

# DEVELOPING A BETTER CSA CONTRACT

Paul Goeringer, Extension Legal Specialist,  
CSA Workshops and Webinar 2015



## Sponsorship

Research is based on a Federal  
State Marketing Improvement  
Program grant from:



Thank you to our other sponsors:



Maryland Crop Insurance:



*This institution is an equal  
opportunity provider*  
UNIVERSITY OF MARYLAND  
DEPARTMENT OF AGRICULTURE  
DEPARTMENT OF AGRICULTURAL &  
RESOURCE ECONOMICS

## Partners in the grant:



COLLEGE OF  
AGRICULTURE & NATURAL RESOURCES  
DEPARTMENT OF AGRICULTURAL &  
RESOURCE ECONOMICS



UNIVERSITY OF MARYLAND  
**AGRICULTURE LAW  
EDUCATION INITIATIVE**  
EMPOWERING THE STATE



## University of Maryland MPower

The University of Maryland: *MPowering the State* brings together two universities of distinction to form a new collaborative partnership. Harnessing the resources of each, the University of Maryland, College Park and the University of Maryland, Baltimore will focus the collective expertise on critical statewide issues of public health, biomedical informatics, and bioengineering. This collaboration will drive an even greater impact on the state, its economy, the job market, and the next generation of innovators. The joint initiatives will have a profound effect on productivity, the economy, and the very fabric of higher education.

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



## Agriculture Law Education Initiative

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.

Website: [www.umaglaw.org](http://www.umaglaw.org)

Twitter: @MdAgLaw

Facebook:

[www.facebook.com/MdAgLaw](https://www.facebook.com/MdAgLaw)

Email: [umaglaw@umd.edu](mailto:umaglaw@umd.edu)



UNIVERSITY OF MARYLAND  
**AGRICULTURE LAW  
EDUCATION INITIATIVE**  
EMPOWERING THE STATE



COLLEGE OF  
AGRICULTURE & NATURAL RESOURCES  
DEPARTMENT OF AGRICULTURAL &  
RESOURCE ECONOMICS

## Disclaimer

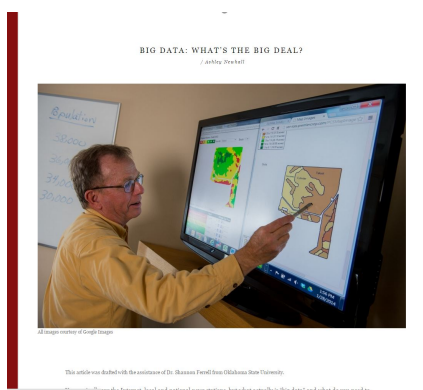
This presentation is intended to provide general information and should not be construed as providing legal advice. It should not be cited or relied upon as legal authority. State laws vary and any attempt made to discuss laws of states other than Maryland is for general information to help the viewer better understand Maryland law. For advice about how these issues might apply to your individual situation, consult an attorney.



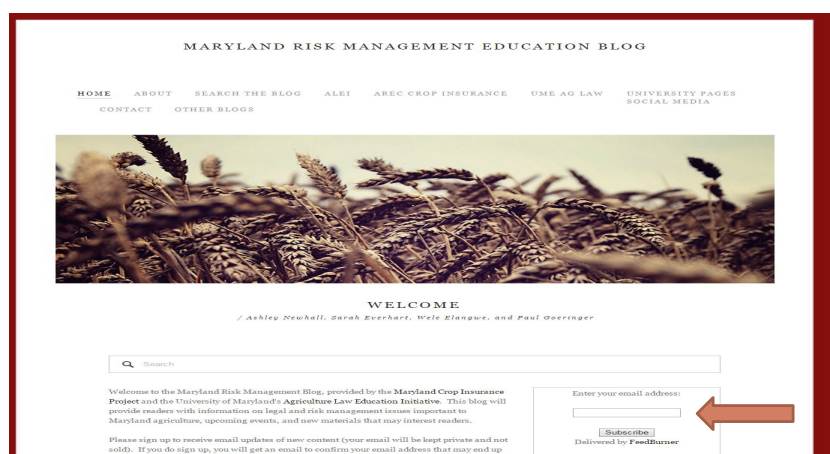
COLLEGE OF  
AGRICULTURE & NATURAL RESOURCES  
DEPARTMENT OF AGRICULTURAL &  
RESOURCE ECONOMICS

