



How to Lease Your Land With a Conservation Easement



PHOTO: EDWIN HEIMBERG

In Maryland, a conservation easement is an agreement a landowner signs to protect rural properties with agricultural, historic, natural, scenic, scientific, open space, or recreational significance.

A conservation easement is a right or power which a landowner gives to a third party. These third parties are usually a government agency or a land trust. Landowners may choose to donate easements for a variety of reasons, including tax benefits and/or an interest in land conservation for environmental or other concerns. A landowner gives away his or her right to develop the land for the assurance that it will forever be maintained in a certain use. Conservation easements remain in place in perpetuity, which means they remain on the land no matter how many times it is sold.

In Maryland, a conservation easement is an agreement a landowner signs to protect rural properties with agricultural, historic, natural, scenic, scientific, open space, or recreational

significance. Usually, agricultural conservation easements require the land to remain in agricultural production. For more information on conservation easements, see <http://go.umd.edu/ConEaseEP>.

How Do I Know I Have a Conservation Easement?

Before closing on a property, look for copies of the original conservation easement in the county land records. Since the terms of conservation easements never expire, there should be language in the real estate contract used during the property purchase. You may also be given a copy of the conservation easement along with any supporting documents regarding soil conservation or any other relevant plan prior to closing.

How Do I Lease a Conservation Easement?

Overall, land with an easement is leased like any other property. Advertise through platforms that farmers interact with, ensure the lessee is trustworthy, craft a well-written lease, and use clear communication strategies. Resources covering how to develop a written lease and communicate with the other party are available at <http://go.umd.edu/MDAgLease>.

Before closing on a property, look for copies of the original conservation easement in the county land records. Since the terms of conservation easements never expire, there should be language in the real estate contract used during the property purchase.

How Do I Get the Word Out?

When leasing a conservation easement, make sure you are advertising the land appropriately. Clearly state the dedicated use of the land, such as agricultural, scenic, historical, etc. If the land has been conserved for agriculture, advertise the property through sources farmers use when looking for land. A good initial resource for listing or finding farmland to rent is Maryland FarmLink (<http://www.marylandfarmlink.com/>), which offers a “Property Exchange” allowing landowners and potential tenants to find property for rent in the state. Consider regional papers such as the Delmarva Farmer, online sites like Craigslist, and check out institutional resources, including Maryland Department of Natural Resources and University of Maryland Extension. Local extension educators may be able to put you in touch with farmers looking for land. Maryland Department of Natural Resources runs a webpage listing some available easement properties at http://dnr2.maryland.gov/met/Pages/Property_listings.aspx.

How Do I Know I Can Trust the Lessee?

Finding trustworthy and responsible tenants is always important, but even more so when the property contains limitations associated with a conservation easement. As in any other rental situation, ask to see a resume, and request references from potential tenants as well as a credit history. Specifically ask if the potential tenant has any prior experience working on land with conservation



PHOTO: EDWIN REMSEBERG

Finding trustworthy and responsible tenants is always important, but even more so when the property contains limitations associated with a conservation easement.

easements or how much they know about easements. More information on communicating with your potential tenant is available at <http://go.umd.edu/MDAgLease>.

How Do I Communicate Conservation Easement Restrictions or Limitations?

The best way to communicate the parameters of the easement is to put it into a contract. You can add a section to the leasing agreement specifically addressing the conservation easement. Provide a copy of the original conservation plan, which may include management and soil conservation plans. Rather than trying to create an exhaustive list of every possible approved and restricted use, communicate the spirit of the conservation easement and provide copies of the easement.

The problem with writing a list of restricted uses is that someone will always come up with something that hasn't occurred to you. You can also use the contract to set parameters for what the tenant can do with and without your consent or that of the easement holder. The land trust or governmental agency holding the easement are valuable resources and both have staff to help with communication and meet with you and the farmer to make sure the terms of the easement are understood. For example, you may decide the tenant may build structures of a given size or for certain purposes at their discretion, but will need your approval for other uses. This will allow you to discuss with the easement holder if the structure can be built.



