

§ 7A-38.3. Prelitigation mediation of farm nuisance disputes.

(a) Definitions. – As used in this section:

- (1) "Farm nuisance dispute" means a claim that the farming activity of a farm resident constitutes a nuisance.
- (2) "Farm resident" means a person holding an interest in fee, under a real estate contract, or under a lease, in land used for farming activity when that person manages the operations on the land.
- (3) "Farming activity" means the cultivation of farmland for the production of crops, fruits, vegetables, ornamental and flowering plants, and the utilization of farmland for the production of dairy, livestock, poultry, and all other forms of agricultural products having a domestic or foreign market.
- (4) "Mediator" means a neutral person who acts to encourage and facilitate a resolution of a farm nuisance dispute.
- (5) "Nuisance" means an action that is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property.
- (6) "Party" means any person having a dispute with a farm resident.
- (7) "Person" means a natural person, or any corporation, trust, or limited partnership as defined in G.S. 59-102.

(b) Voluntary Mediation. – The parties to a farm nuisance dispute may agree at any time to mediation of the dispute under the provisions of this section.

(c) Mandatory Mediation. – Prior to bringing a civil action involving a farm nuisance dispute, a farm resident or any other party shall initiate mediation pursuant to this section. If a farm resident or any other party brings an action involving a farm nuisance dispute, this action shall, upon the motion of any party prior to trial, be dismissed without prejudice by the court unless any one or more of the following apply:

- (1) The dispute involves a claim that has been brought as a class action.
- (2) The nonmoving party has satisfied the requirements of this section and such is indicated in a mediator's certification issued under subsection (g) of this section.
- (3) The court finds that a mediator improperly failed to issue a certification indicating that the nonmoving party satisfied the requirements of this section.
- (4) The court finds good cause for a failure to attempt mediation. Good cause includes, but is not limited to, a determination that the time delay required for mediation would likely result in irreparable harm or that injunctive relief is otherwise warranted.

(d) Initiation of Mediation. – Prelitigation mediation of a farm nuisance dispute shall be initiated by filing a request for mediation with the clerk of superior court in a county in which the action may be brought. The Administrative Office of the Courts shall prescribe a request for mediation form. The party filing the request for mediation also shall mail a copy of the request by certified mail, return receipt requested, to each party to the dispute. The clerk shall provide each party with a list of mediators certified by the Dispute Resolution Commission. If the parties agree in writing to the selection of a mediator from that list, the clerk shall appoint that mediator selected by the parties. If the parties do not agree on the selection of a mediator, the party filing the request for mediation shall bring the matter to the attention of the clerk, and a mediator shall be appointed by the senior resident superior court judge. The clerk shall notify the mediator and the parties of the appointment of the mediator.

(e) Mediation Procedure. – Except as otherwise expressly provided in this section, mediation under this section shall be conducted in accordance with the provisions for mediated

settlement of civil cases in G.S. 7A-38.1 and G.S. 7A-38.2 and rules and standards adopted pursuant to those sections. The Supreme Court may adopt additional rules and standards to implement this section, including an exemption from the provisions of G.S. 7A-38.1 for cases in which mediation was attempted under this section.

(f) Waiver of Mediation. – The parties to the dispute may waive the mediation required by this section by informing the mediator of their waiver in writing. No costs shall be assessed to any party if all parties waive mediation prior to the occurrence of an initial mediation meeting.

(g) Certification That Mediation Concluded. – Immediately upon a waiver of mediation under subsection (f) of this section or upon the conclusion of mediation, the mediator shall prepare a certification stating the date on which the mediation was concluded and the general results of the mediation, including, as applicable, that the parties waived the mediation, that an agreement was reached, that mediation was attempted but an agreement was not reached, or that one or more parties, to be specified in the certification, failed or refused without good cause to attend one or more mediation meetings or otherwise participate in the mediation. The mediator shall file the original of the certification with the clerk and provide a copy to each party. Each party to the mediation has satisfied the requirements of this section upon the filing of the certification, except any party specified in the certification as having failed or refused to attend one or more mediation meetings or otherwise participate. The sanctions in G.S. 7A-38.1(g) do not apply to prelitigation mediation conducted under this section.

(h) Time Periods Tolled. – Any applicable statutes of limitations relating to a farm nuisance dispute shall be tolled upon the filing of a request for mediation under this section, until 30 days after the date on which the mediation is concluded as set forth in the mediator's certification, or if the mediator fails to set forth such date, until 30 days after the filing of the certification under subsection (g) of this section. The filing of a request for prelitigation mediation under subsection (d) of this section does not constitute the commencement or the bringing of an action involving a farm nuisance dispute. (1995, c. 500, s. 1; 2013-314, s. 2.)