



ENSURING THE CONTINUED VIABILITY OF RURAL COMMUNITIES: USING MEDIATION TO SETTLE DISPUTES



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Henry Jones and his family have been farming the same property, located near the Neighbors Homeowners Association (HOA), for more than 40 years. The HOA became upset when Henry began farming 5 acres of his land adjacent to the HOA. The HOA residents had previously used this land without Henry’s permission, but Henry did not disallow the residents’ use of the property at the time since he was not using it. One spring, however, Henry began to plow and prepare those 5 acres for planting, and as he was expanding his operation, noise, odors, and dust began affecting the HOA. The HOA residents filed a **nuisance** suit against Henry based on the dust, odors, and noise, and Henry sought mediation to resolve the issue.

Mediation, a form of **alternative dispute resolution**, has considerable advantages over litigation in terms of relationships among parties, finances, and time. Mediation can be a useful alternative to expensive litigation for many disputes. It encourages individuals to take responsibility for their issues by meeting to discuss both sides of the story openly, and properly identifying facts with a mediator in an effort to avoid expensive litigation. The end result is a mutually beneficial decision that helps keep rural communities viable and maintains friendly relationships amongst neighbors.



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In Maryland, agricultural operators are offered a dispute resolution service known as the Maryland Agricultural Conflict Resolution Service (ACReS) program, administered by the Maryland Department of Agriculture. ACReS handles common types of disputes including agricultural loans, unfavorable decisions from a USDA agency, farm succession, agricultural credit, wetland determinations, compliance with farm programs, crop insurance, pesticide issues, rural development loans, or as in Henry's case, right-to-farm issues (MAMP, 2016). Knowing this, Henry believed mediation through ACReS would help both sides better understand each other, and allow him to state that because those acres were part of his farm, he believed he was protected under the **right-to-farm law** (see Goeringer and Lynch, *Understanding Agricultural Liability: Maryland's Right-to-Farm Law* (UME 2013)).

Mediation is often successful in peacefully resolving disputes similar to Henry's. "Mediation enjoys such a high success rate because parties are brought together in an environment where they can freely and confidentially present their position in front of a neutral third party" (Thomson Reuters, 2017). A

majority of disputes originate with communication problems between neighbors, a farmer and a debtor, or a farmer and USDA. Looking back to Henry's case, the issues originated from a lack of communication between the HOA members and Henry. An impartial individual called a mediator, trained in USDA issues to identify mutually beneficial options but with no ability to impose solutions, is used in the mediation process. Although Henry hoped to resolve the issue with his neighbors through mediation, the HOA refused to participate in the mediation and the dispute continued to court.

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Agricultural legal issues in the past have typically been handled in court, ending in a result that is often win-lose, not mutually beneficial. Both parties often feel hostile towards each other after a court case due to the lack of confidentiality and inability to discuss their side of the issue in full detail. Litigation also tends to take longer and cost more to resolve an issue. Due to the legal fees and cost of lost time, the economic success of a farm may be threatened should an issue need to be litigated. Those who rely on the courts for litigation often find it expensive, time-consuming, and inefficient. Moreover, courts are limited in how much relief they can award, which may not be enough to meet the desired outcome.

To resolve Henry's problem, the court accepted the case and Henry retained an attorney. The HOA's attorney alleged that because the farming activity did not exist one year before the filing of the case, the farm activity was a nuisance and should not be protected under the Maryland's right-to-farm law.

Henry's attorney alleged that since those 5 acres were part of a larger property the family had farmed for over 40 years, the farming activity was protected under the law. Ultimately, the court found that since the 5 acres were historically farmed by the Jones family, it was part of total farm acreage, and thus protected by the state's right-to-farm law.

PHOTO: EDWIN REMSBERG



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Had the HOA in this situation attended mediation, they would likely have avoided court altogether. An agricultural mediator could have helped the HOA understand the right-to-farm law and how it operates, possibly deterring the HOA from taking legal action. Mediation can often resolve an issue within a few meetings of 2-3 hours each, and more importantly, can potentially preserve business relationships. One of the key features of mediation is bringing parties together and allowing for effective communication which will often remove the need for litigation.

Mediation for agricultural legal issues in Maryland comes at little or no cost. ACREs does not charge either party for the first meeting but the second meeting will be split amongst parties unless there is a waiver of fees due to income. Mediation is also a confidential process, allowing both parties to fully

disclose their side of the issue, feeling secure, and avoiding a stigma of publicly resolving an issue related to foreclosure or bankruptcy. The flexibility offered through mediation allows all options to be explored in order to solve an issue, and if successful, results in a contract signed by both parties.



