

CHAPTER 1502

DEPARTMENT OF AGRICULTURE

FARMER-LENDER MEDIATION

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1502.0001 SCOPE.

Parts 1502.0001 to 1502.0026 are adopted by the Department of Agriculture under Minnesota Statutes, section 583.285, and govern the procedures to be followed in farmer-lender mediation held under the Farmer-Lender Mediation Act. Mediation begun or concluded before the adoption of parts 1502.0001 to 1502.0026 is not void for lack of compliance with those parts.

Statutory Authority: *MS s 583.285*

History: *14 SR 1418*

1502.0002 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part and Minnesota Statutes, section 583.22, apply to parts 1502.0001 to 1502.0026.

Subp. 2. **County extension agent.** "County extension agent" means the county agricultural extension agent for the county in which the debtor resides.

Subp. 3. **Farmer-Lender Mediation Act.** "Farmer-Lender Mediation Act" means Minnesota Statutes, sections 583.20 to 583.32.

Subp. 4. **Mediation notice.** "Mediation notice" means the mediation notice served by an initiating creditor under Minnesota Statutes, section 336.9-501, 505.365, 559.209, or 581.015.

Subp. 5. **Mediation proceeding notice.** "Mediation proceeding notice" means the mediation proceeding notice sent by the county extension agent under Minnesota Statutes, section 583.24, subdivision 4.

Subp. 6. **Proceeding.** "Proceeding" means the process required by law, security agreement, lease agreement, or contract for enforcing a debt against agricultural property under Minnesota Statutes, chapter 580 or 581, or sections 336.9-501 to 336.9-508, terminating a contract for deed to purchase agricultural property under Minnesota Statutes, section 559.21, or garnishing, levying on, executing on, seizing, or attaching agricultural property.

Subp. 7. **Send.** "Send" means to mail by first class mail.

Statutory Authority: *MS s 583.285*

History: *14 SR 1418*

1502.0003 ADMINISTRATION.

The director of Minnesota extension services shall administer the Farmer-Lender Mediation Act subject to the delegation power prescribed in Minnesota Statutes, sections 583.22, subdivision 5, and 583.23, subdivision 3. Under the delegation power in Minnesota Statutes, section 583.22, subdivision 5, the county extension agent in the county in which the

debtor resides is the director's designee as provided in parts 1502.0001 to 1502.0026 and for purposes of service, filing, and other purposes specified by the director.

Statutory Authority: *MS s 583.285*

History: *14 SR 1418*

1502.0004 RESPONSIBILITIES.

The director's responsibilities under the Farmer-Lender Mediation Act include, but are not limited to, the following:

A. The director shall provide training in mediation techniques to mediators. The training must include training on mediation process, skills, and farm finance issues in mediation.

B. The director shall provide support to mediators, including, but not limited to, technical assistance in complying with parts 1502.0001 to 1502.0026 and the Farmer-Lender Mediation Act, clerical support, postage, and other necessary supplies.

C. The director shall provide training in farm financial analysis (FINPAC) computer software to financial analysts.

D. The director shall set the compensation of mediators and financial analysts and shall reimburse them upon submission of expense claims.

E. The director shall coordinate community legal education programs for farmers.

F. The director shall collect and maintain accurate statistical data on the program.

Statutory Authority: *MS s 583.285*

History: *14 SR 1418*

1502.0005 FORMS.

The director shall make forms for mediation under the Farmer-Lender Mediation Act available through each county extension agent and county recorder for use by debtors, creditors, and mediators.

Statutory Authority: *MS s 583.285*

History: *14 SR 1418*

1502.0006 SUBSTANTIVE RIGHTS.

The fact that the director or county extension agent has in any way acted upon a request for mediation does not determine the substantive rights of the debtor or creditors under the Farmer-Lender Mediation Act or parts 1502.0001 to 1502.0026.

