

AGRICULTURAL CONFLICT RESOLUTION SERVICE (ACReS)

**Presented to
Maryland State Bar
Agricultural Law Committee
June 18, 2015**

**Mae Johnson
ACReS**

**Maryland Department of Agriculture (MDA)
(410-841-5778 / mae.johnson@maryland.gov)**

OBJECTIVES

- **Increase awareness of USDA Certified Mediation Program as an opportunity to resolve disputes**
- **Increase awareness of opportunity to resolve Right to Farm disputes using mediation**
- **Increase understanding and awareness of the availability of MDA mediation services**
- **To encourage participants to share mediation information with farmers, producers and others impacted by agricultural issues**

MARYLAND AGRICULTURAL MEDIATION PROGRAM

- **Funded by Federal Grant with matching state funds for U. S. Department of Agriculture (USDA) related activities and credit**
- **Funded by State Maryland Department of Agriculture for Right to Farm issues**

TWO PART MEDIATION PROGRAM

The Maryland Agricultural Conflict Resolution Service (ACReS) manages a two part mediation program:

- 1) USDA CERTIFIED STATE MEDIATION PROGRAM**
- 2) MARYLAND RIGHT TO FARM**

During this presentation, both portions of the program will be discussed.

PART I

USDA CERTIFIED STATE MEDIATION PROGRAM

Maryland is one of 36 states certified by the U. S. Department of Agriculture to offer mediation for issues relating to USDA programs and activities and credit. For a list of certified states visit:

http://www.fsa.usda.gov/Internet/FSA_File/ag_med_prgr_table_1a.pdf

http://www.fsa.usda.gov/Internet/FSA_File/ag_med_prgr_table_2a.pdf

http://www.fsa.usda.gov/Internet/FSA_File/ag_med_prgr_table_2.pdf

USDA CERTIFIED STATE AGRICULTURAL MEDIATION PROGRAM REGULATIONS

- Section 502 of the Agricultural Credit Act of 1987 (Pub. L. No. 100-233, January 6, 1988)
- Title II of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, 7 U.S.C. 6995 (Public Law 103-354), and 7 Code of Federal Regulations (CFR) 614.
- [Department of Agriculture Regulation 4710-001: Alternative Dispute Resolution](#)
- [Administrative Dispute Resolution Act of 1996](#)
- Agriculture Credit Act of 1987, as amended by the [Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994](#)
- [The Grain Standards and Warehouse Improvement Act of 2000](#) 7 C.F.R. sections [11.5](#) and [1900.55](#)

USDA MEDIATION GOAL

- **State Mediation programs are developed to assist agricultural producers, their creditors, and other persons directly affected by the actions of the USDA to resolve disputes thereby reducing the participant's cost associated with administrative appeals, litigation, and bankruptcy.**
- **Agricultural mediation is a way of settling disputes within a producers own means. The program provides a neutral mediator that can meet with or work on the phone to resolve very sticky issues. Instead of years it can take for a case to filter through the courts, the mediation process generally takes a few meetings to complete.**

TYPES OF CASES MEDIATED

- **Unfavorable decisions made by USDA agencies, creditors and crop insurance providers**
- **Agricultural Credit issues (including foreclosures)**
- **Other disputes affecting the profitability of agriculture**

GENERAL

- **USDA agencies participate in mediations pursuant to agency informal appeals processes**
- **No person may be compelled to participate in mediation. This provision does not affect a State law requiring mediation before foreclosure**
- **USDA officials are strongly encouraged to participate in mediations**
- **Mediation is available for USDA appealable issues**

PERSONS COVERED

**Producers (farmers), their
creditors and other persons
directly affected by actions of the
USDA.**

MEDIATION SERVICE FEES

In Maryland, the first two hours of the mediation are at no cost to the participants. Time for session may be extended at no cost. Possible fees will be discussed during Intake Process.

NOTE: Other states may charge fee for the full session.