PHOTO: EDWIN REMSBERG

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In Maryland, an individual interested in mediation will complete an ACREs intake form for filing a request for mediation. ACREs will then contact the other party to determine if they are willing to participate. If so, a mediator briefing will be prepared and a mediator assigned. In some instances, financial analysis and counseling are available to prepare an individual to properly present information during a meeting. Both parties are notified of a date, time, and neutral location to meet.

The mediator will sit in the meeting and facilitate the discussion of issues in an organized, confidential, and friendly environment. A successful mediator will discuss personal beliefs, values, and other information which may not normally surface in a court case. Information disclosed during mediation is generally confidential and cannot be used for later legal action (USDA, 2016). Under USDA agriculture mediation regulations, confidential mediation means

nondisclosure of oral or written communications to a mediator except for circumstances such as under 5 U.S.C §§574 and 785.9. 5 U.S.C §§574 allows exclusions to nondisclosure such as when both parties consent to share information, the issue has already been made public, dispute resolution is required by statute, a court determines resolution communication is necessary to prevent public harm, violation of law is established, or to prevent manifest injustice (Cornell University Law School, 1996). §785.9 permits government access to state mediation records for the purpose of evaluating, auditing, and monitoring state mediation programs (Farm Service Agency, 2013). A mediation participant should be sure to ask their mediator about confidentiality before beginning the process. In all mediation cases, the government will have access to information such as mediation dates, applicant names, issues mediated, services and charges, and documentation of the outcome. A successful meeting concludes with both parties signing a contract.

The USDA ag mediation program has a 73% success rate.

Mediation can be successful in many situations; the USDA ag mediation program has a 73% success rate (USDA, 2016). There are times, however, where mediation may not be the best choice. When one party has significantly more control over the other, for example, litigation may be the best course. Parties who are unable to effectively communicate may be better off seeking relief in court. Complex issues with many parties may also be best handled in a court. Finally, should one or both parties be uncooperative, they are free to pursue other forms of appeal and litigation. In most cases, however, it is beneficial to at least attempt mediation before pursuing litigation. The intake form for mediation can be found at <http://mda.maryland.gov/SiteAssets/Pages/acrs/ACReS%20Mediation%20Intake%20Form.pdf>

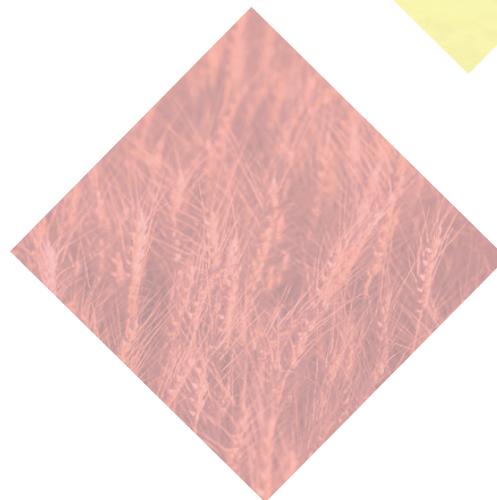
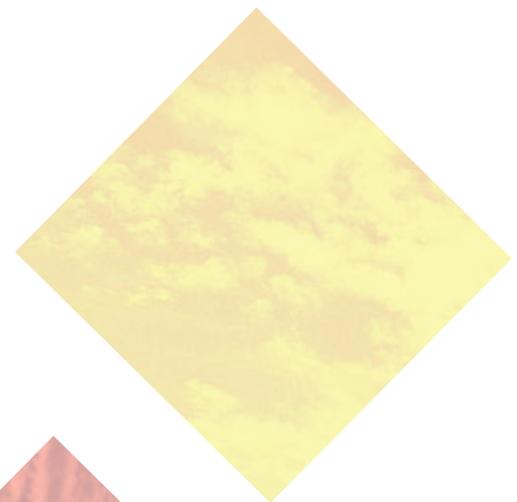
Glossary

Alternative Dispute Resolution – a method of settling disputes by means other than litigation, typically through mediation, arbitration, or a mini-trial.

Mediation – a non-binding method of alternative dispute resolution. In mediation, a dispute is heard by neutral third party who tries to help the two parties reach a mutually agreeable solution.

Nuisance – a condition such as a foul odor, noise, etc., which interferes with the use and enjoyment of one's property.

Right-to-farm law – a defense to a nuisance suit brought against a farm.



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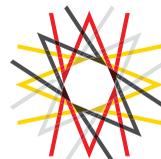
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