Statutory Authority: *MS s 583.285*

History: *14 SR 1418*

1502.0007 FILING AND WITHDRAWAL OF MEDIATION REQUEST.

A debtor must file a mediation request form with the county extension agent within 14 days after receiving a mediation notice. A debtor may withdraw a mediation request at any time before 14 days after receiving a mediation notice. The debtor's withdrawal must be in writing. Withdrawal of the mediation request constitutes a waiver of the debtor's right to mediate the debt that initiated the service of the mediation notice under the Farmer-Lender Mediation Act unless the debtor refiles the mediation request within the 14 days permitted to file the original mediation request.

Statutory Authority: *MS s 583.285*

History: *14 SR 1418*

1502.0008 FAILURE TO REQUEST MEDIATION.

The creditor must serve the mediation notice on the county extension agent within three days of service of the notice on the debtor. If a debtor fails to file a timely mediation request or withdraws a mediation request, the county extension agent shall send a copy of the Extension Notice of Debtor(s) Failure to Request Mediation (Form 3) to the debtor and the creditor who served the mediation notice. The extension Notice of Debtor(s) Failure to Request Mediation (Form 3) must be sent within 20 days after service of the mediation notice on the debtor or

within three days after the creditor's filing with the county extension agent proof of the date of service of the mediation notice, whichever is later.

Statutory Authority: *MS s 583.285*

History: *14 SR 1418*

1502.0009 CANCELLATION OF MEDIATION PROCEEDING.

Subpart 1. Cure of default. If the debtor cures the default of the debt specified in the mediation notice before the first mediation meeting, the county extension agent shall cancel the mediation proceeding upon receipt of a written statement from the debtor and creditor indicating that the default has been cured.

Subp. 2. Agreement reached before the first mediation meeting. If the debtor and the creditor who served the mediation notice have reached an agreement before the first mediation meeting, the county extension agent shall cancel the mediation proceeding upon receipt of a written statement from the creditor and debtor indicating that an agreement has been reached.

Statutory Authority: *MS s 583.285*

History: *14 SR 1418*

1502.0010 PROOF OF FILING MEDIATION REQUEST.

When a debtor files a mediation request with the county extension agent, the mediation request must be filed by certified mail using return receipt or by actual delivery of the mediation request with a signed receipt of the county extension agent.

Statutory Authority: *MS s 583.285*

History: *14 SR 1418*

1502.0011 CREDITOR CLAIM FORMS FOR DEBTS NOT SUBJECT TO MEDIATION.

Subpart 1. Supporting documents. A creditor owed a debt not subject to the Farmer-Lender Mediation Act under Minnesota Statutes, section 583.26, subdivision 4, paragraph (f), must return a claim form specifying why the debt is not subject to the Farmer-Lender Mediation Act to the county extension agent and attach the documents indicated for the debts listed in items A to E.

A. for a debt that has been in bankruptcy under Minnesota Statutes, section 583.24, subdivision 4, paragraph (a), clause (1), either a copy of the proof of claim form filed in bankruptcy, a copy of the bankruptcy petition in which the debt is listed as a scheduled debt, or a notice of petition for bankruptcy in which the debt is listed as a scheduled debt;

B. for a debt in default and mediated under Minnesota Statutes, section 583.24, subdivision 4, paragraph (a), clause (2):

(1) an affidavit stating that the debt was in default when the creditor received a mediation proceeding notice under the Farmer-Lender Mediation Act, and that a claim form was filed, the debt was mediated during the mediation period, and (i) the mediation was unresolved; or (ii) a mediation agreement with respect to that debt was signed;

(2) a copy of the mediation proceeding notice;

(3) a copy of the creditor's claim form; and

(4) a copy of the Memorandum of Agreement (Form 8) or Mediation Conclusion With No Agreement (Form 12), or other evidence that the debt was mediated during the mediation period;

C. for a debt, if the debtor did not request mediation and the creditor proceeded to enforce the debt under Minnesota Statutes, section 583.24, subdivision 4, paragraph (a), clause (3):

(1) a copy of the mediation notice;