AGRICULTURAL DISPUTES

USDA perspective on conflicts:

- Conflict often emerges out of routine circumstances.
- Conflict is usually brought about by what is perceived to be a significant change or perception of being treated unfairly.
- Conflict, if not managed, can significantly affect people's quality of life – both an emotional and financial strain.
- Conflict can often be managed at an early stage or avoided all together.
- There are often no right or wrong issues of conflict.
- USDA customers deserve a response.

AGRICULTURAL MEDIATION

- **When USDA issues an Adverse Decision the notice to the farmer will include the offer to mediate as well as other appeals options**
- **Understand the nature of conflict --
The issue being mediated must be appealable**
- **All settlements must be within the scope of the appropriate USDA regulation**

AGRICULTURAL MEDIATION

- If agreement is reached, the agreement is binding
- If agreement is not reached, the person may continue with a USDA appeal
- Mediation is also binding on non-USDA entities such as creditors and crop insurance providers

SOME TYPES CONFLICTS

(This is not an all inclusive list. There are many other issues that can be mediated.)

- 1) Credit & loan servicing, loan delinquency (includes credit with Non-USDA sources)**
- 2) Crop Insurance – denial of claims**
- 3) Farm Program issues**
- 4) Conservation contracts**
- 5) Rural Development Programs (denials, foreclosures, loan servicing)**
- 6) Public access to public and private lands**

Some Types Conflicts

(This is not an all inclusive list. There are many other issues that can be mediated.)

- 7) Wetland determinations**
- 8) Compliance with farm programs**
- 9) Rural water loans**
- 10) Grazing on National Forest lands**
- 11) Wetland determinations**
- 12) Compliance with farm programs**
- 13) Rural water loans**
- 14) Grazing on National Forest lands**
- 15) Other issues**

QUESTIONS

?????

PART II

MARYLAND RIGHT TO FARM STATUTE

- **All states have some form of Right to Farm protections**
- **The Maryland Right to Farm Statute:
Maryland Code Annotated Courts and
Judicial Proceedings Article
Section 5-403
“Nuisance Suits against agricultural
operations”**

State Law

Definition of Agricultural Operation:

“Agricultural operation” means an operation for the processing of agricultural crops or on–farm production, harvesting, or marketing of any agricultural, horticultural, silvicultural, aquacultural, or apicultural product that has been grown, raised, or cultivated by the farmer.

Applies to agricultural operations

- (1) Underway for a period of 1 year or more and**
- (2) In compliance with applicable federal, State, and local health, environmental, zoning and permit requirements and**
- (3) Not conducted in a negligent manner**

Then

- (1) The operation, including any noise, dust, or insects from the operation, may not be deemed to be a private or public nuisance and,**
- (2) A private action may not be sustained on the grounds that the operation interferes with the use or enjoyment of other property, whether public or private**

State law does not:

- (1) Prohibit a federal, State, or local government from enforcing health, environmental, zoning or any other applicable law**
- (2) Relieve any agricultural operation from the responsibility of complying with the terms of any applicable federal, State, and local permit required for the operation**

State law does not:

- (3) Relieve any agricultural operator from the responsibility to comply with any federal, State, or local health, environmental, and zoning requirement**

- (4) Relieve any agricultural operation from liability for conducting an agricultural operation in a negligent manner**

- (5) Apply to any agricultural operation that is operating without a fully and demonstrably implemented nutrient management plan for nitrogen and phosphorus if otherwise required by law**

Dispute Resolution Process

- **“If a local agency is authorized to hear a nuisance complaint against an agricultural operation, a person may not bring a nuisance actions against an agricultural operation in any court until:**
 - **The person has filed a complaint with the local agency; and,**
 - **The local agency has made a decision or recommendation on the complaint.**

Dispute Resolution (Continued)

- **The decision of the local agency (in some counties) may be appealed in court.**
- ***Some counties have elected to include or offer mediation through ACRoS into its hearing process before making a decision.***

