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MANDATORY FARM CREDIT MEDIATION: What It Is and How It Works



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In Article 1 of the 1986 Omnibus Farm Bill, the Minnesota Legislature voiced support for mediation as one means of orderly process to assist farmers and agricultural lenders address issues of agricultural indebtedness. The effective date of Article 1 was March 22, 1986. While the use of voluntary mediation to discuss credit problems is encouraged, the law also instituted a program of mandatory farm credit mediation. It is important for farmers and lenders to understand what mandatory mediation is and how it is being implemented in Minnesota.

MEDIATION: THE PROCESS

Mediation introduces a neutral party into borrower and creditor discussions to facilitate discussion and generate alternative plans. All decisions and recommendations are made by the debtors and creditors. Farmers and creditors come to mediation with the understanding that they will seek a mutually agreeable solution that, in the best way possible, meets the needs of all parties.

These are key elements of the process:

- It focuses on constructive outcomes.
- It assures an equal voice for all parties.
- It allows people to determine the results and develop creative solutions to difficult problems.
- It allows a case-by-case consideration of problems and focuses on solutions that meet the needs of debtors and creditors in each specific instance.

The Minnesota Extension Service has the responsibility of developing and administering the Farm Credit Mediation Program. This folder describes the way the program operates and answers some common questions about mandatory farm mediation.

MANDATORY FARM CREDIT MEDIATION

The use of the word "mandatory" in this situation does not change the mediation process for problem-

solving. **"Mandatory"** means that no creditor can start a proceeding to collect a debt against agricultural property until the creditor and debtor have first attempted to reach resolution of the issue through mediation. Creditor is defined as persons or organizations holding secured debts against agricultural property. This includes mortgages, liens or security interests, judgments and contracts for deed. The mandatory program imposes some timelines, requires good faith participation, and stipulates that settlements agreed upon by all parties are binding legal contracts.

Mandatory farm credit mediation is a last resort action to be employed when all other attempts to resolve disputed issues of farm credit have been exhausted by the borrower and the creditors. **The Mandatory Farm Credit Mediation Program should be used only if discussions between parties have broken down and adverse legal actions for debt collections are necessary and impending.** It is not intended to replace the serious good faith bargaining and discussion inherent in debtor/creditor relationships.

HOW THE MANDATORY MEDIATION PROCESS WORKS

A **creditor** with a secured debt of more than \$5,000 against agricultural property must initiate mandatory mediation before proceeding with foreclosure, repossession, cancellation of contract or collection of a judgment. To begin mandatory mediation, the creditor must "serve" a Creditor's Notice of Mediation on the debtor and on the County Office of the Minnesota Extension Service. This Notice must be sent by certified mail or personal delivery and requires a signed receipt.

A **debtor** receiving a Creditor's Notice of Mediation has two choices: 1) to do nothing and allow the

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Current information available from University of Minnesota Extension: <http://www.extension.umn.edu>.

creditor to move ahead, or 2) to file a Request for Mandatory Mediation with the County Extension Office within 14 days indicating a desire to enter into mediation as an attempt to resolve the issues. The Request forms are available at the offices of the County Recorder and the Minnesota Extension Service in each county. The names and addresses of all specified creditors must be included on the Farmers Request forms.

The **Minnesota Extension Service** administers the program and provides farm financial analysis assistance. If a debtor does not respond to the Creditor's Notice of Mediation within 14 days, the County Office informs the creditor that mediation is waived and proceedings against agricultural property may begin. If the debtor does request mediation, the County Office initiates several actions:

1. Assigns a financial analyst to assist the debtor.
2. Provides names of farm advocates to the debtor.
3. Sends a Mediation Proceeding Notice to the farmer and all specified creditors.
4. Sends creditors and debtors the names of 3 mediators available to work on the case.

Both the debtor and the initiating creditor have the right to remove one name from the list of 3 mediators. To do this, a letter must be sent to the County Extension Office within 3 days of receipt of the Mediation Proceeding Notice. While the goal is to appoint a mediator acceptable to all parties, the Minnesota Extension Service has the final decision in appointing a mediator under the guidelines established in the law.

Mediation takes place over a 60-day period. All known secured creditors and necessary unsecured creditors are invited to participate. The debtor works with the assigned financial analyst to prepare records and financial information. Alternative strategies are formulated with the help of the mediator who schedules meetings and guides the discussion.