(2) a copy of Extension Notice of Debtor(s) Failure to Request Mediation (Form 3); and

(3) an affidavit stating that the creditor began a proceeding to enforce the debt within 45 days after the debtor failed to make a timely request;

D. for a debt that is not subject to mediation under Minnesota Statutes, section 583.24, subdivision 4, paragraph (a), clause (5), because there is a lien under Minnesota Statutes, section 514.661 or 559.2091, a copy of the lien statement under Minnesota Statutes, section 514.661 or 559.2091, indicating that the filing officer has received and filed the lien statement; and

E. for a debt restructured in mediation under Minnesota Statutes, section 583.24, subdivision 4, paragraph (a), clause (4):

(1) a copy of the Mediation Proceeding Notice; and

(2) a copy of the signed agreement reached in mediation that is a separate agreement between the debtor and the creditor with respect to that debt. The agreement may be an attachment to the Memorandum of Agreement (Form 8).

Subp. 2. Notification of debt not subject to mediation. If a creditor returns a claim form with the documents required under subpart 1, items A to E, the county extension agent shall determine from the documents whether the debt is subject to the Farmer-Lender Mediation Act. The county extension agent shall notify the debtor, creditor, and mediator of the determination.

Statutory Authority: *MS s 583.285*

History: *14 SR 1418*

1502.0012 FINANCIAL ANALYST AND FARM ADVOCATE.

Within three business days of receiving a mediation request, the county extension agent shall provide a financial analyst to meet with the debtor at the orientation session and as necessary to prepare the debtor's records before the initial mediation meeting. The county extension agent shall provide the debtor with information on obtaining, without charge, a Department of Agriculture farm advocate to assist the debtor and the financial analyst. This information must include a list of farm advocates and an explanation of the farm advocates services, as provided by the Minnesota Farm Advocate Program. The county extension agent shall provide the debtor with information on the availability of legal assistance to financially eligible debtors through the Minnesota Family Farm Law Project.

Statutory Authority: *MS s 583.285*

History: *14 SR 1418*

1502.0013 COMPUTATION OF TIME PERIODS.

In computing any period by parts 1502.0001 to 1502.0026, by court order, or under the Farmer-Lender Mediation Act, the day of the last act, event, or default from which the designated period begins to run must not be included. The last day of the computed period must be included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday. When the period prescribed is less than seven days, intermediate Saturdays, Sundays, and legal holidays must be excluded in the computation.

Statutory Authority: *MS s 583.285*

History: *14 SR 1418*

1502.0014 ORIENTATION SESSION.

At the orientation session, the mediator must inform the debtor and creditors of their right to seek counsel regarding the legal and tax consequences of documents and agreements. At the debtor's request, the financial analyst shall meet in private with the debtor at intervals during the orientation session.

Statutory Authority: *MS s 583.285*

History: *14 SR 1418*

1502.0015 SELECTION OF MEDIATOR.

Subpart 1. Procedure. The initiating creditor and the debtor may strike one name from the mediator list by sending the county extension agent a notice to that effect. The notice must be mailed within three days of the date the debtor or creditor received the mediation proceeding notice.

Subp. 2. **Replacement mediator.** If the appointed mediator withdraws from the case, the county extension agent shall appoint a replacement mediator not previously stricken from the mediator list by the debtor or the initiating creditor, or if an unstricken mediator is not available, the county extension agent shall appoint an available mediator, subject to the disapproval of either the debtor or creditor, upon a showing of conflict of interest.

Subp. 3. **Comediators.** At the discretion of the county extension agent, more than one mediator may be assigned to a mediation proceeding.

Statutory Authority: *MS s 583.285*

History: *14 SR 1418*

1502.0016 DUTIES OF MEDIATOR.

At the initial mediation meeting and subsequent meetings, the mediator shall:

A. perform the duties prescribed in Minnesota Statutes, section 583.26, subdivision 6, paragraph (b);

B. review the debtor's and creditors' rights and obligations in the mediation process;

C. explain the rules of conduct for mediation meetings;

D. explain the confidentiality of mediation; and

E. facilitate written agreement on:

(1) money to be released for necessary farm operating expenses;

(2) money to be released for necessary living expenses; and

(3) the creditors, if any, responsible for releasing the money.

