

WHAT TO CONSIDER WHEN DEVELOPING A LEASE?

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COLLEGE OF
AGRICULTURE & NATURAL RESOURCES

DEPARTMENT OF AGRICULTURAL &
RESOURCE ECONOMICS

Disclaimer

This presentation is intended to provide general information about leasing laws and should not be construed as providing legal advice. It should not be cited or relied upon as legal authority. State laws vary and no attempt is made to discuss laws of states other than Maryland. For advice about how these issues might apply to your individual situation, consult an attorney.

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- <http://www.mpowermaryland.com>

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The Agriculture Law Education Initiative is a collaboration between the University of Maryland Francis King Carey School and College of Agriculture & Natural Resources, University of Maryland, College Park. Through the University of Maryland Extension - the statewide, non-formal agriculture education system - the collaboration partners with the School of Agricultural and Natural Sciences, University of Maryland Eastern Shore.

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MPOWERING THE STATE

OVERVIEW

Overview

- To be valid a lease needs:
 1. Valid contract
 2. Extent of the property to be leased
 3. Definite lease term/how long will the lease be for?
 4. Definite rental rate
- Note none of this 4 requirements states the lease should be written, an oral lease could be valid if it meets the 4 requirements

A Leasing Checklist

1. Make sure there is an economic gain for both parties.
2. Put the lease in writing!
3. Make sure the lease provides for legal protections for both parties.
4. Make sure both parties have agreed on the contribution each is to make to the lease.
5. Keep complete and accurate records.
6. Decide who is responsible for which jobs.
7. Agree on the responsibility for maintaining buildings, facilities, and soil fertility.
8. Set a date rent will be paid on or no later than.
9. How will tenant be compensated for improvements, if the lease ends early.
10. Know how the lease is to terminate, automatically renew, and will rent be recalculated.

ECONOMIC GAIN

Make sure there is an economic gain for both parties

- Three types of leases
 1. Crop-share lease
 2. Fixed cash lease
 3. Flex-cash lease
- Each provides some form of economic gain
- Each type requires varying levels of recordkeeping and monitoring
- We will discuss all of these in the next session.

PUT IT IN WRITING

Put the Lease in Writing

- Oral leases
 - Pros:
 - Simple, usually just have a rent and lease term clauses, and generally no other clauses
 - Shows trust in other party
 - Parties like to think the other one will always be reputable and honest with them.
 - Cons:
 - May not always meet legal requirements
 - No written record
 - No reminder of what was agreed upon
 - Any legal dispute will rest on which party is more believable.

Put the Lease in Writing

- Written leases
 - Pros:
 - Have a written record of terms
 - Allows the parties to negotiate the lease and develop a lease that works for them
 - Clearly define who is responsible for what during the life of the lease
 - Good business practice
 - Provides proof to lenders you actually have the acreage claimed under lease
 - Cons:
 - Looks like the parties do not trust each other
 - May prefer there be no record of what was agreed to

Put the Lease in Writing

- Who is this famous person and why do I have her picture here? (No it is not to give you something better to look at than my face for a minute)



Put the Lease in Writing

- Answer: Marilu Henner was on *Taxi* and suffers from a condition called Hyperthymesia or the ability to remember specific events on specific days of her life – basically she recalls everyday of her life and what happened with complete accuracy.
- Unless you are one of the few people in the world diagnosed with that condition, you probably should consider putting your leases into writing. Trend has been for leases to last multiple years and everyone needs a reminder of what was agreed to – unless you and the other party are Marilu Henner.

Put the Lease in Writing

- No requirement that a lease be in writing, unless the lease is for a period longer than 1 year.
 - Example 1, lease that runs from January 1, 2013 to December 31, 2013
 - Not required to be in writing and can be oral
 - Example 2, lease that runs from January 1, 2013 to December 31, 2013 and can continue after Dec. 31, 2013 until terminated by one of the parties
 - Not required to be in writing
 - Example 3, lease that runs from January 1, 2013 to December 31, 2015 is for a period longer than 1 year
 - Needs to be in writing.

Put the Lease in Writing

- Sometimes “in writing” is not one document. Can be series of emails or letters that both parties can determine responsibility from.
- Much safer to also to make one writing at the end.
- Has happened in Maryland before, recently, so be aware of it.

