the property.

A lease term can also be extended to match the life of a conservation practice or for however long a conservation practice continues to provide the intended benefits.

At the bottom right of the document, there are two blue buttons: an upward arrow and a downward arrow, followed by the text "Powered by Typeform".

Defining Farm Stewardship



- **What is good stewardship?**
 - You can define it by referencing state or national standards or incorporating by reference a farm conservation plan
- **What growing practices will the farmer use?**
 - Organic, pesticide applications, etc.





7 → Farm

- a. Conservation
Is there a

A Yes

B No

7 → Farm Stewardship

b. Farm Stewardship Provision

Please choose the provision you feel best suited for your draft Agricultural lease:

Provision A. Tenant shall follow the farming best practices of the State Department of Agriculture and the _____ County Soil Conservation District.

Provision B. A copy of the Soil Conservation and Water Quality Plan for the Farm is attached to this Lease as Exhibit A. The Soil Conservation and Water Quality Plan is made apart of this Lease and Tenant agrees, to the maximum extent practicable, to implement the best management practices and natural resource strategies outlined in the Plan.

A Provision A

Restrictions & Conservation Easements



- Permitted uses?
 - What else besides farming can the farmer do?
- Conservation easement?
 - If so, consider making compliance part of the lease and attaching a copy of the easement as an exhibit to the lease.



Restrictions & Conservation Easements



5 → Permitted Use

a. Agricultural and Non-Agricultural

Will the tenant be allowed to use the land for agriculture? For example, will the tenant be allowed to use the land for agriculture? For example, will the tenant be allowed to use the land for agriculture? For example, will the tenant be allowed to use the land for agriculture? For example, will the tenant be allowed to use the land for agriculture?

- A Tenant shall only use the land for agriculture.
- B In addition to farming, the tenant shall be allowed to use the Farm for other purposes.

10 → Conservation Easement

A farmer should be made aware of all easements on leased farmland and the restrictions those easements might have on farming. For example, conservation easements may restrict agricultural production in certain areas, thereby reducing the amount of land that can be farmed.

To avoid confusion, all easements should be referenced in the farm's lease, a copy of the easements should be attached to the lease, and compliance with the easements should be documented in the lease. Fully informing a farmer about restrictions on use at the beginning of the leasing relationship will prevent future conflict.

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Address Specific Practices



8 → Conservation Practices

Example: Cover Crops

- Considerations
 - Who will enroll in the cover crop payment program?
 - What varieties of cover crops will be planted?
 - Who pays the expenses if state/federal payments are inadequate to cover costs?

a. Add Cover Crops

Cover crops can reduce wind and water erosion, preserve or improve soil health, use excess nutrients that could otherwise pollute waterways, and suppress weeds or pests. Farmers may consult with their SCD to determine which crop or combinations of crops are eligible to plant as cover crops.

