

# UNDERSTANDING AGRICULTURAL LIABILITY: MARYLAND'S RIGHT-TO-FARM LAW CAN LIMIT LIABILITY FOR MARYLAND FARM, COMMERCIAL FISHING, AND SEAFOOD OPERATORS



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## AREC FACT SHEET

SEPTEMBER 2017 | FS-973

Many individuals moving into agricultural areas in Maryland have no farm backgrounds and little understanding of agricultural operations. The same is true of commercial fishing and seafood operations in Maryland. Once there, the new residents may find the noises, insects, farm equipment on the roads, smells, and other characteristics of agricultural and commercial seafood life unexpected and objectionable. While neighbors should consider working together and developing open lines of communication to find solutions, in some cases, this cooperative approach may not work.

In response, Maryland introduced a Right-to-Farm (RTF) law in 1981. All 50 states have RTF laws which typically shield agricultural activities from complaining nonfarm neighbors by limiting the scope of and providing a defense for nuisance actions brought against farms and other agricultural operations. In 2014, Maryland extended these protections to commercial seafood operations and watermen.



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Maryland introduced a Right-to-Farm (RTF) law in 1981 and extended these protections to commercial seafood operations and watermen in 2014. While the law is limited in scope, it can provide powerful protections against nuisance suits in certain situations.

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Maryland's RTF law, while limited in scope, can provide powerful protections in certain situations. When faced with a nuisance suit, an agricultural, commercial fishing, or seafood operation in business for at least 1 year and complying with all applicable federal, state, and local laws, ordinances, and permits will have a strong defense.

The state's RTF law also requires either Agricultural Review Board (ARB) review or review through Maryland's Agricultural Conflict Resolution Service (ACReS) program of nuisance claims before the complainant can bring a lawsuit in court. This pre-court review minimizes litigation and ensures that a producer with a defense avoids higher litigation costs to prove that defense in court. Providing information about Maryland's RTF law and county RTF ordinances to potential new residents can ensure that new neighbors understand these laws and how they protect the state's agricultural, commercial fishing, and seafood operations.

## **RTF Law Provides Affirmative Defense to "Nuisance" Suits**

Although there is no uniform RTF law, each state's law provides the same general protections to agriculture in the form of an affirmative defense. Qualifying farmers, fishers, or seafood operators can use this defense against private and public nuisance claims involving their operations.

Maryland's RTF law provides an affirmative defense to nuisance claims brought against agricultural, commercial fishing, and seafood operations in the state. An affirmative defense means a farmer or waterman who can demonstrate the use of good agricultural or commercial fishing practices can defeat a claim regardless of whether it is true.

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A **nuisance** is "[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: public or private. A public nuisance involves an activity or conduct that unreasonably interferes with the general public's right to property; a public official usually brings a lawsuit to stop the public nuisance. A private nuisance would be a condition or situation that interferes with a private person's enjoyment of his or her property.

An example of a public nuisance would be a farmer who does not remove dead livestock from a stream and the deceased livestock begins to decompose, affecting a downstream city's water supply. In contrast, a neighbor not wanting to use her deck because of the manure smell coming from the farm next door or because of the noise caused by pumps used by watermen illustrates a private nuisance.

### Which Operations Does RTF Protect?

Maryland's RTF law provides protections for agricultural, silvicultural, commercial fishing, and seafood operations. Agricultural operations are any businesses which:

1. Process agricultural crops, or
2. Conduct on-farm production, harvesting, or marketing of any agriculture, horticulture, silviculture, apiculture, or aquaculture product grown, raised, or cultivated by the producer (§ 5-403(a)(1)).

Traditional agricultural operations such as livestock, grain, fruit, and vegetable production, or traditional forestry operations would likely fall under the RTF law.

Commercial fishing and seafood operations are “for the harvesting, storage, processing, marketing, sale, purchase, trade, or transport of any seafood product” (§ 5-403(a)(2)(i)). These operations include “the delivery, storage, and maintenance of equipment and supplies and charter boat fishing and related arrival and departure activities, equipment, and supplies” (§ 5-403(a)(2)(ii)).

### RTF Law Only Protects Qualified Operations from Nuisance Suits

Even if a business qualifies as an agricultural, commercial fishing, or seafood operation, it must meet statutory requirements to receive RTF protections. First, the operation must have been in business for at least 365 days (1 year) to qualify for protection from a nuisance suit. An operator can use business records or other evidence to prove time in operation.

To qualify for an RTF defense, the operator also must provide business records or similar proof that the business complies with all applicable federal, state, and local requirements. Operators will need good business records to ensure they can prove compliance with the relevant laws and regulations. For more information on the importance of good business records to show compliance with applicable laws, see *Understanding Agricultural Liability: Legal Risk Management Considerations* (UME FS-995, 2015).



