

SHELLFISH AQUACULTURE LEASE TRANSFER FACT SHEET

OVERVIEW

What is the purpose of a commercial shellfish lease transfer?

A shellfish lease transfer can be used to:

- add one or more new co-leaseholder(s) to a lease;
- remove one or more existing co-leaseholder(s); or
- transfer the lease to one or more new parties entirely.

How do I request to transfer my lease?

The current leaseholder should complete and submit a Request to Transfer a Commercial Shellfish Aquaculture Lease form to the MD Department of Natural Resources (DNR) using full, legal names. The form is available at: dnr.maryland.gov/fisheries/pages/aquaculture/transfer.aspx.¹

UNDERSTANDING ROLES

Who can be a leaseholder?

Any individual who is at least 18 years of age can be a leaseholder. A business entity can also be a leaseholder if it meets certain criteria and provides associated supporting documentation to the DNR.

What are the criteria and documentation required for a corporation or other business entity to be a leaseholder?

For a corporation to be a leaseholder, Maryland law requires that the business be organized under the laws of the State of Maryland and that more than 50% of the stock of the corporation be owned by Maryland residents.²

For a lease to be transferred into the name of a corporation or other business entity, the business must be active and in good standing with the Maryland State Department of Assessments and Taxation (SDAT).

At least one individual with legal signatory authority who is able to bind the business in a contract with the State of Maryland must also be referenced by name and business title on the request to transfer. A business must also submit the following as part of the Request to Transfer a Commercial Shellfish Aquaculture Lease form:

- Proof of an SDAT ID number (see dat.maryland.gov);
- Copy of the Articles of Organization;
- Copy of the Operating Agreement or By-Laws; and;
- Resolutions (if required by the business' Articles of Organization or Operating Agreement).

**UNDERSTANDING
ROLES, *continued*****Who is a primary leaseholder?**

The primary leaseholder is the first or only person or business entity to be listed on a lease agreement as a lessee. This is an administrative label which designates to whom DNR will direct all general correspondence pertaining to the lease. It does not imply or grant any additional rights, stake or ownership in the leasehold.

Who is a co-leaseholder?

Co-leaseholder(s) are additional lessees listed on a lease. They have the ability to sign documents including but not limited to Monthly Harvest Reports and Annual Usage Reports. In the event of a primary lessee's death, any co-lessee(s) would automatically assume the remainder of the current term of the lease, and all obligations associated with the lease. The next-listed co-leaseholder on the lease agreement would be considered the new primary leaseholder.

What happens if no co-leaseholder is named, and the sole leaseholder dies?

Upon the death of a sole leaseholder, the lease will automatically revert back to the State. A shellfish lease is not inheritable as part of a will or estate and cannot be passed down to the next of kin.

Who is an assignor?

An assignor is an existing leaseholder who is transferring/assigning his or her interest in the lease.

Who is an assignee?

An assignee is a corporation, business entity or individual(s) to whom an interest in a lease is being transferred/assigned. If the primary leaseholder is changing, the first assignee listed on the transfer request form will be designated as the primary leaseholder when the DNR drafts the personalized lease transfer form.

Who may legally sign documentation related to a commercial shellfish lease?

In general, lease-related documents and reports may only be signed by an individual named as a legal leaseholder on a Shellfish Lease Agreement or subsequent Transfer of Shellfish Lease Document. Some documents require the signature of all legal leaseholders in order to be considered complete. Documentation pertaining to a lease held in the name of a business may only be signed by an individual for whom satisfactory documentation has been provided to the DNR establishing signatory authority on behalf of the business.

How might transfer requirements differ if one or more current leaseholders will not be changing?

At the discretion of the DNR, if one or more current leaseholders will not be changing as the result of the transfer, the requirements for completion of a Partial Year Usage Report and/or Application for the Transfer of a State Commercial Shellfish Aquaculture Lease may be waived. Otherwise, the person receiving a transferred lease shall complete a lease application for approval by DNR.³ Shellfish Aquaculture Harvester Permit and Registration Cards must only be returned for Permittees and/or Registrants being removed from association with a lease.

UNDERSTANDING THE PROCESS

What happens after the Request to Transfer a Commercial Shellfish Lease form is submitted?