LEGAL PROTECTIONS

Make sure the lease provides for legal protections for both parties.

- Is the lease one-sided (protects only one of the parties)?
- Does the lease offer protections to both parties?
- Certain protections to keep in mind:
 - Right of landlord to come on the property or allow others on
 - Recreational value
 - Can the tenant assign or sublease the land?
 - What about death or bankruptcy?

Growing Crops

- What if you have crops growing when the lease terminates?
 - Common law view was if the lease had a definite termination date then not entitled to harvest growing crops
 - Are exceptions to this rule
 - What is the practice in the area? Did landlord make some assurances?
- Big deal to consider if participating in Cover Crop Program and required to destroy the crop by March 1.



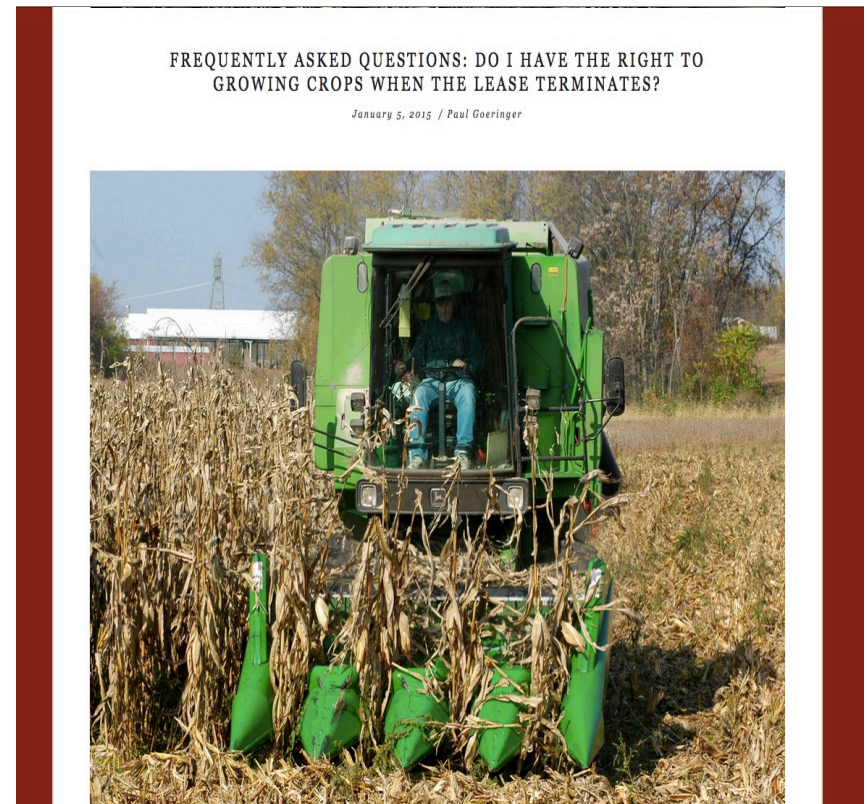
Growing Crops



- Highlight this so you will remember to settle this issue in the lease.
- Typically way to handle is to allow tenant reasonable time to collect unharvested crops at harvest time

Legal Protections

- Get curious about discussion of growing crops and other legal protections
- Check out MD RME Blog at www.aglaw.umd.edu



Legal Protections

- Highlight the first issue to show problems that have existed with all leases.
- Think about previous issues in leases and layout how to handle those issues.
- Other issues:
 - How to handle improvements
 - What about irrigation? (well only a problem in certain areas).

CONTRIBUTIONS

Make sure both parties have agreed on the contribution each is to make to the lease

- Will the landlord only be contributing the land? Will tenant cover everything else?
- Will landlord cover some of the production expenses (crop-share arrangement)?
- If farm has irrigation on it and pump breaks who pays for the cost of repairs?

