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FARM CREDIT MEDIATION

Policy Manual and Operational Guidelines
for Volunteer Mediators

by
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Minnesota Extension Service
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**FARM CREDIT MEDIATION:
Policy Manual and Operational Guidelines
for Volunteer Mediators**

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BACKGROUND

on

**FARM CREDIT
MEDIATION**

FARM CREDIT MEDIATION: WHAT IT IS AND HOW IT WORKS

Joyce Walker
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In Article I 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. While the use of neutral mediators in voluntary mediation meetings is encouraged, the law also instituted a program of mandatory farm credit mediation. It is important for farmers and lenders to understand what farm credit mediation is and how it is being implemented in Minnesota.

Mediation is a process used to solve problems and settle disputed issues related to farm credit, debt restructure or voluntary liquidation of farm property. Mediation introduces a neutral third party into borrower and lender discussions in order to facilitate discussion and generate alternative plans. The actual process of mandatory mediation is no different than voluntary mediation. All decisions and recommendations are made by the borrowers and lenders. 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.

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.** The mandatory program imposes some timelines, requires good faith participation, and stipulates that settlements agreed upon by all parties are binding legal contracts.

The Minnesota Extension Service has the responsibility of developing and administering the Mandatory Farm Mediation Program. This paper will describe the way the program operates and answer some of the common questions asked about Mandatory Farm Mediation.

WHAT IS MANDATORY FARM CREDIT MEDIATION?

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 lenders. Hopefully very few contractual disputes between borrower and lender will ever reach the stage of mandatory mediation. 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 borrower/lender relationships.

Key elements of the process are:

- 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 for a case by case consideration of problems and focuses on solutions that meet the needs of lenders and borrowers in each specific instance.

HOW THE MEDIATION PROCESS WORKS

A **creditor** must initiate mandatory mediation before moving ahead with any of these adverse actions: 1) start a proceeding to collect a debt of more than \$5,000.00 against agricultural property including foreclosure, 2) terminate a contract for deed used to purchase agricultural property 3) garnish, levy on, execute on, seize or attach agricultural property. To begin mandatory mediation, the creditor must file a Mandatory Mediation Notice with the debtor and to 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 Mandatory Mediation Notice has two choices: 1) to do nothing and allow the creditor to move ahead, or 2) to file a Mandatory Mediation Request 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 known creditors must be included on the Request forms.

The **Minnesota Extension Service** coordinates the program and provides farm financial analysis assistance. If a debtor does not respond to the Mandatory Mediation Notice 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 credit analyst to the debtor
2. provides names of farm advocates to debtor
3. sends a Mediation Meeting Notice to the farmer and all known creditors
4. sends creditors and debtors the names of 3 volunteer mediators available to work on the case

Both the debtor and the 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 Meeting Notice. While the goal is to appoint a mediator acceptable to all parties, the MN 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 creditors with secured debt of more than \$5,000.00 with interests in real estate and farm operations are invited to participate. The debtor works with the assigned credit analyst to prepare records and financial information. Negotiations begin, and 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 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. When all parties are satisfied that the agreement represents a realistic settlement, the agreement is signed and becomes a binding contract. Parties are responsible for carrying through with paperwork and contract changes necessary to implement the new agreement.

OBLIGATIONS OF THE PARTIES IN MANDATORY MEDIATION

All parties who agree to participate are required to attend mediation meetings on a regular and continuing basis. They must provide full information about the financial obligations at issue. And they must participate in generating realistic alternative plans for debt restructuring with a willingness to negotiate a settlement.

The debtor is required to supply the financial records necessary to resolve the issues of agricultural debt which are the subject of the mediation. The assigned credit analyst can assist in this. The debtor must identify all known creditors with whom there is secured agricultural debt of more than \$5,000.00

The creditors must be represented in mediation by a person with the full authority to negotiate and make binding commitments. They must make provision for release of funds from the sale of farm products so that the debtor has necessary living and farm operating expenses during mediation.

Failure to meet any of these obligations may result in a lack of good faith judgment. A failure to agree to reduce debt, restructure, refinance, or forgive debt does not, in itself, show a lack of good faith by a 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 examined about a communication of 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 borrower and the lenders receive copies of the affidavit, and the mediation is terminated. Mandatory court supervised mediation may result.

QUESTIONS ABOUT MANDATORY FARM MEDIATION

Who is involved in a mediation session?

At the minimum, the debtor, secured creditors of agricultural property, and the mediator are present. Family members can be included.

The presence of support people at a mediation must be agreed upon by the parties. 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 during the process.

Must all known creditors attend the mediation sessions?

All known creditors with a secured debt of more than \$5,000.00 are asked to participate in mediation. They have three choices. They may participate to negotiate their interests in the issues. They can choose not to participate and become bound by the terms

of the settlement reached. Or they can file a claim form with the mediator prior to the mediation. This claim form gives them the right to object to the settlement agreement reached in their absence within ten days of notification of the settlement. If such an objection is filed, the mediator calls all parties back for further negotiations within 10 days.

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.

The Minnesota Statute covering civil mediations stipulates that mediation 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).

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 Settlement is prepared by the mediator, reviewed by all parties, reviewed by attorneys or other experts if desired. When all parties agree that the Memorandum of Settlement reflects their understanding of the agreement, it is signed.

What if the mediation fails to generate resolution?

If all parties work in good faith during mediation and no agreement can be reached, the mediation is at impasse and is terminated. Creditors may proceed to enforce the obligations of past contracts.

If one of the parties refuses to cooperate in the mediation or fails to mediate in good faith, the mediator files an affidavit of lack of good faith bargaining. If the debtor has failed to act in good faith, the creditor may proceed in adverse action according to timelines established in the law. If a creditor has failed to act in good faith, the debtor may request court supervised mandatory mediation.

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 the district court of the county where property is located. The court 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 maybe ordered.

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 Volunteer Mediator and the parties.

What if adverse proceedings are begun without Notice of Mandatory Mediation by the creditor?

If adverse action is begun involving a debtor who has not received a Mandatory Mediation Notice, 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 Mandatory Mediation Notice.

How does one get the forms necessary for Mandatory Mediation?

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

Where can one get answers to specific questions?

For general questions about the Mandatory Mediation process, contact the County Extension Office or call the Project Support Hotline: 1-800-843-4334.

**OMNIBUS FARM BILL
FARMER-LENDER MEDIATION ACT**

I. GENERAL BACKGROUND

A. History

1. Voluntary mediation program announced by Governor Perpich November 27, 1985.
2. Part of omnibus farm bill signed by the Governor on March 21 and effective March 22 (terminates August 1, 1988).
3. Amended, in response to lender lobbying, effective April 12, 1986.
 - a. However, lenders did not get "one shot" mediation.

B. Purpose

1. Delay farm foreclosures.
2. Intended to "put teeth" into voluntary mediation program.
 - a. The voluntary mediation program is continued under the Farmer-Lender Medication Act.
3. Encourage lenders and borrowers to find ways of restructuring farm real estate debt.

II. SCOPE OF ACT

A. Agricultural Property

1. Real estate principally used for farming.
2. Personal property pledged as security for farming operation or used as part of farming operation.

B. Debtor

1. A person operating a family farm.
2. A family farm corporation.
3. An authorized farm corporation.

4. Excludes a person who owns and leases less than 60 acres with less than 20,000 in gross sales of agricultural products the preceding year.

NOTE: This summary was prepared for a farm mediation seminar for creditors. Some notes are clearly from a creditor perspective. It is useful to recognize this perspective.

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PART 1

Omnibus Farm Bill

(Laws 1986, chapter 398, as amended)

An act relating to agriculture; establishing the rural finance administration; authorizing the sale of state bonds; ratifying and approving an interstate compact on agricultural grain marketing; authorizing development of a plan for a memorial to Native Americans; establishing a mediation procedure; re-enacting an interest buydown program; authorizing certain deficiency judgments; prescribing a procedure to determine the amount of certain agricultural deficiency judgments; providing for farm advocate guidelines; reactivating the data collection task force; authorizing additional interest payments to certain family farm security program sellers; increasing the allowable width of certain trucks; authorizing trucks hauling sugar beets or potatoes to be overweight during certain periods; declaring crop ownership; prescribing a procedure for planting crop owners to recover crop value; providing for a lien; prescribing satisfaction and enforcement of liens; modifying venue to recover possession of personal property; allowing designation, sale and redemption of an agricultural homestead that is executed on and sold as part of other property; allowing designation, sale, and redemption of a homestead foreclosed on or part of other property; establishing filing requirements, enforcement, and priority of veterinarian's liens; declaring state policy relating to wild rice; increasing the homestead exemption to 160 acres; exempting agricultural property for certain purposes; providing certain rights of first refusal; establishing a legal services support program; protecting certain conservation practices; changing the agricultural land preservation pilot program; protecting certain rights-of-way from erosion; changing certain variances requiring a study; authorizing certain soil and water purification tests; appropriating money and authorizing issuance of bonds; excluding certain capital gains; amending Minnesota Statutes 1984, sections 138.585, by adding a subdivision; 160.27, subdivision 5; 169.01, subdivision 7; 169.80, subdivision 1; 169.81,

24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

25 ARTICLE 1

26 MEDIATION

27 Section 1. Minnesota Statutes 1984, section 336.9-501, is
28 amended to read:

29 336.9-501 [DEFAULT; PROCEDURE WHEN SECURITY AGREEMENT
30 COVERS BOTH REAL AND PERSONAL PROPERTY.]

31 (1) When a debtor is in default under a security agreement,
32 a secured party has the rights and remedies provided in this
33 part and except as limited by subsection (3) those provided in
34 the security agreement. He may reduce his claim to judgment,
35 foreclose, or otherwise enforce the security interest by any
36 available judicial procedure. If the collateral is documents
37 the secured party may proceed either as to the documents or as
38 to the goods covered thereby. A secured party in possession has
39 the rights, remedies, and duties provided in section 336.9-207.
40 The rights and remedies referred to in this subsection are
41 cumulative.

42 (2) After default, the debtor has the rights and remedies
43 provided in this part, those provided in the security agreement,
44 and those provided in section 336.9-207.

45 (3) To the extent that they give rights to the debtor and
46 impose duties on the secured party, the rules stated in the

1 subsections referred to below may not be waived or varied except
2 as provided with respect to compulsory disposition of collateral
3 (subsection (3) of section 336.9-504 and section 336.9-505) and
4 with respect to redemption of collateral (section 336.9-506) but
5 the parties may by agreement determine the standards by which
6 the fulfillment of these rights and duties is to be measured if
7 such standards are not manifestly unreasonable:

8 (a) Subsection (2) of section 336.9-502 and subsection (2)
9 of section 336.9-504 insofar as they require accounting for
10 surplus proceeds of collateral;

11 (b) Subsection (3) of section 336.9-504 and subsection (1)
12 of section 336.9-505 which deal with disposition of collateral;

13 (c) Subsection (2) of section 336.9-505 which deals with
14 acceptance of collateral as discharge of obligation;

15 (d) Section 336.9-506 which deals with redemption of
16 collateral; and

17 (e) Subsection (1) of section 336.9-507 which deals with
18 the secured party's liability for failure to comply with this
19 part.

20 (4) If the security agreement covers both real and personal
21 property, the secured party may proceed under this part as to
22 the personal property or he may proceed as to both the real and
23 the personal property in accordance with his rights and remedies
24 in respect of the real property in which case the provisions of
25 this part do not apply.

26 (5) When a secured party has reduced his claim to judgment
27 the lien of any levy which may be made upon his collateral by
28 virtue of any execution based upon the judgment shall relate
29 back to the date of the perfection of the security interest in
30 such collateral. A judicial sale, pursuant to such execution,
31 is a foreclosure of the security interest by judicial procedure
32 within the meaning of this section, and the secured party may
33 purchase at the sale and thereafter hold the collateral free of
34 any other requirements of this article.

35 (6) A person may not begin to enforce a security interest
36 in collateral that is agricultural property subject to sections

1 5 to 17 that has secured a debt of more than \$5,000 unless: a
 2 mediation notice under subsection (7) is served on the debtor
 3 and a copy filed with the director; and the debtor and creditor
 4 have completed mediation under sections 5 to 17.

5 (7) A mediation notice under subsection (6) must contain
 6 the following notice with the blanks properly filled in.

7 "TO:(Name of Debtor)....

8 YOU HAVE DEFAULTED ON THE(Debt in Default).... SECURED
 9 BY AGRICULTURAL PROPERTY DESCRIBED AS(Reasonable
 10 Description of Agricultural Property Collateral)....

11 AS A SECURED PARTY,(Name of Secured Party).... INTENDS
 12 TO ENFORCE THE SECURITY AGREEMENT AGAINST THE AGRICULTURAL
 13 PROPERTY DESCRIBED ABOVE BY REPOSSESSING, FORECLOSING ON, OR
 14 OBTAINING A COURT JUDGMENT AGAINST THE PROPERTY.

15 YOU HAVE THE RIGHT TO HAVE THE DEBT REVIEWED FOR
 16 MEDIATION. IF YOU PARTICIPATE IN MEDIATION, THE DIRECTOR OF THE
 17 AGRICULTURAL EXTENSION SERVICE WILL PROVIDE A CREDIT ANALYST TO
 18 HELP YOU TO PREPARE FINANCIAL INFORMATION. MEDIATION WILL
 19 ATTEMPT TO ARRIVE AT AN AGREEMENT FOR HANDLING FUTURE FINANCIAL
 20 RELATIONS.

21 TO HAVE THE DEBT REVIEWED FOR MEDIATION YOU MUST FILE A
 22 MEDIATION REQUEST WITH THE DIRECTOR(Date of 14 Days after
 23 Service of the Mediation Notice).... THE MEDIATION REQUEST FORM
 24 IS AVAILABLE AT ANY COUNTY RECORDER'S OR COUNTY EXTENSION OFFICE.

25 FROM:(Name and Address of Secured Party)...."

26 Sec. 2. [550.365] [MEDIATION NOTICE AND CONDITIONS FOR
 27 AGRICULTURAL PROPERTY.]

28 Subdivision 1. [REQUIREMENT.] A person may not attach,
 29 execute on, levy on, or seize agricultural property subject to
 30 sections 5 to 17 that has secured a debt of more than \$5,000
 31 unless: (1) a mediation notice is served on the judgment debtor
 32 and a copy filed with the director; and (2) the debtor and
 33 creditor have completed mediation under sections 5 to 17.

34 Subd. 2. [CONTENTS.] A mediation notice must contain the
 35 following notice with the blanks properly filled in.

36 "TO:(Name of Judgment Debtor)....

1 A JUDGMENT WAS ORDERED AGAINST YOU BY(Name of
2 Court).... ON(Date of Judgment).

3 AS A JUDGMENT CREDITOR,(Name of Judgment Creditor)....
4 INTENDS TO TAKE ACTION AGAINST THE AGRICULTURAL PROPERTY
5 DESCRIBED AS(Description of Agricultural Property).... TO
6 SATISFY THE JUDGMENT.

7 YOU HAVE THE RIGHT TO HAVE THE DEBT REVIEWED FOR
8 MEDIATION. IF YOU PARTICIPATE IN MEDIATION, THE DIRECTOR OF THE
9 AGRICULTURAL EXTENSION SERVICE WILL PROVIDE A CREDIT ANALYST TO
10 HELP YOU PREPARE FINANCIAL INFORMATION. MEDIATION WILL ATTEMPT
11 TO ARRIVE AT AN AGREEMENT FOR HANDLING FUTURE FINANCIAL
12 RELATIONS.

13 TO HAVE THE DEBT REVIEWED FOR MEDIATION YOU MUST FILE A
14 MEDIATION REQUEST WITH THE DIRECTOR(Date of 14 Days after
15 Service of the Mediation Notice).... THE MEDIATION REQUEST FORM
16 IS AVAILABLE AT ANY COUNTY RECORDER'S OR COUNTY EXTENSION OFFICE.

17 FROM:(Name and Address of Judgment Creditor)...."
18 Sec. 3. [559.209] [MEDIATION NOTICE AND CONDITIONS FOR
19 AGRICULTURAL PROPERTY.]

20 Subdivision 1. [REQUIREMENT.] A person may not begin to
21 terminate a contract for deed under section 559.21 to purchase
22 agricultural property subject to sections 5 to 17 that secured a
23 debt of more than \$5,000 unless: (1) a mediation notice is
24 served on the contract for deed purchaser and a copy filed with
25 the director; and (2) the contract for deed vendor and purchaser
26 have completed mediation under sections 5 to 17.

27 Subd. 2. [CONTENTS.] A mediation notice must contain the
28 following notice with the blanks properly filled in.

29 "TO:(Name of Contract for Deed Purchaser)....

30 YOU HAVE DEFAULTED ON THE CONTRACT FOR DEED OF THE
31 AGRICULTURAL PROPERTY DESCRIBED AS(Size and Reasonable
32 Location of Property, Not Legal Description)....

33 AS THE CONTRACT FOR DEED VENDOR,(Contract for Deed
34 Vendor).... INTENDS TO TERMINATE THE CONTRACT AND TAKE BACK THE
35 PROPERTY.

36 YOU HAVE THE RIGHT TO HAVE THE CONTRACT FOR DEED DEBT

1 REVIEWED FOR MEDIATION. IF YOU PARTICIPATE IN MEDIATION, THE
 2 DIRECTOR OF THE AGRICULTURAL EXTENSION SERVICE WILL PROVIDE A
 3 CREDIT ANALYST TO HELP YOU PREPARE FINANCIAL INFORMATION.
 4 MEDIATION WILL ATTEMPT TO ARRIVE AT AN AGREEMENT FOR HANDLING
 5 FUTURE FINANCIAL RELATIONS.

6 TO HAVE THE CONTRACT FOR DEED DEBT REVIEWED FOR MEDIATION
 7 YOU MUST FILE A MEDIATION REQUEST WITH THE DIRECTOR BY(Date
 8 of 14 Days after Service of the Mediation Notice).... THE
 9 MEDIATION REQUEST FORM IS AVAILABLE AT ANY COUNTY RECORDER'S OR
 10 COUNTY EXTENSION OFFICE.

11 FROM:(Name and Address of Contract for Deed
 12 Vendor)...."

13 Sec. 4. [581.015] [MEDIATION NOTICE AND CONDITIONS FOR
 14 AGRICULTURAL PROPERTY.]

15 Subdivision 1. [REQUIREMENT.] A person may not begin a
 16 proceeding under this chapter to foreclose a mortgage on
 17 agricultural property subject to sections 5 to 17 that has a
 18 secured debt of more than \$5,000 unless: (1) a mediation notice
 19 is served on the mortgagor and a copy is filed with the
 20 director; and (2) the mortgagor and mortgagee have completed
 21 mediation under sections 5 to 17.

22 Subd. 2. [CONTENTS.] A mediation notice must contain the
 23 following notice with the blanks properly filled in.

24 "TO:(Name of Record Owner)...."

25 YOU HAVE DEFAULTED ON THE MORTGAGE OF THE AGRICULTURAL
 26 PROPERTY DESCRIBED AS(Size and Reasonable Location, Not
 27 Legal Description)....

28 AS HOLDER OF THE MORTGAGE,(Name of Holder of
 29 Mortgage).... INTENDS TO FORECLOSE ON THE PROPERTY DESCRIBED
 30 ABOVE.

31 YOU HAVE THE RIGHT TO HAVE THE MORTGAGE DEBT REVIEWED FOR
 32 MEDIATION. IF YOU PARTICIPATE IN MEDIATION, THE DIRECTOR OF THE
 33 AGRICULTURAL EXTENSION SERVICE WILL PROVIDE A CREDIT ANALYST TO
 34 HELP YOU PREPARE FINANCIAL INFORMATION. MEDIATION WILL ATTEMPT
 35 TO ARRIVE AT AN AGREEMENT FOR HANDLING FUTURE FINANCIAL
 36 RELATIONS.

1 TO HAVE THE MORTGAGE DEBT REVIEWED FOR MEDIATION YOU MUST
2 FILE A MEDIATION REQUEST WITH THE DIRECTOR(Date of 14 Days
3 after Service of the Mediation Notice).... THE MEDIATION
4 REQUEST FORM IS AVAILABLE AT ANY COUNTY RECORDER'S OR COUNTY
5 EXTENSION OFFICE.

6 FROM:(Name and Address of Holder of Mortgage)...."

7 Sec. 5. [583.20] [CITATION.]

8 Sections 5 to 17 may be cited as the "farmer-lender
9 mediation act."

10 Sec. 6. [583.21] [LEGISLATIVE FINDINGS.]

11 The legislature finds that the agricultural sector of the
12 state's economy is under severe financial stress due to low farm
13 commodity prices, continuing high interest rates, and reduced
14 net farm income. The suffering agricultural economy adversely
15 affects economic conditions for all other businesses in rural
16 communities as well. Thousands of this state's farmers are
17 unable to meet current payments of interest and principal
18 payable on mortgages and other loan and land contracts and are
19 threatened with the loss of their farmland, equipment, crops,
20 and livestock through mortgage and lien foreclosures,
21 cancellation of contracts for deed, and other collection
22 actions. The agricultural economic emergency requires an
23 orderly process with state assistance to adjust agricultural
24 indebtedness to prevent civil unrest and to preserve the general
25 welfare and fiscal integrity of the state.

26 Sec. 7. [583.22] [DEFINITIONS.]

27 Subdivision 1. [APPLICABILITY.] The definitions in this
28 section apply to sections 7 to 17.

29 Subd. 2. [AGRICULTURAL PROPERTY.] "Agricultural property"
30 means real property that is principally used for farming as
31 defined in section 500.24, subdivision 2, paragraph (a), and
32 raising poultry, and personal property that is used as security
33 to finance a farm operation or used as part of a farm operation
34 including equipment, crops, livestock, and proceeds of the
35 security. "Agricultural property" does not include personal
36 property that is subject to a possessory lien under sections

1 514.18 to 514.22.

2 Subd. 3. [Repealed, 1986 Special Session, H.F. No. 2,
3 article 2, section 14.]

4 Subd. 4. [CREDITOR.] "Creditor" means the holder of a
5 mortgage on agricultural property, a vendor of a contract for
6 deed of agricultural property, a person with a lien or security
7 interest in agricultural property, or a judgment creditor with a
8 judgment against a debtor with agricultural property.

9 Subd. 5. [DIRECTOR.] "Director" means the director of the
10 agricultural extension service or the director's designee.

11 Subd. 6. [FILE.] "File" means to deliver by the required
12 date by certified mail or another method acknowledging receipt.

13 Subd. 7. [MEDIATOR.] "Mediator" means a farm mediator
14 appointed by the director.

15 Subd. 7a. [NECESSARY FARM OPERATING EXPENSES.] As used in
16 section 12, "necessary farm operating expenses" means a sum or
17 sums adequate to continue, during the mediation period, farm
18 operations begun prior to the notice of default. "Necessary
19 farm operating expenses" does not include expenses for
20 increasing the scale of an on-going farming operation or
21 planting additional crops.

22 Subd. 7b. [NECESSARY LIVING EXPENSES.] As used in section
23 12, "necessary living expenses" means a sum approximately equal
24 to the amount to which the family would be entitled if eligible
25 for payments under section 256.74.

26 Subd. 8. [SERVE.] "Serve" means (1) personal service as in
27 a district court civil action; (2) service by certified mail
28 using return receipt signed by addressee only; or (3) actual
29 delivery of required documents with signed receipt.

30 Sec. 8. [583.23] [FARM MEDIATION.]

31 Subdivision 1. [TRAINING.] The director must provide
32 training and support for mediators.

33 Subd. 2. [APPOINTMENT.] The director must provide
34 mediators by contracting with qualified persons experienced in
35 farm finance, agricultural law, and negotiation.

36 Subd. 3. [ADMINISTRATION.] The director may appoint a farm

1 mediation administrator. The administrator and director shall
2 provide training for farm mediators and credit analysts and
3 coordinate community legal education programs for farmers.

4 Sec. 9. [583.24] [APPLICABILITY.]

5 Subdivision 1. [CREDITORS.] (a) The farmer-lender
6 mediation act applies to creditors who are:

7 (1) the United States or an agency of the United States;

8 (2) corporations, partnerships, and other business
9 entities; and

10 (3) individuals.

11 (b) The farmer-lender mediation act does not apply to
12 creditors of a debtor described under subdivision 2, paragraph
13 (b).

14 Subd. 2. [DEBTORS.] (a) Except as provided in paragraph

15 (b) the farmer-lender mediation act applies to a debtor who is:

16 (1) a person operating a family farm as defined in section
17 500.24, subdivision 2;

18 (2) a family farm corporation as defined in section 500.24,
19 subdivision 2; or

20 (3) an authorized farm corporation as defined in section
21 500.24, subdivision 2.

22 (b) The farmer-lender mediation act does not apply to a
23 debtor who owns and leases less than 60 acres with less than
24 \$20,000 in gross sales of agricultural products the preceding
25 year.

