

## Understanding Agricultural Liability: Maryland's Right-to-Farm Law



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Maryland's Right-to-Farm law is designed to protect agricultural operations, such as dairy, grain, fruit, vegetable, and poultry, or traditional forestry operations, with an affirmative defense to nuisance suits.



Many agricultural areas have seen individuals without farm backgrounds and little understanding of farm operations moving into the neighborhood. Once there, they find noises, insects, farm equipment on the roads, smells and normal characteristics of agricultural and rural life unexpected and objectionable and then they complain. As a response to this, all fifty states have passed some form of "right-to-farm" (RTF) legislation. These RTF laws protect agricultural operations from the nonfarm neighbors by limiting and providing a defense for nuisance actions brought against farms and other agricultural operations. Although there is no uniform RTF law, each state's law

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provides the same general protection to agriculture. This protection comes in some form of an affirmative defense: farmers use this defense against private nuisance claims and public nuisance claims involving agricultural operations. The defense works to protect existing farmland from the new entrants into



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**In order to qualify for the affirmative defense of the RTF statute, an operation must be an agricultural or silvicultural operation, have been in business for at least 365 days, and be in compliance with all applicable laws. An operation meeting these three requirements will be able to use the affirmative defense afforded by the RTF statute.**

agricultural areas who become upset with normal farming practices.

Although RTF laws provide an affirmative defense against nuisance suits, all RTF legislations' underlying theme is prevention: good relations between neighbors may limit the number and types of complaints ever occurring. Farmers can work with their neighbors and have open lines of dialogue to ensure the farmer is the first person hearing about questions and concerns from the neighbors which may limit the disputes. Thus, improving communication between farmers and neighbors, helping new neighbors understand how farming works, and resolving issues effectively are the first lines of defense.

One important feature of Maryland's RTF law is requiring a county board's review or Maryland's agricultural mediation program to mediate all agricultural nuisance claims first. Requiring a county board review or mediation before

bringing a lawsuit is one way to help reduce litigation costs, protect the financial status of agricultural operations, and offer a resolution of nuisance disputes outside a formal courtroom. This aspect of the law will be discussed in more detail later in the fact sheet.

This fact sheet provides an overview of Maryland's RTF law and county ordinances, the defense provided by them, exclusions to the defense, and the prerequisites to bringing a nuisance suit. As of this fact sheet's publication in June 2013, no court in Maryland has interpreted any provisions in the state's RTF law.

### **What is a "Nuisance"?**

Maryland's RTF law provides an affirmative defense to nuisance claims brought against Maryland agricultural or silvicultural operations. An affirmative defense means a farmer meeting the RTF law's requirements can defeat a claim regardless of whether the

claim is true. A nuisance is defined as "[a] condition or situation (such as a loud noise or foul odor) that interferes with the use and enjoyment of property (Black's Law Dictionary, 2001). A nuisance can come in one of two forms, either public or private. A public nuisance involves an activity or conduct that unreasonably interferes with the general public's right to property and a lawsuit to stop the public nuisance is usually brought by a public official. For example, a farmer does not remove dead livestock from a stream, the deceased livestock begin to decompose, and this impacts a downstream city's water supply would be an example of a public nuisance. A private nuisance would be a condition or situation that interferes in a private person's enjoyment of their property. A neighbor might not want to use her deck because of the manure smell coming from the farm next door would be an example of a private nuisance.

### **Statutory Defense**

Maryland's RTF law only applies if certain conditions are met. First, Maryland's RTF law provides protections for agricultural and silvicultural operations. Agricultural operations are defined to be any operation that:

1. Processes agricultural crops
2. Conducts the on-farm production, harvesting or marketing of any agricultural, horticultural, silvicultural, apicultural, or product that was grown, raised, or cultivated by the producer (§ 5-403(a)(1)).