Insurance

- General liability insurance
 - Tenant will want to insure any of their equipment on the property, such as grain augers and tools
 - Landlord will want to insure any buildings or permanent structures on the property
- Crop Insurance
 - Tenant will carry burden with cash rent and flex cash lease. Landlord may want to require certain coverage level on crops grown on leased property to insure payment of rent
 - Tenant and landlord can split crop insurance costs based on the crop share

RECORDS

Removal of Fixtures

- Unless agreement states otherwise, Maryland tenant has right to remove fixtures they erected on the leased property when the lease terminates



Removal of Fixtures

- May have to agree to return surface to original state when fixture is removed.
- Area where good records can come in handy
- Take pictures before and after fixture is built.
 - That way we know condition of area before structure went up.
 - Have something to show condition land should be returned to when fixture removed.
- What about provision to have landlord buy?

JOBS

Agree on the responsibility for maintaining buildings and facilities

- Similar to last thought, want to early on say who does what if the rented land has buildings, fences, or other structures.
- May not ever be an issue but always good to settle it early on
 - Both parties have chance to negotiate solution that works best for them
 - Less likely to be hurt feelings
 - Court may not always come up with best solution



Good Husbandry Practices

- Good husbandry practices is broad but means those agricultural practices that conserve fertility, usefulness, and value of the soil.
- Idea is to prevent tenant from using property in way to reap quick profit but use land in way that sustains it.
- Considered by many to be an implied duty in the lease
 - Implied means does not have to be explicitly included in the lease
 - We just assume it exists in the lease
 - But no MD court has said this duty exists.

WHEN IS RENT DUE

Set a rent payment date

- When traditionally should you pay rent on farmland?
- Same question, but imagine 5, 10, 15, etc. years into the future, will the farmland have the same owner and would that owner know what tradition is?
- Clearly set out when rent will be due and how many days past that before it considered late.
- If using a crop-share or flex-cash set far enough past harvest date to give you enough time to get records in order.

Failure to Pay Rent

- Cash rent and flex cash rent leases have no automatic statutory liens in growing crops for unpaid rent
- Landlord can include language in lease to create security interest in crops for unpaid rent, but requires certain steps to be done to be valid.
- With crop-share leases, a statutory lien is created in growing crops for rent.

COMPENSATION FOR IMPROVEMENTS

How to compensate for improvements if the lease ends early?

- What happens if you decide a rented farm needs to be irrigated and your landlord doesn't agree, so you go out pay to put in the irrigation equipment and 3 years later landlord terminates the lease?
- Another way is to consider in the lease including language that before the tenant makes any improvements over a certain dollar value (for example \$500) will talk with landlord first:
 - Have landlord agree that improvement is necessary
 - If landlord won't pay set up payment schedule if lease terminated early.

How to compensate for improvements if the lease ends early?

- For example:
 - Tenant needs to include a barn on the rented farmland to aid with her cattle operation, barn would cost \$100,000 to build, have a useful life of 20 years, and depreciate at \$5,000/year.
 - Landlord agrees for the barn to be built and if the lease is terminated within the next 20 years, then landlord agrees to pay to tenant the undepreciated amount of the barn.
 - If terminated 1 year after building the barn then landlord would pay \$95,000 to tenant
 - If terminated in year 15, then landlord would pay tenant \$25,000.

TERMINATION

Know How the Lease Terminates, Automatically Renews, and How to Recalculate Rent

- Want to know clearly early on how to terminate the lease or what if anything needs to be done to renew the lease.
- As tenant:
 - How many months notice would you like to get/give to terminate?
 - Should you be required to give notice that you want to renew the lease?
 - Should the rent be recalculated every few years?
- As landlord:
 - How many months notice is enough when terminating the lease? How long would it take to find a new tenant?
 - Do you want some kind of notice each year from tenant on renewing the lease?
 - How often should rent be recalculated?

Lease Termination

- Lease may terminate on certain date, may or may not require notice to be given
- Either party will need to follow proper termination process
- If lease specifies process, then follow that process exactly
- If lease doesn't then must follow Maryland law and that requires 6 months notice to terminate a farm lease (MD. Code Real Property Section 8-402)
 - Allows for oral notice of termination, but again better practice to use written notice.
 - Written provides a record.

Lease Renewal

- Lease renewal is always the responsibility of the tenant
 - Landlord can never force a tenant to renew
 - Landlord can only accept offer to renew or find a new tenant
- Lease can also extend automatically until notice of termination is given. Very common in agricultural leases.
- Maybe in both parties best interest to require some form of notice (around same time notice of termination would be due) that tenant would like to renew the lease the next year.

