

FARM MEDIATION ACT

- Administration: This Act is administered by the Nebraska Department of Agriculture, Administration Division. The Department of Agriculture is located in the State Office Building, 301 Centennial Mall South, Lincoln, Nebraska 68509. Telephone: (402) 471-3348.
- Revisions: This Act was last revised during the 2009 session of the Nebraska Legislature.
- Rules: A regulation has been promulgated under this Act, known as Title 19, Chapter 2, Nebraska Administrative Code - Farm Mediation Regulations.

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2-4801. Act, how cited. Sections 2-4801 to 2-4815 shall be known and may be cited as the Farm Mediation Act.

2-4802. Terms, defined. As used in the Farm Mediation Act, unless the context otherwise requires:

(1) Administrator means the Department of Agriculture or any other appropriate state agency designated by the Governor;

(2) Borrower means an individual, limited liability company, corporation, trust, cooperative, joint venture, or other entity entitled to contract who is engaged in farming or ranching, who derives more than fifty percent of his or her gross income from farming or ranching, and who holds an agricultural loan;

(3) Creditor means any individual, organization, cooperative, partnership, limited liability company, trust, or state or federally chartered corporation to whom an agricultural loan is owed;

(4) Farm mediation service means an entity with which the administrator contracts to conduct mediation and related services pursuant to the act;

(5) Mediation means a process by which the parties present, discuss, and explore practical and realistic alternatives to the resolution of a dispute; and

(6) Mediator means anyone responsible for and engaged in the performance of mediation pursuant to the act.

2-4803. Administrator; duties. The administrator shall serve as the farm mediation program coordinator and shall be responsible for placing into effect and implementing the Farm Mediation Act.

2-4804. Financial, legal, and farm mediation services; contracts to provide.

(1) Borrowers involved in mediation under the Farm Mediation Act shall be offered assistance, at no cost to borrowers, in the analysis of their business and personal financial situation. The administrator shall contract with one or more eligible persons to provide such assistance. A person shall be eligible to contract to provide services pursuant to this subsection if he or she has staff trained and experienced in farm and ranch financial analysis, is familiar with the unique aspects of production agriculture, is able to work effectively with borrowers and creditors, and demonstrates an ability to assist each borrower in developing alternatives and to evaluate such alternatives for potential viability.

(2) The administrator shall provide any available information regarding legal assistance programs for borrowers and may contract with one or more eligible persons to provide such assistance. A person shall be eligible to contract to provide services pursuant to this subsection if such assistance is provided by attorneys who are qualified in agricultural credit problems of borrowers.

(3) The administrator shall contract with one or more eligible persons to provide farm mediation services pursuant to the Farm Mediation Act. A person shall be eligible to contract to provide farm mediation services if he or she is qualified or provides agricultural mediation training of mediators to a level of expertise specified by the administrator and ensures that all mediation sessions are confidential.

(4) Any person contracting with the administrator to provide services

pursuant to this section shall demonstrate an ability to perform high quality service for the least cost within the time limits established by the administrator.

(5) The contract or contracts entered into pursuant to this section may be terminated by either party upon written notice. Any person awarded a contract shall be designated as the contractor for the service area of the state set forth in such contract for the duration of the contract.

2-4805. Farm mediation service; advise borrower of assistance programs. After receiving a mediation request, the farm mediation service shall advise the borrower that financial and legal preparation assistance may be available. The farm mediation service shall provide any other available information regarding assistance programs to farmers.

2-4806. Fees. The administrator shall adopt and promulgate rules and regulations setting appropriate fee guidelines for the services provided under the Farm Mediation Act, which fees shall not exceed actual costs and shall be borne equally by all parties, and setting forth any procedures or requirements necessary to implement the act. The rules and regulations shall provide that the fees shall be collected by the farm mediation service and retained by the farm mediation service to offset its costs and that the farm mediation service may require payment of the fees or a portion thereof prior to a mediation meeting. The administrator may adopt and promulgate rules and regulations that allow a separate fee schedule for mediation services that are not eligible for partial or full federal reimbursement.