PHOTO: EDWIN REMSBERG

To qualify for an RTF defense, the operation must have been in business for 365 days and provide business records or similar proof that the business complies with all applicable federal, state, and local requirements.



With the RTF defense, an operation will not be considered a private or public nuisance based on sight, noise, odors, dust, or insects resulting from the operation (§ 5-403(c)(1)). The RTF defense also helps defeat claims that the operation has interfered or is interfering with the right of others to use or enjoy their property (§ 5-403(c)(2)).

For example, Steve’s house is next to one of Charlie’s farm fields. Charlie applies manure as fertilizer according to all federal, state, and local laws. The manure application also complies with his nutrient management plan (NMP). After the application, Steve finds the odor of the manure noxious. Steve files a private nuisance lawsuit saying the offensive odors from Charlie’s farm interfere with his right to use his backyard and asks the judge to stop Charlie’s manure applications. Because Charlie applied the manure in compliance with all federal and state laws as well as his NMP, he can use the RTF’s affirmative defense to have the claim dismissed. If Charlie had violated his NMP or other laws, he would not be able to use the affirmative defense; in this case, Steve’s nuisance suit could proceed.

In another example, Shannon’s house is next door to Justin’s commercial seafood operation. Justin routinely stores his gear (crab pots, fish nets, dredges, engines, etc.) outside. Shannon files a lawsuit against Justin claiming that storing his gear outside impacts her use and enjoyment of her water view home, and asks the judge to force Justin to remove his gear from her

view. If Justin is in compliance with all federal, state, and county laws and regulations, the RTF’s affirmative defense would allow Justin to seek dismissal of Shannon’s lawsuit.

## Good Neighbor Relationships Can Limit Lawsuits and Costs

Even though the RTF’s affirmative defense helps avoid judgments against law-abiding qualifying operations, being willing to work with neighbors also can help limit costly litigation. Neighbors may not recognize that the location of their new house near a farming or fishing operation may mean strange odors and noises. In turn, the operator may not understand the new neighbor’s lack of knowledge of agricultural, commercial fishing, or seafood operations.

Looking at our earlier example, even if Charlie follows all existing laws and regulations and can use the affirmative defense, it would be better if Steve did not file a suit. If Steve felt comfortable talking with Charlie and the two had a neighborly discussion, they could avoid Steve’s lawsuit.

For example, if Charlie’s fertilizer had run-off into Steve’s Koi pond and killed some of the fish, Charlie could say he is not legally responsible for replacing them. Alternatively, Charlie could discuss the event with Steve and offer to help replace the fish. In turn, Steve may mention his plans to have a party the following week to Charlie, who could postpone any further manure applications until after the party. (Or maybe Steve could ask Charlie to the party?) By working with Steve, Charlie created good feelings with his neighbor which might be worth far more than the amount he saved by claiming no responsibility for the fish.

Charlie created goodwill by replacing the fish, thus avoiding the legal fees for fighting the lawsuit, the requisite paperwork, and bad feelings. Both farm and non-farm neighbors should look for opportunities to interact and develop personal relationships. Opening lines of communication to make each person aware of the other’s needs may result in solutions without litigation.



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For advice from farmers on how to communicate with your neighbors, see University of Maryland Extension publications, *Improving Neighbor Relations, Farmers Advising Farmers and Improving Neighbor Relations Living in a Rural Community*.

### **RTF Defense Doesn't Apply in Cases of Negligence or Trespass**

Maryland's RTF law only provides a defense against nuisance claims, not a general defense to all claims against agricultural, commercial fishing, or seafood operations. If a federal, state, or local government is enforcing applicable laws against a qualifying operation, the RTF law will not apply (§ 5-403(b)(1)(i)). Operators cannot use this defense when they are 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 could not be used as a defense. 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 NMP and has not fully and demonstrably implemented it, the operator would not be able to use the RTF defense in a nuisance suit (§ 5-403(b)(2)).

This exclusion also applies to failure to comply with federal, state, and local health, environmental, and zoning requirements (§ 5-403(b)(1)(iii)). For example, Maryland requires concentrated animal-feeding operations (CAFOs) be built at least a half a mile from a school, park, or summer camp. A farmer who diversified and constructed a CAFO within a quarter-mile from a school could not use the RTF law as a defense when the school's Parent-Teacher Association challenges the permit application.