Traditional agricultural operations, such as livestock, grain, fruit, or vegetable operations, or traditional



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**Recordkeeping is very important in order to show that an operation meets the requirements to gain the affirmative defense of the RTF law. Farmers should maintain records to demonstrate compliance with all applicable federal, state, and local laws and permits. Having the basic records can quickly resolve any dispute and may aid in the mediation process.**

forestry operation would in all likelihood fall under the RTF law.

Second, the operation must have been in business for at least 365 days (1 year) or more before the nuisance suit is brought. An agricultural producer can use business records or other evidence that show how long the operation has been operating to prove this fact.

Third, the agricultural producer must prove that the operation is in compliance with all applicable laws in order to benefit from the RTF defense. Again, this can be done with business records demonstrating compliance with all applicable federal, state, and local requirements. Farmers should keep good business records to ensure that when needed, they will be able to prove they have been in compliance with the relevant laws and regulations. For more information on the importance of good business records to show compliance with applicable laws, see the Center for Agricultural and Natural Resource Policy Fact Sheet, “Understanding Agricultural Liability: Tips to Consider Before Going to Court.”

An agricultural or silvicultural operation that meets these three requirements can use the affirmative defense offered by the RTF law. With this defense, these operations will be

prohibited from being found as a private or public nuisance based on sight, noise, odors, dust, or insects resulting from the operation (§ 5-403(c)(1)). The RTF defense will also help defeat claims that the operation has interfered or is interfering with the right to use and enjoyment of property of others (§ 5-403(c)(2)).

For example, Steve’s house is next to one of Charlie’s farm fields. Charlie applies manure as fertilizer and does the application in accordance with all federal, state, and local laws. The application was also in compliance with his nutrient management plan. After the application, Steve finds the odor of the manure to be noxious. Steve files a lawsuit that the odors from Charlie’s farm interfere with his right to use his backyard due to noxious smells, a private nuisance action, and asks the judge to stop Charlie from further applications of manure in the future. Because Charlie had applied the fertilizers in compliance with all federal and state laws as well as his nutrient management plan, he can use the RTF’s affirmative defense to have the claim dismissed. But, if he has violated his plan or the laws and Steve files the same suit, Charlie would not be able to use the affirmative defense of the RTF. In this case, Steve’s nuisance suit could have proceeded.

Even if Charlie does follow all existing laws and regulations and is able

A silvicultural operation implements forestry practices for the establishment, composition, growth, and harvest of trees (§ 5-403(a)(2)).

“Apiculture” is the practice of keeping bees. An apicultural product would include honey, beeswax, and pollen.

to use the affirmative defense, he probably would be better off if Steve did not file a suit. Say instead, Charlie had been neighborly with Steve. If Charlie discussed any concerns Steve had with him and Steve felt comfortable



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discussing issues with Charlie, they might have been able to avoid Steve using the law to seek help. For example, Charlie's fertilizer had run-off into Steve's Koi pond after a rainstorm and possibly killed some of the fish. Rather than Charlie saying he is not responsible for the fish dying; i.e. he is not legally responsible to pay for them, he discussed the event with Steve and offered some help with replacing the fish. Then when the odors from manure occurred, Steve may have called Charlie and told him next week he was having a party and request that Charlie postpone any further applications of manure till after the weekend, rather than filing a lawsuit. By working with Steve, Charlie created some good feelings between the neighbors. This might be worth much more than the amount he saved by claiming no responsibility for the fish.

Being willing to work with one's neighbors can help limit the need for costly litigation. Non-agricultural neighbors, such as Steve, may not understand that the house is in an agricultural area, which means unfamiliar odors and noises. Charlie, the agricultural producer, may not understand the non-agricultural neighbor's lack of knowledge of agricultural production. However, Charlie created goodwill by discussing the dead Koi, by being willing to restock the pond or by creating a barrier to stop further run-off. A subsequent suit, the paperwork involved, and the

bad feelings may have been avoided. Both neighbors should look for opportunities to interact with each other and develop personal relationships with the other. These relationships will open lines of communication, help make

each party aware of the other party's needs, and help the parties find solutions without resorting to litigation. For more information on farmers' advice to other farmers on how to communicate with your neighbors, see University of Maryland Extension Publication L279 *Farmers Advise Farmers* and University of Maryland Extension Publication *Improve Neighbor Relations, Welcome to the Neighborhood*.