26 Subd. 3. [FINANCIAL INSTITUTION UNDER CEASE AND DESIST
27 ORDER.] Upon the request of an institution, as defined in
28 section 46.23, subdivision 4, the commissioner of commerce may
29 exempt the institution from the farmer-lender mediation act
30 without a hearing or contested case proceeding if:

31 (1) the institution is subject to a cease and desist order
32 issued under sections 46.23 to 46.33; and

33 (2) the commissioner determines that exemption is essential
34 to the financial survival of the institution.

35 The commissioner shall notify the director that the
36 institution is exempt from mediation. The director shall notify

1 the mediator that the institution is exempt. The reason for the
2 exemption is confidential.

3 Sec. 10. [583.25] [VOLUNTARY MEDIATION PROCEEDINGS.]

4 A debtor that owns agricultural property or a creditor of
5 the debtor may request mediation of the indebtedness by a farm
6 mediator by applying to the director. The director shall make
7 voluntary mediation application forms available at the county
8 recorder's and county extension office in each county. The
9 director must evaluate each request and may direct a mediator to
10 meet with the debtor and creditor to assist in mediation.

11 Sec. 11. [583.26] [MANDATORY MEDIATION PROCEEDINGS.]

12 Subdivision 1. [MEDIATION NOTICE.] A creditor desiring to
13 start a proceeding to enforce a debt against agricultural
14 property under chapter 580 or 581 or sections 336.9-501 to
15 336.9-508, to terminate a contract for deed to purchase
16 agricultural property under section 559.21, or to garnish, levy
17 on, execute on, seize, or attach agricultural property, must
18 serve an applicable mediation notice under sections 1, 2, 3, and
19 4 on the debtor and the director. The creditor may not begin
20 the proceeding until the creditor and debtor have completed
21 mediation or as allowed under sections 5 to 17.

22 Subd. 2. [MEDIATION REQUEST.] (a) A debtor must file a
23 mediation request form with the director by 14 days after
24 receiving a mediation notice. The mediation request form must
25 state all known creditors. The director shall make mediation
26 request forms available in the county recorder's and county
27 extension office of each county.

28 (b) A debtor who fails to file a timely mediation request
29 waives the right to mediation under the farmer-lender mediation
30 act. The director shall notify a creditor stating that the
31 creditor may proceed against the agricultural property because
32 the debtor has failed to file a mediation request.

33 (c) If a debtor has not received a mediation notice and is
34 subject to a proceeding of a creditor enforcing a debt against
35 agricultural property under chapter 580 or 581 or sections
36 336.9-501 to 336.9-508, terminating a contract for deed to

1 purchase agricultural property under section 559.21, or
2 garnishing, levying on, executing on, seizing, or attaching
3 agricultural property, the debtor may file a mediation request
4 with the director. The mediation request form must indicate
5 that the debtor has not received a mediation notice.

6 Subd. 3. [CREDIT ANALYST AND FARM ADVOCATE.] (a) After
7 receiving a mediation notice, the director shall provide a
8 credit analyst knowledgeable in agricultural and financial
9 matters to meet with the debtor and assure that information
10 relative to the finances of the debtor is prepared for the
11 initial mediation meeting.

12 (b) After receiving the mediation notice, the director
13 shall notify the debtor that a farm advocate may be available
14 without charge to assist the debtor and the credit analyst.

15 Subd. 4. [INITIAL MEDIATION MEETING.] (a) By ten days
16 after receiving a mediation request, the director shall send:
17 (1) a mediation meeting notice to the debtor; and (2) a
18 mediation meeting notice and claim form to all known creditors
19 of the debtor.

20 (b) The mediation meeting notice must include a time and
21 place for an initial mediation meeting between the debtor, all
22 known creditors of the debtor, and a list of three mediators.
23 An initial mediation meeting must be held within 20 days of the
24 notice.

25 (c) Each creditor and the debtor may request the director
26 to exclude one mediator from the list by sending the director a
27 notice to such effect within 3 days after receiving the
28 mediation meeting notice. In the event that requests from the
29 creditors to remove mediators from the list would result in the
30 exclusion of all of the remaining mediators the director shall
31 appoint the mediator not excluded by the creditor owed the
32 largest debt. In the event that a debtor and creditor request
33 the same mediator, the director shall appoint that mediator.

34 Subd. 5. [EFFECT OF MEDIATION MEETING NOTICE.] (a) Except
35 as provided in paragraph (b), if a creditor receives a mediation
36 meeting notice under subdivision 4 the creditor and the

1 creditor's successors in interest may not continue proceedings
2 to enforce a debt against agricultural property of the debtor
3 under chapter 580 or 581 or sections 336.9-501 to 336.9-508, to
4 terminate a contract for deed to purchase agricultural property
5 under section 559.21, or to garnish, levy on, execute on, seize,
6 or attach agricultural property. Time periods under and
7 affecting those procedures stop running until (1) 90 days after
8 the initiation of mediation, or (2) a mediation agreement is
9 reached.

10 (b) If a creditor is an agency of the United States and
11 receives a mediation meeting notice under subdivision 4, the
12 creditor and the creditor's successors in interest may not
13 continue proceedings to enforce a debt against agricultural
14 property of the debtor under chapter 580 or 581 or sections
15 336.9-501 to 336.9-508, to terminate a contract for deed to
16 purchase agricultural property under section 559.21, or to
17 garnish, levy on, execute on, seize, or attach agricultural
18 property. Time periods under and affecting those procedures
19 stop running until (1) 180 days after the initiation of
20 mediation, or (2) a mediation agreement is reached.

21 Subd. 6. [DUTIES OF MEDIATOR.] At the initial mediation
22 meeting and subsequent meetings, the mediator shall:

- 23 (1) listen to the debtor and the creditors desiring to be
24 heard;
25 (2) attempt to mediate between the debtor and the creditors;
26 (3) advise the debtor and creditors of assistance programs
27 available;
28 (4) attempt to arrive at an agreement to fairly adjust,
29 refinance, or pay the debts; and
30 (5) advise, counsel, and assist the debtor and creditors in
31 attempting to arrive at an agreement for the future conduct of
32 financial relations among them.

33 Subd. 7. [MEDIATOR LIABILITY AND IMMUNITY.] (a) A mediator
34 is immune from civil liability for actions within the scope of
35 the position as mediator. A mediator does not have a duty to
36 advise a creditor or debtor about the law or to encourage or

1 assist a debtor or creditor in reserving or establishing legal
2 rights. This subdivision is an addition to and not a limitation
3 of immunity otherwise accorded to a mediator under law.

4 (b) A mediator cannot be examined about a communication or
5 document, including worknotes, made or used in the course of or
6 because of mediation under this section and section 12. This
7 paragraph does not apply to the parties in the dispute in an
8 application to a court by a party to have a mediated settlement
9 agreement set aside or reformed. A communication or document
10 otherwise not privileged does not become privileged because it
11 is used in the cause of mediation. This paragraph is not
12 intended to limit the privilege accorded to communication during
13 mediation by the common law.

14 Subd. 8. [MEDIATION PERIOD.] The mediator may call
15 mediation meetings during the mediation period, which is up to
16 60 days after the initial mediation meeting.

17 Subd. 9. [MEDIATION AGREEMENT.] (a) If an agreement is
18 reached among the debtor and creditors the mediator shall draft
19 a written mediation agreement, have it signed by the creditors,
20 and, if applicable, submit the agreement to the Minnesota rural
21 finance administration for approval of debt restructuring.

22 (b) The debtor and creditors who are parties to the
23 approved mediation agreement and creditors who have filed claim
24 forms and have not objected to the mediation agreement:

25 (1) are bound by the terms of the agreement;

26 (2) may enforce the mediation agreement as a legal
27 contract; and

28 (3) may use the mediation agreement as a defense against an
29 action contrary to the mediation agreement.

30 Sec. 12. [583.27] [GOOD FAITH REQUIRED, COURT SUPERVISED
31 MEDIATION.]

32 Subdivision 1. [OBLIGATION OF GOOD FAITH.] The parties
33 must engage in mediation in good faith. Not participating in
34 good faith includes: (1) a failure on a regular or continuing
35 basis to attend and participate in mediation sessions without
36 cause; (2) failure to provide full information regarding the

1 financial obligations of the parties and other creditors; (3)
2 failure of the creditor to designate a representative to
3 participate in the mediation with authority to make binding
4 commitments within one business day to fully settle, compromise,
5 or otherwise mediate the matter; (4) lack of a written statement
6 of debt restructuring alternatives and a statement of reasons
7 why alternatives are unacceptable to one of the parties; (5)
8 failure of a creditor to release funds from the sale of farm
9 products to the debtor for necessary living and farm operating
10 expenses; or (6) other similar behavior which evidences lack of
11 good faith by the party. A failure to agree to reduce,
12 restructure, refinance, or forgive debt does not, in itself,
13 evidence lack of good faith by the creditor.

14 Subd. 2. [LACK OF GOOD FAITH AFFIDAVIT; MEDIATOR'S
15 RESPONSIBILITY.] If the mediator determines that either party is
16 not participating in good faith as defined in subdivision 1, the
17 mediator shall file an affidavit indicating the reasons for the
18 finding with the director and with parties to the mediation.

19 Subd. 3. [CREDITOR'S LACK OF GOOD FAITH; COURT SUPERVISED
20 MEDIATION.] If the mediator finds the creditor has not
21 participated in mediation in good faith, the debtor may require
22 court supervised mandatory mediation by filing the affidavit
23 with the district court of the county where the property is
24 located with a request for court supervision of mediation and
25 -serving a copy of the request on the creditor. Upon request the
26 court shall require both parties to mediate under the
27 supervision of the court in good faith for a period of not more
28 than 60 days. All creditor remedies must be suspended during
29 this period. The court may issue orders necessary to effect
30 good faith mediation. Following the mediation period, if the
31 court finds the creditor has not participated in mediation in
32 good faith, the court shall by order suspend the creditor's
33 remedies for an additional period of 180 days. A creditor found
34 by the mediator not to have participated in good faith shall pay
35 attorneys' fees and costs of the debtor requesting
36 court-supervision of mediation or additional suspension of

1 creditor's remedies.

2 Subd. 4. [DEBTOR LACK OF GOOD FAITH.] A creditor may
3 immediately proceed with creditor's remedies upon receipt of a
4 mediator's affidavit of a debtor's lack of good faith
5 notwithstanding any other requirements of sections 5 to 17.

6 Sec. 13. [583.28] [CREDITOR NOT ATTENDING MEDIATION
7 MEETING.]

8 Subdivision 1. [FILING AND EFFECT OF CLAIM FORM.] A
9 creditor that is notified of the initial mediation meeting is
10 subject to and bound by a mediation agreement if the creditor
11 does not attend mediation meetings unless the creditor files a
12 claim form. In lieu of attending a mediation meeting, a
13 creditor may file a notice of claim and proof of claim on a
14 claim form with the mediator before the scheduled meeting. By
15 filing a claim form the creditor agrees to be bound by a
16 mediation agreement reached at the mediation meeting unless an
17 objection is filed within the time specified. The mediator must
18 notify the creditors who have filed claim forms of the terms of
19 any agreement.

20 Subd. 2. [OBJECTIONS TO AGREEMENTS.] A creditor who has
21 filed a claim form may serve a written objection to the terms of
22 the agreement on the mediator and the debtor within ten days
23 after receiving notice of the agreement. If a creditor files an
24 objection to the terms of an agreement, the mediator shall meet
25 again with debtors and creditors within ten days after receiving
26 the objection to mediate a new agreement. Notwithstanding the
27 mediation period under section 11, subdivision 8, if an
28 objection is filed, the mediator shall call mediation meetings
29 during the ten-day period following receipt of the objection.

30 Sec. 14. [583.285] [RULES.]

31 The state court administrator, in consultation with the
32 director of the bureau of mediation services and the director of
33 the University of Minnesota agricultural extension service,
34 shall make rules under chapter 14, to implement the
35 farmer-lender mediation act. The state court administrator may
36 adopt emergency rules.

1 Sec. 15. [583.29] [PRIVATE DATA.]

2 All data regarding the finances of individual debtors and
3 creditors created, collected, and maintained by the mediators or
4 the director are classified as private data on individuals under
5 section 13.02, subdivision 12, or nonpublic data under section
6 13.02, subdivision 9.

7 Sec. 16. [583.30] [FORMS AND COMPENSATION.]

8 Subdivision 1. [COMPENSATION.] The director shall set the
9 compensation of mediators and credit analysts.

10 Subd. 2. [FORMS.] The director shall adopt voluntary
11 mediation application, mediation request, and claim forms.

12 Sec. 17. [583.31] [ENFORCEMENT.]

13 The mediation agreement must be enforced by the district
14 court.

15 Sec. 18. [583.32] [INCONSISTENT LAWS.]

16 The farmer-lender mediation act has precedence over any
17 inconsistent or conflicting laws and statutes including chapters
18 336, 580, and 581, and section 559.21.

19 Sec. 19. [REPEALER.]

20 Sections 1 to 17 and Minnesota Statutes, section 336.9-501,
21 subsections (6) and (7), are repealed on July 1, 1988.

22 Sec. 20. [EFFECTIVE DATE.]

23 The article is effective the day following final enactment.

C. Creditor

1. The holder of a mortgage on agricultural property, a vendor of a contract for deed of agricultural property, a person with a lien or security interest in agricultural property or a judgment creditor with a judgment against a debtor with agricultural property.
2. Creditors can be government agencies, business entities of any kind (including corporations and partnerships) or individuals.
3. The Act does not apply to creditors who have been granted an exemption by the commissioner of commerce.
 - a. A lender may obtain an exemption if it is subject to a cease and desist order or if the commissioner determines that exemption is essential to the financial survival of the lender.

D. Retroactive Application

1. The Act may apply to foreclosure proceedings that were pending prior to the effective date of the Act. The issue is before the Court of Appeals.
 - a. There is a conflict among the state district courts.
 - b. Walter E. Laue vs. Production Credit Association, CX-86-617.
 - i. The debtor served a mediation request in a replevin action that was commenced prior to the effective date of the Act. The district court judge denied the debtor application to stay the replevin and the debtor filed a writ of mandamus with the Court of Appeals. The Court stayed the replevin pending its decision.
 - ii. The case is being handled on an accelerated basis and a decision is expected in early June.
2. In the meantime, lenders would be well advised to file a mediation notice in proceedings that were pending at the time the Act became effective to avoid last minute debtor initiated mediation.

III. THE MEDIATION PROCESS

A. Actions that trigger mandatory mediation

1. Beginning a mortgage foreclosure proceeding against agricultural property that secured a debt of more than \$5,000.
2. Beginning to terminate a contract for deed to purchase agricultural property that secured a debt of more than \$5,000.
3. Executing, levying, seizing or attaching agricultural property that secured a debt of more than \$5,000.

4. Beginning to enforce a security interest in collateral that is agricultural property that secured a debt of more than \$5,000.
5. Beginning any of the above proceedings without serving a mediation notice can be stopped by the borrower filing a mediation request. Form 2.
 - a. In the case of a mortgage foreclosure, failure to invite mediation may also result in title problems or, where the creditor is enforcing a security interest, the creditor's failure to invite mediation may be a breach of the duty of commercial reasonableness and good faith under the Uniform Commercial Code.
6. Sending out a 60 day Notice of Default probably does not trigger mediation process.
 - a. Send both out simultaneously so that, if the debtor does not request mediation, you have avoided a 14 day delay.

B. Commencing Mediation

1. Serve a mediation notice on the borrower. Forms A1-A4.
 - a. By certified mail, return receipt requested, signed by the addressee only; or
 - b. By actual delivery with signed receipt; or
 - c. By personal service as in a district court civil action.
2. Mail a copy of the mediation notice, by certified mail or any other method with a return receipt, to the director of the agricultural extension service in the county in which the property is located.
3. Debtor has 14 days after receiving notice to mail a reply requesting mediation to the director. Form 1.
 - a. If the debtor fails to mail in his request within 14 days, he waives his right to mediation and the director shall authorize the lender to proceed against the property. Form 3.
 - i. Mortgagees may wish to record Notice of Debtor's Failure to Request Mediation to protect title.
 - b. Three days after receiving Debtor's Mediation Request, director sends out confirmation and calls mediators for times and date of first meeting. Form 4
4. By 10 days after receiving the debtor's mediation request, the director must send a mediation meeting notice to the debtor and to all creditors whom the debtor listed in his request for mediation. Form 5.

- a. Contents of notice:
 - Date of first mediation meeting (must be within 20 days of the notice);
 - List of three proposed mediators;
 - Claim form which the creditor may file in lieu of attending meetings (Form 6); and
 - List of all creditors.
 - b. Creditors have three days to exercise right to strike unwanted proposed mediator by sending objection to director via certified mail.
 - i. If all mediators draw an objection, the mediator that the largest creditor did not object to will be selected.
 - ii. The director will notify the mediator, the debtor, and all listed creditors of the mediator chosen. Form 7.
 - c. Receipt of mediation meeting notice stops all foreclosure proceedings against the debtor for 90 days from the date mediation was initiated (180 days if the creditor is an agency of the United States) or until a mediation agreement is reached.
 - i. The Initial Meeting Notice (Form 5) provides that mediation is "initiated" when the creditors receive the Initial Meeting Notice. However, the Mediation Rules may alter this.
5. Mediation period runs no more than 60 days from the date of the initial meeting.
 - a. Unless a creditor negotiates in bad faith.
 - b. Unless a creditor who has filed a claim form in lieu of attending mediation objects to the mediation agreement. Form 9.

C. Duty to mediate in good faith

1. All parties who receive notice of the meeting must attend and participate (unless the lender files a claim form).
2. All parties must provide full financial information.
3. All lender representatives must have authority to make binding commitments within one business day on behalf of the lender.

4. The debtor (and possibly the lenders) must state, in writing, debt restructuring alternatives and the lenders (and possibly the debtor) must state, in writing, reasons for rejecting any unacceptable alternatives.
 - a. Advisable for lender to come to mediation with a set of debt restructuring alternatives that are acceptable and unacceptable alternatives tailored to the particular debtor.
5. Lender must release to the debtor, out of funds from the sale of farm products, necessary living expenses and necessary farm operating expenses.
 - a. Necessary living expenses means the amount that the farmer's family would be entitled to if it were eligible for public assistance payments (A.F.D.C.).
 - b. Necessary farm operating expenses means an amount adequate to enable the farmer to continue, during the mediation period, farm operations begun prior to the notice of default.
 - i. Excludes expenses for increasing the scale of the farming operation (increasing size of herd, increasing acreage) or planting additional crops.
 - ii. What if farmer has not "begun" planting this year's crop at time of mediation?
6. A lender's refusal to agree to reduce, restructure, refinance, or forgive debt is not in itself evidence of bad faith.

D. Consequences of negotiating in bad faith

1. The mediator determines whether a party is participating in good faith and files an affidavit if bad faith is determined. Form 10.
2. Lender's lack of good faith gives the debtor the right to request an additional mediation period of not more than 60 days supervised by the district court. Form 11.
 - a. The court may issue orders necessary to effectuate good faith mediation.
 - b. Are the remedies of all of the creditors are suspended during the court mediation period?
 - c. The bad faith creditor is liable to the debtor for attorney fees and costs of the court supervised mediation.
 - d. Continued bad faith mediation stays the remedies of the bad faith creditor for an additional period of 180 days after the 60-day court supervised mediation.

3. Debtor's lack of good faith entitles the lender to immediately proceed to enforce its rights against the debtor.

E. Mediation Agreement

1. If a mediation agreement is reached, the mediator shall draft the agreement and submit it to the Minnesota Rural Financial Administration for approval. Form 8.
 - a. If possible, the lender should have counsel prepare agreement:
 - i. Agreement should recite the debt (accrued interest and principal);
 - ii. Agreement should recite that debt is in default and justly owing;
 - iii. Agreement should recite that debtor has no counterclaims, defenses or set-offs to the debt or to the note evidencing the debt;
 - iv. Agreement should recite and affirm the security documents (mortgages, security agreements, etc.);
 - v. Debtor should agree to release lender from any and all claims;
 - vi. Junior lenders should agree to subordinate to restructured debt.
 - vii. Agreement should provide for events of default and remedies in event of default;
 - viii. Agreement should provide for waiver of debtor's right to future mediation of the debts recited in the agreement (enforceability is questionable).
2. A mediation agreement is enforceable in district court.
 - a. Mediation agreement is binding on creditors who signed the agreement, or creditors who don't attend the meeting (and fail to timely file proof of claim) and on creditors who file proof of claim but do not file a timely objection.
3. If the debtor defaults in the performance of the agreement, the creditors must give the debtor another opportunity to mediate before foreclosing.
 - a. Unless the debt restructuring agreement contains a waiver and provided that such a waiver is enforceable.

F. Lender's option to file claim form instead of attending mediation meetings

1. The notice of the first mediation meeting includes a claim form (Form 6). A creditor may file a notice of claim and proof of claim on the claim form with the mediator before the first meeting in lieu of attending.
2. Lender is then bound by any agreement that is reached unless the lender files a timely objection.
3. Written objection to the mediation agreement must be sent by certified mail within 10 days after the lender receives notice of the agreement from the mediator. Form 9.
 - a. If an objection is filed, the mediator must call an additional meeting within 10 days after receiving the objection to mediate a new agreement.

G. Rules

1. The Act provides that the State Court Administration shall promulgate Mediation Rules.
 - a. Rules have not yet been finalized but proposed rules are expected to be published for comments in the State Register on May 30th or the following week.
 2. The Rules will not cover substantive issues (such as whether the Act applies retroactively). The Rules will be procedural governing areas such as:
 - a. Counting time.
 - b. Guidelines for mediator in conducting mediation sessions.
 - c. Instructions to the clerk of court for processing bad faith affidavits and requests for court supervised mediation.
 - d. The role of the court in court supervised mediation.

IV. BANKRUPTCY CONSIDERATIONS

A. Automatic Stay (11 U.S.C. §362)

1. Lender cannot serve mediation request after debtor has filed a petition in bankruptcy.
 - a. The lender must seek relief from stay to pursue mediation.
 - i. Possibly, each creditor may have to seek relief, individually.
2. Automatic stay does not stop the running of 14-day period in which debtor must file mediation request if creditor mediation notice was served pre-petition.

- a. Section 108 of the Bankruptcy Code extends the 14-day period in which the debtor must request mediation for 60 days from the date of filing.

B. Federal Preemption of Mediation Act

1. Has the federal government "occupied the field" in the reorganization area?
 - a. Strong pre-emption argument exists that a debtor-in-possession who cannot confirm a Plan of Reorganization under Chapter 11 is not then entitled to mediation under state law.
 - i. The argument for pre-emption is even stronger if the debtor could not confirm a plan and the bankruptcy case was then dismissed.

DO-15

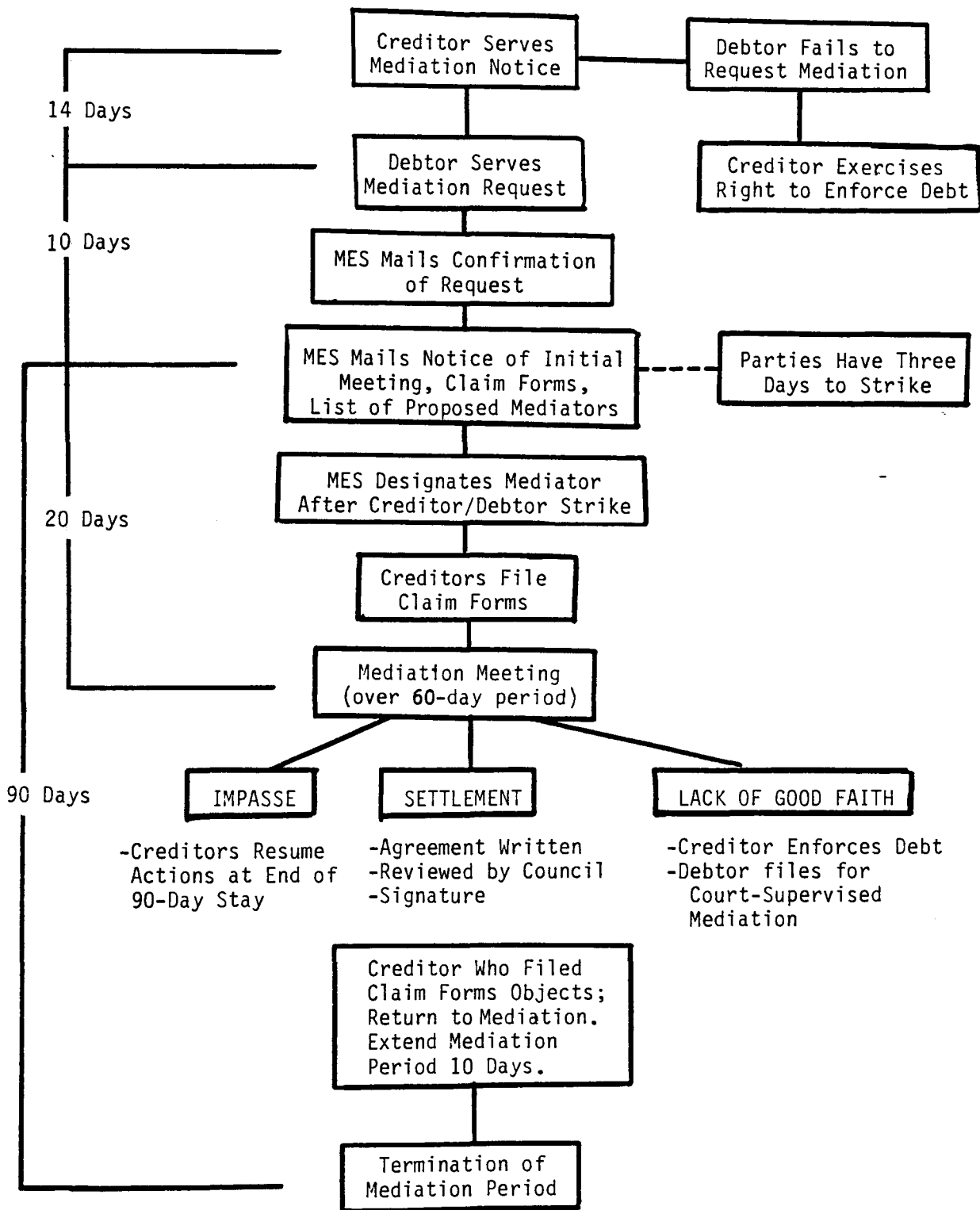
MINNESOTA EXTENSION SERVICE

POLICY AND PROCEDURE

Materials compiled by
Kathy Mangum, Manager
Farm Credit Mediation Program
Minnesota Extension Service

For more information call:
612-625-9721

MANDATORY MEDIATION STEPS



*MES = Minnesota Extension Service - Mediation is handled by Extension Offices located in each County

*If a creditor negotiates in bad faith and debtor requests court supervised mediation, mediation period and stay can be extended 60 days. The stay (but not the mediation period) is extended an additional 180 days as to a creditor who continues to negotiate in bad faith.