The RTF law will also not provide a defense when the claim is negligence against the qualifying operation (§ 5-403(b)(1)(iv)). Legally, negligence means a person or business failed to exercise a standard of care which society would expect from a reasonably prudent person. For example, Charlie has cattle which frequently get out into the road between Charlie's pasture and Steve's house. Charlie has not taken the time to repair the fence to prevent the cattle's escape. On Steve's way home from work one day, he crashes his car into one of Charlie's cattle. Steve may file a claim of negligence against Charlie after the accident. The standard of care expected of Charlie is to keep his cattle enclosed safely on his farm, which includes keeping his fences in good repair. Since Charlie has not repaired the fences despite repeated evidence that his cattle had been getting out, he 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 any other damages.

***The RTF law will not provide a defense when the claim is negligence against the qualifying operation.***

RTF laws also 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. Charlie's cattle, from our previous example, cross onto Steve's property to use his pond for water. This is considered trespassing because the cows are interfering with Steve's exclusive right to use his property. Steve

can call local law enforcement in this case, and the RTF law could not be used to defend Charlie who is liable for damages caused by his cattle.



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RTF laws do not provide a defense against claims of trespass.

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### **Before Bringing a Nuisance Suit, File With the County Agricultural Reconciliation Board**

Before bringing a nuisance suit to court, a complaining party such as Steve must file with the local agency authorized to hear nuisance complaints against agricultural, commercial fishing, or seafood operations (§ 5-403(e)(2)). This local agency reviews the complaint and makes an official recommendation.

Most Maryland counties have established a county agricultural reconciliation board (ARB) to hear nuisance suits against agricultural operations. These boards are typically five county residents with a mix of both agricultural and nonagricultural backgrounds. Membership requirements vary by county. The ARBs conduct hearings informally, i.e., not under the same strict rules as a formal courtroom. This informality can reduce litigation expenses, provide win-win solutions, and allow quicker resolutions of a nuisance suit. If the ARB rules that the nuisance suit has merit or that the operation is not qualified to use RTE, the suit may move forward to the Circuit Court.

If there is no local ARB authorized to hear a nuisance complaint against an agricultural operation, the

complaint is referred to the state agricultural mediation program, known as the Maryland Agricultural Conflict Resolution Service (ACReS). If ACReS certifies that mediation has concluded without a resolution, the complaining party may file the nuisance suit in the appropriate Circuit Court.

***By requiring nuisance suits to be heard first by a local board or state mediator, the Maryland RTF laws may reduce litigation costs and protect an operation's financial status.***

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This process of local review or mediation delays or avoids costly nuisance suits. Although RTF laws provide an affirmative defense for nuisance suits, they do not prevent the filing of nuisance suits. Both parties must present evidence as to whether the defense applies in a particular case and a judge will rule on the evidence. Presenting evidence can be costly in money and time; an operator may suffer financial stress. In a few cases, operations have been sold to finance court costs. By requiring nuisance suits to be heard first by a local board or state mediator, the Maryland RTF laws may reduce litigation costs and protect an operation's financial status.

### **Check Your County's RTF Ordinance for Protected Activities**

Each of Maryland's 23 counties has its own RTF ordinance. Agricultural, commercial fishing, and seafood operations should check the code for each county in which they operate. These county RTF ordinances work with the state's RTF law to define the parameters of those activities protected in each county.

Twenty-two of Maryland's 23 counties have adopted similar language in their county RTF ordinances. This "common county RTF ordinance" states that if an agricultural operation uses "generally accepted agricultural management practices" (GAAMPs), the

RTF defense applies. Governmental agencies such as the local soil conservation district or University of Maryland Extension have defined many GAAMPs. For cases where a governmental agency has not authorized any GAAMPs, the practice(s) in question is presumed by the ARB or ACReS to be GAAMP, but a neighbor can provide evidence to show that the practice is not generally accepted.

For example, assume no governmental agency has set a recommended buffer zone from a stream when spraying a pesticide, but local farmers commonly use a 20-foot buffer zone. If a farmer is using a 10-foot buffer zone in this situation, a neighbor can present evidence showing most other farmers in the county use 20-foot buffer zones. In this case, the RTF law might not provide a defense to the neighbor's nuisance suit.



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County RTF ordinances may require disclosure of the RTF ordinance when a house or property is sold or transferred. The notice informs new owners of the existing RTF law and ordinances in the state and county.

The requirement to utilize GAAMPs as well as comply with all applicable laws, permits, and other requirements creates some safeguards under both county and state RTF laws. Compliance assumes a producer is utilizing GAAMPs authorized by governmental agencies, which will help 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 ARB before issuing a final decision. State and county RTF laws work together to create protections for Maryland producers and other citizens.

In many Maryland counties, if a nuisance suit involves public health, RTF ordinances require it to be filed with the county Health Department, rather than the county's ARB or the state's ACReS program. The county Health Department reviews and decides if the agricultural operation is a nuisance to public health. Within these counties, the ARB hears all the non-public health related nuisance claims.