THANKS

ANY QUESTIONS?

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SETTING A FAIR RENTAL RATE



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Question that I hate

- I hate the phone call that eventually ends with “Paul, is \$X a good rental rate?”
- Why do I hate this question?
 - Answer is simple, I have no idea what a good rental rate is on any property
 - Well I do but its going to be one that I’m actually farming on because I will know the issues we are about to discuss
- Thing is most of you will know what we are about to talk about

SIMPLEST WAY

Fair Rental Rate?

RENT, CASH, CROPLAND, NON-IRRIGATED - EXPENSE, MEASURED IN \$ / ACRE													
County	2002*	2003*	2004*	2005*	2006*	2007*	2008	2009	2010	2011	2012	2013	2014
Caroline	\$65.64	\$74.66	\$70.44	\$81.26	\$75.68	\$73.85	\$67.50	\$75.50	\$71.50	\$73.50	\$78.50	\$90.50	\$ 95.50
Cecil	\$68.28	\$61.74	\$68.39	\$72.31	\$74.44	\$72.19	\$71.00	\$79.00	\$68.00	\$71.00	\$85.50	\$103.00	\$ 89.50
Dorchester	\$67.50	\$62.72	\$73.58	\$82.56	\$76.92	\$77.54	\$65.50	\$76.00	\$68.50	\$75.50	\$66.00	\$83.00	\$ 95.50
Queen Anne's	\$73.39	\$83.40	\$86.15	\$90.47	\$91.81	\$92.18	\$86.00	\$79.50	\$75.00	\$81.00	\$113.00	\$116.00	\$ 122.00
Talbot	\$69.77	\$78.40	\$74.86	\$76.71	\$83.12	\$83.02	\$71.00	\$78.00	\$75.50	\$77.50	\$105.00	\$114.00	\$ 109.00
Wicomico	\$53.91	\$58.56	\$62.86	\$71.45	\$73.20	\$73.21	\$64.00	\$65.50	\$64.50	\$67.50	\$84.50	\$80.50	\$ 77.50
Worchester	\$65.84	\$73.08	\$73.16	\$75.04	\$80.64	\$82.38	\$79.00	\$82.50	\$77.50	\$77.00	\$82.00	\$92.50	\$ 84.50

RENT, CASH, CROPLAND, IRRIGATED - EXPENSE, MEASURED IN \$ / ACRE					
State & County	2010	2011	2012	2013	2014
Caroline	\$100.00	\$118.00	---	\$156.00	\$161.00
Cecil	\$119.00	\$119.00	---	\$131.00	
Dorchester	\$110.00	\$100.00	\$152.00	\$160.00	\$161.00
Kent	\$118.00	\$119.00	---	\$131.00	\$147.00
Queen Anne's	\$100.00	\$117.00	---	\$131.00	\$136.00
Talbot	\$119.00	\$119.00	---	\$131.00	

Fair Rental Rate

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Search

PROGRAMS ▾ LOCATIONS ▾ GET INVOLVED ▾ LEARN ▾ NEWS & EVENTS

etting Clubs Crop Budgets Crop Insurance Custom Rates Estate Planning Lease Agreements

rm Bill

Grain Marketing

NEW

2015 Custom Rates and Crop Budgets now posted!

Headlines:

Rolling Clovers 4-H Club February Update

Uses for Your Nutrient Management Plan (Other Than a Doorstop)

2015: International Year of Soils

The Mid Winter Blah's

Progressive Clovers February Update

[More headlines](#)

er Acre 2015

\$397.51 \$43

- Remember those are averages
 - So rents can be higher and lower than that \$
- Available online for you at UME Grain Marketing page

Fair Rental Rate

- Can also find at aglaw.umd.edu
- USDA releases about August or September of each year