### Exclusions to the Defense

Maryland's RTF law will only provide a defense against nuisance claims. These laws do not provide a general defense to all claims against an agricultural or silvicultural operation. If a federal, state, or local government is trying to enforce applicable laws against an agricultural or silvicultural operation, the RTF law will not apply (§ 5-403(b)(1)(i)). Nor can farmers use this defense if violating any federal, state, or local government permits issued to the operation (§ 5-403(b)(1)(ii)). For example, if a poultry producer violated her Clean Water Act discharge permit, the RTF law would not provide a defense for this violation. In this case, the poultry producer can be fined and required to meet the discharge limits. Similarly, if an agricultural operation is required to have a nutrient management plan and it has not been fully and demonstrably implemented, it would not be able to use the RTF defense in a nuisance suit (§ 5-403(b)(2)). This exclusion also applies to



*Maryland's RTF law does not provide an affirmative defense when the claims are violations of the local, state, or federal laws or permits.*

failure to comply with federal, state, and local health, environmental and zoning requirements (§ 5-403(b)(1)(iii)). For example, the state has a requirement that all concentrated animal-feeding operations (CAFOs) cannot be built within half a mile of a school, park, or summer camp. If a farmer diversified and constructed a CAFO within a quarter mile from a school, he could not use the RTF law as a defense against a nuisance suit filed by the school's Parent-Teacher Association.

The RTF law will not provide a defense when the claim is negligence against the agricultural or silvicultural operation (§ 5-403(b)(1)(iv)). Negligence suggests a person or business failed to exercise a standard of care that society would be expecting from a reasonably prudent person. For example, Charlie has cattle on his farm and they have been getting out into the road between Charlie's pasture and Steve's house on many occasions. Charlie has never taken the time to repair the fences to prevent the cattle's escape. On Steve's way home from work one day, Charlie's cattle are out, and Steve crashes his car into one of them. Steve may file a claim of negligence against Charlie after the accident. The standard of care expected of Charlie is to maintain and keep his fences in good repair. In this example, Charlie has not repaired the fences despite the repeated evidence that his cattle have been getting out. Charlie would be unable to use the Maryland's RTF law for his defense. Charlie would most likely be liable for repairing Steve's car and other damages.

RTF laws do not provide a defense against claims of trespass. Trespass is unlawful intrusion that interferes with a person's exclusive right to use their property. Say, Charlie's cattle, without permission, cross onto Steve's property to use his pond for water. The moment these cattle cross on to Steve's property, they are trespassing because they are interfering with Steve's exclusive right to use his property. Steve can call local law enforcement in this case and the RTF law will do nothing to defend Charlie's cattle.

### **Prerequisite to Bringing a Nuisance Suit**

Before a nuisance suit can be brought to court, the complaining party (Steve) must file a complaint with the local agency authorized to hear a nuisance complaint against agricultural operations (§ 5-403(e)(2)). This local agency reviews the complaint and makes an official recommendation. If there is no local agency authorized to hear a nuisance complaint, then the complaint should



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**The RTF law will not provide a defense to a livestock producer whose cattle get out through fences in bad repair. The RTF law is an affirmative defense limited to nuisance suits and not to claims of trespass or negligence.**

be referred to the State Agricultural Mediation Program, known as the Maryland Agricultural Conflict Resolution Service (ACReS) for mediation. If mediation fails and ACReS certifies that mediation has been concluded, Steve can then file the nuisance suit in the appropriate Circuit Court.