## Want to learn more?

- [www.aglaw.umd.edu](http://www.aglaw.umd.edu) cover a wide range of topics on farm policy, crop insurance, and legal issues
- Can sign up for updates

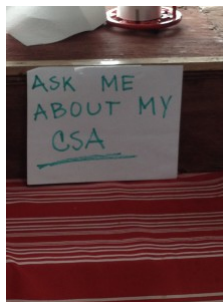


## Want to learn more?



## Overview

How many of you view your CSA as a risk management tool?



## Overview



- In a way it really is a risk management tool:
  - Potentially reduces borrowed capital.
  - Ready market
  - Any other benefits?
- Idea of CSA is sharing the risk



## Overview

- Although risks shared in CSA issues do arise.
- Not uncommon for (fill in disaster) to hit
- Literature on CSA contracts is lined with stories of members contacting attorneys.



## Overview

- Ashley has laid out the problems with many contracts used in CSAs.
- Literature shows this is a national problem (not a Maryland problem).



# MODEL CONTRACT

## Model Contract

- We are finalizing a model contract with this project.
  - Contract will cover areas typically seen in the CSA business model.
  - Not areas that are typically covered in every one of your CSA contracts.



## Model Contract



- We have tried to keep the “legalese” to a minimum in the contract
- This was done because contract is potentially a marketing tool to show how your farm operates



## Model Contract

- Other sources for model contracts:
  - Farmcommons.org
  - Connecticut Extension
  - Other sources are available



## Model Contract



- We've developed this to cover all potential issues seen before.
- Remember we are lawyers, our job is to be over cautious
- Want a contract that works for you?
  - Talk to an attorney



## Model Contract

- Contents of the model contract:
  1. Growing Practices
  2. Products and Delivery
  3. Risk of Crop Failure
  4. Crop Surplus
  5. Membership fees
  6. Communication
  7. Indemnification and Hold Harmless



# GROWING PRACTICES

## Growing Practices

- How are you currently growing crops/livestock on the farm?
  - Certified Organically?
  - Organically?
  - Grass-fed?
  - Grain-fed?
  - GMO free?



## Growing Practices



- Why do you want to do this in the contract?
- Its already on your website right?
- Isn't this just repetitive?



## Growing Practices

- Yes it could be repetitive, but acts as reminder before future member signs the agreement
- If any dispute ever arises with member on your growing practices, already spelled out in contract



## Growing Practices

- So how do you do this for your contract?
- Just copy and paste the language you are already using on your website.
- Remember see the contract as a way to market your CSA, but
- Be clear in the exact practices you are using and do not use too much fluff.



PRODUCTS AND DELIVERIES  
MEMBERS SHOULD EXPECT

---

## Products and Deliveries Members Should Expect



- What products do you grow?
- When are these products available?



## Products and Deliveries Members Should Expect

- New members accustomed to shopping for produce in grocery stores may not be familiar with the availability of locally grown foods.
- How do you demonstrate this?
  - Simple chart or list of what you grow and when you expect deliver to take place
  - Again going to be similar to what is on your website



## Products and Deliveries Members Should Expect

- But Paul, I grow X number of crops and this list could be huge
- Best thing is to include the list in your contract, but can potentially reference list on your website



## Size of Delivery



- Keep in mind if you use a specific weight or volume will need to have equipment (scales, etc) checked by MDA Weights and Measures



## Delivery location

- Make sure to include:
  - Delivery location(s);
  - Days of delivery take place
- If have multiple delivery locations have them check box on contract.
- Make clear what requirements are to pick up the share.
- Specify what happens if share no picked up.



