



FARMERS' LEGAL
ACTION GROUP,
INCORPORATED

360 North Robert Street Suite 500
Saint Paul, Minnesota 55101

Phone: 651 223.5400
Fax: 651 223.5335

Internet:
lawyers@flaginc.org

Web site:
www.flaginc.org



Legal Information for Broiler Growers

I'll See You in Court—Or Will I?

The last thing on many growers' minds when they sign a contract to raise broilers for a poultry company is: what happens if something goes wrong? But if a disagreement arises between a grower and a company, the terms of the contract can control the process that must be used to resolve the disagreement. Broiler production contracts often include provisions that specifically address how disagreements related to the growout arrangement must be handled, and they approach it in a variety of ways.

To the extent that a contract provides that disagreements will be resolved through a formal system other than the courts, this process is referred to as Alternative Dispute Resolution, or "ADR." Clauses calling for resolution of disputes through ADR have become very common in poultry growing contracts.

Be sure you know the dispute resolution approach used in your contract: both what is available and what may be required to allow you to pursue a dispute.

What is Alternative Dispute Resolution (ADR)?

Alternative Dispute Resolution (ADR) is an alternative to the traditional model of suing to have a dispute resolved by a judge or jury. ADR includes several types of processes that do not involve either state or federal courts, but instead use other neutral parties to help the two sides reach an agreement or to make a binding decision for them. The most common forms of ADR in the poultry industry are mediation, peer review, and arbitration.

In **mediation**, a neutral mediator tries to help the parties to resolve their disagreement. Depending on the situation, a mediator may be an "expert" or may simply be someone whom both sides accept as fair. If your broiler growout contract provides for mediation of a dispute, it will likely also set out how the mediator will be selected. A mediator may persuade the parties to come to an agreement, but has no power to impose a solution on them. If mediation is unsuccessful, the contract will generally set out what other ADR processes, such as arbitration, may be required. If no further ADR process is required, you and the company are likely free to take the dispute to court.

In **peer review**, a small group of people decide how to resolve a dispute. When peer review is called for in a broiler growout contract, the contract generally states who will be in the group. Typically the group will be made up of experienced growers, but in some

cases it will also include company employees. Depending on the particular contract, you and the company may or may not be bound by the peer review committee's decision. If the decision is not binding, the contract may require that objections to the peer review committee's decision go to arbitration, or you may be free to take the dispute to court.

In **arbitration**, one or more arbitrators make a final decision on how to resolve a dispute. If your contract provides for arbitration, it may also set out how the arbitrator(s) will be selected and what formal rules, if any, they will use when considering the dispute. It is very likely that neither you nor the company will be able to appeal to anyone, including a court, if you are unhappy with the arbitration decision.

Why do I need to understand contract provisions related to ADR?

Poultry companies have given a great deal of thought to what to do when disputes arise under production contracts. Because ADR provisions in a contract may determine whether you will be able to resolve disagreements in a way that is fast, relatively inexpensive, and fair, they can greatly affect the level of risk involved.

It is also important to make sure that you understand the provisions of your contract. Even contracts that use the same type of ADR process often have different rules. For example, some contracts require growers to serve on a peer review committee if asked by the company, while other contracts expressly provide that growers will not be required to serve on a peer review committee.

Understanding the dispute resolution provisions of your contract is also critical because they may include **deadlines** for you to seek a resolution of disagreements with the company. Some growout contracts that require ADR have very short deadlines for starting the ADR process, generally much shorter than would apply if you were considering taking a claim to court. If the contract does not list a deadline for seeking ADR, you should still try to act as quickly as you reasonably can to get your materials and arguments together.

Note that if your dispute is related to receiving prompt and full payment, any contract deadlines for seeking ADR are separate from the deadlines for making a complaint to USDA. Your written complaint must reach USDA and the company within 30 days of the final date the live poultry dealer should have paid you.

You should also determine if the contract states that the ADR process must take place in a certain **location** or under certain **rules**. Will you have to travel to the company's home state or another location? If the process is arbitration, will the rules (and fees) of the American Arbitration Association apply? If the contract does not answer these questions, do you know how they will be answered?

Can I skip ADR and go right to court?

If your contract does not require ADR and no law requires the use of ADR in the circumstances, you are free to take any dispute right to court. On the other hand, if the contract says that disputes **must** be resolved using ADR, then it may be that neither party can go to court, at least not right away.

Depending on the language used in the contract, whether you can go to court may also depend on the type of dispute. Does the clause in your contract say that “any dispute” will be subject to ADR? Or does the contract use more limited language, such as “any dispute having to do with the payment to be made to the grower”? The first example would include many more potential disputes than the second. If you had a clause saying that “any dispute about the payment due” would go to arbitration and you had a complaint about the quality of chicks provided, you could argue that the dispute over chick quality did not fall within the arbitration clause, and you could try to go to court.

Whether you can go to court will also depend upon the type of ADR required by your contract.

Mediation itself is never binding, unless the parties reach an agreement and enter a new contract. If you do not reach an agreement in mediation, you are free to go to court, unless the contract provides for some other form of ADR after mediation.

It is not clear whether a **peer review** process can be used to prevent you from going to court, even if the contract says it is a final decision. Because the decision-makers in the peer review process have a personal stake in their own relationship with the company, their ability to be impartial may be in doubt. Many contracts provide for arbitration if you are unhappy with the peer review decision.