COUNTY RIGHT TO FARM ORDINANCES

- **All Maryland Counties have some form or Right to Farm (Nuisance) protections**
- **Twenty-one of the 23 counties have established Right to Farm Ordinances**
- **Twelve require “Right to Farm Notice” to residents of agriculturally zoned areas**

Mediation

- **If there is no local agency authorized to hear a nuisance complaint against an agricultural operation, a person may not bring a nuisance action against an agricultural operation until:**
 - **The person has contacted the agricultural mediation program in the State Department of Agriculture under Title 1, subtitle 1A of the agricultural article, and**
 - **The department certifies that mediation has concluded.**

In General

- **County Right to Farm laws provide protections against nuisance complaints.**
- **Some are stronger than others.**
- **Some have added additional protections. *For example, one county also has a “Right to Seafood ordinance.***
- **Right to Farm ordinances by County can be found at: <http://mda.maryland.gov/Pages/County-Agricultural-and-Land-Use-Information.aspx>.**

EXAMPLE OF RIGHT TO FARM ORDINANCE

- **Frederick County, Maryland (FCARC)** (*Provided by Michael J. Chomel, Senior Assistant County Attorney, Frederick County, Maryland*)

Frederick County Code:

Recognizes that agriculture is the largest industry in the County and is important to the quality of life

Recognizes that when nonagricultural (i.e., residential) land uses extend into agricultural areas, agricultural operations can become the subject of lawsuits

Seeks to promote a clear understanding between agricultural operations and nonagricultural neighbors concerning the normal inconveniences of agricultural operations which follow generally accepted agricultural practices and do not endanger public safety

FREDERICK COUNTY

Right to Farm

- **Requires Real Estate Disclosure notice**
- **Copy of Right to Farm Notice included in property tax bill**
- **Arbitrates and mediates disputes involving agricultural operations**
- **Holds an informal hearing**
- **Issues opinions on whether such agricultural operations are conducted in a manner consistent with accepted agricultural management practices.**

FCARC RIGHT TO FARM (CONTINUED)

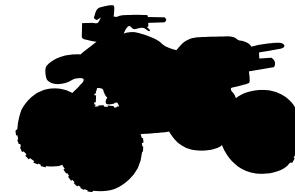
- **Orders of the FCARC are binding on the parties as a matter of law**
- **Enforcement of the order is suspended, if within 30 days of the order a party appeals to the Circuit Court**
- **Appeals to the Court are tried *de novo***

FREDERICK COUNTY RIGHT TO FARM COMPLAINTS INVOLVING PUBLIC HEALTH

- **Nuisances which affect Public Health:**
 - **Complaint made to County Health Department**
 - **Health Department investigates**
 - **Health Officer makes determination on whether a nuisance exists**

FCARC Right To Farm Laws Do Not Address

- all terrain vehicles (ATVs)



- dumping



- activities and noise which disturb farm animals



SUMMARY

- **All 23 counties have some form of “Right to Farm” protection whether stated in a specific ordinance or internal to zoning ordinances.**
- **Right to Farm statutes protect the farmer and the community. In order for a farming activity to be protected the farmer must meet federal, state and local applicable laws.**
- **The farmer is not relieved from liability for conducting an agricultural operation in a negligent manner.**
- **The farmer must have a nutrient management plan if otherwise required by law.**
- **Right to Farm statute and ordinances serves as an educational tool for rural residents who are not accustomed to living near production agriculture.**
- **The laws put the nonfarming community on notice that agriculture is a vital component of the state’s economy, character and culture.**

References

- **Right to Farm ordinances by County:**
<http://mda.maryland.gov/Pages/County-Agricultural-and-Land-Use-Information.aspx>
- **University of Maryland Right to Farm:**
<https://extension.umd.edu/grainmarketing/right-farm>
- **Understanding Agricultural Liability:
Maryland's Right-to-Farm Law**
https://www.extension.umd.edu/sites/default/files/_docs/articles/Right%20to%20Farm%20Fact%20Sheet%202013.pdf

QUESTIONS????