PHOTO: EDWIN REMSBERG

When land contains a conservation easement, it is especially important the tenant understands his or her responsibilities since violating the easement can have serious financial and/or legal consequences.

In any landowner-lessee relationship, clear, open communication is critical. When land contains a conservation easement, it is especially important the tenant understands his or her responsibilities since violating the easement can have serious financial and/or legal consequences. Depending on the violation, there may be an even larger consequence of damaging the land and hindering conservation efforts. If possible, establish guidelines for how the tenant can contact you with questions or concerns about the property.

What Are My Responsibilities in Making Sure the Conservation Easement Limitations Are Followed?

The level of your responsibility is related to how you write the lease and explain the conservation easement requirements. If your lease clearly communicates that the burden of following easement guidelines falls on the tenant, any violation can be considered a violation of the lease. For example, if you clearly state that the public cannot enter the property, and you find the tenant has been hosting public events there, that is a violation of the lease and could lead to a termination.

Generally, easement violations would be dealt with the same way as any violation of a lease. Once you have clearly communicated the tenants' responsibilities, it is their job to follow the rules. Some governmental agencies and land trusts holding easements will meet with you and the farmer to make sure everyone understands the uses permitted by the easement terms. For example, if the conservation easement requires a 100-foot buffer along designated waterways, you and the farmer can meet with the easement holder to ensure this provision is followed, especially if the farmer is planning on tilling near the buffer area.

How Do I Determine a Good Rental Rate?

Setting a fair rental rate is not an easy process. Many factors can go into determining the rental rate for the farmland including size and shape of fields, proximity to water, access, location, soil types, and restrictions on the property from the conservation easement. Resources exist to assist you in developing your rental rate. University of Maryland Extension summarizes the USDA cash rent survey for Maryland each year. This survey provides a county average rental rate (\$/acre/year) and is available at <http://go.umd.edu/MDAgLease>.

Other resources to aid you in determining a cash rental rate for your farmland include websites such as aglease101.org and fairrent.umn.edu, which offer worksheets for landlords and tenants to determine a cash rent range useful in negotiations. University of Maryland Extension also offers yearly crop budgets to estimate costs of production which can be helpful in developing a rental rate, available at <http://go.umd.edu/CropBudgets>.

Authored by:

Mayhah Roma Suri
Extension Environmental
Specialist



Paul Goeringer
Extension Legal Specialist



PHOTO: EDWIN REMSBERG

The best way to limit your risk is to develop a good lease. Provide as much information as you can about what a conservation easement is and use language to convey the spirit of the conservation easement rather than a long list of approved uses.

Landlords may also want to consider other options when renting the farmland, such as a crop-share lease. With a crop-share lease, the landlord receives a percentage of the crop harvested in return for allowing the tenant to utilize the farmland. There are drawbacks to both crop-share leases and a cash rental leases, and you should discuss with your accountant which works best for you. For more information on the differences between cash rental rate and crop-share leases, see <http://go.umd.edu/MDAgLease>.

How Can I Limit My Personal Financial and Legal Risks?

The best way to limit your risk is to develop a good lease. Provide as much information as you can about what a conservation easement is and use flexible language to convey the spirit of the conservation easement rather than a long list of approved uses. Ensure you and the tenant both know each person's responsibilities. Although it may seem unfriendly or overly cautious to have an involved leasing agreement, a good lease will protect you in case there is a conflict over the land in the future. ■

**University of Maryland
College of Agriculture
and Natural Resources**
**Department of Agricultural
and Resource Economics**
Symons Hall, Room 2119
College Park, MD 20742
(301) 405-1293
www.umaglaw.org
Twitter: @MDAgLaw

The Agriculture Law Education Initiative (ALEI) is a collaboration of the University of Maryland Francis King Carey School of Law at the University of Maryland, Baltimore ([UMB](http://www.umb.edu)); the College of Agriculture & Natural Resources at the University of Maryland, College Park ([UMCP](http://www.umcp.edu)); and the School of Agricultural and Natural Sciences at the University of Maryland Eastern Shore ([UMES](http://www.umes.edu)). 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, business development, and student opportunities at both universities.