County RTF ordinances may require disclosure about the existence of the RTF ordinance when a house or property is sold or transferred. The notice informs the new owners of the existing RTF law and ordinances in the state and county. This disclosure educates the people potentially purchasing property, leasing with an option to purchase, or leasing in a residential area that they must co-exist with neighboring agricultural, commercial fishing, or seafood operations.

## Putting It All Together

When a neighboring landowner believes he/she has a claim against a farming or seafood operation, how should he/she proceed? The neighboring landowner first should consider the nature of the claim against the operation. For example, Nancy lives next door to Anne, who operates poultry houses. During the summer months, Nancy notices large flies on her property and believes the flies are coming from Anne's poultry operation next-door. The flies make it impossible for Nancy to use her outdoor spaces during the summer, so she decides to bring a lawsuit against Anne for causing a private nuisance.

Nancy would first need to file a complaint with her county's ARB. This board would review the complaint and attempt to work out a fair solution to the problem. Remember, this is one important feature of Maryland's RTF law: a court cannot hear a nuisance suit against a farmer until the county ARB issues a decision on the claim.

If Nancy does not first bring the claim before the county ARB, then Anne's attorney should file the appropriate motions to have this process play out first. Allowing the county ARB or the ACREs program to hear the claim first could resolve disputes outside of the court system, saving money, avoiding bad feelings, and permitting productive and agreeable outcomes.

If Nancy decides to bring a suit based on violations of other laws, regulations, ordinances (i.e. zoning, health, environmental), negligence, or trespass, the RTF law will not apply. Anne could not use the RTF affirmative defense in this situation. Anne would need to show with appropriate business records that her poultry operation complies with all applicable laws and regulations. For example, if Nancy's property was downhill of Anne's and a large rain washed Anne's poultry litter onto Nancy's property causing the large flies to swarm, Nancy might bring a trespass claim which is not protected by the RTF law. The same would be true if Anne's negligence allowed a disease from the poultry operation to spread to the few chickens Nancy keeps on her property. The RTF law would provide no defense in these situations. It applies only in the limited case when nuisance is alleged.

*Note: This publication is intended to provide general information about legal issues and should not be construed as 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.*

## Definitions

*Affirmative defense* – is a defense that if the defendant can prove he or she qualifies to use it, will disallow civil liability even if the defendant did the alleged acts.

*Apiculture operation* – is the business of keeping bees on a large scale.

*Commercial fishing or seafood operations* – are operations for harvesting, storing, processing, marketing, selling, purchasing, trading, or transporting of any fish or seafood product. These operations include delivery, storage, and maintenance of equipment and supplies and charter boat fishing and related arrival and departure activities, equipment, and supplies.  
§ 5-403(a)(3)(i) to (ii).

*Nuisance* – is a condition or situation (such as a loud noise or foul odor) which interferes with the use and enjoyment of property versus an offence, annoyance, trouble, or injury from the use of another's property.

*Silviculture operation* – is implementing forestry practices, including establishment, composition, growth, and harvesting of trees § 5-403(a)(4).

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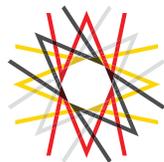
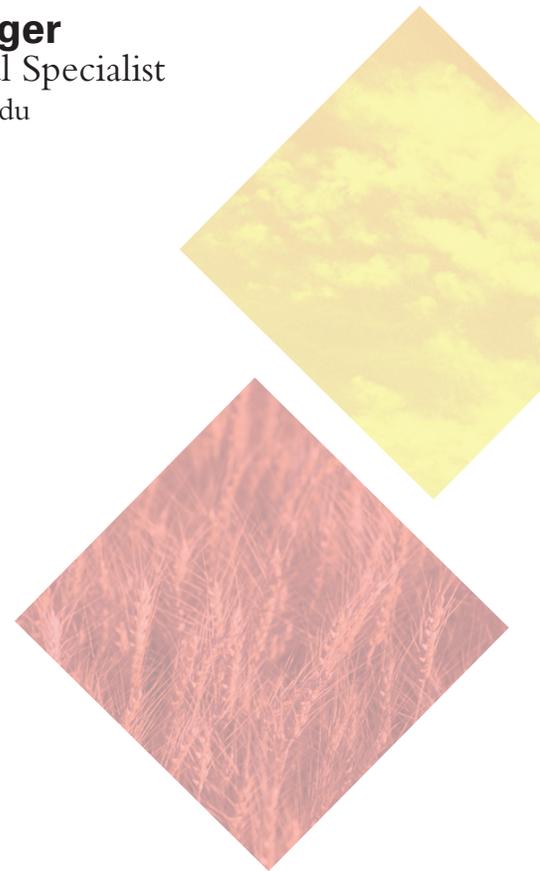
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