Upon receipt of a Request to Transfer form, DNR staff review the information for completeness and also concurrency with lease records. Forms submitted with incomplete or incorrect information will be returned for revision. After acceptance of a completed form, staff will initiate a complete review of the lease record to verify eligibility for transfer, and, if applicable, draft personalized transfer forms. These and any other required forms will be sent to the current primary leaseholder, along with a detailed cover letter and instructions. The current primary leaseholder is responsible for coordinating with all other parties for completion of the necessary forms and their submission back to the DNR.

Is notarization required?

The personalized transfer form must be signed and dated in the presence of a public notary by all parties. If any portion of the form is signed prior to the certification by the public notary, or if a notary fails to fully complete their designated section of the form, the form will not be legally valid and new forms will need to be completed.

Who is responsible for the lease after the transfer documents are submitted but before the DNR approves the lease transfer?

Until the DNR approves the lease transfer, the current leaseholder(s) remains responsible for what happens on the lease, and for meeting all reporting requirements.

When is the lease officially transferred?

The lease is officially transferred when the DNR has signed the transfer form to execute it. After the executed transfer form is administratively recorded, a copy will be mailed to the assignee designated as the primary leaseholder.

After the lease transfer is complete, does the DNR issue new lease documents?

No. The most recently issued shellfish lease agreement (or lease renewal agreement), together with any subsequent amendments or transfer forms, still make up the legal lease document(s) of record, even if that lease agreement lists a previous leaseholder's name. It is the responsibility of the new leaseholder to request and secure copies of these lease documents and associated permit, which together show the chain of custody of the lease and its terms and conditions. Leaseholders who also hold a lease permit from the U.S. Army Corps of Engineers must also reach out to the Corps and follow the transfer requirements for that permit.⁴

When a lease is transferred, does the term of the lease change?

No. The term of a shellfish lease is not changed by a transfer. The assignees named as leaseholders on the transferred lease retain the current term of the lease.

SHELLFISH AQUACULTURE HARVESTER PERMIT FAQs

Who is a Permittee?

A Permittee is a leaseholder(s) named on the lease who also has a Shellfish Aquaculture Harvester Permit (SAHP). Anyone designated as a Permittee shares the responsibility for meeting the requirements of the permit, including monthly harvest reporting. To be issued a SAHP, a new applicant must obtain an Aquaculture Declaration through COMPASS (compass.dnr.maryland.gov) and satisfy DNR harvester education requirements.

Do I need to be a Permittee to be a leaseholder?

The primary leaseholder must be a Permittee. Co-leaseholders who do not anticipate conducting activities on the lease or signing lease reports are not required to obtain a SAHP.

Who are the permit Registrants?

Registrants are the individuals authorized by the leaseholder to engage in aquaculture activities on the lease, with or without the SAHP Permittee being present. All individuals conducting aquaculture activities on the lease, including Permittees, must have a Shellfish Aquaculture Harvester Registration Card (SAHRC) on their person at all times, unless under the supervision of a Permittee who is also present on the lease.⁵

Aquaculture activities include purchasing, monitoring, bottom preparation, planting, sale, possession, harvest, production, breeding, transportation, and processing shellfish in State waters or in areas used for shellfish cultivation.⁶

To be issued a SAHRC, every Registrant must obtain an Aquaculture Declaration through COMPASS and satisfy DNR harvester education requirements.

Can a business entity be a Permittee?

No. Only individuals (natural persons) can apply for a SAHP. Individuals with legal signatory authority and who are able to bind that business in a contract with the State can submit a SAHP Application.

REFERENCES

- 1 Lease Transfers DNR Website**
dnr.maryland.gov/fisheries/pages/aquaculture/transfer.aspx
- 2 Md. Code Ann., Nat. Res. § 4-11A-05 (2012)**
mgaleg.maryland.gov/mgawebwebsite/laws/StatuteText?article=gnr§ion=4-11A-05&enactment_s=False&archived=False
- 3 Md. Code Ann., Nat. Res. § 4-11A**
mgaleg.maryland.gov/mgawebwebsite/laws/StatuteText?article=gnr§ion=4-11A-01&enactments=false
- 4 U.S. Army Corps of Engineers Shellfish Aquaculture in Maryland Website**
www.nab.usace.army.mil/Missions/Regulatory/Aquaculture
- 5 Maryland Code of Regulations – COMAR 08.02.23.04 (2016)**
dsd.maryland.gov/regulations/Pages/08.02.23.04.aspx
- 6 Maryland Code of Regulations – COMAR 08.02.23.02(B)(1)(2013)**
dsd.maryland.gov/regulations/Pages/08.02.23.02.aspx



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