2014 MARYLAND AND DELAWARE COUNTY CASH RENTS

September 14, 2014 / Paul Goeringer



Photo by Edwin Remsburg



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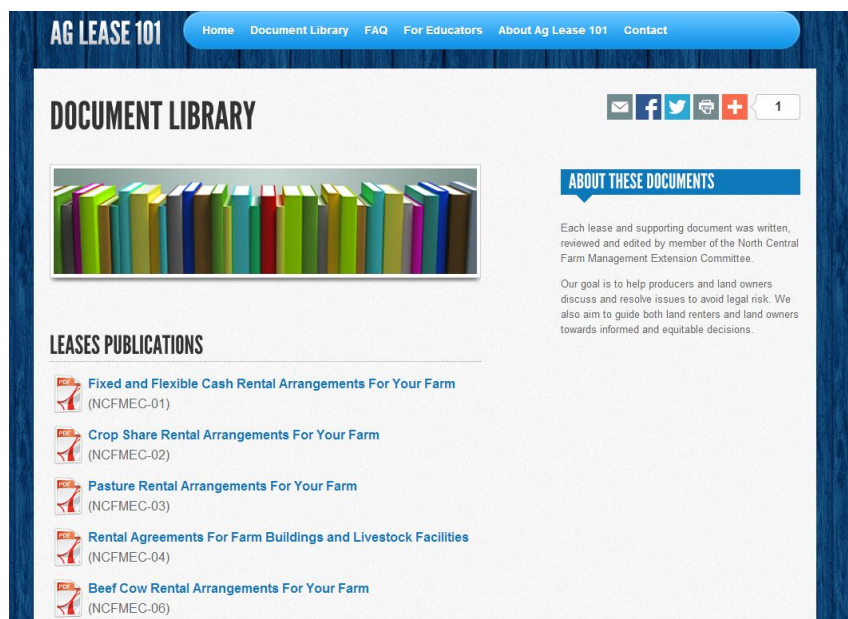
How to Calculate a Good Rent Price

- Many may have no idea where to start in calculating rent.
- Going to be a big deal to set a good rent:
 - Needs to be at level beginning farmer can afford
 - Needs to be at a level that is good for landlord
 - Potentially going to have to look at renegotiating this every year (not something we normally do in ag).



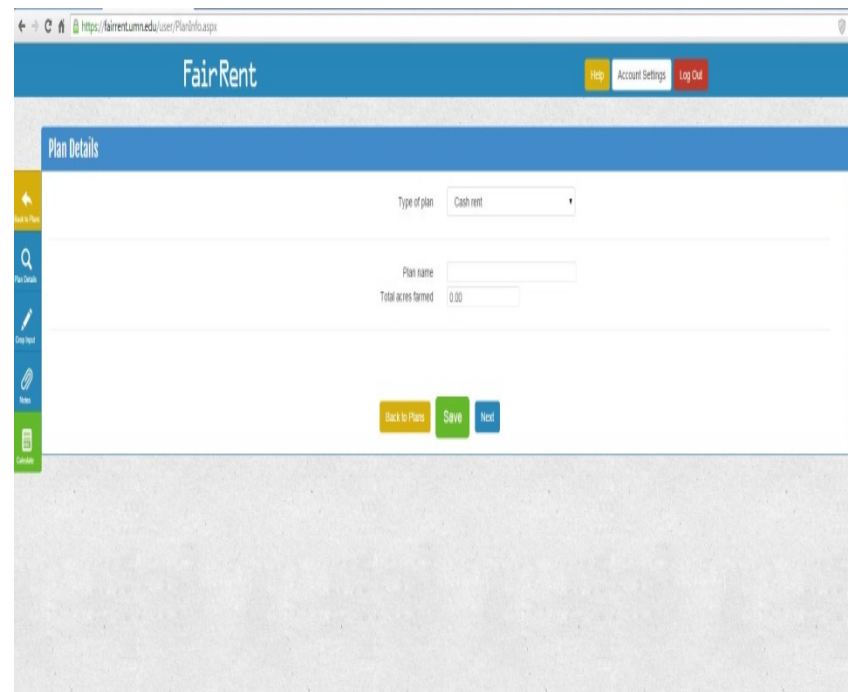
How to Calculate a Good Rent Price

- Aglease101.org has worksheets available to help calculate this rent level
- Has resources available to do cash, flex-cash, and crop-share rents



How to Calculate a Good Rent Price

- Don't like printing off a worksheet and using pen and paper?
- Fairrent.umn.edu is new online resource that lets user input in factors and it spits out rent levels.