For example, most counties have established a county agricultural reconciliation board to hear these suits. These boards are typically five county residents with a mix of both agricultural and non-agricultural backgrounds. Membership requirements do vary by county. The county boards conduct hearings in an informal manner, i.e. not under the same strict rules as a formal courtroom. Working in an informal manner can reduce litigation expenses, provide win-win solutions, and allow quick resolutions of a nuisance suit.

This process of local review or mediation acts as a control against costly nuisance suits. Although RTF laws provide an affirmative defense to nuisance suits, the affirmative defense itself does not automatically end a nuisance suit. Both parties will have to present evidence as to whether the defense applies in this case and a judge will have to rule on the evidence. Presenting evidence can be costly; an agricultural operator may suffer financial stress. In some cases, farms have been sold to finance court costs. By requiring nuisance suits



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**Both the county and state RTF laws have similar requirements to utilize GAAMPs and to comply with all applicable laws which creates some safeguards for producers. Compliance with state law assumes a producer is utilizing GAAMPs and the use of GAAMPs assumes a producer is compliant with applicable state and federal laws.**

to be heard first by a local board or state mediator, Maryland's RTF law helps reduce litigation costs and protect agricultural operations financial status.

### **County Right-to-Farm Provisions**

Each of Maryland's twenty-three counties has its own RTF ordinance in their county codes. These RTF ordinances vary from county to county. Agricultural producers should check the county code for each county in which they operate in. These county RTF ordinances work with the state's RTF law to define the parameters of what agricultural activities are protected in each county.

Twenty-two of Maryland's twenty-three counties have adopted similar language in their county RTF ordinances ("common county

RTF ordinance"). This common county RTF ordinance provides that if the agricultural operation is conducted in accordance with "generally accepted agricultural management practices" (GAAMPs), it will be protected from nuisance suits. Governmental agencies, such as the local soil conservation district or University of Maryland Extension, have defined these GAAMPs. Where a governmental agency has not authorized any GAAMPs, then the practice in question is just presumed to be GAAMP, but this presumption can be rebutted with evidence that the practice is not generally accepted. For example, assume no governmental agency has recommended the proper buffer zone from a stream when spraying a pesticide, but it is common for farmers to use a 20 foot buffer zone. If a farmer is using a 10 foot buffer

zone and no governmental agency has recommended the proper buffer zone, the farmer's practice of a 10 foot buffer would be presumed to be GAAMP. However if the neighbor could present evidence showing that other farmers in the county actually use 20-foot buffer zones, the RTF law may not provide a defense to the neighbor's nuisance suit.

The requirement to utilize GAAMPs and to comply with all applicable laws creates some safeguards under both county and state RTF laws. Under the state's RTF law, a producer is required to comply with all applicable laws, permits, and other requirements. Compliance assumes a producer is utilizing GAAMPs authorized by governmental agencies. The use of GAAMPs will help to ensure compliance with all applicable laws, permits, and other requirements. The common county RTF ordinance also mirrors the state RTF law by requiring nuisance suits to be brought to a county Agricultural Reconciliation Board before a final decision is issued. The state's RTF law and a county's RTF law are working together to create protections for producers in Maryland.

Many county RTF ordinances require a nuisance suit involving claims that affect public health be reviewed by the county Health Department, and not the county's agricultural reconciliation committee or ACREs program. The county Health Department reviews and makes a decision if the agricultural operation is a nuisance to public health. The county's agricultural reconciliation committee hears all the non-public health related nuisance claims.

County RTF ordinances may require that transfers of property include a disclosure of the existence of the RTF ordinance. The notice informs the new owners about the RTF law and ordinance that exist in the state and county. This disclosure tells a person who may purchase the property, lease with an option to purchase, or lease residential property with improvements that he/she could be subject to agricultural disamenities such as noise and odors.