A Yes

B No



Consider the Costs & Compensation



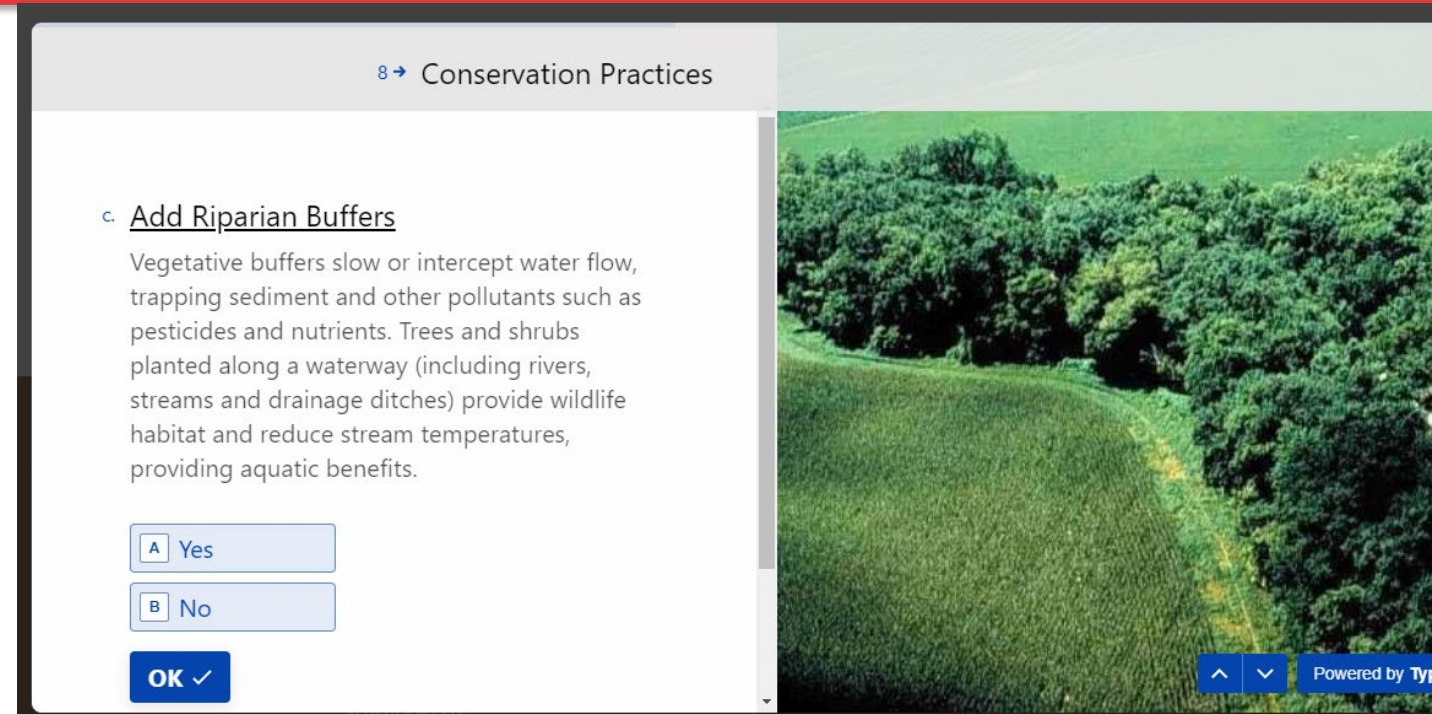
- Possible costs include
 - Initial implementation/construction
 - Yield/Profit losses
 - Maintenance
- Consider addressing costs in the lease
 - Rent can be discounted
 - Program payments can be shared
 - Non-monetary benefits (ex. longer lease term)
- Don't forget about the tax implications!

Address Costs & Compensation



Example: Riparian Buffer

- Considerations
 - Is the farmer aware of the required width of the buffer?
 - Are the maintenance restrictions of the buffer area clear?
 - What are the disease and weed management challenges and implications for a vegetative buffer?



- If the buffer is enrolled in a conservation program (e.g. CRP) will the funds be shared?

Right to Entry



- When can the landowner enter the Farm?
- Required notice?
- Environmental testing and soil samples?

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13 → Right to Entry Activities

What will the landowner be able to do upon entry of the property?