Time is spent clarifying the issues and discussing options for settlement. Pertinent facts and information are surfaced. Expert advice may be requested and discussed. The mediator takes the lead role to stimulate cooperation, help define the issues, emphasize common goals, assure that all parties have a chance to speak, keep the discussion focused, and reduce guilt or blame-placing. Creative ways to solve the problem are encouraged from all parties.

When all parties have reached agreement, the settlement agreement is written, and copies are provided to each person. The parties should have the tentative agreement reviewed by attorneys, supervisors, outside experts or family members. Parties are responsible for carrying through with paperwork and contract changes necessary to implement the agreement. When all parties are satisfied that the

agreement represents a realistic settlement, the agreement is signed and becomes a binding contract.

OBLIGATIONS OF THE PARTIES IN MANDATORY MEDIATION

All parties who agree to participate are required to attend all mediation meetings.

Debtors must also:

- attend an orientation session with a financial analyst and a mediator before the first meeting;
- include all secured creditors and those unsecured creditors necessary to the farm operation on the mediation request;
- allow secured creditors to inspect the property on a 24 hour notice;
- not conceal, remove, or transfer any secured property without turning the proceeds over to the secured creditor;
- prepare financial information showing all assets and liabilities; and
- provide farm plans and debt restructuring proposals.

Creditors also have specific obligations:

- provide the debtor with copies of notes, statement of interest rates, a listing of delinquent payments, a statement of current principal balance, a list of collateral securing the debts and estimated value of collateral, and the debt restructuring programs that are available to the debtor by the first meeting;
- release necessary farm operating and family living expenses needed during the mediation period; and
- must be represented in mediation by a person with full authority to negotiate and make binding commitments.

Failure by a party to meet the obligations may result in a lack of good faith affidavit being filed by the mediator.

Lack of good faith by the debtor results in the termination of mediation, and the creditors move ahead with legal collection of the property.

Lack of good faith by the creditor gives the debtor the right to request District Court to provide Court Supervised Mediation.

Under the law, a failure to agree to reduce debt, restructure, refinance, or forgive debt does not, in itself, show lack of good faith by the creditor.

THE ROLE OF THE MEDIATOR

The mediator leads and manages the discussion as a neutral without making decisions or judgments. **The mediator's job is to insure that all participants in a mediation get to speak and be heard, help define the issues, emphasize common goals, keep discussion focused, facilitate discussion of**

all options and assistance programs, and reduce fault finding. During the mediation session, the mediator is responsible for keeping things orderly, fair, and moving forward.

The mediator may advise, counsel, and assist the parties on ways to come to agreement, but does not tell the parties how they should conduct their business or personal affairs. Under no conditions does the mediator advise on legal matters or advise/assist parties in determining their legal rights.

Mediators are immune from civil liabilities for actions as mediators. They cannot be required to testify about a communication or document made or used in the course of mediation.

If the mediator determines that one of the parties is not participating in good faith as defined in the law, an affidavit is filed stating the reasons for the finding. The debtor and creditors receive copies of the affidavit, and the mediation is terminated.

QUESTIONS ABOUT MANDATORY FARM CREDIT MEDIATION

What is successful mediation?

Success is opening communication so the creditors and debtors continue talking. Success is not necessarily keeping people on the farm. It is making the best decision given the current realities.

Who attends a mediation session?

The debtor, mediator, and initiating creditor are required to attend. All other secured creditors and unsecured creditors necessary to the farm operation are invited to attend.

Family members, farm advocates, attorneys, ministers, etc. can also attend upon the invitation of a party. The mediator will decide the level of actual involvement of those support people.

The debtor and creditors who agree to participate must speak for themselves, but can consult with their advisors during the mediation process.

Which creditors must attend the mediation sessions?

The initiating creditor must attend. All other known secured creditors are invited to attend. Any unsecured creditor necessary to the farm operation is also invited to attend. It is the debtor's discretion as to which unsecured creditors are "necessary."

Invited creditors have three choices. They may participate to discuss their interests. They can choose not to attend and become bound by the Memorandum of Agreement reached by those who did participate. Or, they can file a claim form with the mediator prior to the mediation. This claim form gives them the right to object to a Memorandum of Agreement reached at a

meeting they did not attend. If such an objection is filed, the mediator calls the parties back for further discussions. The Memorandum of Agreement may stand or change as a result.