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### Putting It All Together

When a neighboring landowner believes he has a claim against a farmer, how should the landowner proceed? The neighboring landowner (either another farmer or a nonagricultural neighbor) needs to consider the nature of the claim he wants to bring against the farmer. For example, Nancy lives next door to Anne and Anne’s poultry houses. During the summer months, Nancy notices large flies on her property and believes the flies are because of Anne’s poultry houses next-door. The large flies make it impossible for Nancy to use her property during the summer and Nancy decides to bring a lawsuit against Anne for causing a private nuisance. Figure 1 would provide a farmer, such as Anne, with a checklist to determine if the RTF law would apply to the alleged claims. Before Nancy or Nancy’s attorney files any nuisance suit in court, Nancy would need to file a complaint with her county’s agricultural reconciliation board. This board would first decide on the complaint and attempt to work out a fair solution to the problem. Remember this is one important feature of Maryland’s RTF law that a court cannot hear a nuisance claim against a farmer until the county board issued a decision on the claim.

If Nancy does not bring the claim first before the county reconciliation board, then Anne’s attorney should file the appropriate motions to have this process play out first. Until the county board of reconciliation has made a decision on the complaint, a Maryland court cannot properly hear a nuisance suit against a farm. As mentioned before, allowing the county board or the ACREs program to hear the claim first will hopefully resolve disputes outside of the court system saving money, avoiding hurt feelings, and permitting productive and agreeable outcomes.

If Nancy decides to bring a suit not of the nuisance variety but rather based on violations of other laws, regulations or ordinances (i.e. zoning, health,

**The RTF law requires some form of mediation, ACREs or county board, before a Circuit Court can hear a nuisance claim against a farm. The requirement that nuisance suits must first be mediated helps reduce litigation costs and protect agricultural operations’ financial status.**

environmental), the RTF law would not apply. Figure 2 would provide a neighbor, such as Nancy, with a checklist to determine if the RTF law might apply to her potential claim. Anne would have no RTF defense in this situation. Anne’s only defense would be having the appropriate business records to demonstrate that her poultry operation is in compliance with all applicable laws and regulations. The RTF defense does not apply when the claim against her is negligence or trespass. For example, if Nancy was downhill of Anne and a large rain washed some poultry litter onto Nancy’s property causing the large flies to appear on Nancy’s property, this could be a trespass claim that would not be protected by the RTF law. The same would be true if Anne’s negligence allowed a disease from Anne’s poultry to spread to the few chickens Nancy keeps on her property. The RTF law would provide no defense in these situations and only in the limited case when nuisance is alleged.

### Conclusion

Maryland’s RTF law, while limited in scope, can provide powerful protections in certain situations. Both non-agricultural and agricultural neighbors should consider working together to develop communication to limit many disputes. But, when faced with a nuisance suit, an agricultural or silvicultural producer who has been in business for at least one year and has complied with all applicable federal, state, and local laws, ordinances, and permits will have a strong defense. The state’s RTF law also requires either county review or review through the ACREs program of nuisance claims before the complainant can bring a lawsuit in court. This pre-court review keeps litigation to a minimum and