MINNESOTA EXTENSION SERVICE - UNIVERSITY OF MINNESOTA



Project Support

**FARM CREDIT MEDIATION
GUIDELINES AND PROCEDURES**

Kathy Mangum
Extension Specialist/Coordinator
Farm Credit Mediation

SCOPE OF ACT

- A. Agricultural Property
1. Real estate principally used for farming.
 2. Personal property pledged as security for farming operation or used as part of farming operation.
 3. The Act does not apply to personal property subject to mechanic's lien.
- B. Debtor
1. A person operating a family farm.
 2. A family farm corporation.
 3. An authorized farm corporation.
 4. Excludes a person who owns and leases less than 60 acres with less than 20,000 in gross sales of agricultural products the preceeding year.
- C. Creditor
1. The holder of a mortgage on agricultural property securing debts of more than \$5,000, a vendor of a contract for deed of agricultural property securing debts of more than \$5,000, a person with a lien or security interest in agricultural property securing a debt of more than \$5,000 or a judgment creditor with a judgment of more than \$5,000 against a debtor with agricultural property.
 2. Creditors can be government agencies, business entities of any kind (including corporations and partnerships) or individuals.
 3. The Act does not apply to creditors who have been granted an exemption by the Commissioner of Commerce.
- D. Retroactive Application
1. The Act may apply to foreclosure or repossession proceedings that were pending prior to the effective date of the Act. The issue is before the Minnesota Court of Appeals.
 - a. There is a conflict among the state district courts.
 - b. Walter E. Laue vs. Production Credit Association, CX-86-617.
 - i. The debtor served a mediation request in a replevin action that was commenced prior to the effective date of the Act. The district court judge denied the debtor application to stay the replevin and the debtor filed a writ of mandamus with the Court of Appeals. The Court stayed the replevin pending its

- decision.
- ii. The case is being handled on an accelerated basis and a decision is expected in early June.

2. The Extension Service will not prejudice any parties rights under the mandatory provisions in the Act. If a debtor requests mandatory mediation, Extension will provide the forms and begin the process. If a creditor challenges, in court, the debtor's rights to mediation, the Minnesota Extension Service will continue facilitating mediation until the Court orders a stay or termination of mediation on this case.

I. MANDATORY MEDIATION PROCESS: Creditors Actions that trigger mandatory mediation.

1. Beginning a mortgage foreclosure proceeding against agricultural property securing a debt of more than \$5,000.
2. Beginning to terminate a contract for deed to purchase agricultural property that is secured with a debt of more than \$5,000.
3. Executing, levying, seizing or attaching agricultural property that is securing a debt of more than \$5,000.
4. Beginning to enforce a security interest in collateral that is agricultural property secured by a debt of more than \$5,000.
5. Beginning any of the above proceedings without serving a mediation notice can be stopped by the debtor filing a mediation request.
6. Sending out a 60 day Notice of Default probably does not trigger mediation process.

II. COMMENCING MEDIATION:

1. Creditor serves a mediation notice on the borrower.
 - a. By certified mail, return receipt requested, signed by the addressee only; or
 - b. By actual delivery with signed receipt; or
 - c. By personal service as in a district court civil action.
2. Mail a copy of the mediation notice, by certified mail or any other method with a return receipt, to the county extension service in the county in which the property is located. The Director of Extension has assigned mediation cases to the county extension agents.

III. DEBTOR REQUEST FOR MEDIATION:

The Law

The debtor must file a mediation request form with the director within 14 days of receiving the creditor's mediation notice. Failure to do so waives the debtor's right to mediation, and the creditor may commence proceedings. The request must include a list of all known specified creditors.

Extension Procedures - Form 1: Debtor Mediation Request

1. This form is used when the debtor has already received a Notice of Mediation from the creditor.
2. The debtor lists (Form 1) all known secured creditors (holding debts of more than \$5,000). Specified types of creditors are defined as:

property used as security to finance a farm operation, including equipment, crops, livestock, and proceeds of the security.

3. It is the debtor's responsibility to list the "correct creditor" . . . Extension will send to all creditors listed in forms 1 and 2.
4. Debtor files this form with the initiating creditor and county extension ag agent. Extension assigns a case number according to the county code sheet and uses it to indicate this mandatory case; for example, M1-1, M1-2, etc. This case number will always be used on every form relating to this case from now on.

The Law:

If a debtor has not received a mediation notice and is subject to a proceeding affected by the Act, the debtor may file a mediation request with the director, indicating that a mediation notice had not been received.

Extension Procedure: - Form #2 Debtor Mediation Request: No Creditor Notice

This form is used when (a) debtor has received (March 22 or after) information from a creditor about legal proceedings of foreclosure, repossession, replevin, termination of contract, but not a Notice of Mediation, informing the debtor of their rights to have debt reviewed for mediation.

1. The debtor lists (Form 1) all known specified creditors. Specified types of creditors are defined as: 1) holder of a mortgage; 2) vendor of a contract for deed; 3) person with a lien or security in agricultural property; 4) a judgment creditor with a judgment against agricultural property. Property is defined as real property used for farming and personal property used as security to finance a farm operation, including equipment, crops, livestock, and proceeds of the security. This only includes property securing debts of more than \$5,000.
2. It is the debtor's responsibility to list the "correct creditor" . . . Extension will send to all creditors listed in Forms 1 and 2.
3. Debtor files this form with the initiating creditor and county extension ag agent. Extension assigns a case number according to the county code sheet and uses it to indicate this mandatory case; for example, M1-1, M1-2, etc. This case number will always be used on every form relating to this case from now on.

IV. DEBTORS WAIVER OF RIGHTS TO MEDIATION

The Law:

Debtor has 14 days after receiving the Creditor's Notice of Mediation to mail a reply requesting mediation to the director. If the debtor fails to request mediation within 14 days, he waives his right to mediation and the Extension shall authorize the creditor to proceed against the property.

Extension Procedure: Form #3 Notice of Debtor's Failure to Request Mediation

1. County Extension agent must have proof that the debtor has received the Creditor's Notice of Mediation before sending this form. The proof can be from either the creditor, debtor, or the post office.

2. Start counting the 14 days from the day the debtor received the Notice. Extension will consider the debtor's request received the date the envelope is postmarked.

V. EXTENSION ASSISTANCE TO DEBTORS

The Law:

After receiving a mediation notice, the director shall provide a credit analyst to assist the debtor in preparing financial information prior to mediation and notify the debtor that a farm advocate may be available to provide assistance.

Extension Procedures: Form #2 Confirmation of Mediation Request

1. The county agent sends this to the debtor within 3 days after the day the Debtor's Mediation Request is received by Extension.
2. Attach a list of farm advocates.
3. Assign a credit analyst (usually county agent).
4. Inform the debtor to: a) gather specific financial information for preparation for mediation; b) schedule an appointment with a credit analyst to review financial information.

There are no specific requirements in the law except that the "credit analyst" meet with the debtor and assure that information relative to the finances of the debtor be prepared for the initial mediation meeting. The Extension goal is to make the gathering of such information an educational experience.

Goals of Financial Analysis in Mediation From an Extension Point of View:

1. Assist the debtor to gather information to determine if there is a "reasonable chance" of succeeding in farming in the long run as he/she is presently farming.
2. Assist the debtor to analyze his/her ability to overcome cash flow problems in the next few years.
3. Suggest alternatives which may improve the financial viability of the farm in the long run or short run future and, if desired by the debtor, help analyze these alternatives.

Suggested Use of FINPACK -- Preferred Method of Analysis

1. Use FINLRB to look at the long run financial strength of the current farming operation (1 column). If the current operation does not show financial strength likely to lead to long range success, analyze alternative plans as suggested by the debtor or the county agent.
2. Use FINTRAN to analyze the cash flow implications of continuing farming as presently organized for the next three years. If viable alternatives were surfaced in step #1, analyze the cash flow implications of moving in those directions.

Suggested Use of FINPACK -- Alternate Method of Analysis

1. Use FINTRAN to analyze the continuation of the farming operation "as is" for the next two or three years.
2. Analyze alternatives only if and when they are raised in the mediation process.

Extension agents will determine, on a case by case basis, how much financial analysis to do prior to the first meeting. During the first (fact finding)

meeting, parties will discuss what other information may be needed to facilitate mediation. Creditors and debtors must agree on what additional information is needed. Mediators can also request additional financial information. At the first meeting, creditors and debtor must agree on values in the financial statement.

The credit analyst will provide additional financial analyses for the second and subsequent mediation meetings upon parties' request, and will provide the requested analyses prior to the next scheduled mediation meetings.

VI. FIRST MEDIATION MEETING

The Law:

Within 10 days of receiving a mediation **request**, the director sends a mediation meeting notice to the debtor and a meeting notice and claim form to all known creditors. **The notice must contain the date and location of the initial mediation meeting, to be held within 20 days of (the date of) the notice, and the names of 3 mediators.**

Extension Procedures: Form #5 Notice of Initial Mediation Meeting

1. Before filling out this form, Extension agent will call at least three mediators and determine their availability for the first meeting which needs to be held within 20 days after Extension sends this Meeting Notice.
2. Priorities for scheduling the first meeting are base on: first, the mediator's availability; second, the debtor's availability; and third, the creditor's availability.
3. When the Extension agent has identified a time when these potential mediators will all be available during the 20 days . . . Extension agent sends the form to the Debtor(s) and all Creditors listed on the Debtor's Mediation Request form (within 10 days of Extension's receipt of Debtor's Mediation Request).
4. When a creditor receives the Mediation Meeting Notice, the creditor may not proceed against the debt until: (1) 90 days after the creditors receipt of meeting notice (180 days if the creditor is a federal agency), or (2) a mediation agreement is reached.
5. Creditors notified of this initial mediation meeting are subject to and bound by a mediation agreement if the creditor does not attend mediation meetings unless the creditor files a Creditor Claim Form.
6. In lieu of attending a mediation meeting, a creditor may file the Creditor Claim Form with the mediator before the scheduled meeting. By filing a Creditor Claim Form, the creditor agrees to be bound by a mediation agreement reached at the mediation meeting unless an objection is filed within ten days after receiving Notice of the Agreement.
7. Creditor Claim Forms are attached to all Notices of Meetings going to creditors.
8. In come cases, a first meeting can't be held within 20 days of Extension's sending the Initial Mediation Meeting Notice due to: (a) high demand for mediation in a given county and/or (b) unavailability of a trained mediator. Extension will set or reschedule the first meeting after the 20 day deadline by getting parties to mutually agree on a new date. Reasons for rescheduling must be written and placed in the case file. The agent shall get the parties' agreement to an alternative date in writing. Extension

agents will make every effort to keep postponement of first meetings to a minimum.

9. Extension and mediators will expect debtors and creditors to demonstrate a "spirit of cooperation" in scheduling meetings when volunteer mediators are available, i.e. late afternoon, early evening, and Saturdays.

VII. PROOF OF CLAIM

The Law:

In lieu of attending a mediation meeting, a creditor may file a notice and proof of claim form with the mediator before the initial meeting. By filing a claim, the creditor agrees to be bound by the agreement unless an objection is filed within a specified time.

Extension Procedures: Form #6 Creditors Proof of Claim

1. Creditor sends the claim form to selected mediator (after they've received Form #7, Notice of Mediator Chosen) and prior to initial mediation meeting.
2. Creditors notified of this initial mediation meeting are subject to and bound by a mediation agreement if the creditor does not attend mediation meetings unless the creditor files a Creditor Claim Form.
3. In lieu of attending a mediation meeting, a creditor may file the Claim Form with the mediator before the scheduled meeting.
4. By filing a Creditor Claim Form, the creditor agrees to be bound by a mediation agreement reached at the mediation meetings unless an objection is filed within 10 days after receiving the Notice of Settlement.

IX. EXCLUSION OF MEDIATOR

The Law:

The debtor and each creditor may request the exclusion of one mediator on the list by notifying the director within 3 days.

Extension Procedures: Form #7 Notice of Mediator Chosen

1. Request for removal of a mediator must be made **in writing within three days of receipt of this creditor's meeting notice.** Where requests from creditors to remove mediators from the list would result in exclusion of all remaining mediators, Extension will appoint the mediator not excluded by the creditor owed the largest debt.
2. If there is agreement between debtor(s) and creditor(s) on a preferred mediator, that mediator will be appointed.
3. Co-mediation is allowed and preferred for some complex cases. Both last names will be listed as one name with a hyphen between the names. If one member of the team is stricken from the list, then both mediators are eliminated.
4. Confirms time, date, and location of initial meeting. Rescheduling of this meeting, at the parties' request, is the mediator's decision (in consultation with Ag agent), and will be based on: (a) the validity of the request [illness vs. inconvenience], and (b) availability of the mediator.
5. Extension sends to Debtor, Creditors, and Mediator.

X. MEDIATION PERIOD AND MEETINGS

The Law:

The mediator may call mediation meetings for up to 60 days after the initial meeting.

Extension Procedures:

1. The first meeting accomplishes: (a) description of the mediation process, roles of parties, rules of meetings, and (b) fact finding around four farm credit issues: current net worth and financial stability, cash flow ability, restructuring resources, and plan for debt repayment.
2. As a demonstration of good faith, the mediator may request parties to state, in writing, debt restructuring alternatives and the reasons for rejecting any unacceptable alternatives.
3. As a demonstration of good faith, the creditor must release to the debtor, out of funds from the sale of farm products, necessary living expenses and necessary farm operating expenses.
 - a. Necessary living expenses means the amount that the farmer's family would be entitled to if it were eligible for public assistance payments (A.F.D.C.).
 - b. Necessary farm operating expenses means an amount adequate to enable the farmer to continue, during the mediation period, farm operation begun prior to the notice of default. This excludes expenses for increasing the scale of the farming operation (increasing size of herd, increasing acreage) or planting additional crops.
4. There are three possible outcomes from mediation sessions: (a) Settlement of Agreement; (b) Conclusion With No Agreement; and (c) Lack of Good Faith.

XI. MEDIATION AGREEMENT

The Law:

Parties to the agreement and creditors filing claim forms who have not objected to the agreement are bound by its terms, may enforce the agreement as a legal contract, and may use the agreement as a defense against actions contrary to the terms of the agreement. If agreement is reached, the mediator drafts a written agreement for signature by the parties and notifies creditors who have filed claim forms of the terms of the agreement. The District Court must enforce the agreement.

Extension Procedures: Form #8 Memorandum of Agreement

1. The mediator has responsibility to see that the Memorandum gets drafted for review by the attorney of each party.
2. The mediator may request creditors to write their own section of the agreement.
3. Agreement must be reviewed by the parties' legal and tax consultants to consider consequences of the agreement.
4. Once attorneys and tax advisers have approved the document, the parties each sign.
5. Each signature must be original.
6. The mediator sends copies of the approved agreement to the county extension agent and all creditors submitting claim forms.

XII. CREDITORS OBJECTION TO AGREEMENT

The Law:

Creditors who have filed claim forms may serve a written objection to the terms of the agreement on the mediator and the debtor within ten days after receiving notice of the agreement. **If objections are filed, the mediator shall meet with the debtors and creditors within ten days after receiving the objection to mediate a new agreement.**

Extension Procedure - Form #9 Creditor Objection to Agreement

1. Creditors who have filed Claim Forms may serve (by certified mail or personal delivery with a signed receipt) this written objection to the terms of the agreement on the Mediator and the Debtor within ten days after receiving the Notice of Agreement.
2. If objections are filed, the Mediator shall meet with Debtors and Creditors (within ten days after receiving the objection) to mediate a new agreement.
3. Any creditor filing an objection to the agreement will be required to attend any mediation meetings called during the ten day period following the filing of the objection.
4. The outcome of this mediation effort can be either a new agreement, or no change in the agreement.

XIII. FAILURE TO MEDIATE IN GOOD FAITH

The Law:

If the mediator determines that either party is not participating in good faith, the mediator shall file an affidavit indicating the reasons for the finding with the director and with parties to the mediation.

"Not participating in good faith" means:

- failure on a regular or continuing basis to attend and participate in mediation sessions without cause
- failure to provide full information regarding the financial obligations of the parties and other creditors
- failure of the creditor to designate a representative to participate in mediation with authority to make binding commitments within one business day to fully settle, compromise, or otherwise mediate the matter
- lack of a written statement of debt restructuring alternatives and a statement of reasons why alternatives are unacceptable to one of the parties

Extension Procedure: Form #10 Lack of Good Faith Affidavit

1. If the mediator determines that any party is not participating in good faith, the mediator shall file an affidavit indicating the reasons for the finding with the County Extension Service and with parties to the mediation. By law, if the mediator finds the debtor has not participated in good faith, the creditor may immediately proceed with debt collection remedies upon receipt of the mediator's affidavit.
2. Mediators will receive careful training in do's and don'ts for decisions of bad faith and will make these decisions with counsel

from the Minnesota Extension Service.

XIV. CREDITOR'S BAD FAITH

The Law:

The debtor may file the mediator's affidavit with District Court with a request for court supervised mediation and serving a copy of the request on the creditor.

Extension Procedures - Form #11 Request for Court Supervised Mediation

1. The Debtor may file the mediator's affidavit with District Court with this request for court supervised mediation.
2. The Debtor serves (by certified mail with return receipt or personal delivery with signed receipt) a copy of the request on the creditor.

XV. COURT SUPERVISED MEDIATION

The Law:

1. Upon request, the court shall require both parties to mediate under the court's supervision in good faith for not more than 60 days **and may issue orders necessary to effect good faith mediation.**
2. Creditors shall suspend all remedies during the 60 day period. If the court finds that the creditor has not participated in good faith during the mediation period, the court shall suspend the creditor's remedies for an additional 180 days.
3. The creditor shall pay attorneys' fees and costs of the debtor requesting court supervised mediation or additional suspension of creditor's remedies.

Extension Procedures:

The volunteer mediator is withdrawn from this case; Extension will request the court to appoint a professional certified mediator to follow up with the court ordered mediation.

XVI. CONCLUSION OF MEDIATION

The Law:

A creditor's receipt of the mediation meeting notice stops all debt collection proceedings for 90 days from the date of initiation of mediation (180 days if creditor is agency of the United States) or until a mediation agreement is reached.

Extension Procedure

There are three possible outcomes for mediation. If agreement is reached, the settlement will identify the time lines for each decision to be implemented. If mediation concludes with no settlement (but good faith), then the creditors can resume debt collection proceedings at the end of 90 days from the date of initiation of mediation (day creditor received the Extension Notice of Initial Meeting).

XVII. RULES

1. The Act provides that the Minnesota State Court Administration shall promulgate Mediation Rules.
Rules have not yet been finalized but proposed rules are expected to be published for comments in the State Register

on May 30th or the following week.

2. The Rules will not cover substantive issues (such as whether the Act applies retroactively. The Rules will be procedural governing areas such as:
 - a. Counting time
 - b. Guidelines for mediator in conducting mediation sessions.
 - c. Instructions to the clerk of court for processing bad faith affidavits and requests for court supervised mediation.

These Extension procedures are subject to change if so indicated by the final rules promulgated by the State Court Administrator.

DEBTOR MEDIATION REQUEST

To be filed by Debtor with initial Creditor and Minnesota Extension Service
- County Office/Agriculture Agent.

I(We), _____, have received
a Creditor Notice of Mediation on _____(date), and do
request mandatory mediation as specified in Minnesota Statute
1986, Chapter 398. In addition to _____,
the creditor identified in the Creditor Notice of Mediation,
I(we) also have debts with the attached list of creditors (as
defined by Minnesota Statute).

Signed _____ Date _____

Print name _____

Address _____ Phone(day) _____

_____ (evening) _____

Debtor's Instructions:

1. Attach a copy of the Creditor Notice of Mediation you received.
2. Attach a list of specified creditors.
3. **Send this form and attachments by certified mail or personal delivery** to the initial creditor and your County Extension Service **within 14 days** of the day you received the Creditor Notice of Mediation. **Failure to respond within 14 days waives your right to mediation**, and your creditor may begin proceedings against your agricultural property.

For use by MN Extension Service:

Case number assigned: _____ (Agent: Also list this case number to
Extension's copy of Creditor's Notice of Mediation.)

Credit Analyst Assigned _____

Date _____

Signed: _____, County Extension Agent

_____, County Extension Service

Designee of Director of Minnesota Extension Service

Form No 1

1986 MINNESOTA FARM BILL: MANDATORY MEDIATION FORMS
Provided by Minnesota Extension Service

Revised 5/13/86

Debtor's Name

Debtor's List of Creditors

NOTE: The information you are being asked to supply with this form and in connection with the mediation process is classified as private data under Minnesota law. The purpose and intended use of this data is to carry out legislated assignment under Minnesota Statute 1986, Chapter 398. You may refuse to provide the information requested, but such refusal will jeopardize your rights as a debtor. The persons authorized to receive this information are the Director of the Minnesota Extension Service or his assignee, the mediator appointed by the Director, and the parties to the mediation.

The purpose of mandatory mediation is to mediate restructuring of debt obligations between debtors and all creditors holding secured debts of more than \$5,000 against the specified agricultural property. The initial creditor and all the creditors listed below can participate in mediation.

The definition of agricultural property is (Minnesota Statute, Section 500.24, Subd.2[a]) real property that is principally used for production of (1) agricultural products; (2) livestock or livestock products; (3) milk or milk products; or (4) fruit or other horticultural products. It does not include the processing, refining or packaging of said products, nor the provision of spraying or harvesting services by a processor or distributor of the production of poultry or poultry products. It also includes personal property that is used as security to finance a farm operation or used as part of a farm operation including equipment, crops, livestock, and proceeds of the security. It does not include personal property subject to a possessory lien.

The Debtor must provide complete information on each of the following types of creditors. For each creditor list: A. Organization; B. Contact person; C. Address; D. Telephone, and E. Outstanding debt. Use additional paper if necessary.

I. LIST ALL KNOWN CREDITORS THAT ARE HOLDERS OF A MORTGAGE ON YOUR AGRICULTURAL PROPERTY WITH A SECURED DEBT OF MORE THAN \$5,000.

- 1. A. _____
- B. _____
- C. _____
- D. _____ E. _____

Attachment to Form 1

Debtor's Name _____

- 2. A. _____
- B. _____
- C. _____
- D. _____ E. _____

- 3. A. _____
- B. _____
- C. _____
- D. _____ E. _____

- 4. A. _____
- B. _____
- C. _____
- D. _____ E. _____

II. LIST ALL KNOWN CREDITORS HOLDING A LIEN OR SECURITY INTEREST IN AGRICULTURAL PROPERTY SECURED BY A DEBT OF MORE THAN \$5,000 IN COLLATERAL (CHATTEL). PLEASE NOTE THAT AGRICULTURAL PROPERTY INCLUDES EQUIPMENT, CROPS, LIVESTOCK, AND PROCEEDS OF THE SECURITY.