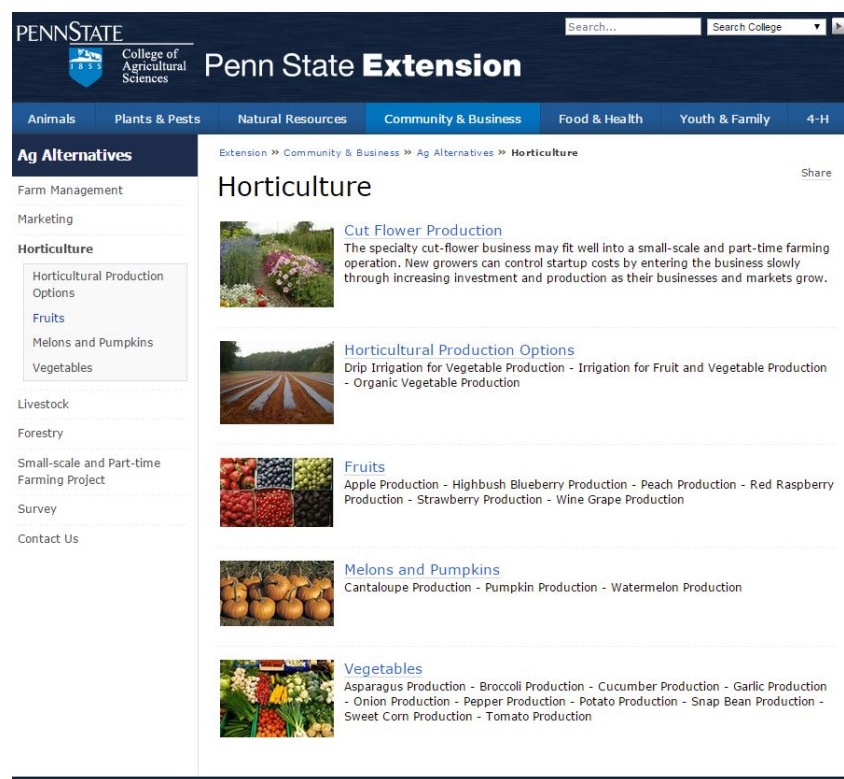


The screenshot shows a web browser window with the URL <https://fairrent.umn.edu/user/PlanInfo.aspx>. The page has a blue header with the "FairRent" logo and links for "Help", "Account Settings", and "Log Out". Below the header is a "Plan Details" section. On the left side of this section is a vertical navigation menu with icons for "Back to Plans", "Plan Details", "Plan Tools", "Plan Input", "Plan History", and "Plan Output". The main content area contains a "Type of plan" dropdown menu set to "Cash rent", a "Plan name" text input field, and a "Total acres farmed" text input field with the value "0.00". At the bottom of the form are three buttons: "Back to Plans" (yellow), "Save" (green), and "Next" (blue).