2-4807. Creditor; provide notification of availability of mediation; when.

(1) At least thirty days prior to the initiation of a proceeding on an agricultural debt in excess of forty thousand dollars, a creditor, except as provided in subsection (2) or (3) of this section, shall provide written notice directly to the borrower of the availability of mediation and the address and telephone number of the farm mediation service in the service area of the borrower.

(2) Subsection (1) of this section shall not apply to creditors subject to the federal Agricultural Credit Act of 1987 if such act and the rules and regulations adopted and promulgated thereunder require otherwise.

(3) Subsection (1) of this section shall not apply if a court of competent jurisdiction determines that the time delay required would cause the creditor to suffer irreparable harm because there are reasonable grounds to believe the borrower may dissipate or divert collateral.

2-4808. Mediation; request; participants. (1) Any borrower or creditor may request mediation of any indebtedness incurred in relation to an agricultural loan by applying to the farm mediation service. Any party involved in an adverse decision from a United States Department of Agriculture agency may request mediation by applying to the farm mediation service. The farm mediation service may also accept disputes regarding division fences, including disputes referred by a court pursuant to section 34-112.02.

(2) The farm mediation service shall notify all the parties and, upon their

consent, schedule a meeting with a mediator. The parties shall not be required to attend any mediation meetings under this section, and failure to attend any mediation meetings or to participate in mediation under this section shall not affect the rights of any party in any manner. Participation in mediation under this section shall not be a prerequisite or a bar to the institution of or prosecution of legal proceedings by any party.

2-4809. Initial mediation meeting. After receiving a mediation request under section 2-4808, the farm mediation service shall send a mediation meeting notice to all the consenting parties setting a time and place for an initial mediation meeting between the parties and a mediator associated with the farm mediation service. Adequate preparation by all parties shall be advised by the farm mediation service prior to the mediation meeting. An initial mediation meeting shall be held within forty days after receiving the mediation request or as otherwise agreed by the parties.

2-4810. Mediation period; duration; continuation. The farm mediation service shall conduct and conclude a mediation meeting during the mediation period which extends for sixty days after the farm mediation service receives the mediation request. If all parties consent, mediation may continue after the end of the mediation period. If any party elects not to participate in mediation, the farm mediation service shall so notify all parties.

2-4811. Agreement; mediator; powers; enforcement. If an agreement is reached between the parties, the mediator may (1) draft a written mediation agreement encompassing the agreement, (2) have it signed by the parties, and (3) file the agreement with the farm mediation service. Any party to the mediation agreement may enforce the agreement as a legal contract.

2-4812. Mediator; duties; confidentiality required. (1) At the initial mediation meeting and any subsequent meetings, the mediator associated with the farm mediation service shall:

- (a) Listen to every party desiring to be heard;
- (b) Attempt to mediate between the parties;
- (c) Allow for exploration of legitimate and fair interests of the parties; and
- (d) Advise the parties as to the existence of any available assistance programs including financial preparation and legal assistance.

(2) All documents and data regarding the finances of borrowers and creditors or the involvement of parties in an adverse decision from a United States Department of Agriculture agency which are created, collected, and maintained by the farm mediation service shall not be public records and shall be held in strict confidence by the farm mediation service and all parties to the mediation. If all parties consent to disclosure, such information may be disclosed pursuant to the terms of the consent.

(3) No mediation shall commence until the mediator makes a statement to the effect of language contained in subsection (2) of this section. At the end of a mediation session, the mediator shall obtain a signed statement by all parties to the mediation agreeing to abide by the requirements of this section.

2-4813. Administrator; farm mediation service; promote services. The administrator and the farm mediation service shall make an extensive effort to educate borrowers and creditors and other eligible participants on the mediation process; financial, legal, and federal agricultural program issues; and the availability of farm mediation services.

2-4814. Applicability of act. Except as otherwise provided in the Farm Mediation Act, nothing in the act shall be applicable to or shall affect any legal proceedings filed by any party in mediation.

2-4815. Farm mediation service; maintain statistical records. The farm mediation service shall maintain complete statistical records of program participation and costs and make them available upon request.

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