Are there guidelines for disclosure of information?

Parties are expected to enter into mediation with full commitment to work toward constructive resolution of the issues. Honesty and full disclosure are basic ingredients for a complete discussion and an honorable agreement.

Mediation proceedings are confidential. At the first meeting, the mediator and all parties sign an agreement they will not make unauthorized disclosures of the content of the discussions to outside parties.

What debts are exempt from mediation?

- Farm debts that have been in bankruptcy.
- Debts that were in default, and mediated once, are not eligible for additional mediations.
- Debts on removable agricultural structures leased without option to purchase.
- Debts on farm machinery primarily used for custom field work.

Who are the mediators?

Mediators are community minded people who volunteer their services to farm mediation. Mediators complete Extension training in conflict resolution skills, farm mediation process, and farm finance issues. They provide up to 40 hours of service per month for 6 months. As compensation for their services, they receive a stipend for each mediation session and reimbursement for travel expenses. Over 700 mediators have provided service since the program began. Volunteers need high level interpersonal and communication skills and a basic knowledge of farm finance. One out of three mediators is retired. The remainder are engaged in teaching, counseling, ministry, small business, homemaking, and local government.

What are the settlement agreements?

Mediation Settlement Agreements involve compromise on the part of both debtors and creditors. Farmers give up land or personal property, voluntarily liquidate assets, and reduce operating costs. Creditors forgive debt, reschedule principal payments, and reduce interest rates.

What are the results of mediation?

People feel mediation is successful in three ways: (1) farmers are more prepared for making decisions about their future; (2) communication between lenders and borrowers is improved; and (3) frustration and tension are minimized and peaceful change occurs.

During March 1986 thru June 1989, over 7,000 farmers and more than 15,000 creditors have partici-

pated in mediation, with about half of the farmers reaching Memorandum of Agreement which keeps them in farming.

What are the time clocks in mediation?

There are two clocks, one for the creditor's stay and another for the mediation period. The creditor's stay begins the day after the debtor has requested mediation and ends 90 days later. During this stay, mediation sessions can occur for a period of up to 60 days. The mediation period ends 60 days after the first mediation meeting. The mediation period must end by the last day of the stay.

How binding is the result?

The settlement agreement reached in mandatory mediation becomes a binding contract which may be used as a defense against an action contrary to the mediation agreement. The Memorandum of Agreement is prepared by the mediator, reviewed by all parties, and reviewed by attorneys or other experts if desired. When all parties agree that the Memorandum of Agreement reflects their understanding of the agreement, it is signed.

What if the mediation ends without agreement?

If all parties work in good faith during mediation but no agreement can be reached, the mediation is at impasse and is terminated. Creditors may proceed with legal debt collection remedies. Debtors may seek other legal remedies such as bankruptcy.

What is court supervised mandatory mediation?

If the mediator finds that a creditor has not participated in good faith mediation, the debtor may file an affidavit with district court which will appoint a mediator for court supervised mediation. The court shall then require the parties to mediate for no more than 60 days under court supervision. If lack of good faith continues, an additional 180 day suspension of creditor remedies may be ordered.

Where does the mediation take place?

The parties involved agree on a neutral location in the community. The home or office of a participant is not appropriate. Libraries, churches, schools or public buildings are often used.

When are mediations scheduled?

Mediations are scheduled at the convenience of the Volunteer Mediator and the parties.

What if adverse proceedings are begun without Creditor's Notice of Mandatory Mediation?

If adverse action is begun involving a debtor who has not received a Creditor's Notice of Mediation, the debtor can file a Request for Mediation with the Minnesota Extension Service County Office. The request form must indicate that the debtor has not received a Creditor's Notice of Mediation.

Where are mediation forms available?

Forms are available at the County Recorder's office and the County Office of the Minnesota Extension Service.