How to Calculate a Good Rent Price

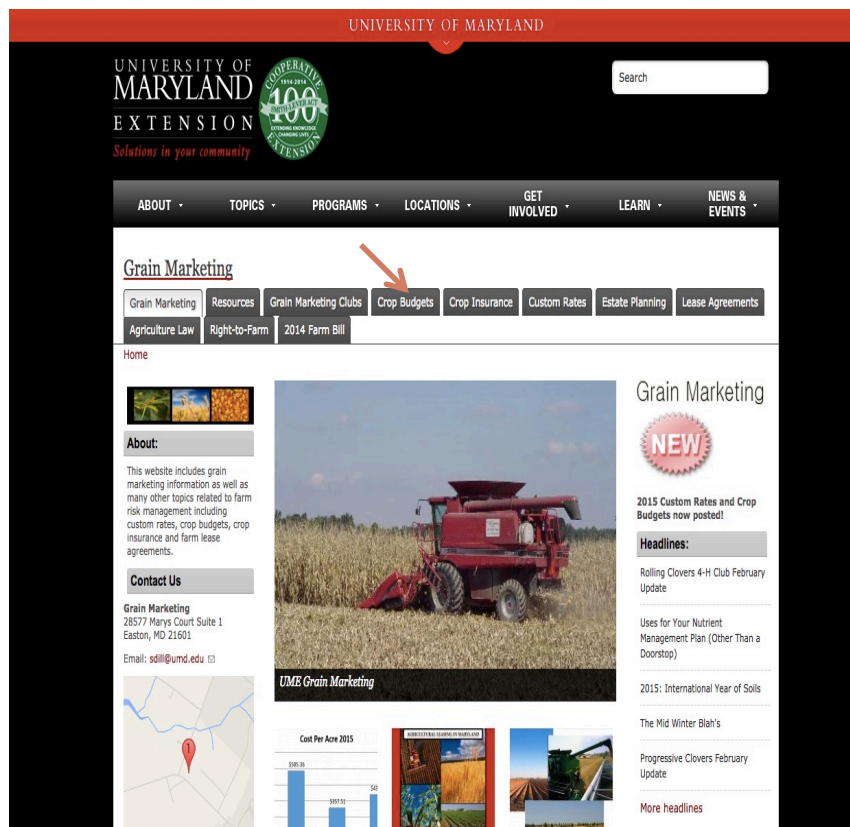
- Main drawback to both resources are you have to know your costs of production.
- If no idea what those are, budgets exist to give you an idea of some costs of production.

<http://extension.psu.edu/business/ag-alternatives/horticulture>



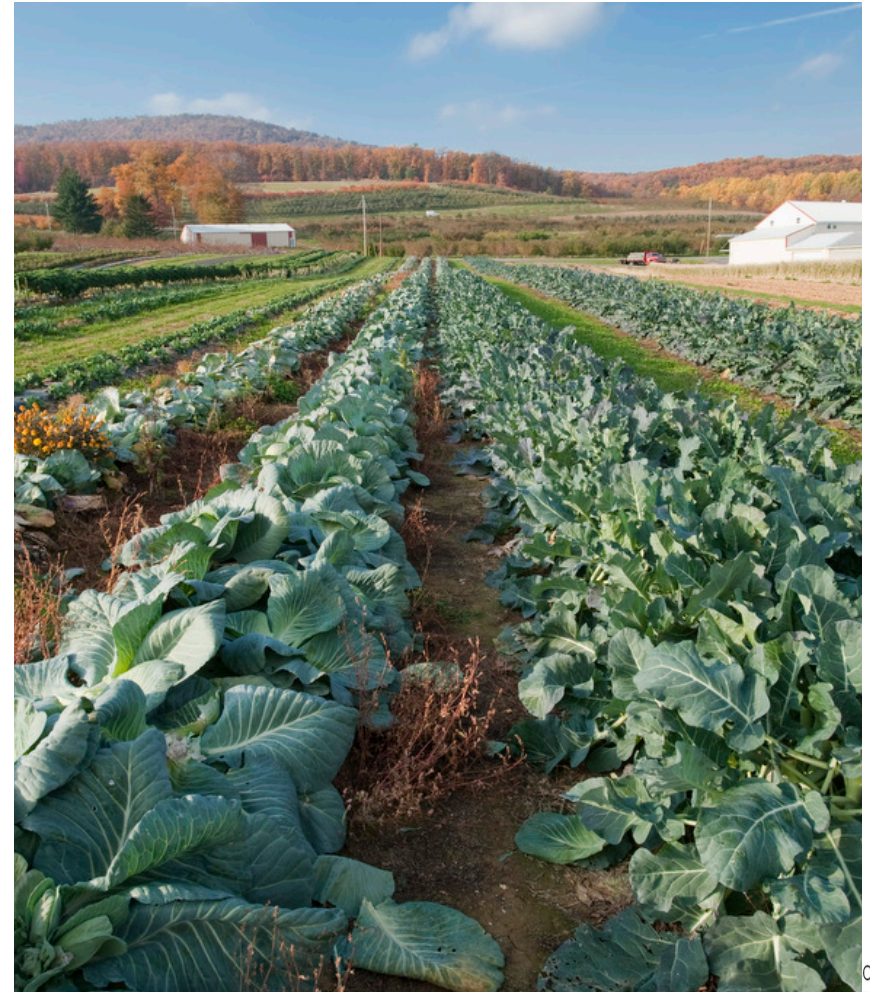
How to Calculate a Good Rent Price

- You will need to know costs of production
 - What does it take you to traditionally produce an acre of your crop?
 - What do you need to sale that crop at to make a profit?
- UME does have budget available for some crops
www.extension.umd.edu/grainmarketing