If you filed a lawsuit in court after signing a contract with an **arbitration** clause, the company would probably be able to get the judge to stop the court proceedings and refer the dispute to arbitration. In very rare cases, you might be able to persuade a court not to enforce the arbitration clause, but you would need to show that there were serious problems with the contract in the first place, such as fraud, duress, or a mutual mistake that you and the company made.

Can an arbitration award be appealed?

Once a dispute has been submitted to arbitration, it is extremely difficult to get the arbitrator’s decision overturned by a judge. However, an award could be set aside if the arbitrator engaged in misconduct. Examples of misconduct would be accepting money in return for deciding a certain way or refusing to hear relevant evidence. A judge could also correct an obvious factual mistake. However, a decision that is unfair or even incorrect under the law will not necessarily be overturned.

If the contract requires arbitration of all disputes, modifying or removing the arbitration clause in a new contract is likely the only way to preserve the right to have disputes considered by a court.

How can my right to go to court be taken away?

By signing a poultry production contract with an arbitration clause, you are agreeing to give up – or “waive” – the right to have your day in court. Because you voluntarily sign the contract, you are considered to have voluntarily agreed to all of the terms of the contract – including the arbitration clause. Therefore, the argument goes, nothing has been taken

from you. If you do not want an arbitration clause in the contract, the law puts the burden on you to negotiate with the company to take that clause out.

Although in reality an individual grower may have little or no power to negotiate the terms of a growout contract and try to have an unwanted arbitration clause removed, signing the contract will still be considered voluntary acceptance of the arbitration requirement. As long as there is a written agreement between the parties, even if it is just one sentence in a much larger contract, the law will likely enforce your agreement to use arbitration to address any conflicts that arise.

If preserving the right to take disputes to court is important to enough growers who are contracting with a particular company, the growers might want to consider whether it would be worthwhile to approach the company as a group about the issue.

What are some advantages and disadvantages of ADR?

ADR processes are increasingly being used to resolve disputes, particularly disputes arising under commercial contracts such as broiler growing contracts. Proponents of ADR argue that disputes can be resolved more quickly and at less cost through ADR than through the courts. They also suggest that the less confrontational nature of ADR processes can lead to an improved relationship between the parties once the dispute is resolved. While these advantages may be realized in many cases, ADR is not always advantageous.

As mentioned earlier, contract provisions requiring that disputes be resolved through ADR often also impose deadlines on the disputing party that significantly reduce the time available to consider options before having to bring the claim. Failure to meet those deadlines may mean that any opportunity to have the dispute resolved is lost. Depending on the circumstances, some forms of ADR, particularly arbitration, may also be as expensive or more expensive than going to court. Bringing a dispute to arbitration generally means having to pay filing fees and pay the arbitrator(s) for the time spent hearing and deciding the case. Because companies are generally represented by attorneys in arbitration, growers often also find that they face the expense of legal representation if they are to have the best chance of a successful outcome.

If you arbitrate a dispute, you also may not be able to get access to information that is crucial to proving your case. In a lawsuit, specific rules govern the kinds of information and records that one side must make available to the other side. These “discovery” rules generally do not apply in arbitration.

Possibly the greatest disadvantage of arbitration is the essentially complete loss of the right to seek review of an arbitration award. Depending on your contract and the arbitration rules involved, you may or may not have a say in who your arbitrator will be. And unless that arbitrator is flagrantly biased or totally incompetent you will probably be stuck with their decision, even if they are wrong about the law behind your dispute.

If losing your right to go to court is a disadvantage of arbitration, being able to go to court after using other forms of ADR may undermine the advantages mentioned above. If you

ultimately face either having to bring a claim or defend against a claim in court to get the dispute resolved, many of the time-saving and cost-saving benefits of ADR are lost.

Can ADR address widespread problems?

You probably have heard of “class action lawsuits” in which many people are able bring claims against a person, company, or agency because they all suffered similar harm or have similar disputes. A class action lawsuit often allows a group of people to put together more evidence, as well as allowing them to share legal costs. Group claims are generally less available in ADR processes, unless specifically provided for by statute, such as in contract bargaining by unions or other associations. ADR processes provided in growout contracts will likely only be available for individual claims. Some contracts requiring arbitration of disputes even specify that arbitration may only involve one grower at a time.

A further limitation on ADR as a tool to address widespread problems is that ADR decisions generally have no impact on later disputes involving the same issues. If one grower has a successful arbitration, this does not help growers who go to arbitration in the future on the same issue. In contrast, a successful lawsuit could set a legal rule, or “precedent,” that growers could build upon in future lawsuits.

What laws govern the use of ADR?

The Federal Arbitration Act sets out general rules and procedures for arbitration in commercial settings involving interstate commerce, which includes most poultry production contracts. Many states also have arbitration acts that may apply to growout contracts. These statutes may become important if there is a problem with the arbitration process, but your primary concern will be the rules that you will be required to follow in the arbitration itself. Depending on the language of the arbitration clause in your contract, you may be agreeing to follow the rules of the American Arbitration Association, the National Grain and Feed Association, or some other organization. Or the rules may not be specified at all. If your growout contract requires you to arbitrate your disputes with the company, it is a good idea to get a copy of the arbitration rules as soon as a dispute arises, so you will know what would be required of you (including any fees) if you wanted to pursue arbitration.