- 1. A. _____
- B. _____
- C. _____
- D. _____ E. _____

- 2. A. _____
- B. _____
- C. _____
- D. _____ E. _____

Attachment to Form 1

Debtor's Name _____

- 3. A. _____
- B. _____
- C. _____
- D. _____ E. _____

- 4. A. _____
- B. _____
- C. _____
- D. _____ E. _____

III. LIST ALL KNOWN CREDITORS WHO ARE JUDGMENT CREDITORS WITH A JUDGMENT AGAINST YOUR AGRICULTURAL PROPERTY FOR MORE THAN \$5,000.

- 1. A. _____
- B. _____
- C. _____
- D. _____ E. _____

- 2. A. _____
- B. _____
- C. _____
- D. _____ E. _____

- 3. A. _____
- B. _____
- C. _____
- D. _____ E. _____

Attachment to Form 1

Debtor's Name _____

- 4. A. _____
- B. _____
- C. _____
- D. _____ E. _____

IV. LIST ALL KNOWN CREDITORS WHO ARE VENDORS OF CONTRACTS FOR DEEDS ON YOUR AGRICULTURAL PROPERTY SECURED BY A DEBT OF MORE THAN \$5,000.

- 1. A. _____
- B. _____
- C. _____
- D. _____ E. _____

- 2. A. _____
- B. _____
- C. _____
- D. _____ E. _____

- 3. A. _____
- B. _____
- C. _____
- D. _____ E. _____

- 4. A. _____
- B. _____
- C. _____
- D. _____ E. _____

DEBTOR MEDIATION REQUEST: NO CREDITOR NOTICE

To be filed by Debtor(s) with initial Creditor and Minnesota Extension Service - County Office/Agriculture Agent.

I(We), _____, have received the attached notice of a proceeding from, _____, a creditor who is enforcing a debt against agricultural property. I(We) have not received a Creditor Notice of Mediation as required under Minnesota Statute 1986, Chapter 398, and therefore I(we) request mandatory mediation. In addition to the creditor identified above, I(we) also have debts with the attached list of creditors (as defined by Minnesota Statute):

Signed _____ Date _____

Print name _____

Address _____

Phone (day) _____ (evening) _____

Debtor's Instructions:

1. Attach a copy of the creditors notice of proceedings (foreclosure, repossession, cancellation of contract, etc.) which you received from the creditor.
2. Attach a list of specified creditors.
3. **Send this form with attachments by certified mail or personal delivery** to both the County Extension Service and the creditor named above.

For use by MN Extension Service:

Case Number Assigned _____

Credit Analyst Assigned: _____

Date _____

_____, County Extension Agent

_____, County Extension Service
 Designee of Director, Minnesota Extension Service

Form No 2
 1986 MINNESOTA FARM BILL: MANDATORY MEDIATION FORMS
 Provided by Minnesota Extension Service

Revised 5/13/86

Debtor's Name

Debtor's List of Creditors

NOTE: The information you are being asked to supply with this form and in connection with the mediation process is classified as private data under Minnesota law. The purpose and intended use of this data is to carry out legislated assignment under Minnesota Statute 1986, Chapter 398. You may refuse to provide the information requested, but such refusal will jeopardize your rights as a debtor. The persons authorized to receive this information are the Director of the Minnesota Extension Service or his assignee, the mediator appointed by the Director, and the parties to the mediation.

The purpose of mandatory mediation is to mediate restructuring of debt obligations between debtors and all creditors holding secured debts of more than \$5,000 against the specified agricultural property. The initial creditor and all the creditors listed below can participate in mediation.

The definition of agricultural property is (Minnesota Statute, Section 500.24, Subd.2[a]) real property that is principally used for production of (1) agricultural products; (2) livestock or livestock products; (3) milk or milk products; or (4) fruit or other horticultural products. It does not include the processing, refining or packaging of said products, nor the provision of spraying or harvesting services by a processor or distributor of the production of poultry or poultry products. It also includes personal property that is used as security to finance a farm operation or used as part of a farm operation including equipment, crops, livestock, and proceeds of the security. It does not include personal property subject to a possessory lien.

The Debtor must provide complete information on each of the following types of creditors. For each creditor list: A. Organization; B. Contact person; C. Address; D. Telephone, and E. Outstanding debt. Use additional paper if necessary.

I. LIST ALL KNOWN CREDITORS THAT ARE HOLDERS OF A MORTGAGE ON YOUR AGRICULTURAL PROPERTY WITH A SECURED DEBT OF MORE THAN \$5,000.

- 1. A. _____
- B. _____
- C. _____
- D. _____ E. _____

Attachment to Form 2

Debtor's Name _____

- 2. A. _____
- B. _____
- C. _____
- D. _____ E. _____

- 3. A. _____
- B. _____
- C. _____
- D. _____ E. _____

- 4. A. _____
- B. _____
- C. _____
- D. _____ E. _____

II. LIST ALL KNOWN CREDITORS HOLDING A LIEN OR SECURITY INTEREST IN AGRICULTURAL PROPERTY SECURED BY A DEBT OF MORE THAN \$5,000 IN COLLATERAL (CHATTEL). PLEASE NOTE THAT AGRICULTURAL PROPERTY INCLUDES EQUIPMENT, CROPS, LIVESTOCK, AND PROCEEDS OF THE SECURITY.

- 1. A. _____
- B. _____
- C. _____
- D. _____ E. _____

- 2. A. _____
- B. _____
- C. _____
- D. _____ E. _____

Attachment to Form 2

Debtor's Name _____

- 3. A. _____
- B. _____
- C. _____
- D. _____ E. _____

- 4. A. _____
- B. _____
- C. _____
- D. _____ E. _____

III. LIST ALL KNOWN CREDITORS WHO ARE JUDGMENT CREDITORS WITH A JUDGMENT AGAINST YOUR AGRICULTURAL PROPERTY FOR MORE THAN \$5,000.

- 1. A. _____
- B. _____
- C. _____
- D. _____ E. _____

- 2. A. _____
- B. _____
- C. _____
- D. _____ E. _____

- 3. A. _____
- B. _____
- C. _____
- D. _____ E. _____

Attachment to Form 2

Debtor's Name _____

- 4. A. _____
- B. _____
- C. _____
- D. _____ E. _____

IV. LIST ALL KNOWN CREDITORS WHO ARE VENDORS OF CONTRACTS FOR DEEDS ON YOUR AGRICULTURAL PROPERTY SECURED BY A DEBT OF MORE THAN \$5,000.

- 1. A. _____
- B. _____
- C. _____
- D. _____ E. _____

- 2. A. _____
- B. _____
- C. _____
- D. _____ E. _____

- 3. A. _____
- B. _____
- C. _____
- D. _____ E. _____

- 4. A. _____
- B. _____
- C. _____
- D. _____ E. _____

Case No _____

_____ Debtor(s)

_____ Initial Creditor

EXTENSION NOTICE OF DEBTOR(S) FAILURE TO REQUEST MEDIATION
To be sent by Minnesota Extension Service to Debtor and Creditor

Date: _____

Name of Creditor

Address

Dear _____ (Creditor):

_____ (Debtor[s]) has failed to file a timely

mediation request and has, therefore, waived the right to mandatory mediation. I am notifying you, as required by Minnesota Statute, Section 583.26, Subd.2(b), that you may proceed against the agricultural property specified in the Creditor Notice of Mediation filed with the Minnesota Extension Service on _____ (date).

Very truly yours,

Date _____

Signed: _____ County Extension Agent,
_____ County Extension Service
Designee of the Director, Minnesota Extension Service

cc: _____, Debtor(s)

Case No _____

_____ Debtor(s)

_____ Initial Creditor

EXTENSION CONFIRMATION OF MEDIATION REQUEST

To be sent to Debtor within three days of Extension's receipt of Debtor Request for Mediation

Date _____

Name of Debtor(s)

Address

Dear _____ (Debtor):

The Minnesota Extension Service has received the above-mentioned mediation request. In order to assist you in preparation for mediation, the following information is provided.

1. Farm advocates may be available without charge to assist you. A list of farm advocates provided by the Minnesota Department of Agriculture is attached.
2. The Minnesota Extension Service has assigned a credit analyst to assist you in preparation of financial records for the mediation. Gather the financial records (list attached) and call to schedule a meeting. You must meet with your credit analyst within the next ten days.

Name of Credit Analyst: _____

Title: _____

Address: _____

Phone: _____

If you have questions, contact your County Extension Office.

Very truly yours,

_____, County Extension Agent

_____, County Extension Service

Designee of Director, Minnesota Extension Service

- Enclosure: List of Farm Advocates
 List of Farm Financial Records

Form No 4

1986 MINNESOTA FARM BILL: MANDATORY MEDIATION FORMS

Provided by Minnesota Extension Service

Revised 4/15/86

Attachment to Form 4

MINNESOTA DEPARTMENT OF AGRICULTURE
FARM ADVOCATE LIST - MARCH 1986

Mr. Bruce Lubitz
 Rural Route 1, Box 265
 Perham, Minnesota 56573
 (218) 346-4866

Ms. Lana Anderson
 Star Route 2
 Goodridge, MN 56725
 (218) 378-4214

Mr. Herb Schloesser
 Rural Route 2, Box 222
 LeCenter, MN 56057
 (612) 357-6251

Mr. Myrl Fairbrother
 Rural Route 2
 Royalton, MN 56373
 (612) 584-5388

Ms. Garnette Hanson
 Rural Route 1, Box 71
 Newfolden, MN 56738
 (218) 874-6473

Ms. Jan Boll
 Route 1, Box 135
 Gully, MN 56646
 (218) 268-4472

Ms. Janice Daley
 Route 1, Box 54
 Lewiston, MN 55952
 (507) 523-3177

Ms. Diana Hunter
 Route 1, Box 11
 Wright, MN 55798
 (218) 357-3292

Mr. Jack McGill
 2010 17th Street S.E.
 Apartment #18
 Rochester, MN 55904
 (507) 285-1007

Ms. Sandra Hunz
 3760 County Road 92 North
 Maple Plain, MN 55359
 (612) 972-3636

Mr. Harold Hutchinson
 Rural Route 1
 Revere, MN 56166
 (507) 752-7776

Mr. Milan Wisniewski
 Rural Route 2, Box 89
 Ivanhoe, MN 56142
 (507) 694-1629

Mr. Keith Williams
 Box 176
 Boyd, Minnesota 56218
 (612) 855-2656

Farm Advocate Program of the Minnesota Department of Agriculture is a network of farmers helping farmers. An advocate can help you get a clear picture of your financial situation and help you work with your lender to get operating loans necessary to keep farming. To find an advocate in your area call 1-800-652-9747, toll free, and ask for the Farm and Home Preservation Hotline.

Attachment to Form 4

Extension's Goal for Financial Analysis in Mediation

- A. Assist the debtor to gather information to determine if there is a "reasonable chance" of succeeding in farming in the long run as he/she is presently farming.
- B. Assist the debtor to analyze his/her ability to overcome cash flow problems in the next few years.
- C. Suggest alternatives which may improve the financial viability of the farm in the long run or short run future and, if desired by the debtor, help analyze these alternatives.

Extension agents use FINPACK computer programs to assist farmers in developing and presenting feasible financial plans to creditors.

Debtors must provide the following information to their credit analyst for review and preparation for mediation.:

1. A current financial statement of assets and liabilities (prepared in pencil)
2. A depreciation schedule
3. Evidence of crop yields and livestock production for the past three years
4. Income and expense records for the past three years
5. A list of debts outstanding
6. Income tax records from the past three years.

This information will be used to prepare cash flow and long range plans to be considered in mediation. During the first "fact finding" meeting, creditors and debtors must agree on what additional financial information is needed.

Case No _____

_____ Debtor(s)

_____ Initial Creditor

NOTICE OF INITIAL MEDIATION MEETING

To be sent to Debtor and all known Creditors within 10 days of Extension's receipt of Debtors Request for Mediation

1. Debtor(s) and creditors are hereby notified that the initial mediation meeting for all concerned parties in the above captioned matter will be held (within 20 days from the mailing of this Notice):

Time: _____ Location _____

Date: _____

2. Listed below are the proposed mediators. If you so desire you may request that one mediator be excluded from list:

1. _____

2. _____

3. _____

Request for removal of a mediator must be made in writing within three days of receipt of this notice. Where requests from creditors to remove mediators from the list would result in exclusion of all remaining mediators, Extension will appoint the mediator not excluded by the creditor owed the largest debt. If there is agreement between debtor(s) and creditor(s) on a preferred mediator, that mediator will be appointed.

3. When a creditor receives the Mediation Meeting Notice, the creditor may not proceed against the debt until: (1) 90 days after the creditors receipt of meeting notice (180 days if creditor is federal agency), or (2) a mediation agreement is reached.

4. Creditors notified of this initial mediation meeting are subject to and bound by a mediation agreement if the creditor does not attend mediation meetings unless the creditor files a Creditor Claim Form. In lieu of attending a mediation meeting, a creditor may file the Creditor Claim Form with the mediator before the scheduled meeting. By filing a Creditor Claim Form the creditor agrees to be bound by a mediation agreement reached at the mediation meeting unless an objection is filed within ten days after receiving notice of the agreement.

Date _____

_____, County Extension Agent

_____, County Extension Service
Designee of Director, Minnesota Extension Service

Attachment to Creditors Only: Creditor Claim Form
Form 5

Case No _____

_____ Debtor(s)

_____ Initial Creditor

CREDITOR PROOF OF CLAIM FORM

To be sent by Creditor to chosen Mediator prior to initial mediation meeting

Debtor(s) Name _____

Address _____

Telephone _____

1. This proof of claim is made for the claimant named below and is signed by _____, who is duly authorized to make this claim and states that (check one):

- The undersigned is the Claimant
 The undersigned is the Agent or Attorney for the Claimant
 Claimant is a partnership; undersigned is partner thereof
 Claimant is a corporation; undersigned is an authorized officer thereof.

The correct name and address of claimant is:

Full name: _____

Address: _____

City, State, Zip: _____

Telephone _____

2. Debtor is indebted to claimant in the sum of \$ _____

3. Consideration for this debt is: _____.

4. (a) This claim is based on a writing attached hereto, or
 (b) This claim is founded on an open account as shown by the itemized statement attached hereto.

5. Judgment _____ has not been entered on this claim.
 _____ has been entered from _____ District Court, on _____
 (date) in the amount of _____.

6. There is a security interest is held for this claim _____ (no)
 _____ (yes; proceed to question #7).

Form No 6

1986 MINNESOTA FARM BILL: MANDATORY MEDIATION FORMS

Provided by the Minnesota Extension Service

Revised 5/13/86

Attachment to Form 6

Debtor's Name _____

7. If a security interest is claimed, it is under the writing referred to in paragraph 4 or under a separate writing attached hereto. Evidence of perfection of such security interest is also attached hereto.

\$ _____
Total Amount Claimed

Name of Creditor: _____
(print or type full name)

Dated: _____ Signed: _____

Creditors notified of this initial mediation meeting are subject to and bound by a Mediation Agreement if the creditor does not attend mediation meetings unless the creditor files a Creditor Claim Form. In lieu of attending a mediation meeting, a creditor may file the Creditor Claim Form with the mediator before the scheduled meeting. By filing a Creditor Claim Form, the creditor agrees to be bound by a mediation agreement reached at the mediation meeting unless an objection is filed within ten days after receiving notice of the agreement.

NOTE: The information you are being asked to supply with this form and in connection with the mediation process is classified as private data under Minnesota law. The purpose and intended use of this data is to carry out legislated assignment under the Minnesota Statute 1986, Chapter 398. You may refuse to provide the information requested but such refusal may jeopardize your rights as creditor. The persons authorized to receive this information are the Director of the Minnesota Extension Service or his assignee, the mediator appointed by the director and the parties to the mediation.

Case No _____
_____ Debtors(s)
_____ Initial Creditor

NOTICE OF MEDIATOR CHOSEN

To be sent to Debtor, Mediator, and all known Creditors.

Notice is hereby given to Debtors(s) and all known Creditors that:

Mediator's Name

Address

Phone

has been chosen mediator in this matter through the process of
exclusion offered on the Notice of Initial Mediation Meeting.

Confirmation of Initial Meeting

Time: _____
Date: _____
Location: _____

Signed _____, County Extension Agent

_____, County Extension Service
Designee of Director, Minnesota Extension Service

For use by MN Extension Service:

Attach copies of Form 1 or 2 to Mediator's copy of this Notice.
Send this form only (#7) to Debtor and all known Creditors.

Form No 7
1986 MINNESOTA FARM BILL: MANDATORY MEDIATION FORMS
Provided by the Minnesota Extension Service

Revised 5/13/86

Case No _____

_____ Debtor(s)

_____ Initial Creditor(s)

MEMORANDUM OF AGREEMENT

To be sent by Mediator to Debtor(s), Creditor(s), and Minnesota Extension Service - County Office/Agriculture Agent

This Memorandum of Agreement is entered into by the parties identified above and by other participating creditors pursuant to Minnesota Statute 1986, Chapter 398.

Debtor-Creditor mediation was conducted by _____, farm mediator. The following Creditor(s) participated in mediation:

- A. _____
- B. _____
- C. _____
- D. _____

The following Debtor(s) participated in mediation:

- A. _____
- B. _____
- C. _____
- D. _____

Prior to entering into mediation, all parties signed an Agreement to Mediate form which adopted the Rules of Mediation for the Farm Credit Mediation Program.

The following represents their intended decisions reached in mediation. All parties have made full disclosure to each other. They wish to adopt the following agreements as binding upon the Debtor(s) and Creditor(s) who are parties and upon Creditor(s) who have filed claim forms and have not objected to the Agreement.

Attachment to Form 8

Debtor's Name _____

FACTUAL BACKGROUND

AGREEMENTS

Each of the persons signed below has read this document and acknowledges they understand it, and agree that this

Attachment to Form 8

Debtor's Name _____

represents the complete and accurate agreement between parties.

Date _____

Signed:

Debtor(s)

Creditor(s)

Approved: _____, Counsel to Creditor

_____, Advisor to Debtor

Mediator's Instructions

Original signatures are required on each copy; type (preferred) or hand write Agreement. Provide a photocopy to each party for their signature. Send a copy of the Agreement to all Creditors who sent in Claim Forms. Send a copy to the County Extension Service office that assigned you the the case.

Case No _____

_____ Debtor(s)

_____ Initial Creditor(s)

CREDITOR OBJECTION TO AGREEMENT

I, _____ am a creditor/party to the above captioned mediation. I filed a Creditor Claim Form in conjunction with the above captioned matter on _____ (date).

I received Notice of an Agreement reached in the mediation process on _____ (date). I object to the terms of this agreement for the following reasons:

_____ and I request that the mediator meet again within 10 days with debtor(s) and creditor(s) to attempt to reach a new agreement.

Dated: _____ Creditor

Phone _____

Address _____

Creditor's Instructions

To be considered, this objection must be served on the mediator and on the debtor(s) within 10 days of creditor's receipt of the Memorandum of Agreement

Case No _____

_____ Debtor(s)

_____ Initial Creditor

LACK OF GOOD FAITH AFFIDAVIT

To be filed by Mediator with Debtor(s), Creditor(s), and Minnesota Extension Service - County Office/Agriculture Agent

_____, Creditors(s)

v.

AFFIDAVIT OF MEDIATOR,

_____, Debtor(s)

Name

_____(Mediator), being first duly sworn upon oath states:

- 1. I am a farm mediator appointed by the Director of the Minnesota Extension Service pursuant to Minnesota Statute 1986, Chapter 398.
- 2. A Request for Mediation was filed on (date) _____ by (name) _____.
- 3. The mediation process has been conducted pursuant to Minn. Stat. 1986 Chapter 398.
- 4. I have determined that (name) _____ is not participating in the mediation in good faith as that term is defined in Minnesota Statute 1986, Chapter 398.
- 5. The reasons for my determination are

FURTHER YOUR AFFIANT SAYETH NOT. _____, Mediator
Subscribed and sworn to

before me this ____ day of

_____, 1986.

_____, Notary Public

Mediator's Instructions: Send by certified mail or personal delivery with a signed receipt to Minnesota Extension Service - County Office, Agriculture Agent and all Debtor(s) and Creditor(s)

Case No _____

_____ Debtor(s)

_____ Initial Creditor(s)

DEBTOR'S REQUEST FOR COURT SUPERVISED MEDIATION

STATE OF MINNESOTA

DISTRICT COURT
JUDICIAL DISTRICT

COUNTY OF _____

_____, Debtor-Plaintiff

v.

_____, Creditor-Defendant.

TO THE HONORABLE JUDGE OF THE ABOVE-NAMED COURT:

Plaintiff hereby requests court supervision of mediation pursuant to Minn. Stat. Chapter 398 for the following reasons:

1. Plaintiff and defendant have engaged in mediation with a farm mediator according to the terms and conditions set forth in the Minn. Stat. 1986, Chapter 398.

2. The mediator has determined that the creditor-defendant has not participated in mediation in good faith and has set forth her/his reasons for this determination in the attached affidavit.

Therefore, debtor-plaintiff respectfully requests this Court to require all parties to mediate under the supervision of this Court in good faith for a period of not more than 60 days.

Dated: _____

By: _____
Debtor's Name (pro se)

Address _____

Phone _____

Form No 11

1986 MINNESOTA FARM BILL: MANDATORY MEDIATION FORMS

Provided by Minnesota Extension Service

Revised 4/15/86



**Position Description
Volunteer Mediator
Farm Credit Mediation Program**

Project Support

Description of program: The 1986 Minnesota Farm Bill provides for mediation of farmer-lender debt disputes for debt restructuring.

Role of volunteer mediator: the mediator leads and manages the discussion as a neutral party. All financial decisions are made by creditors and farmers. Under the law, mediators are immune from civil liability for actions as mediators.

Qualifications:

Education: no degree requirements; education or training in conflict resolution desirable but not required.

Experience: experience preferred, but not required in farm management, farm finance, small business, law, adult education, conflict resolution; knowledge of lender/borrower perspectives on farm credit issues.

Skills and abilities:

1. Ability to function as a neutral party; willingness to see both sides of issues without prejudging.
2. Ability and willingness to manage conflict.
3. Strong communication skills in listening, speaking and clarifying issues, and writing skills.
4. Abilities in persuasion, problem-solving, and negotiation.
5. Commitment to confidentiality.

Responsibilities:

1. Complete 2 days of farm mediation training to learn mediation skills and farm finance aspects of farm credit mediation.
2. Mediate 1-2 farm credit cases per week involving 6-10 hours per week for up to 6 months following training.
3. Listen to the debtor and creditors desiring to be heard.
4. Attempt to mediate between the debtor and the creditors.
5. Advise the debtor and creditors of assistance programs available.
6. Attempt to arrive at an agreement to fairly adjust, refinance or pay the debts, and
7. Advise, counsel and assist the debtor and creditors in attempting to arrive at an agreement for the future conduct of financial relations among them.
8. Write up agreement resulting from mediation.
9. Keep program records.
10. Maintain confidentiality of specific cases.

Compensation: \$20 per meeting plus reimbursement for work-related mileage and long-distance telephone calls. All training will be provided at no cost, and training-related costs (mileage, meals, lodging) will also be reimbursed.

FARM MEDIATION SERVICES
 DEPARTMENT OF COMMUNICATION RESOURCES
 433 Coffey Hall, University of Minnesota
 St Paul, MN 55108

CERTIFICATION OF SERVICES

Agricultural Extension Service
 REQUEST FOR PAYMENT

In consideration of payment in the amount of \$ \$80.00.

I hereby certify that I have (describe services rendered) 1 session
(6/5), Debtor H. Anderson-Murray Cty; 2 sessions (6/10 & 6/18),
Debtor B. Jones-Nobles Cty; 1 session (6/23), Debtor A. Nelson-Rock Cty -

I understand payment and W-2 will be sent to the address shown.

Date June 30, 1986

Signature

John Smith

Address

P O Box 221, RR 2

Luverne, MN 56156

Social Security No. 123-45-6789

NOTE: \$20.00 per session honorarium
 THIS FORM MUST ACCOMPANY TRAVEL EXPENSE ACCOUNT FORM

SAMPLE



Travel Expense Account

INSTRUCTIONS: Complete this form at least monthly or within 30 days of the date traveled. Frequent travelers may submit forms twice a month. Receipts are required for lodging, airfare, car rental, registration and miscellaneous items (taxi and parking excepted). If receipts have been lost, sign and attach a statement of explanation.

Incomplete forms will cause a delay in processing—call the Accounting Office if you have any questions.

Forward white and blue copies to Agricultural Extension Accounting Office, 415 Coffey Hall.

Name John Smith	Social Security No. 123-45-6789	Check here if this is a new address <input type="checkbox"/>
Street P O Box 221, RR 2	City, State, Zipcode Luverne, MN 56156	

CHECK APPROPRIATE BOXES:

Travel (check one)

- Instate
- Outstate

Funds (check one)

- Regular Individual Allotment
- * Special Individual Allotment—

Sub/Acct-Fund-Dept-Budget _____ - _____

* Other Project—Project ID Number MEDIATION 2

*If multiple funds or projects, submit separate Travel Expense Account Forms (Form No AEx 4) for each.