Figure 1

Checklist for a Farmer when presented with a lawsuit to determine if the RTF law applies		Yes	No
A.	Do you meet the definition of “agricultural operation?” If you answer yes to any of 1-4 then you could meet the definition of an agricultural operation:		
	1) Are you processing an agricultural crop?		
	2) Are you producing crops on a farm?		
	3) Are you harvesting crops on a farm?		
	4) Are you marketing any agricultural, horticultural, silvicultural, aquacultural, or apicultural product grown, raised, or cultivated by you?		
B.	Have you been in operation for 1 year or more and in compliance with all existing health, zoning, and environmental laws, regulations, and permits? (If yes, move to C)		
C.	Do you have a nutrient management plan; are you following it? (If yes, move to D)		
D.	Is the claim being brought one covered by the RTF law?		
	1) Is the claim a nuisance claim, i.e., a claim that you interfered with another’s peaceful enjoyment of their own property? (If yes, move to E and if No, move to F)		
E.	If you answered yes to these questions then the RTF law may apply to your case, but you will need to check with an attorney to properly use the RTF defense. (Skip to G)		
F.	Is the claim being brought not covered by the RTF law?		
	1) Is the claim to enforce an existing health, environmental, zoning, or other law?		
	2) Is the claim that you violated terms of a federal, state, or local permit required for your farm?		
	3) Is the claim that you failed to comply with a health, environmental, or zoning requirement?		
	4) Is the claim that you operated your operation in a negligent manner?		
	If you answered yes to any of these questions then the RTF law probably does not apply in your situation, but still check with an attorney about your individual situation.		
G.	If the RTF law applies, then before a claim is brought in court, has either:		
	1) A county agricultural reconciliation board made a decision on the nuisance complaint; or		
	2) Has the state’s Agricultural Mediation Program made a decision on the complaint, if no agricultural reconciliation board exists in the county?		
	If the answer is no to any of these questions then request the complaint first be heard by one of these groups before proceeding in court.		

Figure 2

Checklist for a neighboring landowner considering a lawsuit against an agricultural operation		Yes	No
A.	Do you want to bring a lawsuit against an agricultural operation? (If yes to any of the 4, move to B)		
	1) Does the operation process an agricultural crop?;		
	2) Does the operation produce crops on-farm?;		
	3) Does the operation harvest crops on-farm?;		
	4) Does the operation market any agricultural, horticultural, silvicultural, aquacultural, or apicultural product grown, raised, or cultivated by the operation?		
B.	Has the farm been in operation for 1 year or more and in compliance with all existing health, zoning, and environmental laws, regulations, and permits? (If yes, move to C)		
C.	Does the farm have a nutrient management plan: is it following it? (If yes, move to D)		
D.	Is the claim being brought one covered by the RTF law?		
	1) Is your claim a nuisance claim, i.e., a claim that the operation has interfered with your peaceful enjoyment of your own property? (If yes, move to E and if No, move to F)		
E.	If you answered yes to these questions, then the RTF law may apply to your lawsuit, you should ask a attorney whether the operation can use this defense rendering the lawsuit pointless. (Skip to G)		
F.	Is the claim being brought not covered by the RTF law?		
	1) Is the claim to enforce an existing health, environmental, zoning, or other law?;		
	2) Is the claim that the operation violated terms of a federal, state, or local permit required for the agricultural operation?;		
	3) Is the claim that the agricultural operation failed to comply with a health, environmental, or zoning requirement?; or		
	4) Is the claim that the operation was operated in a negligent manner?		
	If you answered yes to any of these questions then the RTF law probably does not apply in your situation, but still check with an attorney about your individual situation.		
G.	If the RTF law applies, then before a claim is brought in court, has either:		
	1) A county agricultural reconciliation board made a decision on the nuisance complaint; or		
	2) Has the state's Agricultural Mediation Program made a decision on the complaint if no agricultural reconciliation board exists in the county?		
	If the answer is No to any of these questions then take the complaint to one of these groups before proceeding in court.		

insures that although the producer has a defense, he or she is not paying a high litigation costs to prove the defense in court. Finally, providing information about the state RTF law and the county RTF ordinances can insure that new neighbors understand these laws and how they protect agricultural operations in Maryland. ■

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Maryland's Department of Agriculture provides a link to most of Maryland counties' right-to-farm regulations at [http://www.mda.state.md.us/on\\_web/ag\\_links/countyag.php](http://www.mda.state.md.us/on_web/ag_links/countyag.php).



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**When dealing with any type of lawsuit or legal action, a producer should immediately get in touch with an attorney to begin planning the appropriate defense. If you do not know an attorney, check with your friends, neighbors, the Maryland Bar Association, or the American Agricultural Law Association for help in finding an attorney.**

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## Understanding Agricultural Liability: Maryland’s Right-to-Farm Law

**Note:** This publication is intended to provide general information about legal issues 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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