Choose as many as you like

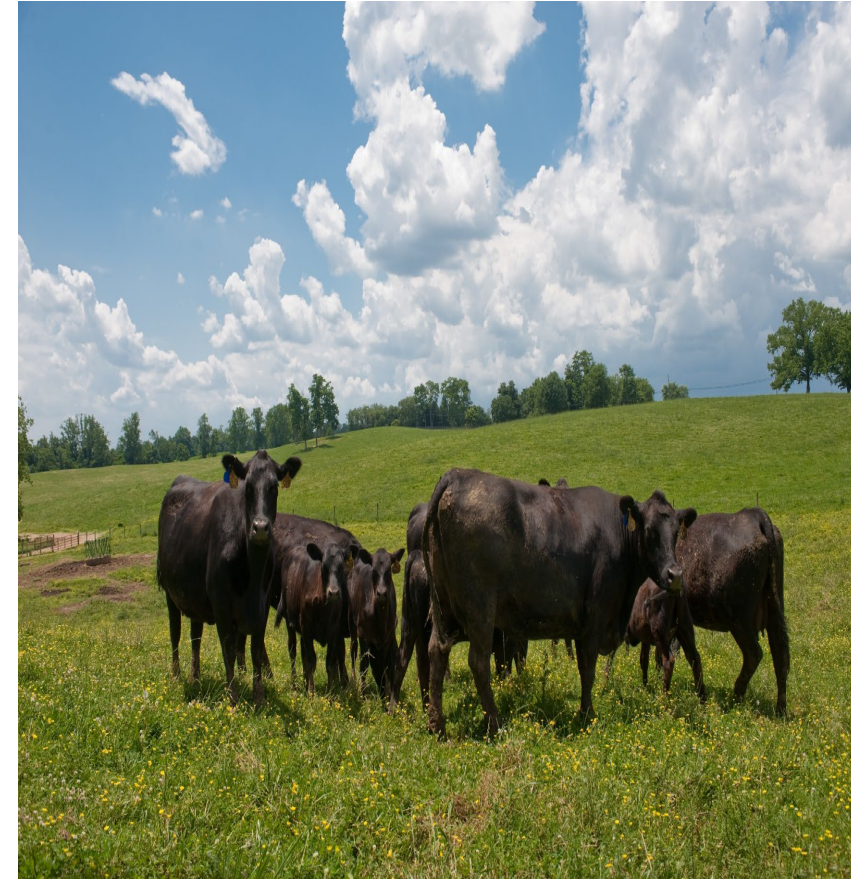
- A consult with Tenant
- B make repairs, improvements, and inspections
- C after notice of termination of the lease is given, perform tillage, seeding, fertilizing, and any other customary seasonal work, including planting a cover crop
- D hunt and fish wildlife during applicable seasons and according to the laws, rules, and regulations of the state, none of which is to interfere with the Tenant in carrying out regular farm operations.
- E Other

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Breach & Right to Cure



- **A good lease considers the “what ifs”.**
- What happens if the rent is late?
 - Is there a penalty? Is there a grace period?
- What constitutes a breach?
- What happens upon a breach?
 - Do the parties give notice and have time to resolve the issue?



Mediation & Attorney's Fees



- Do you want to mediate before we litigate?
- If we go to court, who pays for the attorney's fees?

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16 → Mediation

Mediation is a confidential, non-adversarial process where an impartial neutral individual attempts to bring the parties to a resolution. Both parties can benefit from having a neutral third-party involved in dispute resolution. Most states have a USDA-certified, low-cost program specifically for mediating agricultural disputes. You can find a list of state programs at <https://www.fsa.usda.gov/programs-and-services/certified-mediation-program/certified-mediation-states/index>

A section on pursuing mediation before litigation can be written into a lease so, in the case of a conflict, the parties must first try to settle any dispute through mediation before initiating litigation.

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Continuation to maintain a good working