EXPENSE DATES: From June 1, 1986 to June 30, 1986

PURPOSE	CITY (or CITIES)
Mediation of Farm Credit Cases	Rock, Nobles and Murray Counties

Month and Day	Location and Explanation of Miscellaneous	Transportation			Lodging	Misc.—Registration, Telephone, etc.	Meals		
		Personal Car Mileage	Airfare	Other Bus, Taxi, etc.			B	L	D
6/5	Luverne to Slayton (round)	130 mi				\$7.19 Phone			
6/10	Luverne to Worthington	70 mi				\$3.42 Phone			
6/18	Luverne to Kinbrae	110 mi						\$3.50	
6/23	Luverne to Luverne	2 mi							
COMPLETE AND SEND TO:									
Kathy Mangum									
Communication Resources									
433 Coffey Hall									
University of Minnesota									
St Paul, MN 55108									

SAMPLE

I certify that the expenses itemized above are correct and that I have paid the amounts shown.

Signed _____ Date _____

MEDIATION RESOURCE MATERIALS

Materials compiled by
Joyce Walker, Extension Specialist
University of Minnesota

For more information call:
612-625-2701

**MEDIATION SESSION RULES
FOR
MINNESOTA EXTENSION SERVICE**

Purpose of Rules

These rules are to establish common understanding and agreement of the terms of the mediation process for Farm Credit Mediation. They are to assist parties in reaching agreement of issues submitted for mediation. They are to protect the integrity and confidentiality of the discussions, insure that all parties can participate fully, and clarify the responsibilities of all parties and the mediator.

These rules apply in this form at the time mediation is initiated. Any additional rules that the participating parties agree upon to facilitate settlement or address special circumstances shall be clearly written out, added and signed by all parties before mediation begins.

Conduct of Mediation

The mediator is the final word in issues of procedure and conduct of mediation sessions. The mediator will guide the process to achieve 1) understanding of the facts 2) definition of the issues, 3) full discussion and 4) expeditious resolution.

Parties participating in mediation discussions must have a demonstrated interest in the matter and must have full authority to negotiate alternatives and make binding commitments for settlement within one business day.

The involvement of experts or other persons in the mediation sessions must be agreed by all parties. The mediator may limit the participation of support and resource people if he/she decides that their presence limits productive discussion.

Mediator Liability and Immunity

The mediator is immune from civil liability for actions within the scope of the mediation. The mediator is a neutral who does not advise about the law or make recommendations for settlement. The mediator cannot be called as a witness to testify in any proceedings related to the issues in mediation. Parties must consult with their own attorneys to implement decisions proposed or agreed upon in mediation.

Confidentiality

Legislation exists in the state of Minnesota that protects the confidentiality of the mediation process. Since mediation is a procedure for reaching settlement of a dispute either in litigation or likely to be in litigation, it is very important that every participant in the mediation process understand what is meant by confidentiality of the process. Because it is a different form of

problem-solving litigation, the parties in mediation must understand that anything they say in mediation cannot later be used against them in a court proceeding.

Mediator Immunity

1. Through the adoption of these rules, all parties to the mediation process agree that the mediator will not be called as a witness to testify in any legal proceeding arising from the controversy. Records, files or documents in possession of the mediator classified as private data in the 1986 Omnibus Farm Bill will not be requested from the mediator for any subsequent litigation in the event the mediation ends in impasse. (This does not preclude those documents from production by the normal adversarial discovery process between the parties once litigation has commenced.)

Mediator Confidentiality

2. Since many of the mediators are volunteers from the community where the parties also reside, the mediator assures the parties that he or she will hold the discussions in the strictest of confidence.

Communication Confidential

3. All communication in mediation is "confidential". This means that no one will repeat any of the communications outside of the mediation process. If you consult with outside advisors and want to tell them about what has been said in mediation, you should first have that advisor agree in writing to respect the confidentiality of the information.

Communication Privileged

4. All communication in mediation is "privileged". This means that none of the statements or documents made during the mediation process can be used as evidence in any lawsuit. Tape recordings or similar records of the proceedings are not permitted. Personal notes are private data. An exception is that communication in mediation can be used as evidence if there is a charge of fraud in the mediation process.

Full Disclosure

During the mediation process, each person agrees to fully disclose all information and writings related to agricultural property, farm operating and living expenses, loan records, farm plans and any other information requested by the mediator as an aid to the full discussion of the issues.

Time Limits

The mediator may call mediation meetings during the mediation period

which is up to 60 days after the initial mediation meeting. Any extension beyond the 60-day period must be by written consent of all participating parties.

Agreements made by the parties to deviate from any provision of the 1986 Omnibus Farm Bill, Article I, Mediation.

The 1986 Omnibus Farm Bill which sanctions farm credit mediation does not affect the parties' rights to deviate from the provisions of the act provided all agree. The purpose of any mediation process is to provide people with an opportunity to settle their differences outside of the legal process. Portions of the Act set certain standards for the mediation process, yet parties are still able to deviate from any provision of the act provided all agree in writing. An example of this deviation would be the agreement of all parties to extend the sixty-day period for mediation to a longer period of time. Any important procedural agreement that is different from the Act should be in written form added to the meeting rules, and signed by all parties in the mediation.

Release of Funds During Mediation

Certain circumstances require the creditor to release to the debtor, out of funds from the sale of farm products, necessary living expenses and necessary farm operating expenses. The creditor must, during mediation, agree to forego retaining all or a portion of the funds from the sale of farm products during the mediation process. The amount of "necessary living expenses" is defined by the statute as the amount the farmer's family would be entitled to if it were eligible for public assistance payments (A.F.D.C.). In some cases, the creditor must release funds above the amount needed to pay for personal family living expenses. The statute requires the creditor to release funds in an amount adequate to enable the farmer to continue farm operations begun prior to the notice of default. Increasing the size of the farming operation or planting additional crops will not require the creditor to release funds. This requirement is seen as an attempt to keep the farm family or farm operation from "going under" during mediation. As such, it is consistent with general principles of mediation that ask the parties to maintain a status quo while engaging in settlement discussions.

Good Faith Mediation

The legislature expected that all participants in mediation will act in good faith. The mediation process also asks that participants try their best to reach a solution. However, the fact that the parties cannot reach agreement on restructuring debt or other solutions sought is not evidence of bad faith. A lender's refusal to agree to reduce, restructure, refinance, or forgive debts is not in itself evidence of bad faith. Good faith as defined by the statute is as follows:

1. Regular and continued attendance and participation in mediation sessions.

2. Full disclosure of financial obligations and circumstances.
3. Ability to make binding commitments within one business day.
4. Willingness to generate debt restructuring alternatives and provide clear, written reasons for proposals deemed unacceptable.
5. Provision of funds released for necessary living and farm operation expenses during mediation.
6. Other similar evidence of integrity and commitment to reach settlement.

Lack of Good Faith

Lack of good faith is when the parties to the mediation process are not following the above commitments. If the mediator is asked to make a determination of lack of good faith or decides such a conclusion is necessary without being asked, an affidavit form should be provided to all the parties as well as the Minnesota Extension Service detailing specific reasons why the mediator is making such a finding.

If a creditor participates in mediation sessions and acts in such a way as to indicate a bad faith attempt at settlement, sanctions against the creditor could be imposed such as:

1. court orders to effectuate good faith
2. suspension of creditors legal remedies
3. Attorneys fees and court costs for needing court supervised mediation.

If a debtor participates in bad faith, the creditor can immediately proceed to enforce its legal rights against the debtor.

Recommendation for Tax and Legal Review

There will be significant tax consequences in every settlement reached by the parties. Regardless of whether the agreement is to restructure or liquidate, these rules put all parties on notice that the volunteer mediator and Minnesota Extension Service strongly recommend that all parties obtain legal review and tax consequences review of all decisions readed in mediation before such decisions become binding upon the parties.

Drafting Settlement Agreement

The legislature designated the settlement agreement in Mandatory Mediation to be a binding contract upon the parties if signed by all. These rules contemplate that the volunteer mediator will not have the

skill or time to draft a technical legal agreement that satisfies all the parties. Therefore, the mediator will draft a summary of the main agreements reached by the parties using a form supplied by the Minnesota Extension Service. The mediator may ask an attorney for one of the parties to draft the legal documents that will be signed by all of the parties upon review and final agreement.

Prepared by Stephen Erickson and Marilyn McKnight, Erickson Training Institute, Minneapolis, MN, 1986.

FORMS MEDIATORS DEAL WITH

The Minnesota Extension Service has developed eleven (11) different forms to assist debtors, creditors, Extension Agents and volunteer mediators comply with the provisions of the 1986 Omnibus Farm Bill, Article 1 on Farmer-Lender Mediation.

Mediators should be familiar with all of the forms, but seven (7) are particularly relevant for your work:

#1 - DEBTOR MEDIATION REQUEST

This form is filed with the County Extension Office. It contains the name of the debtor and all known secured creditors. You are free to see this form or get a copy of it in order to have the names, addresses and phone numbers of the persons involved in a mediation case assigned to you.

#5 - NOTICE OF INITIAL MEDIATION MEETING

You may receive a copy of this form although it is not necessary. It merely indicates that your name has been submitted to the debtor and creditors in a case. You are not assigned to a case until you receive form #7.

#6 - CREDITOR PROOF OF CLAIM FORM

These forms will be sent to you by any creditors in a case who choose not to be present at the mediation sessions but who nevertheless indicate an interest in the case and possible agreements. Keep it in your file. The final settlement agreement must be sent to these creditors for review.

#7 - NOTICE OF MEDIATOR CHOSEN

You will receive this form when you are assigned a case. It indicates the date, time and location of the first scheduled mediation session. A copy of the debtor's request for mediation will be attached. If you have any questions or problems, contact the County Extension Agent who sent the notice.

#8 - MEMORANDUM OF AGREEMENT

You complete this agreement when a settlement is reached and agreed upon by all parties. It is not complete until it has been reviewed by all parties, their attorneys or tax consultants, and signed. You may add attachments to this agreement form as well as any wording that helps to convey the intentions and agreements of the parties. See Sample Agreement in the booklet for additional help.

#9 - CREDITOR OBJECTION TO AGREEMENT

You may receive this form if a creditor who has previously sent you a Creditor Proof of Claim (Form #6) objects to a settlement agreement. This form must be served on you and the debtor within 10 days of creditor's receipt of the Memorandum of Agreement.

#10 - LACK OF GOOD FAITH AFFIDAVIT

You use this form if you determine that one of the parties in mediation is not participating in good faith negotiations as defined in the law. It must be sent to the County Office of the MN Extension Service and all parties in mediation by certified mail or personal delivery.

MEDIATOR'S OBSERVATIONS AND IMPRESSIONS AFTER EACH SESSION:

Record After Each Session:

What Happened: _____

Areas of Agreement: _____

Areas of Concern: _____

Hunches About Verbal and Non-Verbal Content _____

What You Did Well: _____

What You Were Uncomfortable About: _____

Group/Family Dynamics: _____

PLANNING FOR NEXT SESSION

Consult with your supervisor or colleague about your last session, and discuss ways to proceed with the participants towards resolution of the presented problem and the other issues that surface during the session. Plan your next session after consultation. Be sure the consultation is positive and constructive. Do not dwell on mistakes and problems of last session. Learn from them in planning the next one:

What You Plan to Accomplish: _____

Possible Techniques to Use: _____

Focus and Management of Session: _____

Zeroing in on Individual Needs/Interests/Concerns: _____

Dealing with Problem Areas: _____

Ideas for Solutions/Options for Resolution: _____

Mediation is an empowering process. Be mindful of the innate qualities that make it so and that make mediation remarkably suited to resolving disputes where power imbalances exist. The first sign of this strength is that the parties to a dispute have come to the table and agreed to abide by the same groundrules as they begin to negotiate a settlement to their differences. Some other empowering qualities are:

1. Respect for human dignity. Mediation is founded upon a respect for human dignity. Mediators role model respectful behavior. They treat the parties with dignity, listen with care, and project their interest in and concern about what each party says. Their example sets the tone for how the parties can listen to and treat one another.
2. Open exploration of options. The mediation process is designed to surface the issues underlying a dispute and to encourage the open exploration of options. This quality in itself can lead to settlements that transcend solutions which arise out of the sheer use of power.
3. Recognition of human emotions. Mediation gives recognition to the human need to express feelings. By providing the parties a safe place to display anger and rage, mediators also give the parties permission to tap into other feelings such as concern, understanding and empathy. People are better able to see one another's perspective once they have had a chance to express their own.
4. Recognition of human intelligence. Mediation assumes that the parties are competent to resolve their own disputes. Often people who have been socialized to feel powerless, rise to the occasion during mediation, especially with the gentle, but insistant reminders of the mediator that they are responsible for designing the agreement.
5. Impartiality of the Process. Mediation provides an impartial, non-judgmental forum to air and settle disputes. Throughout the process, the mediator conveys the message that the parties are viewed equally, including the way they are greeted, seated, addressed, listened to and responded to. This treatment is a strong stimulus for the parties to treat each other as equals.
6. Confidentiality of the process. Mediation provides the parties with a private and secure environment in which to explore the underlying causes of a dispute. Confidentiality can act as an effective tool for surfacing the information needed to construct lasting settlements that respond to the needs of all parties.
7. Voluntariness of reaching a settlement. Many mediation programs require that entry into mediation be voluntary. This in itself has an equalizing effect in that it signals each party that neither alone has the power to bring about a settlement. The voluntary nature of mediation encourages the parties to adopt a cooperative frame of mind. On the one hand, no one can tell them how to settle, and on the other, unless they find a mutually agreeable way to settle, they will have to resort of other forms of dispute resolution which may be less voluntary and less satisfactory. (In programs where parties are mandated to try mediation, the mediator is doubly obliged to let them know that they can walk away from the table at any time.)
8. Openness of the Process. Mediation is stripped of the mystique usually associated with the adjudicative process. Mediators describe the philosophy, the process and the groundrules and encourage questions. By their openness, mediators convey the message that information is to be shared.

COMMUNICATION HELPERS AND STOPPERS

Communication Helpers

The following phrases help a person get feelings out so he/she can talk about his/her problems and begin to work with you toward resolution.

1. Give feedback about feelings:

"You seem to feel disappointed (or pleased, angry, frightened, etc.) about that."

"Sounds like you..."

"You think maybe..."

"So you wish..."

2. You can listen silently but attentively. If you don't talk, someone else has to.

Communication Stoppers

The behaviors and phrases which follow often stop a person from getting their feelings out:

- | | |
|-----------------|--|
| 1. Ordering | - "Don't talk like that!" |
| 2. Warning | - "If you do that, you'll be sorry." |
| 3. Moralizing | - "You ought/should..." |
| 4. Advising | - "I suggest that you..." |
| 5. Reason with | - "Let's look at the facts." |
| 6. Using Praise | - "You have the ability." |
| 7. Judging | - "You are wrong about that." |
| 8. Name calling | - "You are acting childish." |
| 9. Diagnosing | - "You feel that way because..." |
| 10. Reassuring | - "Everybody feels like that sometimes." |
| 11. Questioning | - "What will you do if..." |
| 12. Distracting | - "Let's talk about something else." |

Thompson, Michael, et al; (1986). Mediation Manual for Iowa Farmer/Creditor Mediation Service. Des Moines: University of Iowa, Iowa Farmer/Creditor Mediation Service.

LISTENING TECHNIQUES

TYPE OF STATEMENT	PURPOSE	RESULT	EXAMPLES
A. ENCOURAGING	<ol style="list-style-type: none"> 1. To convey listener's interest 2. To keep speaker talking 	Encourage speaker to continue talking by using non-committal words and a positive tone of voice.	<ol style="list-style-type: none"> 1. "I see..." 2. "Can you tell me more about that..." 3. "That's interesting..."
B. RESTATING	<ol style="list-style-type: none"> 1. To show that you are listening & understanding. 2. To let speaker know you grasp the facts. 	Restate the speaker's basic ideas, emphasizing the facts.	<ol style="list-style-type: none"> 1. "If I understand, your idea is..." 2. "In other words, this is what happened..."
C. REFLECTING	<ol style="list-style-type: none"> 1. To show that you are listening & understanding. 2. To let speaker know you understand his/her feelings 	Reflect the speaker's basic feelings.	<ol style="list-style-type: none"> 1. "You feel that..." 2. "You seem pretty disturbed by this..."
D. SUMMARIZING	<ol style="list-style-type: none"> 1. To pull important ideas and facts together. 2. To establish a basis for further discussion. 3. To review progress. 	Restate, reflect, and summarize major ideas and feelings.	<ol style="list-style-type: none"> 1. "These seem to be the key ideas you have expressed..." 2. "As I understand it, you feel this way about the situation..."

Thompson, Michael, et al; (1986). Mediation Manual for Iowa Farmer/Creditor Mediation Service. Des Moines: University of Iowa, Iowa Farmer/Creditor Mediation Service.

FARM FINANCE RESOURCE MATERIALS

Materials compiled by
Matt Metz, District Program Leader
Department of Agriculture
University of Minnesota

For further information call:
612-625-1745

J. Walker
5/27/86

Framework for Training in Farm Financial Issues

The mediation process must consider the following aspects of the farm business in determining the solvability of the credit issues under consideration. The tools cited are not the only financial records or resources to consider, but they are a good place to start.

A. Sound Financial Management: What is the current net worth of the business and the past track record of financial stability?

B. Viable Core Business: Can the business continue as it is currently operated or with specific changes to improve cash flow and net income?

C. Resources Sufficient to Effect Turnaround: Are there changes that can be made in farm operation and/or restructure of credit arrangements that would make business viable?

D. Sound Strategy Based on Analysis Conclusions: Given the management, business viability and resources generated through alternatives, can parties devise a strategy for continued business operation and systematic debt repayment? If not, what is the best approach to liquidation?

Applying Framework to Mediation Meetings

1. **Fact Finding** is done to determine sound financial management and core business viability. The first mediation session should focus on getting out the facts once basic orientation and statements of needs and interests have been discussed by all parties.

Part of fact finding is getting a clear statement of the issues from the perspectives of all parties. Parties must agree on the methods they will use to determine net worth, land values, market prices, and other dollar figures on which there is disagreement. Reaching agreement on facts is essential to clear definition of interests and needs.

Another set of facts that must be considered are those dealing with major concerns of the parties, fears, hopes and personal expectations.

2. **Generation of Alternatives** addresses the question of whether sufficient resources can be made available to effect a turnaround. This is part of finding mutual options for solutions. Consider both the established factual information, the alternatives generated and analyzed by FINPAK, and the creativity of the parties in a brainstorming session. It is preferable to come up with more than one option.

Remember, options may include ending the farm operation as well as strategies for continued operation.

3. **Reality Testing: Tax and Legal Consequences** will probably necessitate expert opinions to assess the options generated. Both the tax and legal consequences must be clear to the debtor and creditors. The counsel of lawyers, certified public accountants, tax accountants, farm financial experts or other knowledgeable persons should be considered.

4. **Settlement: Sound Action Strategy** will be determined only after fact finding, exploration of alternatives, and evaluation of alternatives. The settlement agreement should be written and must include timeframes for action, designated persons to carry out portions of the agreement, and consequences of non-compliance. The settlement agreement must be reviewed by counsel for both parties prior to signing.

APPROACHING FARM CREDIT ISSUES IN MEDIATION

A Guide for Mediators

UP FRONT - First topics for mediator to cover

1. Do you understand why you are here? (Explain Mandatory Mediation, the consequences of participation and good faith. Review rules.)
2. Are all parties with an interest in the farm operation and all known secured creditors notified of this proceeding? Should anyone else be present?
3. Please be thinking of some objective standards or fair methods by which you will determine disputed values (eg. land, equipment).
4. Goal of first session: 1) orient parties to mediation expectations, rules and process 2) determine adequacy of financial information available 3) determine areas of disagreement on financial facts 4) determine methods to resolve disputed issues 5) determine what collateral will be released and in what amount to provide maintenance for 90 days 6) begin fact finding for essential information
5. Fact finding will focus on financial management of business and determination of viability of core business. Ultimate question is, "Is there something to mediate here? Are we negotiating debt restructure or voluntary liquidation?"

SOUND FINANCIAL MANAGEMENT

1. What is the net worth of the business? (See balance sheet) Total assets? Liabilities? Owner equity?
2. To whom are debts owed and in what amount?
3. If the assets were liquidated, to what extent would debt obligations be covered?
4. What does balance sheet say about trend over last 3 years? Stable? Improving? Getting worse? Significantly or somewhat?
5. What does the income statement for the current/coming year project given the current farm plan? Loss? Stable? Gain?
6. What is the farmer's record of debt repayment? To secured creditors? To unsecured and trade creditors?

7. Where do debtor and creditor records and figures differ? How will we settle the differences?

Tools to determine this are 1) balance sheet 2) cash flow
3) income statement 4) income tax records for past three years 5) past record of debt payments

VIABLE CORE BUSINESS

1. What does the FINTRAN say about cash flow implications for continuing the operation as presently organized for the next three years?

2. What do you conclude about the overall viability of the current business plan? Do we work with current plan or suggest major changes in certain areas (and run new FINPAK)?

3. What other sources of income does family generate?

4. What is required for living expenses and farm operation expenses for the next 90 days? How is this determined?

Tools to determine this are 1) FINLRB Column 1 to look at the long run financial strength of the current operation continuing farming as presently organized for next three years 3) balance sheet to compare assets to liabilities 4) Financial Stress Worksheets by Earl Fuller

RESOURCES TO EFFECT TURNAROUND

1. What state or federal programs might apply to this situation?

2. What ideas do you have for changes in the farm operation that would make a positive difference in cash flow and annual income?

3. What kinds of flexibility in debt repayment or restructure would be most useful in this situation?

4. Have any alternative plans been run on FINLRB that show an improved projected balance sheet (net worth)?

Tools to determine this are 1) FINLRB to analyze the impact of specific alternative methods to improve cash flow and net worth 2) innovative credit options for debt restructure and repayment 3) options for generation of off-farm income 4) methods to reduce farm operation and family living expenses 5) state and federal programs for buy-out, interest write-down, etc.

REALITY TEST STRATEGY PROPOSED

1. What are the tax consequences of the options proposed? Who will we ask?

2. Are there any legal consequences to debtor or creditors we should know about? Who will we ask?
3. Will all parties and organizations involved buy off on the proposed options? Do we anticipate any particular problems?
4. Do any agencies or organizations involved have rules or guidelines that affect our proposed options?

Tools to determine this are 1) creditor suggestions for restructured credit arrangements 2) debtor statements of personal priorities of need and interest that may guide decision-making 3) creditor's legal and institutional restrictions on debt restructure 4) consultation on tax and legal consequences.

COMMONLY USED FINANCIAL TERMS AND PHRASES

Financial Statement, Balance Sheet, New Worth Statement - Three terms all used to describe an inventory of assets and liabilities using assigned values at any one point in time.

Percent in Debt - Dollar value of total liabilities divided by dollar value of total assets time 100 - also known as debt to asset ratio. The part of every dollar owned that is owed to someone else.

Amortization Period - The period of time over which the principal of a loan is repaid.

Security/Collateral - Specific property that a borrower pledges to fulfill the obligation of a loan.

Unsecured Loan - Loan, often accounts payable, to suppliers and other creditors who do not hold a security, interest in any property. (Examples: feed, seed, fertilizer bills, signature note).

Balloon Payment - A lump sum payment of principal due at the end of a contracted period of time. The contract can be renegotiated or the buyer seeks out a new source of credit.

Judgment - A legal document enacted by a person/firm owed a bill when the bill goes unpaid. A judgment is filled with the county and is for public notice.

Bankruptcy - Legal process by which a borrower (individual is afforded an opportunity to effectively settle his/her debts for the protection of all parties.

Chapter 13 - A section of the bankruptcy law specifying a legal procedure which determines the process by which individuals and small businesses with less than \$100,000 in debt may "rehabilitate" their financial situation. Few farms fall under this category.

Chapter 11 - A section of the bankruptcy law specifying a legal procedure which allows borrowers to put off creditors and foreclosure and gain access to new credit provided the business can be "reorganized" to once again meet it's financial obligations. A five year business plan to meet the obligations to the secured creditors must be approved by the bankruptcy court. Eighty to eighty-five of Chapter 11's become Chapter 7's.

Chapter 7 - A section of the bankruptcy law in which assets of a borrower are sold. Secured creditors then recovered their proportion of the total debt. Unsecured creditors divided up the balance of the proceeds if there is any. This generally is the end of the business (liquidation).

P & L (Profit and Loss) Statement - A record of actual income and expenses relating to the operations of a business; a summary of the transactions of the inventory must be adjusted for. Sometimes referred to as "Operating Statement" or "Income Statement".

Cash Flow Statement - A summary of the period-by-period income, expenses, borrowings and payments in the operation of a business or family. Often reflects the projected and actual events of a business' financial transactions.

Debt Structure - The distribution of current, intermediate and long term liability as compared to current, intermediate, and long term assets.

