



Project Support

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**MEDIATION:
What It Is and How It Works**

by Joyce Walker

Mediation is a way to solve problems and settle disputes by using a third party to facilitate discussion and problem-solving. **All decisions and recommendations are made by the borrowers and lenders.** All parties come to mediation with the understanding that they will seek a mutually agreeable solution that, in the best way possible, meets both of their needs.

Mediation has proven successful in assisting people resolve disputes and differences in many areas: personal liability insurance cases, tenant/landlord disagreements, consumer product complaints, divorce and custody disputes, civil rights issues, employment and work related disputes, and patent infringement cases. In Minnesota, a number of state agencies have agreed to use mediation to resolve interagency disagreements. There is every reason to believe that mediation can play a significant role in dealing expediently and constructively with matters of farm finance.

There are several advantages to mediation:

1. It is a **confidential** proceeding recognized as legitimate under Minnesota Statutes.
2. Mediation is a **voluntary process** that is not binding unless all parties agree to a solution and sign an agreement stating their agreement.

3. Mediation is **low cost or free** because it does not require legal counsel; it uses trained persons as mediators. Legal counsel is important to critique all agreements and advise parties on the legal consequences of proposed agreements.

4. The mediation session takes place in the community at a **mutually agreed upon, neutral location.**

HOW THE MEDIATION PROCESS WORKS

All parties involved in the dispute meet together for a preliminary talk. They agree to work together to find a solution. They sign a Mediation Agreement indicating their intention to participate in a voluntary, confidential, non-binding discussion aimed at resolution of the problem.

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.

Time is spent clarifying the issues and discussing options for settlement. Pertinent facts and information are surfaced. Expert advice may be requested and discussed. Creative ways to solve the problem are encouraged from all parties.

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When all parties have reached agreement, the settlement is written, and copies are provided to each person. If desired, the parties may have the tentative agreement reviewed by attorneys, supervisors, outside experts or family members. When all parties are satisfied that the agreement represents a realistic settlement, the agreement is signed and implemented.

Key elements of the process are:

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

FARM FINANCE MEDIATION

Mediation of farm finance and credit issues is proposed as a process to assist borrowers and lenders when they are discussing issues of farm finance, debt restructure, and potential farm foreclosure.

Role of Mediators: **The mediator leads and manages the discussion as a neutral without making decisions or judgments.** Their 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 reduce fault finding. During the mediation session, the mediator is responsible for keeping things orderly, fair, and moving forward.

QUESTIONS ABOUT FARM MEDIATION

As a farmer, why would I consider mediation?

Mediation is not the answer for all borrowers or lenders. Many farm families work out their issues and concerns directly with the lenders through personal discussions and negotiations. There are cases, however, when it may be advantageous to use a neutral mediator:

- If there are personality conflicts or past histories of angry encounters and unresolved misunderstanding.
- If there are multiple lenders involved and no other practical way to bring all the interested parties to the table for a discussion.
- If you feel that not enough creative options have been explored between you and the lender.
- If you feel uncertain about your ability to express your interests or want assistance in negotiation.

Why would a lender or lending institution become involved in mediation?

In some instances, there may be no advantage for a lender to mediate. This may be true if all options have already been sufficiently explored. However, there are both practical and humane reasons for entering into mediation:

- A lender-initiated mediation can be an early intervention -- a way to raise issues of deepening debt -- that can cause a farmer to recognize impending problems and work constructively to prevent worse problems down the road.

- Mediation is a vehicle to bring several lenders together with a borrower to develop creative and cooperative ways to avert foreclosure or restructure debt.
- Mediation can serve as a forum to discuss liquidation of assets and even plan an orderly timetable for transition off the farm and into retraining for other work.
- Mediation allows for case by case consideration of options based on individual needs and personal considerations of the families involved.

Who is involved in a mediation session?

At the minimum, the borrower, the lender or lenders, and the mediator are present. Family members can be included. In cases where both sides have attorneys, they may be invited to attend.

In any case, the presence of support people at a mediation must be agreed upon by both primary parties, the borrower and the lender. The mediator will determine the level of actual involvement of these support people in the mediation. In no case shall a third party speak on behalf of a primary participant. People who agree to mediate speak for themselves, but can consult with other experts when they desire.

How binding is the result?

The agreement which results from a mediation becomes binding when all primary parties agree that it is binding. The Memorandum of Settlement is prepared by the mediator, reviewed by all parties, reviewed by attorneys or other experts if desired. If the agreement is stated to be a binding one, the parties are obligated to act accordingly.

What if the mediation fails to generate resolution?

If the mediation reaches impasse -- if no agreement can be reached -- the mediation is terminated. Because the process is voluntary, any one of the parties can end the mediation at any time. The only loss is the time and energy that has been committed to the process of meeting.

Are there guidelines for disclosure of information?

It is expected that parties will enter into mediation with full commitment to work toward constructive resolution of the issue. Honesty and full disclosure are basic ingredients for a complete discussion and an honorable agreement.

The Minnesota Statute covering civil mediations stipulates that the proceedings are confidential and may not be used as evidence in a court of law at a later date (unless there is clear evidence of intention to defraud, of corruption, or misconduct).

What are the liabilities involved?

There are no liabilities unless there is clear intent to defraud or evidence of negligence. Without such evidence, mediation proceedings are confidential and cannot be introduced into a court of law.

Where does the mediation take place?

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

When are mediations scheduled?

Mediations are scheduled at the convenience of the parties and the mediator.