How to Calculate a Good Rent Price

- Can always talk to neighbors
- Good resource especially for beginning producers



SOURCES



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Example Farm

FairRent

Crop Input for Sample produce farm

Add to Farm
 Search
 Add Input
 Notes
 Calculate

Crop	Tomato	Watermelons	Sweet Corn
Unit	Acre	Acre	Acre
Acres	2	2	2
Expected yield	500.00	2,000.00	1,250.00
Expected price	\$10.00	\$3.00	\$3.00
Other income	0.00	0.00	0.00
Seed	539.95	900.00	51.40
Fertilizer	115.25	151.87	81.70
Chemicals	778.64	246.43	397.36
Crop insurance	0.00	0.00	0.00
Drying	0.00	0.00	0.00
Custom hire	115.87	249.80	135.85
Direct crop labor	1,003.44	1,357.70	280.50
Fuel	36.30	60.45	117.01
Repairs	8.92	33.38	84.18
Irrigation	650.00	787.80	217.80
Other direct expenses	1,483.54	1,344.90	921.80
Overhead expenses	50.00	50.00	50.00
Operating interest	42.87	62.67	27.62
Interest on rent	0.00	0.00	0.00
Operator labor & mgt	0.00	141.75	30.75
Crop insurance APH	0.00	0.00	0.00
Crop insurance price	0.00	0.00	0.00
Crop ins. coverage (%)	0.00	0.00	0.00

Add a Crop
Delete
Delete
Delete

Prev
Save
Next

Remaining for rent	663.25	1,404.03	225.22
Breakeven rent for all crops	764.17		
Maximum Rent to Cover Expenses			
	30 % Lower Revenue	15 % Lower Revenue	Expected Revenue
To cover direct expenses	-653	84	822
To cover direct and ovt'd expenses	-653	84	822
To cover unpaid labor & management	-711	27	764
			15 % Higher Revenue
			30 % Higher Revenue
			1,559
			2,297
			2,297
			2,239

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University of Minnesota

FairRent
www.fairrent.umn.edu

Sample produce farm

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11/5/2014

Cash Rental Analysis: Breakeven Cash Rent at Varying Yields and Prices

Watermelons

Price Per Acre	1,400.00	1,700.00	Yield Per Acre 2,000.00	2,300.00	2,600.00
2.10	-2,397	-1,767	-1,137	-507	123
2.55	-1,767	-1,002	-237	528	1,293
3.00	-1,137	-237	663	1,563	2,463
3.45	-507	528	1,563	2,598	3,633
3.90	123	1,293	2,463	3,633	4,803

Sweet Corn

Price Per Acre	875.00	1,062.50	Yield Per Acre 1,250.00	1,437.50	1,625.00
2.10	-508	-115	279	673	1,067
2.55	-115	363	842	1,320	1,798
3.00	279	842	1,404	1,967	2,529
3.45	673	1,320	1,967	2,613	3,260
3.90	1,067	1,798	2,529	3,260	3,992

Tomato

Price Per Acre	350.00	425.00	Yield Per Acre 500.00	575.00	650.00
7.00	-2,325	-1,800	-1,275	-750	-225
8.50	-1,800	-1,162	-525	113	750
10.00	-1,275	-525	225	975	1,725



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Revisiting Rental Rates

- Big deal with cash rents
 - Many farmers still paying same rate they got 20 years ago on a farm – not just in Maryland all over the US.
 - Maybe in both parties interest to include language to recalculate the rental rate every 2 to 3 years.
 - That way cash rental rate isn't too low
 - As tenant could help prevent other farmers coming in and offering landlord more rent
- Same with flex-cash and crop-share rates, offer to revisit every 2 to 3 years just to make sure that:
 - Base rental rate (if you have one) accurately reflects any increases in cash rent value
 - Make sure all yield increasing expenses are covered (new tech. could come along not covered by original agreement).

THANKS

ANY QUESTIONS?

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