Legal Review & Troubleshooting



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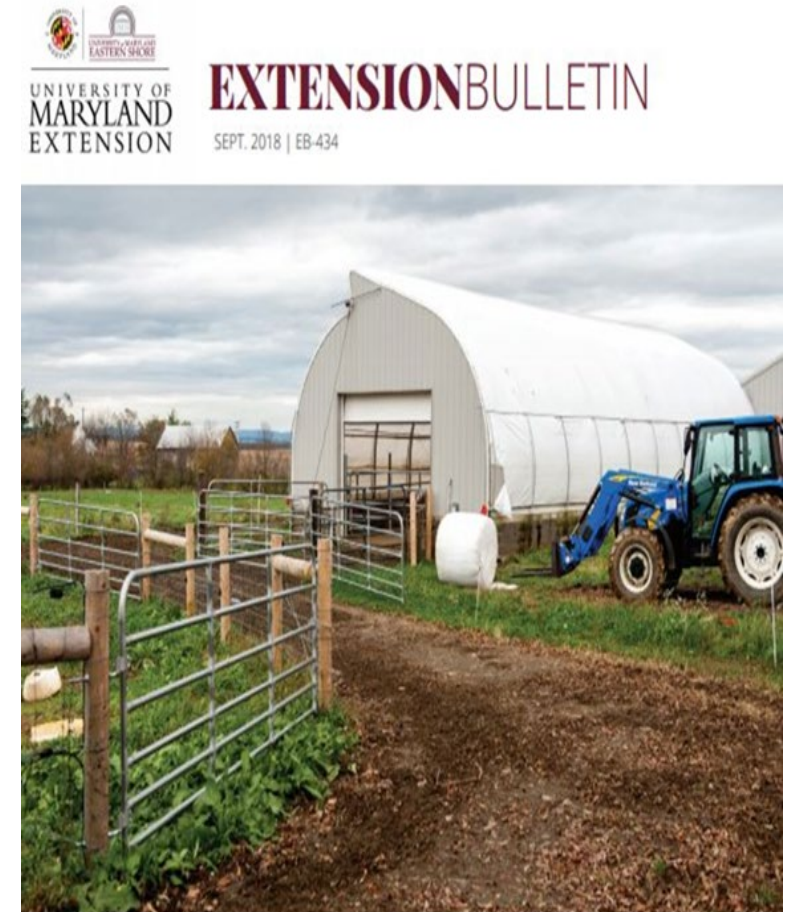
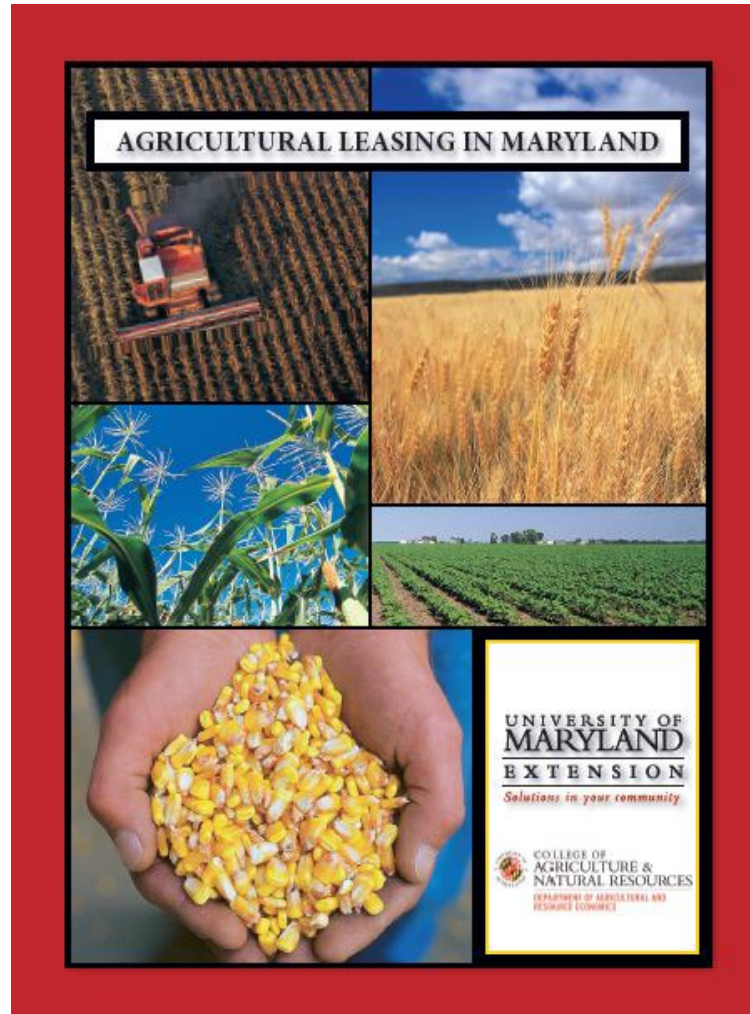
- Ag lease builder.org generates a draft that should be reviewed by a qualified attorney.
- Make sure you understand your obligations.
- Agree to meet annually to verify practices
 - Revise as needed!





Leasing Resources

- ALEI has many ag leasing resources included printed resources, fillable leases (grain, poultry, grazing), and videos.
- Check out www.umaglaw.org/publications
- (Farm Leasing)



Agricultural Conservation Leasing Guide

Thanks



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I am happy to take questions.



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