Restructuring Debt - Redistribution of debt so as to be proportional to the comparable classes of assets. Often involves reamortizing a loan over a longer repayment period and/or renegotiating the terms of the repayment possibly including interest rate changes.

FINANCIAL ASSESSMENT BY CREDIT ANALYST

The steps below describe the financial assessment that a farm family may go through as they work with their credit analyst and FINPAK.

1. Materials to Bring to Session:
 - a) Account Books (3-4 years--including Depreciation Schedule)
 - b) Financial Statement
 - c) Packet Notebook
 - d) Income Tax Forms (3-4 years)
 - e) Family Living Worksheet
 - f) Picture of Farm
 - g) List of Alternatives They're Considering
 - too much NEVER hurts
 - too few ALWAYS hurts

2. Preliminary Discussion:
 - a) Introductions
 - b) Confidentiality
 - c) Honesty
 - d) Give Description of FINPAK
 - e) They Describe Their Operation and Their Perceptions of Their Problem (in Production, Management, & Financial)
 - f) Decide What Needs to be Done First

3. Use FINPAK:
 - a) Financial Statement
 - b) Crop Data Banks
 - c) Livestock Data Banks
 - d) FinLRB/FinTran Forms
 - e) Run Program
 - f) Explain Output
 - Profitability
 - Liquidity
 - Solvency
 - g) Check Accuracy
 - h) Typical vs. Results
 - Labor hours/worker
 - Interest at % of Total Production
 - Years to Pay Back R.E. and Non R.E. Debt
 - i) Strengths & Weaknesses of the Plan

4. Analyze Results:
 - a) Why Does it Come Out This Way?
 - b) What Would Change the Outcome?
 - c) How Sensitive is the Outcome to Certain Factors?
 - d) Are There Other Alternatives?
 - e) Do We Need a Cash Flow?
 - f) Where Do We Go From Here?

SOLVING INDIVIDUAL FARM FAMILIES FARM FINANCIAL TROUBLES

STEPS IN PROCESS:

#1

IDENTIFY THE PROBLEMS

- HIGHLY LEVERAGED
- LOW LEVEL OF PRODUCTION
- MARGINAL MARKETING PERFORMANCE
- HIGH PRODUCTION COSTS
- HIGH INVESTMENT PER \$ OF GROSS INCOME

#2

DEVELOP A WORKABLE PLAN

- LOWER PRODUCTION COSTS
- IMPROVE YIELDS & PRODUCTION
- IMPROVE MARKETING SKILLS
- DROP UNPROFITABLE ENTERPRISE
- SELL OFF SOME PERSONAL PROPERTY
- SELL OFF SOME OR ALL OF LAND
- SEEK OFF-FARM EMPLOYMENT
- FULL-TIME TO PART-TIME FARMER

UNABLE
TO DEVELOP
WORKABLE PLAN

#3

FARMER CAN IMPLEMENT WORKABLE PLAN

- CHANGE BUSINESS MANAGEMENT PRACTICES/HABITS
- ACQUIRE NEEDED PRODUCTION/MARKETING SKILLS

FARMER
UNABLE TO MAKE
CHANGES REQUIRED
TO MAKE PLAN
SUCCEED

#4

CREDITORS WILL SUPPORT WORKABLE PLAN

- COOPERATE WITH FARMER

CREDITOR
WILL NOT
SUPPORT
WORKABLE PLAN

#5

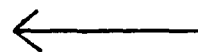
IMPLEMENT WORKABLE PLAN

- MONITOR IT
- EVALUATE IT

PLAN NOT WORKING OUT
GO BACK TO STEP 1

LIQUIDATE THE FARM BUSINESS

- RETIRE
- SEEK OTHER EMPLOYMENT OPPORTUNITIES
- ACQUIRE NEW JOB SKILLS



FINANCIAL STRESS WORKSHEETS

Situation Overview

Date _____

Name _____

Address _____

Explain - Facts and Figures. Complete what you can and believe is relevant.

Who is placing financial or legal pressure on you? _____

What type of mortgage and security interests do they hold? _____

What is the approximate real estate debt? _____

What is the approximate debt on personal property? _____

Who has a crop security interest? _____

Who has recorded their interest? _____

What is the market value of owned land? _____

Has the creditor recently devalued your land? Amount? _____

What is the current value of equipment and livestock? _____

What is your marketing plan for crops? Cash sale? When? To Feed? _____

Is there a delivery contract on the crop? _____

About how much annual off-farm income does your family have? _____

What is the family living on? Amount per year? _____

Can you get operating credit? Amount per year? _____

What has been your recent experience with the principal operating creditors? _____

Approximate

Crop and Livestock Amounts and Values

Crops: _____

Yields: _____

Acres: _____

Price/Income: _____

Contracts: _____

Storage: _____

Livestock no. and kind: _____

Production: _____

Recent Production Problems

Natural disasters: _____

Disease: _____

Stray voltage: _____

Insects: _____

Drought: _____

Family illness: _____

Have you analyzed your financial plan via FINPACK-FINLRB? _____ Cashflow? _____

Other? _____

CHRONOLOGY OF FINANCIAL STRESS CAUSING EVENTS

Financial data (for the last two years)

Identity and priority of all secured creditors: _____

History of payments to secured creditors: _____

Interest rates: _____

Experience with unsecured and trade creditors: _____

Credit Problems

Denials: _____
Interest increases: _____
Lawsuits/judgments: _____
Inability to obtain releases of income: _____

Discussion With Creditors Concerning (when & what):

Crop plans: _____
Livestock plans: _____
Hedging: _____
Farm improvement plans: _____
Other: _____



FINPACK



Version 6.0

Input Instructions For The Financial Statement

The financial statement provides a summary of how funds are invested in the business (assets) and the financing methods used (liabilities and net worth) at a given point in time. Most farm financial statements break both assets and liabilities into three categories: current, intermediate and long term.

Assets include only what you own or have coming to you on the date of the statement. **Current assets** are cash and other assets that you expect to convert to cash or consume in production during one business year. **Intermediate assets** are those that support production (rather than go for sale) and have an expected useful life of one to ten years. This includes machinery and equipment, breeding livestock and securities not readily marketable. **Long term assets** include items of a more permanent nature such as farm land, buildings and improvements.

Liabilities include all obligations you actually owe as of the statement date. **Current liabilities** are those due and payable on demand or within one business year. These include short term notes and accounts payable. **Intermediate liabilities** are notes that normally can be repaid over a period of one to ten years. Loans for machinery, equipment and breeding livestock fall into this class. **Long term liabilities** consist of mortgages and land contracts owed on farm property.

Your **net worth** or equity is determined by the difference between your total assets (what you own) and your total liabilities (what you owe).

The values placed on assets should reflect the purpose of the financial statement. For the purpose of obtaining credit, the fair market value of all assets should be used.

Current Farm Assets

Cash, checking balance includes all cash items as of the statement date. Include undeposited checks.

Seed and supplies should include such items as fertilizer and lime applied or purchased for next year's production, seed, and purchased feed supplies.

Cash in growing crops includes seed, fertilizer, fuel and other expenses already invested in crops if the statement is taken during the crop year.

Accounts receivable includes any amounts owed to you due to your past farming operations which you expect to collect.

Hedging accounts: Enter any amounts held in margin accounts as of the statement date.

Crops held for sale or feed should include all crops in farm or commercial storage at the statement date except crops under government loan. List the crop name, the crop code (found on the back of the form), the quantity, and the total value of each crop. If any part of a crop is going to be fed, use a "feed" code. The quantity should be entered in the units specified in the crop code listing. The value should reflect the current market price, unless it is contracted at a different price.

Government crops, which include sealed grain and grain held in reserve, should be listed with the proper crop code and the number of units. Use the "feed" code if you might use any of your sealed grain for feed. In valuing such crops, enter only your equity in the crop (the difference between the current market value and the loan rate) if you treat the loans as income on your tax return in the year sealed. If you treat this grain as income when it is liquidated, enter the full market value.

Livestock held for sale should include all market livestock being held for the sole purpose of eventual sale. Do not include breeding livestock, those to be culled from the breeding herd, or breeding herd replacements. List the livestock type, the livestock code, the number of head, and the value of each livestock type. Livestock codes are listed on the back of the form. The value should reflect the market value of the livestock at the time of the statement.

Intermediate Farm Assets

Breeding livestock are livestock held for the purpose of producing offspring or livestock products (milk, etc.). List here the total value of the herd, herd replacements and herd sires. A conservative market value should be used.

Farm machinery and equipment may best be valued at a conservative market value. List major items of machinery and equipment and combine the values of other items into a lump sum.

PCA stock should be listed as an intermediate asset unless your PCA loan balance is reported net-of-stock on the liabilities side.

Long Term Farm Assets

Farm real estate should be valued at current market value for purposes of obtaining credit. List the parcels of land owned, the number of acres, and the estimated value.

Federal Land Bank stock and coop equity should be included as long term assets.

Nonfarm Assets

Include the value of all assets that you own in this section. In addition to the items listed, consider savings accounts not included above, sporting equipment, antiques, the value of non-farm businesses, and nonfarm real estate.

Current Farm Liabilities

Farm accounts payable should be listed with the name of the account holder and the amount owed. A liability is an account payable if, when paid, it will be reported as a farm expense instead of a principal payment. Include such items as seed, fertilizer, feed and fuel accounts, past due taxes and rents, and all accrued interest on current, intermediate and long term farm liabilities. Also include the amounts of any judgments against you.

Current farm notes payable are operating loans, feeder livestock loans, government crop loans if the corresponding inventories are valued at full market value under current assets, and other notes that are coming due within 12 months.

Due date: List the month and year when final payment is due.

Interest rate: Enter the current interest rate on the note.

Annual installment: This is the total amount of principal and interest to be paid within the next year. For most current debts, simply enter the word all.

Amount delinquent: Enter any amount past due, including interest.

Principal balance: Enter the total outstanding principal balance. Do not include accrued interest since it should be listed under accounts payable.

Intermediate Farm Liabilities

Include here all notes with an original term of more than one year and less than ten years. This will include most loans for the purchase of breeding livestock, machinery and equipment. Most bank and PCA loans that were not included as current should be included here. If the note has a fixed schedule, enter the month and year of final payment under "due date" and this year's payment (principal and interest) under "annual installment". If the note is renewable, enter the month, day and year of next renewal under "due date" and enter the word **demand** under "annual installment". Again, include only the outstanding principal balance. Any accrued interest should be included under "accounts payable" above.

Long Term Farm Liabilities

Include here all notes with original terms of more than ten years. This will generally include real estate mortgages and contracts for deed.

Nonfarm Liabilities

Nonfarm accounts include credit card balances and other accounts for nonfarm purposes. **Nonfarm notes** might include car debts, school loans, nonfarm business debts, etc.

Net Worth

Total all categories and determine your net worth by subtracting **total liabilities** from **total assets**.

Lease Information

On the back of the form is a section to list all parcels of land and other items leased. This section is not entered into the computer but may be useful for your own purposes or if using the statement to obtain credit.

For land rental, list the legal description of the land (if known), the landowner's name, total acres rented and the number of crop acres, the type of lease (cash, shares, etc.), total annual cash rent, and the expiration date of the lease. If share rented, specify the share percentage (50/50, 60/40, etc.).

For other items leased such as livestock, machinery or buildings, enter a description of the item, the owner's name, the number of items (number of cows, etc.), type of lease, total annual payment, and the expiration date of the lease.

Suggestions For Using FINPACK In Mediation

These suggestions are made with recognition of the time constraints that all Extension agents are under. While recognizing these constraints, it is the responsibility of the Minnesota Extension Service to see that there is an educational side to the mediation process whenever possible. These are just suggestions. There are no specific requirements in the law except that the "credit analyst" meet with the debtor and assure that information relative to the finances of the debtor be prepared for the initial mediation meeting. The Extension goal has to be to make the gathering of such information an educational experience.

Goals of Mediation From an Extension Point of View

1. Assist the debtor to gather information to determine if there is a "reasonable chance" of succeeding in farming in the long run as he/she is presently farming.
2. Assist the debtor to analyze his/her ability to overcome cash flow problems in the next few years.
3. Suggest alternatives which may improve the financial viability of the farm in the long run or short run future and, if desired by the debtor, help analyze these alternatives.

Creditors are going to be most interested in goal number 2. However, for the debtors benefit and for educational purposes, goals number 1 and 3 are probably more important.

Suggested Use of FINPACK -- Preferred Method

1. Use FINLRB to look at the long run financial strength of the current farming operation (1 column). If the current operation does not show financial strength likely to lead to long range success, analyze alternative plans as suggested by the debtor or yourself.
2. Use FINTRAN to analyze the cash flow implications of continuing farming as presently organized for the next three years. If viable alternatives were surfaced in step #1, analyze the cash flow implications of moving in those directions.

Suggested Use of FINPACK -- Alternate Method

1. Use FINTRAN to analyze the continuation of the farming operation "as is" for the next two or three years.
2. Analyze alternatives only if and when they are raised in the mediation process.
3. Never use FINLRB to analyze next year's farming operation. It will never give correct results.

Suggested Long Range Planning (FINLRB) Methodology

To determine if a farm has a reasonable chance of making it in the long run, and to analyze alternatives to the current farming operation, a consistent methodology needs to be used. FINLRB provides that methodology if used correctly. The result of the FINLRB should be a "typical year" plan that indicates the financial strength of the operation given the assumptions used. Assumptions about yields, production levels, and input levels should be based on past history. Prices then become the major concern in developing a plan.

Prices for a FINLRB plan should 1) be consistent across commodities so as not to favor certain alternatives, and 2) be set at a level to indicate the financial soundness of a farm plan in more normal economic times. The government program takes some of the uncertainty out of projecting prices in the short range. In the long run, we are not assured of having a government program to fall back on. Therefore, it is suggested that FINLRB be run without diverting acres and that the following prices be used in developing FINLRB plans:

<u>Crops</u>	<u>Unit</u>	<u>Minneapolis*</u>
Corn	bu	\$ 2.60
Oats	bu	1.50
Wheat	bu	3.40
Soybeans	bu	5.90
Barley	bu	2.20
Sunflowers	cwt	9.50

* These need to be adjusted for your normal local basis.

<u>Livestock</u>	<u>Unit</u>	<u>Terminals</u>
Hogs	cwt	44.00
Feeder pigs	head	37.00
Choice steer calves	cwt	66.00
Choice yearling steers	cwt	61.00
Choice slaughter steers	cwt	60.00
Slaughter lambs	cwt	62.00

<u>Produce</u>	<u>Unit</u>	<u>Local</u>
Milk, grade A, 3.5%	cwt	10.80
Milk, grade B	cwt	10.60

Other suggestions for using FINLRB in mediation plans:

1. Enter crop plans showing normal rotations given no government diversion program.
2. If current liabilities are greater than current assets, a minimum of the difference between the two should be moved into intermediate liabilities for planning purposes. This amount should be shown in the "Debts To Be Repaid" section over a period of years to

determine if the farm has the financial strength to "catch up" on these loans.

3. If current and intermediate debt are not separated on the financial statement, use the same method as described above to separate current and intermediate and show repayment on the intermediate portion.
4. For fixed principal payment loans, enter the required principal payment plus interest on half the outstanding balance as the payment. The FINTRAN plan will show the results of the high payment early years.
5. Take care to show related operating expenses that reflect full acreage planted. Repair expenses and the quantity of fuel used will be higher than past years if acreage was diverted. (Many input costs should be decreased from past history; particularly fuel and other inputs affected by the price of petroleum.)

Suggestions for Using FINTRAN in Mediation

Unlike FINLRB, FINTRAN (and FINFLO) plans are for specific years and thus the government program option has to be included in the planning process.

1. Begin the plan at the beginning of the closest quarter.
2. Be sure the inventories on the financial statement conform to the beginning of the plan.
3. Use acreage diversion at the 1986 levels.
4. Include deficiency payments based upon the levels shown in Hasbargen's April 16 letter, adjusted for the cash planning price you are using.
5. Use the prices in the April 22 letter from Stevens, Egertson, and Hasbargen as guides for short range planning.
6. Include all demand notes in the beginning annual operating debt unless lenders can provide a specific, realistic payment.
7. Include accounts payable in "beginning accounts to be paid", beginning annual operating debt, or not at all--but be sure to note on the output where they are.
8. Also note on the bottom of the output the amount of deficiency payments coming after the end of the last year.

INTERPRETING FINPACK OUTPUTS FOR MEDIATION

FINLRB

The FINLRB output is designed to help compare the financial potential of each alternative long-range farm plan. The first column pertains to the base plan. Hence, it describes the long range financial soundness of continuing "as is". The other columns can then be used to compare the base plan to several alternatives. The output is broken into eight major sections: (1) Plan Description, (2) Profit Or Loss Statement, (3) Profitability Measures, (4) Cash Flow Capacity, (5) Liquidity Measures, (6) Solvency Measures, (7) Sensitivity Analysis, and (8) Crop And Livestock Summary.

The financial analysis describes the financial soundness of each alternative with various measures of profitability, liquidity and solvency. Profits are generally defined as the difference between the value of goods produced and the cost of resources used in their production. The "Profit Or Loss Statement" compares the projected profits from each alternative plan. The "Profitability Measures" help interpret these projected profits in terms of the amounts of resources used to generate them.

Liquidity is the ability of the farm business to meet its financial obligations in a timely fashion. The "Cash Flow Capacity" section measures the ability of each plan to generate adequate cash flow to meet all debt payments and equipment replacement needs. The liquidity of each plan is further analyzed under "Liquidity Measures".

Solvency is the ability of the business to pay all of its debts if it were to be liquidated at a given point in time. The "Solvency Measures" examine the effect of each alternative change on farm net worth.

In addition to the projected levels of profitability, liquidity and solvency, the farm family should also consider the amount of risk associated with each alternative plan. The "Sensitivity Analysis" is intended to help analyze these risks.

In general, one would like to move in the direction which shows the greatest potential for profitability and net worth growth while providing adequate liquidity. Of course, other considerations, such as personal preferences, experience and family goals have to be considered.

The remainder of this chapter shows how each measure is derived and what it means.

Plan Description

The second page of output lays out a short physical and financial description of each plan. Total hours of labor are based upon the number of units (acres, head, etc.) of crops and livestock. The total gives some idea if the labor supply available is adequate to handle each plan or if more hired labor

expense is needed. Keep in mind that the labor load depends not only on the total requirement but on how it is distributed through the year. A high labor requirement for a cash crop operation may require more hired labor than the same labor requirement on a dairy or hog farm where the labor demands are more stable year-round.

Change in farm investment, change in farm non real estate debt, change in farm real estate debt, change in nonfarm investment, and change in nonfarm debt provide a glimpse of the additional investment and associated borrowing required to move from the base plan to each alternative. A negative change in investment indicates a capital sale. A negative change in borrowings indicates a debt reduction based on a capital sale or refinance.

Crop plan and livestock plan describe each crop and livestock enterprise included in the alternative long range plans. **Corn and hay equivalent balances** indicate whether the crop plan, as entered, meets the livestock requirements. If the balance is positive, the excess will be sold. No year-to-year carryover of inventory is assumed in a long range plan. If the balance is negative, the amount needed is purchased by the computer.

Note whether the feed balances under Alternative 1 match the past history of the farm. If there is a surplus (deficit) in corn or hay equivalents when usually the operation is short (long) on feed, it may mean that (1) actual past feed usage has been different than described in the LIVESTOCK DATA BANKS, or (2) actual crop production has been different than described in the CROP DATA BANKS.

Projected Profitability

The FINLRB printout projects an annual profit or loss statement for each plan. The profit and loss statement first projects the farm income that each plan will generate. Thus, **gross farm income** is composed of the following five items: **corn and/or hay equivalents income** determined by selling all positive balances of corn or hay equivalent; **cash crop sales**; **livestock sales**; **cull and other livestock income**; and **other farm income**.

Cash operating expense is the total of all projected cash expenses for the farm for a year. It is composed of the following items: **crop and livestock expense**; **purchased corn and/or hay** determined by buying any negative feed balances; **related operating expenses**; and **interest**.

Net cash farm income is **gross farm income** minus **cash operating expense**. It is the amount of cash the farm will contribute toward family living, personal taxes, principal payments on debts, savings, and reinvestment in the business in a typical year.

Depreciation is a charge for estimated capital replacement needs during the year.

Profit or loss represents returns to labor, management and the equity capital invested in the business. It is calculated by subtracting expected annual depreciation from **net cash farm income**. This is the amount which rewards

investing unpaid family labor, management ability and the farm net worth in the farm business instead of elsewhere.

Profitability Measures

The projected profit or loss gives an indication of the strength of each alternative, but it does not allow an accurate comparison between alternatives. For a comparison, one must take into account the resources employed to produce that profit. This section of output gives a number of measures which allow a more accurate comparison of the profitability of the plans. The measures are presented in the first part of the section, followed by a list of the components used in the calculation of each profitability measure.

Labor and management earnings. This is a good measure of profitability for the labor-oriented business. It represents what the operator and manager of the farm can be expected to earn in a typical year. This assumes 6 percent interest on farm net worth if the net worth were invested elsewhere, and that the rest of the profit or loss is returns to labor and management. These earnings can be compared with that of other farmers and/or potential earnings from non-farm employment. This measure has little significance for a highly capitalized farm.

Rate of return on farm investment is a good measure of profitability for a capital-oriented business. This ratio shows the "opportunity cost" of investment in the farm. Compare this rate with the returns other types of investments are earning to see whether the farm will be a viable operation in the long run. In theory this rate should be at least as high as the rate of interest paid on debts. However, this comparison is only possible if the value of investments has not been appreciated. The more the present assets are appreciated, the lower the rate of return will be.

Rate of return on farm net worth indicates the percentage return earned on the operator's equity capital invested in the farm. Again, compare this rate with the rate of return (interest) that could be earned if the farm investments were liquidated and placed in alternative investments. Remember, however, that this rate includes returns only from operations. Additional returns may be earned through asset appreciation.

The relationship between the interest rate paid on debts, the **rate of return on farm investment** and the **rate of return on farm net worth** is important to consider. It indicates whether the farm business will be able to attract debt capital in the future. These measures, in unison, also help describe the financial leverage position of the farm and its potential for growth.

The relationship between the rate of return on investment and the interest rate gains importance as a farm's percentage in debt increases. Percent in debt, or the debt-to-asset ratio, measures financial leverage. If debt rises while the farm's equity remains the same, financial leverage increases. A more highly leveraged farm business has greater potential for a high rate of growth if its rate of return on investment is high. But, at the same time, this business is vulnerable to a greater rate of decline if its rate of return on investment is low.

Rate of return on added investment indicates whether the new investments included in each alternative plan can be expected to pay their own way when compared to the base plan. The rate of return earned by new investments should be at least equal to the interest rate at which money is borrowed. Otherwise, it does not make much sense to invest.

Net profit margin and asset turnover are efficiency measures which are used by many businesses to evaluate their rate of return. **Net profit margin** measures the prospective operating efficiency of the farm. If expenses are held in line relative to the value of output produced, the net profit margin will be healthy. **Asset turnover** measures the farm's prospective efficiency in the use of capital. If the farm turns out a high level of production with respect to the amount of capital being employed, the asset turnover will be high. For example, an asset turnover ratio of 25 percent means that the farm produces 25 percent of the value of the assets each year.

The **net profit margin** multiplied by the **asset turnover** equals the **rate of return on investment**. If the rate of return is low, these measures can be used to help understand whether the problem is low operating efficiency, low efficiency in use of capital, or both.

Cash Flow Capacity

It may be expected that a plan which shows good long range profitability will also show long range liquidity; that is, it will generate adequate cash flow to pay family living, taxes and debts on time. This is not always true, however. For instance, a profitable farm with high short term debts could be headed for trouble. On the other hand, a farmer who has most of the farm paid for might be able to make a reasonable living and pay back debts even with low profits. FINLRB projects an annual cash flow for each plan to compare their debt servicing abilities.

The cash flow is calculated as follows: **Net cash farm income** and **net nonfarm income** are totaled to arrive at the **net cash available**. **Family living and income tax** and **social security payments** are then subtracted to determine the **cash available for principal payments**.

Interest on real estate and chattel debt which was previously subtracted out to calculate net cash income is then added back to get the **cash available for principal and interest**.

Total scheduled principal and interest payments are the total of the payments listed. This total is then subtracted from **cash available for principal and interest** to determine **cash available after loan payments**.

To arrive at the bottom line, **cash surplus or deficit**, the amount required for annual machine and equipment replacement must be accounted for. **Annual machinery and equipment replacement** was inputted. To prevent charging twice for replacement already occurring, the portion of the scheduled farm non real estate debt payments which is used to pay down the principal (**farm non real estate principal paid**) is deducted from **annual machinery and equipment replacement** to arrive at additional cash required for replacement.

This total is subtracted from the above total, cash available after loan payments to arrive at the cash surplus or deficit. If the non real estate principal paid is greater than replacement needs, the cash required for replacement is zero.