Publications:

Families Together Through Mediation
AD-FO-3172

Mediation from the Farmer's Perspective
AD-BU-3144

Preparing for Mandatory Farm Credit Mediation
AD-FS-3035

Requesting Mediation: Know Your Responsibilities
AD-FS-3280

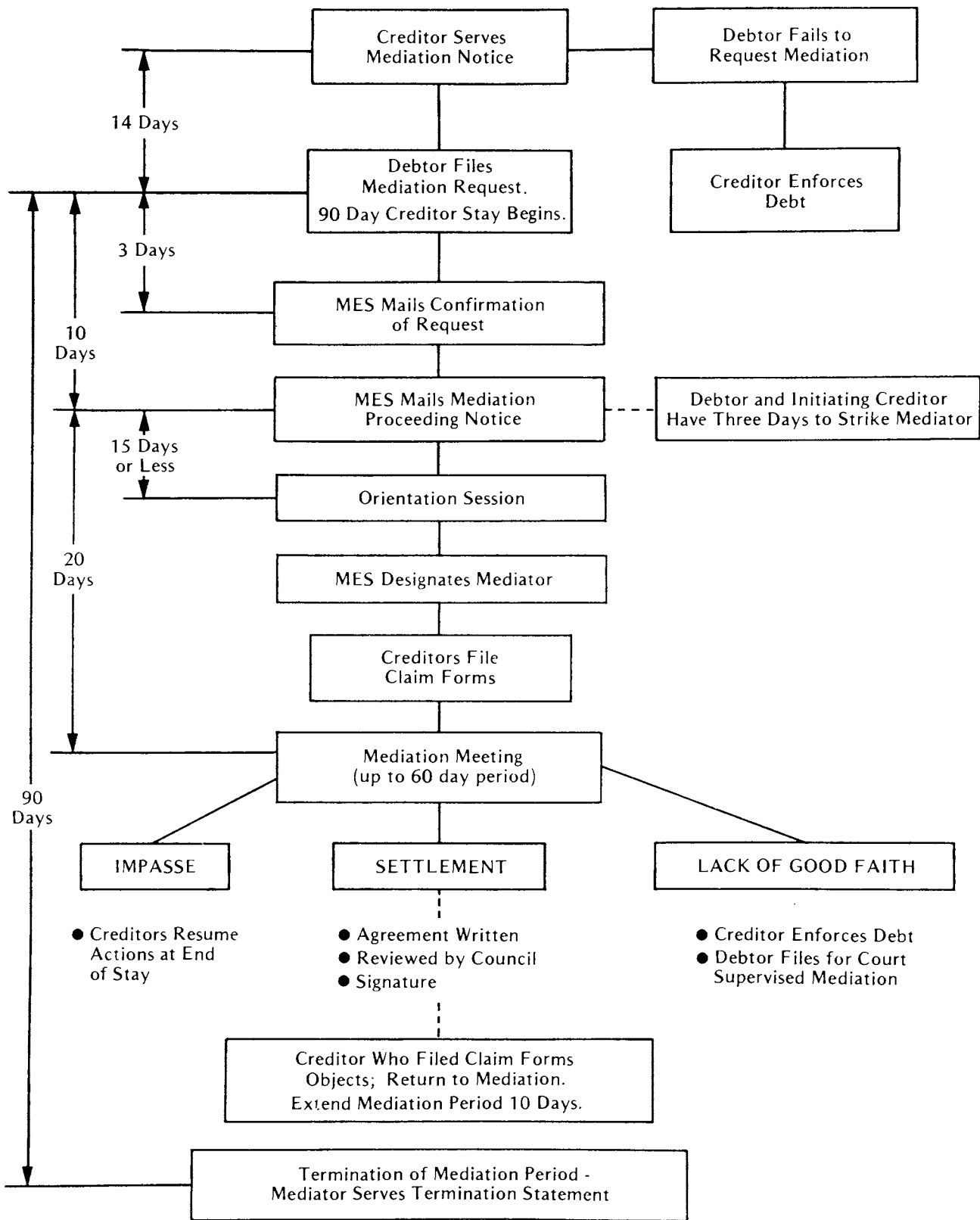
Video — Preparing for Mediation: The Farmer's Perspective
AD-VC-3099 3/4"
AD-VH-3100 1/2"

Video — Farmer-Leader Mediation: You Make It Work
AD-VC-3356
AD-VH-3357

Available through County Extension Offices.

For general questions about the Mandatory Mediation process, contact the Minnesota Extension Service at the County Office or State Office at 1-800-843-4334.

STEPS IN MANDATORY FARM MEDIATION



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Note: Creditors' stay may be shortened or extended due to provisions in the Act for agreement between debtor and creditor allowing creditor to proceed, for conciliation court decisions of release of collateral, and for District Court review of mediator's findings of good faith.

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