All right  
stop,  
Collaborate  
and listen



## Parol Evidence Rule

- Remember the **Parol Evidence Rule** that Ashley discussed earlier
  - Is a contracting rule used by courts that can limit inclusion of evidence that “clarifies” a contract.
  - The idea is that all your negotiations are reflected into the final document (ie the contract).
- By including in the contract, you clarify potential areas of dispute.
  - Yes I realize you would prefer the document to be short sweet and to the point
  - Short sweet and to the point can come back to hurt you



## Parol Evidence Rule

- Can also do this by using Appendixes or referencing back to spots on your website and including copies for potential members.



# RISK OF CROP FAILURE

## Risk of Crop Failure

- Crop failures do happen (disease, drought etc).
- Are your shareholders aware of this?
- Want to remind them that this is possible.



## Risk of Crop Failure



- Why do you want to remind shareholders of this?
- MDA has gotten complaints when farmer stops delivering due to crop failures
- Literature points out happens across the US



## Risk of Crop Failure

- Want to reinforce idea that crops can fail
- Section drives home idea that CSA model is about shared risk



## Risk of Crop Failure



- Have you dealt with a crop failure before?
- If so describe how you handled it.
- Makes member aware of how you could potentially handle the situation.



## CROP SURPLUS SECTION

## Crop Surplus Section

- Many of you potentially already handle this issue through notifications on your websites, newsletters, or social media accounts.
- But contract needs to include language on how this is potentially going to be handled.
  - Remember the Parol Evidence Rule
  - Want to make sure member is aware of how this could be handled.
- Language could be what we have in the model contract to simply reminding them to pay attention to newsletters/ social media/website for announcements



## MEMBERSHIP FEES

---

## Membership Fees

- It is important that your members understand and know the cost of each individual share and what it is paying for.
- This takes away surprises down the road



## Membership Fees



- Pricing the fee can be difficult
- Factors to consider:
  - Market for products
  - Size of share
  - Cost of production
  - Etc.

## COMMUNICATIONS BETWEEN FARM AND MEMBER

---

### Communications Between Farm and Member

- Lets face it farming can change from day to day depending on conditions.
- Spell out how you expect to communicate with them
  - Most likely will be email but communication preferences can change



## Communications Between Farm and Member



- Remember to highlight newsletters or social media accounts that they will have access to see what is going on on the farm.
- Both can keep members aware of day-to-day conditions



## INDEMNIFICATION AND HOLD HARMLESS

---

## Indemnification and Hold Harmless

- Just additional protection included in many contracts.
- This clause will reduce the farmer's legal exposure if a member is injured while visiting the farm, in the event of crop failure or if a member cracks a tooth on a piece of produce from the farm.
- Ex of language:
  - by signing this Agreement, the Member hereby releases, indemnifies and agrees to hold harmless the Farm, its agents and employees from any and all claims and/or liability from being on the Farm property, being at any of the CSA pick-up locations, from the purchase of a CSA membership or the use or consumption of food provided by the Farm.



## Conclusions

- CSA contract is not a simple document.
- Contract is going to need to address:
  1. Growing Practices
  2. Products and Delivery
  3. Risk of Crop Failure
  4. Crop Surplus
  5. Membership fees
  6. Communication
  7. Indemnification and Hold Harmless



## Conclusions

- Will your contract include all these sections?
  - All going to depend on your operation.
- Need to bare in mind the Parol Evidence Rule and make sure that you reference or specifically include areas from your website into the contract



## Conclusions



- When using the model contract, you are free to use whole thing or pick and choose portions you want to use.
- Or feel free to modify them to fit your operation.
- Consider having an attorney review what you come up with



# THANKS ANY QUESTIONS?

---

Contact info:

Website: [www.extension.umd.edu/aglaw](http://www.extension.umd.edu/aglaw)

Blog: [www.aglaw.umd.edu](http://www.aglaw.umd.edu)

SSRN: <http://ssrn.com/author=1948372>

Phone: 301-405-3541

Twitter: @AgLawPaul

Email: [lgoering@umd.edu](mailto:lgoering@umd.edu)



COLLEGE OF  
AGRICULTURE & NATURAL RESOURCES

DEPARTMENT OF AGRICULTURAL &  
RESOURCE ECONOMICS