The cash surplus or deficit represents the amount of cash available to increase family living, add to savings, pay down faster on debts, or reinvest in the farm or elsewhere. A deficit means it is likely that capital will not be replaced in a timely fashion, family living goals will not be fulfilled, debt repayment will be difficult, or some other commitment may not be met in the long range if the alternative is implemented.

Special note should be made of any deficit in Alternative 1. This indicates that the present operation may be headed towards financial difficulties if no changes are implemented.

Liquidity Measures

This section further compares the projected long range liquidity of the alternative plans in terms of years to turnover intermediate-term debts and portions of income being used to pay farm expenses.

FINLRB projects the estimated years to turnover farm non real estate debt by dividing the total reported farm non real estate debt to be served by the cash available for farm non real estate debt. This can be compared with the terms held with lenders. While many lenders simply renew non real estate debts annually, most would like to see them turned over every 3 to 7 years. This measure assumes that all cash available will be applied toward the repayment of non real estate debt.

Years to turnover added farm non real estate debt indicates whether the added non real estate assets will pay their own way. If this measure is high, it does not necessarily mean that the debt cannot be repaid since payments can be subsidized from income from the present operation.

Cash farm expense as a percent of income shows the percentage of gross income needed for farm expenses. The remainder will be available for living expenses, savings, taxes, principal payments and reinvestment.

Farm interest as a percent of value of production indicates the percentage of farm income needed for interest payments.

Farm debt payments as a percent of value of production shows the proportion of the income generated by the farm which must be applied to debt payment.

Solvency Measures

Net worth is the dollar sum remaining if all assets are sold and all debts repaid. This section analyzes the net worth or equity position of the farm family.

The **liabilities/assets ratios** show what percent of assets have debt against them. The debt percentage can be important in assessing the risk position of the farm.

Net worth change per year is calculated by adding any net non farm income to the profit or loss and subtracting family living and income tax and social security payments and the interest portion of any nonfarm debt payments. Net worth change per year is the amount net worth will change in a typical year if the long range plan works the way it is budgeted. This includes net worth change only from farm profits and nonfarm income. Asset appreciation is not considered.

Sensitivity Analysis

The sensitivity analysis shows the results of the same alternative plans if long range production levels, price levels, or a combination of the two result in income levels 10 percent lower than planned. This section is used to analyze the relative differences in financial risk inherent in the alternatives under consideration. If profitability and liquidity projections deteriorate rapidly with only a 10 percent decline in productivity, the risk of implementing such an alternative is likely greater than those less affected by declines in productivity.

In most cases, the financial risks in any one plan will vary with (1) the enterprises involved and (2) the debt load. Enterprises which depend upon high volume and low margins (such as hog and cattle feeding and cash cropping) tend to be high in risk. Highly labor intensive enterprises (such as dairy, feeder pig and market hog production) tend to have higher margins and, therefore, less risk. However, any enterprise combination can lead to problems if debt levels are too high. Also consider production risks.

At the very least, the sensitivity analysis should point out the importance of achieving planned production and price levels. Rethink plans at this point to assure that the resources (including management skills) are available to accomplish the production goals. Also the planning prices used should be reconsidered to assure the marketing management skills exist to develop strategies to achieve these prices.

Weighing The Evidence

Eventually a decision regarding the future course of the business must be made. The preceding analysis has dealt primarily with the measurable factors: the amounts of land, labor, capital and management required for each alternative; and its profit, debt repayment, solvency and risk characteristics.

In evaluating this evidence, begin by comparing the relative profitability of each alternative. For example, labor and management earnings on a labor-oriented farm indicate which alternative will provide greater returns for the management effort. For a capital-intensive farm, the rate of return on investment and the rate of return on net worth are important measures of profitability to consider. If a major increase in investment is involved, compare the rates of return on added investment.

If profits do increase, the next question is "What will happen to the risk position of the farm?" The **sensitivity analysis** should help decide whether the financial risk will likely increase with Alternative 2 or 3. Thoughtful management and planning strategies will help to minimize financial risk and uncertainty. These include crop insurance, a marketing plan, lease versus own decisions, and keeping loan payments in line with expected earnings. Enterprises with higher production risk increase the likelihood of the occurrence of reduced income (the likelihood that the scenario in the sensitivity analysis will come true). The diversification of crop and livestock enterprises, and flexibility in livestock production, can reduce production risks.

If increased profits seem large enough to justify the risks that cannot be planned away, next ask "What will happen to the financial soundness of the business?" The **cash surplus or deficit** and the estimated **years to repay non real estate debt** help determine the effects of a change on the ability of the farm to service its debts.

These measures, along with the percent in debt and the projected **net worth** change per year, indicate whether future borrowing capacity will increase or decrease as a result of a change.

For most situations there are also important factors that are not measurable. Spend some time identifying these and appraising their potential impact on the profitability, soundness and overall desirability of each alternative. These items include: financial and production management ability, the labor situation, the management of hired labor and the handling of stress associated with various levels of debt and their incumbent risk.

If, after weighing the evidence, the farm family is interested in moving toward an alternative plan, they must then begin to analyze how to move from the present situation towards achieving that plan. This calls for an in-depth analysis of the physical and financial effects of the implementation of such a plan. FINTRAN, a computerized three year transitional planning procedure; FINFLO, a computerized monthly cash flow planning procedure; or another cash flow planning technique will be of great value in planning the implementation of any major change in the farm business.

FINTRAN

The objectives of FINTRAN are to (1) develop a workable production, marketing and financial plan for the transitional period and (2) estimate operating credit needs and the loan repayment capacity of the farm business. In order to provide more detail on the short term liquidity of the business, the first year cash flow results are projected quarterly. The second and third year results show projected annual cash flows. Each column of the output describes the projected cash inflows and outflows, capital purchases and sales, new loans, and debt payments for each period. Annual operating credit is borrowed or repaid depending on the projected cash deficit or surplus.

The projected cash flows will likely be highly affected by the marketing plans employed and, thus, the levels of inventories on hand each period. For this reason, the FINTRAN results also include a table detailing the production, sales, purchases, feeding and inventories of commodities on the same quarterly and annual basis. This should give the farm family an opportunity to evaluate alternative production and marketing plans. It should give the lender an opportunity to evaluate the projected collateral base behind the annual operating loan being considered.

Cash Inflows

The cash inflows section is a projection of all farm and nonfarm cash flowing in, except new credit and income from capital sales. Total inflow is composed of the following: Beginning cash balance; cash crop sales including crops sealed or entered into the reserve; livestock sales; cull and other income; Government payments; other farm income; and nonfarm income.

Cash Outflows

Cash outflows include farm operating expenses (excluding interest), family living, income taxes and the minimum ending cash balance. Total outflow is subtracted from total inflow to find the cash surplus or deficit before principal and interest payments, capital purchases and sales, and new credit.

Capital Purchases, New Credit And Capital Sales

These sections detail projected capital transactions for the planning period. Planned capital purchases for the period were entered into the plan along with planned borrowings to cover them. If borrowings were not planned the purchase will be financed out of cash flows or, if a deficit occurs, out of annual operating credit.

Debt Payments

This section includes principal and interest payments on all loans except the annual operating loan.

The surplus or deficit is the difference between all cash in (cash inflows plus new credit and capital sales) and all cash out (cash outflows plus capital purchases and debt payments). This annual cash surplus or deficit does not necessarily indicate the level of progress projected for the year. It may include a substantial beginning cash balance (cash generated in a previous period). Also, interest on the annual operating loan has not yet been deducted. Finally, an adjustment must be made for projected inventory changes before any level of progress can be ascertained.

Annual Operating Loan Balances

In this portion of the output, annual operating loan borrowings and repayment are projected. Annual operating (AO) funds are borrowed in cash deficit periods and repaid in cash surplus periods. Given a surplus, any interest that has accrued on existing annual operating debt is paid first (unless

annual operating interest payments are scheduled). Next, annual operating principal is paid. If there is surplus remaining after all annual operating credit is repaid, the surplus is added to the minimum desired ending balance to determine the ending cash balance for the period.

The purpose of the "Annual Operating Loan Transactions And Balances" section is twofold; (1) it provides a projection of quarterly/annual operating credit needs and repayment ability, and (2) it gives a more general picture of the direction the farm business is heading in a liquidity sense.

Tracing the projected operating loan over the transitional period, the planner can anticipate periods of cash surpluses when annual operating balances may be reduced, and periods of cash deficits when borrowings may increase to meet cash expenses and debt payments. A study of the cash flow plan in this detail may suggest where marketing plans may be altered or debt payments and purchases delayed to reduce annual operating credit needs.

Looking at this section from a general perspective, one may observe the difference between the projected beginning and ending annual operating balances to determine if the liquidity position of the business is heading forward or backward over the transitional period. Keep in mind that this calculation does not account for inventory changes during the year. These changes should be noted in the "Crop And Livestock Summary" table.

The cash flow results, as calculated by FINTRAN, yield a rough estimate of the annual operating loan needs and the payback ability of the farm in the first year, and the outstanding annual operating debt at the end of the next two years. Obviously, a more accurate projection of operating loan transactions would be expected from a monthly cash flow projection for the first year. The advantage of a transitional plan is to see the effects of one year's transactions on subsequent years' cash flows. For example, if two years' crop production is sold in Year 1 or if feed inventories are sold down below needs for the following year, the effects of these decisions can be seen in the ensuing years.

Take care when interpreting the annual operating balances for Years 2 and 3. These balances are probably not the peak balance for the year. Marketing plans will have a substantial impact on the peak.

Weighing The Evidence

The section on FINLRB suggests that a long range plan should be developed before any major change is made in the farm business, be it change in enterprise, expansion, contraction, or change of management. But simply because a long range plan shows good potential profitability, liquidity and solvency, it will not necessarily be possible to get from where the farm family is to where they want to be without experiencing problems. In true transitional situations, it is expected that cash flows will be tight in the first year or two. FINTRAN should give an idea of just how tight cash flows will be. It should also indicate the ability of the farm and the farm family to turn things around to improved cash flows over a three year period. It may be useful to do several computer runs at different prices or production levels to get an idea of the degree of risk involved.

In interpreting the FINTRAN results, obviously one would like to see the cash flow situation improving each year, with progress being made to decrease annual operating debt. The more progress shown in the plan, the less risk involved in the transition. Remember that things do not often go as planned. If the plan shows just break-even cash flows, there is not much margin for error.

Compare the ending annual operating loan in each period with the value of crop and livestock inventories. From the farmers perspective this is a measure of liquidity. From the lender's perspective, this is collateral. Both perspectives are important.

When evaluating projected annual operating loan levels, keep in mind the composition of the operating loan. If only operating money is included, with payments on existing intermediate debt and new debt to cover capital replacement needs scheduled elsewhere, a break-even cash flow with a constant level of operating debt may be sufficient.

Some lenders carry both the farm annual operating and the intermediate debt under the same note. If this is considered the annual operating loan, again a breakeven cash flow may be sufficient, as long as capital replacement needs have been built into the plan. Very few businesses will run three years without some replacement of machinery and equipment. Without this consideration, a breakeven level of operating debt indicates that the cash flow may fall short of covering capital replacement.

When the decision is finally made, the actual implementation of a major change is a critical period which will affect the family for years to come. During this period, cash flows should be projected on a monthly basis and monitored to make sure they are on course. Cash flow plans should be used only as a guide to monitor the business, not as a budget which must be followed. Mid-course adjustments may have to be made to stay on track.

FINFLO, a computerized monthly cash flow planning tool, is valuable in helping develop a more detailed cash flow plan for the coming year. Cash flows can then be monitored using the FINFLO Monitoring Worksheet. At the end of each year, FINAN should be used to analyze annual financial progress and to compare annual plans with actual results.

The Income Tax Management
Of
Farm Asset Liquidation
And
Debt Forgiveness*

By
Erlin J. Weness and Earl I. Fuller**

Disposing of farm assets has tax consequences. Under what circumstances, when, and how they are liquidated, all will affect what the tax liabilities will be.

How the IRS tax code classifies the assets makes a difference. So does the financial circumstance of the taxpayer at the time the property is liquidated. If the taxpayer is solvent just prior to liquidation, then "normal" tax rules hold. If he or she is not, special rules can come into play. The solvency condition needs to first be determined from a planning standpoint. It can affect the planned ordering or timing of liquidation and, ideally, any related debt renegotiation or forgiveness.

This paper focuses on tax planning considerations. Another source which touches on the same topics is readily accessible to tax practitioners, it is North Central Regional Publication No. 43 titled, Tax Planning When Buying Or Selling A Farm, 1984 revision. This bulletin is available from your local Agricultural Extension Service office.

From a compliance perspective, chapter 6 of the 1985 Farm Income Tax School's Workbook is devoted to the tax consequences and filing requirements of debt forgiveness when land and other business assets are liquidated. Chapter 7 reviews capital gains and losses. Chapter 2 and 3 in the 1983 Workbook, along with chapter 6 of the 1984 edition, also speak to many of the concerns a practitioner would have, particularly as they relates to bankruptcy and repossession situations. Other useful sources are noted at the end of this paper.

DISPOSAL WHEN SOLVENT AT THE TIME OF THE DISPOSAL

Many tax planning techniques relate primarily to the options one has when disposing of property under conditions of solvency outside of bankruptcy. These need to be well understood in order to evaluate the consequences of insolvency and bankruptcy liquidation. Solvency is defined as a situation where the fair market value (FMV) (usually defined as the sale price for liquidation items) of all assets just prior to disposal of the liquidated ones is in excess of outstanding liabilities at that time.

* Prepared for presentation at Farm And Individual Income Tax Short Courses, November, 1985.

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The diagram on the next page outlines the tax reporting procedure required through the use of Form 4797 and Schedule D. These forms are used whenever a taxpayer liquidates capital and business assets. Given the rules, what are the planning options?

Control The Timing Of Disposal

From a tax planning perspective, the scheduling of disposal over two or more tax years should be considered. This strategy works better sometimes than it does others. It depends partly on what other income one has to report. It also depends on how much of the reportable obligations will be capital gains as compared to ordinary income. Remember that debt forgiveness of recourse loans amounts to "ordinary" income tax-wise.

Schedule Disposal To Avoid Alternate Minimum Tax

The taxpayer must also be aware of the alternative minimum tax (AMT) implications. Any time that the total of the reportable capital gains and income exceeds \$40,000 in a tax year, it becomes necessary to at least determine whether or not the AMT rules might increase tax liabilities. Large capital gains often trigger AMT.

Test For Income Averaging Eligibility Under All Disposal Options

Income averaging is a good tax management option when eligible. For many, the last several years have had low tax costs but the disposal of assets now may threaten to increase them substantially.

Do Tax Estimates Prior To Year End And Prior To Liquidation

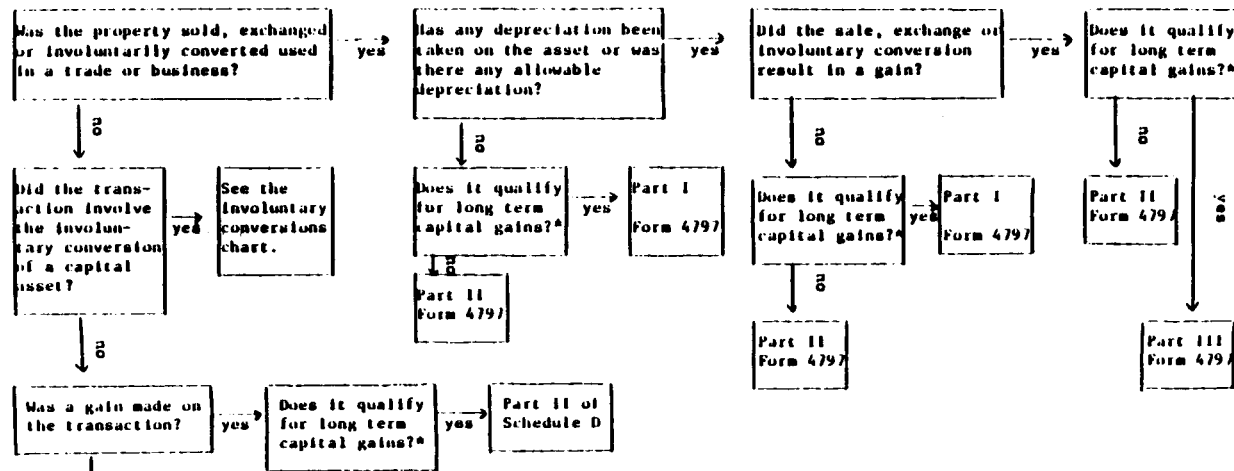
Tax estimates prior to the close of the tax year are particularly important for tax planning purposes in the year previous to, and in the year actually used for the disposal of substantial business assets. Tax estimate computations with due recognition of the income averaging options, AMT implications, the timing of sales and the opportunities to move income or expenses from one year to another in order to reduce tax liabilities should be considered.

Try to qualify as much of the sale as possible for capital gain treatment, because long-term capital gains tax is capped at 20 percent of the liquidation value. It usually makes sense to try to hold eligible assets long enough to qualify for this treatment. A defensible allocation of property value, some of which may be capital gains eligible, and the rest ordinary income, should be directed to maximize the amount eligible for capital gains treatment.

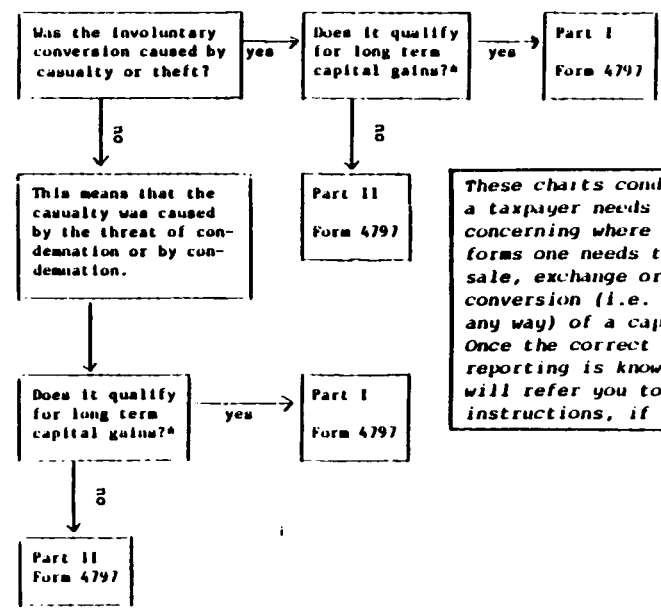
Consider Installment Sale Possibilities

On occasion installment sales to prorate any capital gains and related interest over two or more years makes sense. However, depending on the interest rates charged and the proportion of ordinary income such as interest to capital gains income on the sale may mean that a settlement for cash in the year of sale can still be the preferred option.

SCHEDULE D AND FORM 4797 TREATMENT OF SALE, EXCHANGE, OR INVOLUNTARY CONVERSION OF A CAPITAL ASSET



INVOLUNTARY CONVERSIONS OF A CAPITAL ASSET CHART



These charts condense what a taxpayer needs to know concerning where and on what forms one needs to report the sale, exchange or involuntary conversion (i.e. disposal in any way) of a capital asset. Once the correct location for reporting is known, the forms will refer you to additional instructions, if necessary.

* 24 months for breeding cattle or horses, or other assets; 6 months (after 6-22-84).

Remember The Potential Self-Employment - Social Security Tax Liabilities

Earned income is subject to social security taxes. Wages and income reportable on either 1040C or F are earned income. If the liquidated assets include grain, hay or feeder livestock for instance, this will increase tax liabilities. Scheduling sales through tax planning may help.

"Debt Discharge Income" (DDI) Considerations

Depending on the contractual obligations, a debtor may or may not be personally liable. A lien or mortgage places a claim against the property involved but does not necessarily place the debtor in a position of being personally liable for the unpaid balance of the related loan. This situation is sometimes called a "non-recourse" loan. Forgiveness of a non-recourse loan never has any DDI.

An accompanying note obligating the debtor for the unpaid balance makes it a "recourse loan" and establishes personal liability even after control of the property is turned over to the holder of the claim. A contract which allows the holder to sue to recover an unpaid balance creates a recourse loan.

Debt forgiveness is a gain in wealth position. The cancellation of a personally liable debt must generally be included in gross income. There are exceptions based on the use of the loan which offer options to a solvent debtor. They are:

1. If the cancelled debt is "qualified business debt". In using this option, the debtor must reduce the basis of the property by the cancelled debt amount not reported as "Debt Discharge Income".
2. If the cancelled debt would have been deductible expense had it been paid. (Example: accrued interest, feed, seed, expense.)
3. The debt was a purchase money debt.

SOME COMMON SITUATIONS

Considerable farm property has been purchased recently at prices in excess of current FMV. Payments have been made on a land contract with recourse debt features. Forfeiture at this time causes a capital loss to the purchaser because the basis exceeds FMV. The loss may be offset by DDI of the difference between the original debt and the outstanding amount remaining on the contract.

Recent refinancing of a low basis property now in default creates a very difficult situation. Current conditions can cause substantial capital gains plus DDI, if the property is foreclosed. Not only that but AMT is also likely. Renegotiation and retention may be a preferable situation in such circumstances even if the property must be rented out in order to afford to own it.

Renegotiation of a contract for deed has another feature worth considering. A special provision applies to purchase - money debt reduction. If you owe a contract for deed debt to the seller for the purchase of property, and the seller reduces the amount you owe, generally you do not have income from the debt reduction even though you are not bankrupt or insolvent. The reduction of debt is treated as a purchase price adjustment and reduces the basis in the property to the buyer. The seller simply adjusts his profit ratio on future principal payments received.

Tax Planning

It may be tax wise to renegotiate a contract for deed rather than default. The tax consequences can be less harsh for both parties. Investment credit claimed on Sec. 1245 property will probably have to be recaptured and/or reduced, as a result of the buyer's successful reduction of purchase price on such a contract for deed.

Use The Qualified Business Indebtedness Exclusion When Solvent

As pointed out in the Workbook Chapter 6, 1985, if a business debt is partially or completely discharged and the taxpayer is personally liable for the debt (it is a "recourse" loan) then another taxable income exclusion option may exist.

If a solvent taxpayer elects to use "qualified business indebtedness", these rules apply: [Sec 108 (b) (5)]

1. The tax basis in depreciable property must be reduced.
2. One can exclude income only up to the adjusted basis of depreciable property. Debt cancelled over the amount of basis is taxable income.
3. One can include real investment property as depreciable property. (Not a farmer's farmland.)
4. Basis reduction is allocated among depreciable items in this order:
 - a. Non inventory property used in the business acquired through the incurrance of the cancelled debt.
 - b. Non inventory property used in the business which secures the cancelled debt.
 - c. Other non inventory property.
 - d. Inventory and receivables.
 - e. Property held for production of income.
 - f. Other property
5. Basis reduction is treated the same as depreciation allowed in future filings.
6. Reduction of basis is made at the beginning of the tax year following the year of debt cancellation, and applies to property held at that time.
7. Use Form 982 to file the election.

ADDITIONAL PLANNING CONSIDERATIONS UNDER INSOLVENCY

Under conditions of insolvency, with or without protection of the bankruptcy court, certain additional rules come into play. They do not negate the above rules. The above rules still hold insofar as there is sufficient funds to pay the related legal fees, the tax liabilities, and creditor claims.

These rules in turn produce some suggestions for once again managing the reporting of these tax liabilities.

What happens is that "Debt Discharge Income" which under solvency might have to be reported as taxable income now may instead be deferred as a change in the taxpayers "tax attributes" which will then effect NOL's, credits and capital losses not previously used as well as the basis of depreciable property yet to be recovered.

The IRS requires that if you exclude debt discharge income because of insolvency or bankruptcy, you must reduce certain tax sheltering benefits (attributes). This prevents excessive tax benefit from the debt cancellation. The tax attributes in the order they are "normally" reduced are:

1. Net Operating Loss
2. Credit Carryovers (reduced 50 cents for each dollar)
 - a. Investment credit
 - b. Jobs credit
 - c. Work incentive credit
 - d. Alcohol fuel credit
3. Capital Losses
4. Basis of Depreciable Property

Note that basis reduction can be done first under insolvency before the reduction of other attributes if the debtor elects to do so. Basis does not have to be reduced below the level of the debtor's liabilities after the discharge. If the debtor elects to reduce the basis first then the "liabilities exceeding assets limitation" of insolvency does not apply. No reduction need be made on "exempt property" in bankruptcy. Depreciable real estate investment property can be used but not land.

5. Foreign Tax Credit

Any excluded cancelled debt that remains after the necessary attribute reductions have been made does not result in income to the debtor or have other tax consequences.

TAX PLANNING - MAKE THE BEST USE OF TAX ATTRIBUTES

The tax attribute reductions are made after figuring the tax for the tax year of the debt cancellation. The basis reduction is made at the beginning of the tax year following the tax year of the debt cancellation and applies to

property held by the taxpayer at that time. Consequently, a careful calculation of the current year's income should be made to make the best use of tax attributes.

For any discharge of indebtedness, liabilities and fair market value are determined immediately before the discharge.