Statutory Authority: *MS s 583.285*

History: *14 SR 1418*

1502.0017 MEDIATION PROCESS.

Subpart 1. **Combined proceeding for more than one debtor.** The county extension agent shall combine all mediation notices for more than one debtor into one mediation proceeding if the debtors are liable for the same debt or a portion of the same debt on a single piece of agricultural property.

Subp. 2. **Combined proceeding for more than one mediation notice.** The county extension agent shall combine all mediation notices for the same debtor that are received before the initial mediation meeting into one mediation proceeding. It shall be at the county extension agent's discretion as to how to proceed if a mediation notice is served on a debtor between the time of the initial mediation meeting and the end of the mediation period.

Subp. 3. **Meeting place and time.** The mediator shall call mediation meetings during the mediation period. The meetings must be held at a convenient and neutral place and at times as convenient as possible for the mediator, debtor, and creditors attending and participating in mediation meetings, including nights and weekends.

Subp. 4. **Attendance by financial analyst, farm advocate, or attorney.** A financial analyst, farm advocate, or attorney must be permitted to attend mediation meetings at the invitation of the debtor, a creditor, or the mediator. The mediator may establish procedures to facilitate an orderly exchange of information or views, but the mediator must allow a designated representative of a creditor or debtor to speak on behalf of that creditor or debtor. A financial analyst, farm advocate, or attorney may not attend in place of a debtor or a creditor unless the mediator determines a debtor or creditor is unable to attend and the attendance of a financial analyst, farm advocate, or attorney in place of the debtor or a creditor is beneficial to the mediation.

Subp. 5. **Record.** Upon completion of mediation, the mediator shall forward all documents made or used in the course of or because of mediation to the county extension agent. The documents must be kept by the county extension agent in a secure place and are subject to the confidentiality provisions of Minnesota Statutes, section 13.02, subdivisions 9 and 12.

Statutory Authority: *MS s 583.285*

History: *14 SR 1418*

1502.0018 REMOVAL OF MEDIATOR.

Subpart 1. **Procedure.** The mediator may be removed at any time during the mediation period upon written request of the debtor or initiating creditor. This request must be sent to the county extension agent who, upon receipt of the agreement, shall assign an available replacement mediator not previously stricken from the mediator list by the debtor or initiating creditor to participate in the mediation or if an unstricken mediator from the list is not available, the county extension agent must assign an available mediator subject to the disapproval of either the debtor or creditor upon a showing of conflict of interest.

Subp. 2. **Limitation.** The debtor and initiating creditor may each remove only one mediator during a mediation proceeding.

Subp. 3. **Time periods unaffected.** Time periods in the Farmer-Lender Mediation Act and parts 1502.0001 to 1502.0026 are not affected by the removal of a mediator.

Statutory Authority: *MS s 583.285*

History: *14 SR 1418*

1502.0019 MEDIATION AGREEMENT.

Subpart 1. **Final meeting.** The mediator may hold a final meeting for the purpose of signing the mediation agreement if the mediator determines that a final meeting is necessary to conclude the mediation within the mediation period.

Subp. 2. **Copies to other creditors.** Copies of the signed agreement must be sent to all creditors who have filed claim forms within three days of the signing of the agreement by the debtor and creditors.

Statutory Authority: *MS s 583.285*

History: *14 SR 1418*

1502.0020 REJECTION OF DEBT RESTRUCTURING ALTERNATIVES.

A written statement of why alternatives are unacceptable under Minnesota Statutes, section 583.27, subdivision 1, clause (4), must identify the particular items in each proposal that are unacceptable and state the specific reason for rejection of each item.

