

# **AGRICULTURAL CONFLICT RESOLUTION SERVICE (ACReS)**



## **LEASING WORKSHOP**

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# OBJECTIVES

- To increase awareness of mediation as an opportunity to resolve disputes;
- To encourage use of mediation in resolving “lease” conflicts;
- To encourage participation through incorporation of “mediation clause” within leases;
- To encourage participants to share mediation information with farmers, producers and others.

# MARYLAND AGRICULTURAL MEDIATION PROGRAM

- **TWO-PART PROGRAM**

- Part I – funded by Federal government with matching state funds for supporting U. S. Department of Agriculture disputes and credit issues (Certified agricultural mediation provider since 1999); and,
- Part II – funded by the State of Maryland through the Maryland Department of Agriculture to assist in resolving Right to Farm issues.

# PART I

## USDA CERTIFIED STATE MEDIATION

- Maryland is one of 36 states certified by the U. S. Department of Agriculture to offer mediation for disputes and issues related to USDA programs and activities, and **credit. Leasing is considered a credit issue AND is therefore covered by Part I.**
- In addition to landlord & tenant mediation, a credit mediation can be held between borrowers and lenders – banks, businesses, agricultural supply stores, etc.
- For a list of certified states visit:  
[http://www.fsa.usda.gov/FSA/newsReleases?area=newsroom&subject=landing&topic=pfs&newstype=prfactsheet&type=detail&item=pf\\_20130301\\_admin\\_en\\_agmed.html](http://www.fsa.usda.gov/FSA/newsReleases?area=newsroom&subject=landing&topic=pfs&newstype=prfactsheet&type=detail&item=pf_20130301_admin_en_agmed.html)

# MEDIATION WITHIN THE LEASE

- University of Maryland sample language:  
*“All claims and disputes arising under or relating to this Lease are to be first submitted for mediation through the Maryland Agricultural Conflict Resolution Service. If any, both parties shall equally share the mediator’s cost and fees. This provision maybe enforced by any court of competent jurisdiction and the party seeking enforcement may seek all costs, fees, and expenses associated with enforcing this provision.”*

# **BENEFITS OF INCORPORATING MEDIATION LANGUAGE**

- Establishes a relationship and expectation that issues will be resolved without legal intervention;
- Encourages resolution of disputes without involvement of courts;
- Allows participants to resolve issues in a friendly environment; and,
- Offers opportunity to save time and money.

# BENEFITS OF THE MEDIATION PROCESS

- **Neutral** – The mediator is impartial and has no vested interest in the outcome of the mediation;
- **Confidential** – Parties agree that the communication between them will be confidential and will not be used by either against the other in any subsequent legal action;
- **Time and Cost Efficient** – The mediation process tends to be quicker than the alternatives, such as going to court or arbitration. Mediation is generally less costly than litigation or arbitration;
- **Self Determination** – The mediator does not have decision making authority. Participants design the solution themselves and are generally more committed to the agreement than when a judge or hearing officer imposes a solution.
- **PROTECTS RELATIONSHIPS AND CREATES UNDERSTANDING!**

# UNDERSTANDING CONFLICTS

- Conflict often emerges out of routine circumstances
  - Communication: You thought you understood what I meant
  - Expectations are not clearly defined
  - Dynamics of the situation change (people, property, taxes, government programs)

# COMMON TYPES OF CONFLICT

- **Use of Property**
- **Term of Use**
- **Use of Land**
- **Payment of Rent**
- **Complaints from neighbor about tenant**
- **Responsibility of Landlord and/or Tenant**

# PREVENTING & RESOLVING CONFLICTS

- **Use appropriate lease** – see “Agricultural Leasing in Maryland” prepared by University of Maryland Extension, Center for Agricultural & Natural Policy
- **Understand conditions relating to the lease** –
  - Is use of property impacted Agricultural Land Preservation Agreement, Conservation Agreement, State or Federal Program

# **MEDIATION CLAUSE WITHIN THE LEASE**

- Including a mediation clause in a lease provides for independent problem-solving (without the assistance of a court).
- If the landlord and tenant sign the lease, the agreement to mediate is binding and can be enforced by a court.

# PART II

## MARYLAND RIGHT TO FARM STATUTE

- Maryland Code Annotated Courts and Judicial Proceedings Article Section 5-403, “Nuisance Suits against agricultural operations”  
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.
  - A private nuisance would be a condition or situation that interferes in a private person’s enjoyment of their property.

# RIGHT TO FARM STATE LAW

- **Applies to agricultural operations**
  - Underway for a period of 1 year or more
  - In compliance with applicable federal, State, and local health, environmental zoning and permit requirements and,
  - Not conducted in a negligent manner

# THEN

- The operation, including any noise, dust, or insects from the operation, may not be deemed to be a private or public nuisance and,
- 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.

# 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 action 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.
  - ***Some counties have elected to include or offer mediation through ACRoS into its hearing process before making a decision.***

# 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.

# COUNTY RIGHT TO FARM ORDINANCES

- County Right to Farm ordinances provide protections against nuisance complaints
- Some are stronger than others
- Some have added additional protections - For example, some counties also include a Right to Seafood Ordinance or other protections
- Some are included in Zoning restrictions

# RIGHT TO FARM SUMMARY

- All Maryland counties have some form of “Right to Farm” protection;
- Right to Farm statutes protect the farmer and the community;
- The farmer is not relieved from liability for conducting an agricultural operation in a negligent manner;
- The farmer must have a nutrient management plan;
- Right to Farm statute and ordinances serve as an educational tool for rural residents who are not accustomed to living near production agriculture;
- The laws put the non-farming community on notice that agriculture is a vital component of the state’s economy, character and culture.

# REVIEW

- Name one benefit of having a “mediation clause” within a Lease.
- Name one benefit of mediation.
- What is a nuisance complaint?
- Which County do you live in and what are key elements of your County’s Right to Farm ordinance?
- Is there an agency authorized to hear a nuisance complaint in your county?

# QUESTIONS