Example: [at the time (prior to) discharge]

	<u>Solvent</u>	<u>Insolvent</u>
Total Assets	\$200,000	\$200,000
Total Liabilities	<u>150,000</u>	<u>275,000</u>
Net Worth	\$ 50,000	\$-75,000

How To Reduce Tax Attributes

In this example no election to first reduce the basis of depreciable assets is made.

Example: <u>Facts</u>	<u>#1</u>	<u>#2</u>
Debt Forgiven	\$ 75,000	\$150,000
Assets	300,000	300,000
Debt Before Forgiveness	400,000	400,000
Net Operating Loss	25,000	25,000
Investment Credit Carry Forward	5,000	5,000
Basis In Depreciable Assets	30,000	30,000

Solution (2 parts)

1. Amount Forgiven Via Insolvency Rules	\$ 75,000	\$100,000
Reduction Of Attributes		
Net operating loss	25,000	25,000
Inv. credit carryforward (x2)	10,000	10,000
Basis	0*	0*
Balance	\$ 40,000**	\$ 65,000**

* Insolvent taxpayer is not required to reduce basis if the basis is less than the remaining debt.

** No tax consequences

Income is recognized to the extent of any solvency created. It can be reduced by electing the "qualified business indebtedness" rules.

2. Amount forgiven via "qualified business indebtedness" rules	\$ 50,000
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Debtor has a choice:

	Recognize income of:	50,000
(No election)	No change in basis:	30,000
	or	
(Election)	Recognize income of:	20,000
	And reduce basis to:	0

As noted above, the debtor taxpayer has the option of electing to reduce the basis of depreciable assets first. If the election is made, the basis of depreciable property can be reduced to zero. No relationship exists to liabilities remaining after the discharge. If that reduction does not absorb all of the discharged debt, the other attributes must be reduced beginning at the top of the list.

In this example the election is made to reduce the basis of depreciable assets first. Example: (using the same facts listed above.)

1. Amount forgiven via insolvency rules	\$ 75,000	\$100,000
Reduction of attributes		
Basis	30,000	30,000
NOL	25,000	25,000
ITC	10,000	10,000
Balance	\$ 10,000*	\$ 35,000*

* No tax consequences

Electing this option would needlessly (to the taxpayer) reduce the basis to zero.

2. Amount forgiven via "qualified business indebtedness" rules	\$ 50,000
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Since no adjusted basis exists, the taxpayer has no choice but to pay the tax on the amount of debt forgiveness while solvent (\$50,000).

Tax Planning

The option that is best for the debtor will depend upon the pattern of his or her income in succeeding years. It may be wise to reduce basis and preserve net operating loss and credits carried forward if an appreciable income is expected the following year. If it is desired to delay deductions one may wish to use the net operating loss and credits reductions first and preserve the basis for depreciation for use in later higher income years.

BANKRUPTCY

If an individual files bankruptcy under either Chapter 7 or 11, a new taxable entity is created. The bankruptcy estate is a taxable entity that is separate and distinct from the debtor.

All property owned by the debtor is transferred to the bankruptcy estate, but that transfer is not treated as a taxable disposition. It therefore is not subject to taxation as gain or recapture of investment credit, soil and water conservation expense, depreciation or government cost sharing. All liabilities, including tax liabilities, are also transferred.

Tax Planning

After the bankruptcy estate has been created, income generated from the bankruptcy assets create taxable income to the estate and potential income tax liability. Tax liability is a priority claim on funds. Whether or what income tax liability remaining after the close of the bankrupt estate does or does not pass back to the debtor is currently under vigorous debate by various authorities. In any event, because of the priority of claims, it is advisable to manage the bankruptcy estate to discharge as much of the tax liability as possible while retaining any tax attributes of use in future tax years.

Bankruptcy Tax Implications

If the debtor elects to declare bankruptcy under either chapter 7 or 11 of the bankruptcy code and has property that is not exempt, he or she will have two options with respect to choosing a tax year. One option is to continue with the same tax year that would have been used if there were no bankruptcy. The other option is to divide the tax year that would have been used if there were no bankruptcy into two short years. The first of the short years ends the day before bankruptcy and the second short year begins on the day of bankruptcy.

Since the bankrupt estate is responsible for all of the debtor's liabilities at the time of bankruptcy, income taxes that accrue before the date of bankruptcy become a debt of the estate. Consequently, the election to end a tax year before the day of bankruptcy will cause the taxes on the income earned to that point in time to become a debt of the bankruptcy estate. Since income taxes are a priority claim in bankruptcy, they will be paid before other debts that may be discharged. If the election to two short years is not made, the tax on the income earned during the debtor's tax year in which bankruptcy occurs will accrue after the date of bankruptcy and will therefore not become a debt of the estate, but stay with the debtor.

The debtor's selection of a single tax year or two short tax years will also affect the amount of tax attributes that pass from the debtor to the bankrupt estate. The rule is that the bankrupt estate receives the tax attributes of the debtor as of the beginning of the tax year in which bankruptcy occurred. Therefore, if the debtor chooses a single tax year, the attributes that he or she has at the beginning of that year will pass to the bankrupt estate and cannot be used by the debtor on the tax return for that year. If the debtor chooses two short tax years, the attributes do not pass to the bankrupt estate until the beginning of the second short year. Therefore, the debtor can apply the tax attributes on his or her return for the first short year.

More Tax Planning In Bankruptcy

If the debtor has income before the date of bankruptcy, it is usually to the debtor's advantage to choose two short years. By doing so, the debtor not only makes the taxes on that income a debt of the estate but will reduce the amount of taxes owed on that income. This further implies that liquidation of assets prior to the declaration of bankruptcy should be avoided if at all possible.

There are some disadvantages to selecting two short tax years. The choice of two short years could increase the amount of self-employment taxes that are imposed on the debtor. The full base income amount will be applied in each of the two short years. Therefore, if the debtor's total wage and self-employment income for the two short years is more than the base amount for that calendar year, more self-employment tax will be imposed by choosing two short years than by choosing a single tax year.

The burden of the extra self-employment tax may not fall on the debtor. As noted above, the taxes due for the first short tax year are a debt of the bankrupt estate. If those debts are paid by the bankrupt estate out of assets that would not pass to the debtor anyway, then the extra tax is not a burden to the debtor, it is born by the creditors.

Debt Forgiveness In Bankruptcy

All debt discharge amounts beyond the value of tax attributes in bankruptcy qualify for the section 108 rule and does not have to be reported as income.

Comparison Of Debt Cancellation In Bankruptcy And Insolvency

Debt forgiven an insolvent taxpayer is excludable only to the extent of insolvency. Remaining debt discharged in bankruptcy is exempt from taxation.

Example:

Facts:

	Bankruptcy	Insolvency
Qualified Business Debt	\$ 400,000	\$ 400,000
Assets	300,000	300,000
Net Operating Losses	65,000	65,000
Basis In Depreciable Property	50,000	50,000
Debt Discharged	175,000	175,000

Solutions:

Debt Discharged	175,000	175,000
Amount Of Insolvency/Debt Forgiven		
As A Result Of Insolvency	NA	100,000
Debt Discharged Over Insolvent Amount (Qualified Business Debt)	NA	75,000

Reduction Of Tax Attributes

Net Operating Loss		65,000	65,000**
Basis	Transfer	50,000	0 or 50,000***

Net Taxable Amount

Choice of	Income/Basis	NA	75,000 / 50,000
Or	Income/Basis	NA	25,000 / 0

Status After Attribute Reductions

Net Operating Loss	0*	0
Basis	50,000	0 if tax paid on \$25,000 50,000 if tax paid on \$75,000

- * The difference between the debt discharged and the tax attributes [$\$175,000 - (65,000 + 50,000) = \$60,000$] will never have to be included in income.
- ** The insolvent debtor need not report the first \$100,000 as income, but would reduce the net operating loss to zero.
- *** Insolvency rules state that you don't have to reduce basis below total debt after forgiveness.
- **** The second \$75,000 of debt forgiven is subject to the qualified business indebtedness rules. Under these rules the debtor has the choice with respect to \$50,000 of the \$75,000. \$50,000 can be reported as income or the basis in the debtor's depreciable assets can be reduced to zero.

The debtor has no choice with respect to the remaining \$25,000 of debt forgiveness. It must be reported as income.

Tax Planning

By choosing bankruptcy the debtor (in the example above) can avoid recognition of all income which occurs as a result of debt forgiveness. If bankruptcy is not used, he must pay tax on \$75,000 or \$25,000 depending on his choice as to basis.

SOME OTHER TAX IMPLICATIONS

Many farmers claimed investment credit on farm equipment. If that property is disposed of before its investment tax credit life has expired, a tax liability will occur on the unearned portion.

Farmers should also check alternative minimum tax ramifications (Form 6251) when liquidating assets. Investment tax credits do not reduce the 20 percent alternative minimum tax.

Don't forget about the State of Minnesota tax impacts of alternative minimum tax. Beginning June 29, 1985, gain realized on the sale of agricultural production property and other real property or equipment used in a farm business that was owned and operated by a taxpayer is exempt from Minnesota taxation if the taxpayer was insolvent at the time of the sale and the proceeds of the sale are used solely to discharge indebtedness secured by a mortgage, lien, or other security interest on the property sold. In addition, any tax due on the gain realized on the forced sale of such property is a dischargeable debt in a bankruptcy proceeding.

Sources

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MORRISON CO. EXT. OFFICE (NE) ADMINISTRATIVE BUILDING LITTLE FALLS, MN 56345 632-2941 (612)	CEA-4-H CEA-AG & CED COMMUNITY PROGRAM ASSISTANT-EFNEP CEA-HE/FL	CARLSON, JAMES E. OLSON, KENNETH M. PETERSON, BARBARA V. PETERSON, CHARLOTTE L.
MOWER CO. EXT. OFFICE (SE) COURTHOUSE AUSTIN, MN 55912 437-6616 (507)	CEA-AG & CED CEA-HE/FL CEA-4-H	JOHNSRUD, HARLAN L. MILLER, MARY ELLEN PEDERSEN, MICHAEL K.
MURRAY CO. EXT. OFFICE (SW) COUNTY COURTS BLDG SLAYTON, MN 56172 836-6148 (507)	CEA-AG & CED CEA-HE/FL CEA-4-H	BOXRUD, RUEBEN M. HENRIKSEN, MARIE MARTIKAINEN, KEITH R.
NICOLLET CO. EXT. OFFICE (SW) 501 S. MINNESOTA AVENUE ST. PETER, MN 56082 931-6800 (507)	CEA-AG & CED CEA-4-H CEA-HE/FL	HACHFELD, GARY A. HECTOR, BARBARA D. WALDOCK, DONNA
NOBLES CO. EXT. OFFICE (SW) P.O. BOX 758 WORTHINGTON, MN 56187 372-7711 (507)	CEA-AG & CED CEA-HE/FL CEA-4-H	FRAME, ARTHUR R. GENGLER, COLLEEN H. MARTIKAINEN, KEITH R.

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NORMAN CO. EXT. OFFICE (NW) NORMAN CO OFFICE BLDG ADA, MN 56510 784-7183 (218)	CEA-HE/FL & CED CEA-4-H CEA-AG	KNUTSON, SHARON S. MELIN, THOMAS L. PAZDERNIK, KENNETH J.
OLMSTED CO. EXT. OFFICE (SE) 1200 SOUTH BROADWAY SUITE 195 ROCHESTER, MN 55904 285-8250 (507)	CEA-4-H CEA-AG & CED CEA-HE/FL COMMUNITY PROGRAM ASSISTANT - 4-H CEA-AG & 4-H	DEIDRICK, JAMES C. KJOME, DAVID J. LOVETT, KATHLEEN D. MCNALLAN, JANET SCHROCK, DENNIS S.
OTTER TAIL-E CO. EXT. OFFICE (NW) 222 2ND AVE SE PERHAM, MN 56573 346-5750 (218)	CEA-AG & CED CEA-HE/FL	COOPER, DENZIL PAURUS, VICKIE L.
OTTER TAIL-W CO. EXT. OFFICE (NW) COURTHOUSE FERGUS FALLS, MN 56537 739-2271 (218)	CEA-HE/FL CEA-4-H CEA-AG & CED	BERGE, ANGELA R. HANDEGAARD, STEPHEN K. ROSE, KENNETH R.
PENNINGTON CO. EXT. OFFICE (NW) BOX 616 COURTHOUSE THIEF RIVER FALLS, MN 56701 681-2116 (218)	CEA-4-H CEA-AG CEA-HE/FL & CED	NORD, ANDREA K. PERSON, HOWARD A. ZAK, DEBORAH M.
PINE CO. EXT. OFFICE (NE) CASSIDY BLDG P.O. BOX 370 HINCKLEY, MN 55037 384-6156 (612)	CEA-HE/FL & 4-H CEA-AG	BIEHL, NANCY J. SCHOPER, WAYNE W.
PIPESTONE CO. EXT. OFFICE (SW) BOX 218 PIPESTONE, MN 56164 825-5416 (507)	CEA-AG & CED CEA-HE/FL	FRITZ, ROBERT E. JOHNSON, SHARON K.
POLK-E CO. EXT. OFFICE (NW) P.O. BOX 69 MUNICIPAL BLDG. MCINTOSH, MN 56556 563-2465 (218)	CEA-AG CEA-HE/FL CEA-4-H & CED	COURNEYA, JAMES T. JACOBSON, DONNA RAE QUINLAN, ROBERT B.

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POLK-W CO. EXT. OFFICE (NW) COURTHOUSE P.O. BOX 556 CROOKSTON, MN 56716 281-1751 (218)	CEA-AG & CED CEA-4-H CEA-HE/FL	BIGGER, SAMUEL L. COURNEYA, LOUIS J. OSETH, BARBARA M.
POPE CO. EXT. OFFICE (NW) COURTHOUSE GLENWOOD, MN 56334 634-5301 (612)	CEA-AG & CED CEA-4-H CEA-HE/FL	MORRIS, JOHN E. ONERHEIM, JAMES D. THOMPSON, KAREN R.
RAMSEY CO. EXT. OFFICE (SE) 2020 WHITE BEAR AVENUE ST. PAUL, MN 55109 777-8156 (612)	CEA-HE/FL CEA-HE/FL EXTENSION AGENT-4-H COMMUNITY PROGRAM ASSISTANT - 4-H COMMUNITY PROGRAM ASSISTANT-EFNEP SENIOR SECRETARY EXTENSION AGENT-4-H COMMUNITY PROGRAM ASSISTANT-EFNEP COMMUNITY PROGRAM ASSISTANT-EFNEP COMMUNITY PROGRAM ASSISTANT-EFNEP COMMUNITY PROGRAM ASSISTANT SECRETARY COMMUNITY PROGRAM ASSISTANT-EFNEP COMMUNITY PROGRAM ASSISTANT-EFNEP CEA-4-H COMMUNITY PROGRAM ASSISTANT-EFNEP CEA-4-H & CED CEA-AG & 4-H COMMUNITY PROGRAM ASSISTANT-EFNEP COMMUNITY PROGRAM ASSISTANT-EFNEP SECRETARY CEA-HE/FL COMMUNITY PROGRAM ASSISTANT-EFNEP COMMUNITY PROGRAM ASSISTANT-EFNEP COMMUNITY PROGRAM ASSISTANT-EFNEP/4-H COMMUNITY PROGRAM ASSISTANT-EFNEP	ALLEN, ROSE M. BARBER, SHIRLEY L. BURROWS, CARMEN P. DORNFELD, MICHAEL J. DREHER, L. M. FREEMAN, ARLENE JEAN GARY, WILMA M. HAAG, JEAN FRANCES HARE, ALICE E. KELLER, DEBRA KEO, PHALLA KRENZ, BETTY C. LUND, CLEO D. MIMS, PAULENE W. MOEN, DAVID E. MOUACHEUPAO, SY VANG NELSON, CATHARINE A. PETERSON, JOSEPH C. PROM, SENG RANDALL, JEAN L. SIGMUNDIK, JOAN M. TISHER, BETTY L. VANN, THEODORA C. WHIPPLE, JUANITA XIONG, KAO YANG, UE
RED LAKE CO. EXT. OFF. (NW) COURTHOUSE RED LAKE FALLS, MN 56750 253-2895 (218)	CEA-AG & CED CEA-HE/FL & 4-H	KABES, DAVID E. LEINES, DEEANN R.

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REDWOOD CO. EXT. OFFICE (SW) COURTHOUSE P.O. BOX 46 REDWOOD FALLS, MN 56283 637-8323 (507)	CEA-AG & CED CEA-4-H CEA-HE/FL	HANSEN, WAYNE J. JOHNSON, DEANN K. MOEN, JUDY L.
RENVILLE CO. EXT. OFFICE (SW) COURTHOUSE OLIVIA, MN 56277 523-2522 (612)	CEA-AG & CED CEA-HE/FL CEA-4-H	BOOKER, O. THOMAS GUSTAFSON, JUDITH L. NYSTROM, KAREN E.
RICE CO. EXT. OFFICE (SE) COURTHOUSE FARIBAULT, MN 55021 334-2281 (507)	CEA-HE/FL CEA-4-H CEA-AG & CED	BISHMAN, BETTY M. SKELLY, CAROL L. WILKOWSKE, ROGER M.
ROCK CO. EXT. OFFICE (SW) 110 N. OAKLEY LIVERNE, MN 56156 283-4446 (507)	CEA-HE/FL CEA-AG & 4-H & CED	BERG, SHARLEEN K. THIESSE, KENT V.
ROSEAU CO. EXT. OFFICE (NW) 308 CENTER STREET WEST ROSEAU, MN 56751 463-1052 (218)	CEA-HE/FL & 4-H & CED CEA-AG	ANDOL, DELORES L. STANISLAWSKI, HAROLD
ST. LOUIS CO. EXT. OFFICE (NE) WASHBURN HALL - ROOM 109 2305 EAST 5TH STREET DULUTH, MN 55812 726-7512 (218)	CEA-HE/FL COMMUNITY PROGRAM ASSISTANT-EFNEP COMMUNITY PROGRAM ASSISTANT-EFNEP CEA-4-H CEA-HE/FL CEA-AG & 4-H & ACTG CED COMMUNITY PROGRAM ASSISTANT-EFNEP COMMUNITY PROGRAM ASSISTANT-EFNEP COMMUNITY PROGRAM ASSISTANT-EFNEP COMMUNITY PROGRAM ASSISTANT-EFNEP COMMUNITY PROGRAM ASSISTANT - EFNEP CEA-AG	ANDERSON, EILEEN G. BALDWIN, DOREEN T. BISPALA, BARBARA JANE BOYCE, SHERRY P. BRADLEY, LINDA J. BROMENSHENKEL, EUGENE V. DRESHAR, ANN K. KOVACOVIC, VERA MOHN, CHERYL A. NELSEN, SUSAN A. NORMAN, JULIE S. OLEN, ROBERT M.

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COURTHOUSE-ROOM 2 BOX 86 HIBBING, MN 55746 262-4841 (218)	CEA-AG & CED CEA-4-H	GIESLER, CARROLL F. MORELAND, RICHARD M.
COURTHOUSE ANNEX 402 3RD STREET SOUTH VIRGINIA, MN 55792 749-7120 (218)	CEA-HE/FL CEA-HE/FL	JOHNSON, LINDA J. WHALEN, MARY J.
SCOTT CO. EXT. OFFICE (SE) 123 1ST ST. E. JORDAN, MN 55352 492-2370 (612)	CEA-AG & CED CEA-4-H CEA-HE/FL	HART, DAVID D. KIBLER, MARIANNE LOUIS, KAREN MARIE
SHERBURNE CO. EXT. OFFICE (NE) 433 JACKSON AVE ELK RIVER, MN 55330 441-1441 (612)	CEA-AG & CED CEA-HE/FL & 4-H	ERTEL, GLEN E. TRALLE, MINNELL L.
SIBLEY CO. EXT. OFFICE (SW) COURTHOUSE, BOX 207 GAYLORD, MN 55334 237-2344 (612)	CEA-HE/FL CEA-AG CEA-4-H	ENGELMANN, SUSAN M. KLAIR, KEVIN S. THIES, KATHLEEN J.
STEARNS CO. EXT. OFFICE (NE) 2700 - 1ST STREET NORTH ST. CLOUD, MN 56301 255-6169 (612)	CEA-AG & CED CEA-AG & 4-H CEA-4-H COMMUNITY PROGRAM ASSISTANT-EFNEP/4-H	JANUSCHKA, FRANCIS J. LEWANDOWSKI, RORY A. MOBRATEN, LUCIA R. WURZBURGER, SALLY A.
STEELE CO. EXT. OFFICE (SE) COUNTY ADMINISTRATIVE ANNEX 590 DUNNELL DRIVE-P.O.BOX 890 OWATONNA, MN 55060 451-8040 (507)	CEA-AG CEA-HE/FL CEA-4-H & CED	ARLT, TIMOTHY J. JACOBSON, LINDA R. TANDE, LARRY A.
STEVENS CO. EXT. OFFICE (NW) AGRI SERVICE CENTER HWYS 59 & 28 NORTH MORRIS, MN 56267 589-4884 (612)	CEA-AG & 4-H & CED CEA-HE/FL	EHLERS, DOUGLAS W. HUEBNER, CATHERINE J.

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SWIFT CO. EXT. OFFICE (SW) COURTHOUSE P.O. BOX 305 BENSON, MN 56215 843-3796 (612)	CEA-4-H CEA-AG & CED CEA-HE/FL	DINGELS, PATRICIA L. MAHER, PATRICK J. ROSEMEIER, DOROTHY M.
TODD CO. EXT. OFFICE (NE) COURTHOUSE ANNEX LONG PRAIRIE, MN 56347 732-6181 (612)	CEA-HE/FL CEA-AG & CED CEA-4-H	BURTNES, CAROL ANN WILLIAMS, LEROY WOESTE, MARCIA J.
TRAVERSE CO. EXT. OFFICE (NW) COURTHOUSE WHEATON, MN 56296 563-4515 (612)	CEA-HE/FL & 4-H & CED CEA-AG & 4-H	MARTENSON, DIANA M. NICHOLS, KENDALL A.
WABASHA CO. EXT. OFFICE (SE) COURTHOUSE 625 JEFFERSON AVENUE WABASHA, MN 55981 565-4509 (612)	CEA-4-H CEA-AG & CED CEA-HE/FL	CROWLEY, DENNIS M. SCHWARTAU, CHARLES R. SMITH, TONI L.
WADENA CO. EXT. OFFICE (NE) COURTHOUSE WADENA, MN 56482 631-2332 (218)	COMMUNITY PROGRAM ASSISTANT - AG CEA-HE/FL & 4-H & CED CEA-AG & 4-H COMMUNITY PROGRAM ASSISTANT - AG	BALL, GLEN WALTER CLEAVER, LEANN M. LANGSETH, KENDALL D. TELLOCK, ROGER R.
WASECA CO. EXT. OFFICE (SE) 122 - 3RD AVE NW WASECA, MN 56093 835-3610 (507)	CEA-4-H CEA-HE/FL CEA-AG & CED	BLAUERT, MARK E. MALECHA, MARY C. WERNER, DAVID D.
WASHINGTON CO. EXT. OFFICE (SE) 1825 CURVE CREST BLVD.-#202 STILLWATER, MN 55082 439-0101 (612)	CEA-AG CEA-4-H & CED CEA-HE/FL CEA-4-H	BARLASS, MALCOLM T. LEIFELD, CHARLES F. SPRAIN, JOAN K. TEMPLIN, ELIZABETH E.
WATONWAN CO. EXT. OFFICE (SW) COURTHOUSE ST JAMES, MN 56081 375-3341 (507)	CEA-4-H & HE/FL & CED CEA-AG & 4-H	NICKEL, I. PAULINE WYATT, GARY J.

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WILKIN CO. EXT. OFFICE (NW) COURTHOUSE P.O. BOX 30 BRECKENRIDGE, MN 56520 643-5481 (218)	CEA-4-H & HE/FL CEA-AG & CED	ALTHOFF, CLAIRE J. HEMMINGSEN, RICHARD A.
WINONA CO. EXT. OFFICE (SE) FIRST LEVEL CO. COURTHOUSE WINONA, MN 55987 454-5101 (507)	CEA-4-H CEA-AG & CED CEA-HE/FL	BEYER, JANET E. BROADWATER, NEIL R. CHARLSON, NANCY R.
WRIGHT CO. EXT. OFFICE (NE) COURTHOUSE BUFFALO, MN 55313 682-3900 (612)	COMMUNITY PROGRAM ASSISTANT-EFNEP CEA-HE/FL CEA-4-H CEA-AG & CED	BOKUSKY, GERRI J. JOHNSON, JEAN E. MOELLER, DENNIS D. ZIMMERMAN, WILLIAM E.
YELLOW MEDICINE CO. EXT. OFFICE (SW) 1004 - 10TH AVENUE - BOX 128 CLARKFIELD, MN 56223 669-4471 (612)	CEA-HE/FL CEA-AG CEA-4-H & CED	BIERMAIER, ROSELYN L. KVOLS, RICHARD P. LEE, MARIE B.

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