Statutory Authority: *MS s 583.285*

History: *14 SR 1418*

1502.0021 ABUSIVE BEHAVIOR.

Lack of good faith may include abusive behavior on the part of the debtor or a creditor or a person assisting the debtor or a creditor.

Statutory Authority: *MS s 583.285*

History: *14 SR 1418*

1502.0022 LACK OF GOOD FAITH AFFIDAVIT.

If the mediator determines that a debtor or a creditor is not participating in good faith, the mediator shall file an affidavit indicating the reasons for the finding with the county extension agent, the debtor, and the creditors.

Statutory Authority: *MS s 583.285*

History: *14 SR 1418*

1502.0023 CREDITOR'S LACK OF GOOD FAITH.

If the mediator finds the creditor has not participated in mediation in good faith, the debtor may require court-supervised mediation by:

A. filing the mediator's affidavit with the district court of the county of the debtor's residence with a request for court supervision of mediation;

B. serving a copy of the request with each creditor; and

C. sending a copy of the affidavit to the county extension agent. The request must be filed with the court within ten days of receipt of the lack of good faith affidavit by the debtor or within 90 days after the debtor filed the mediation request with the county extension agent, whichever is later.

Statutory Authority: *MS s 583.285*

History: *14 SR 1418*

1502.0024 DOCUMENTS NECESSARY FOR MEDIATION.

Not participating in good faith may include failure of the debtor or creditor to provide the following records and documents if the mediator determines that they are necessary:

- A. a current, signed financial statement of assets and liabilities;
- B. a copy of the most recent depreciation schedule;
- C. farm record books for the past three years or evidence of crop and livestock production;
- D. projected farm budget for the current 12 months;
- E. copies of any other legal documents that are necessary for the mediation and pertain to the farm business;
- F. copies of FINPACK printout analysis for the farm operation where applicable;
- G. appraisals, including in-house appraisals, of the debtor's property; and
- H. worksheets on foreclosure cost analysis, if any have been done by the lender.

Statutory Authority: *MS s 583.285*

History: *14 SR 1418*

1502.0025 COURT-SUPERVISED MEDIATION.

Subpart 1. **List of mediators.** If requested to do so by the court, the county extension agent shall provide the court with a list of mediators to be used in the selection of the mediator for court-supervised mediation.

Subp. 2. **Suspension of remedies.** The remedies of all creditors are suspended during court-supervised mediation.

Statutory Authority: *MS s 583.285*

History: *14 SR 1418*

1502.0026 CREDITOR NOT ATTENDING MEDIATION MEETING.

Subpart 1. **Initiating creditor.** The initiating creditor shall not file a proof of claim form in lieu of attending meetings.

Subp. 2. **Good faith.** Creditors who file claim forms are bound by the good faith requirements of the Farmer-Lender Mediation Act.

Subp. 3. **Written objection.** To object to the provisions of a mediation agreement, a creditor who files a claim form in lieu of attending mediation meetings shall serve a written objection to the terms of the agreement on the mediator and the debtor within ten days after receiving the mediation agreement. The written objection must identify the particular items in the agreement that are unacceptable and state the specific reason for rejection of each item.

Subp. 4. **New mediation.** Upon receiving the objection, the mediator shall meet again with the debtor and creditors to mediate a new agreement. Mediation meetings must take place within ten days of the receipt of the written objections to the terms of the agreement.

Subp. 5. **Required attendance.** A creditor who files an objection shall attend and participate in any meeting held under subpart 4, unless the mediator determines there is a good reason why the creditor is unable to attend.

Statutory Authority: *MS s 583.285*

History: *14 SR 1418*

1502.0027 ADVOCATE SERVICES FEES.

As allowed in Minnesota Statutes, section 17.03, subdivision 9, the Department of Agriculture shall charge \$15 per hour following a free two-hour consultation for farm advocate services. The department shall waive the fees upon proof that the farm advocate's client has a reportable federal adjusted gross income of \$15,000 or less and a debt to asset ratio of greater than 50 percent.

Statutory Authority: *MS s 16A.128*

History: *17 SR 922*