

CHAPTER 583

MORTGAGE AND CONTRACT FOR DEED
MORATORIUMS

FARMER-LENDER MEDIATION ACT

- | | | | |
|--------|--|---------|--|
| 583.20 | Citation. | 583.28 | Creditor not attending mediation meeting. |
| 583.21 | Legislative findings. | 583.284 | Retention of purchase money security interest. |
| 583.22 | Definitions. | 583.285 | Rules. |
| 583.23 | Farm mediation. | 583.29 | Private data. |
| 583.24 | Applicability. | 583.30 | Forms and compensation. |
| 583.25 | Voluntary mediation proceedings. | 583.305 | Prohibited waivers. |
| 583.26 | Mandatory mediation proceedings. | 583.31 | Enforcement. |
| 583.27 | Good faith required, court supervised mediation. | 583.32 | Inconsistent laws. |

- 583.01** [Repealed, 1983 c 215 s 16; 1984 c 474 s 7; 1985 c 306 s 26; 1987 c 292 s 36; 1989 c 350 art 16 s 7]
- 583.02** [Repealed, 1983 c 215 s 16; 1984 c 474 s 7; 1985 c 306 s 26; 1987 c 292 s 36; 1989 c 350 art 16 s 7]
- 583.03** [Repealed, 1983 c 215 s 16; 1984 c 474 s 7; 1985 c 306 s 26; 1987 c 292 s 36; 1989 c 350 art 16 s 7]
- 583.04** [Repealed, 1983 c 215 s 16; 1984 c 474 s 7; 1985 c 306 s 26; 1987 c 292 s 36; 1989 c 350 art 16 s 7]
- 583.05** [Repealed, 1983 c 215 s 16; 1984 c 474 s 7; 1985 c 306 s 26; 1987 c 292 s 36; 1989 c 350 art 16 s 7]
- 583.06** [Repealed, 1983 c 215 s 16; 1984 c 474 s 7; 1985 c 306 s 26; 1987 c 292 s 36; 1989 c 350 art 16 s 7]
- 583.07** [Repealed, 1983 c 215 s 16; 1984 c 474 s 7; 1985 c 306 s 26; 1987 c 292 s 36; 1989 c 350 art 16 s 7]
- 583.08** [Repealed, 1983 c 215 s 16; 1984 c 474 s 7; 1985 c 306 s 26; 1987 c 292 s 36; 1989 c 350 art 16 s 7]
- 583.09** [Repealed, 1983 c 215 s 16; 1984 c 474 s 7; 1985 c 306 s 26; 1987 c 292 s 36; 1989 c 350 art 16 s 7]
- 583.10** [Repealed, 1983 c 215 s 16; 1984 c 474 s 7; 1985 c 306 s 26; 1987 c 292 s 36; 1989 c 350 art 16 s 7]
- 583.11** [Repealed, 1983 c 215 s 16; 1984 c 474 s 7; 1985 c 306 s 26; 1987 c 292 s 36; 1989 c 350 art 16 s 7]
- 583.12** [Repealed, 1983 c 215 s 16; 1984 c 474 s 7; 1985 c 306 s 26; 1987 c 292 s 36; 1989 c 350 art 16 s 7]

FARMER-LENDER MEDIATION ACT

583.20 CITATION.

Sections 583.20 to 583.32 may be cited as the "farmer-lender mediation act."

History: 1986 c 398 art 1 s 5

NOTE: This section, as added by Laws 1986, chapter 398, article 1, section 5, is repealed July 1, 1992. See Laws 1986, chapter 398, article 1, section 18, as amended by Laws 1987, chapter 292, section 37; Laws 1989, chapter 350, article 16, section 8; and Laws 1990, chapter 525, section 1.

583.21 LEGISLATIVE FINDINGS.

The legislature finds that the agricultural sector of the state's economy is under severe financial stress due to low farm commodity prices, continuing high interest rates, and reduced net farm income. The suffering agricultural economy adversely affects economic conditions for all other businesses in rural communities as well. Thousands of

this state's farmers are unable to meet current payments of interest and principal payable on mortgages and other loan and land contracts and are threatened with the loss of their farmland, equipment, crops, and livestock through mortgage and lien foreclosures, cancellation of contracts for deed, and other collection actions. The agricultural economic emergency requires an orderly process with state assistance to adjust agricultural indebtedness to prevent civil unrest and to preserve the general welfare and fiscal integrity of the state.

History: 1986 c 398 art 1 s 6

NOTE: This section, as added by Laws 1986, chapter 398, article 1, section 6, is repealed July 1, 1992. See Laws 1986, chapter 398, article 1, section 18, as amended by Laws 1987, chapter 292, section 37; Laws 1989, chapter 350, article 16, section 8; and Laws 1990, chapter 525, section 1.

583.22 DEFINITIONS.

Subdivision 1. Applicability. The definitions in this section apply to sections 583.22 to 583.32.

Subd. 2. Agricultural property. "Agricultural property" means real property that is principally used for farming as defined in section 500.24, subdivision 2, paragraph (a), and raising poultry, and personal property that is used as security to finance a farm operation or used as part of a farm operation including equipment, crops, livestock, proceeds of the security, and removable agricultural structures under lease with option to purchase. "Agricultural property" does not include: personal property that is subject to a possessory lien under sections 514.18 to 514.22; property that is leased to the debtor other than removable agricultural structures under lease with option to purchase; or farm machinery that is primarily used for custom field work.

Subd. 3. [Repealed, 1Sp1986 c 2 art 2 s 14]

Subd. 4. Creditor. "Creditor" means 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.

Subd. 5. Director. "Director" means the director of the agricultural extension service or the director's designee.

Subd. 6. File. "File" means to deliver by the required date by certified mail or another method acknowledging receipt.

Subd. 6a. Financial analyst. "Financial analyst" means a person: (1) knowledgeable in agricultural and financial matters that can provide financial analysis; (2) who is able to aid the debtor in preparing the financial information required under section 583.26, subdivision 3; and (3) who is approved by the director. A financial analyst may include county extension agents, adult farm management instructors, technical college instructors, and other persons able to carry out the duties of a financial analyst.

Subd. 7. Mediator. "Mediator" means a farm mediator appointed by the director.

Subd. 7a. Necessary farm operating expenses. As used in section 583.27, "necessary farm operating expenses" means a sum or sums adequate to continue, during the mediation period, farm operations begun prior to the notice of default. "Necessary farm operating expenses" does not include expenses for increasing the scale of an ongoing farming operation or planting additional crops.

Subd. 7b. Necessary living expenses. As used in section 583.27, "necessary living expenses" means a sum approximately equal to 1-1/2 times the amount to which the family would be entitled if eligible for payments under section 256.74, unless limited by section 583.27, subdivision 1, paragraph (b).

Subd. 8. Serve. "Serve" means (1) personal service as in a district court civil action; (2) service by certified mail using return receipt signed by addressee only; (3) actual delivery of required documents with signed receipt; or (4) if an unsuccessful attempt is made to serve under clause (1) or (2), service may be made by mail with a certificate of mailing to the last known address of the debtor. For purposes of serving under clause (4), the addressee is considered to have been served the documents five days after the date on the certificate of mailing.

History: 1986 c 398 art 1 s 7; 1Sp1986 c 2 art 2 s 1-4; 1987 c 258 s 12; 1987 c 292 s 11-14; 1989 c 246 s 2

NOTE: This section, as added by Laws 1986, chapter 398, article 1, section 7, is repealed July 1, 1992. See Laws 1986, chapter 398, article 1, section 18, as amended by Laws 1987, chapter 292, section 37; Laws 1989, chapter 350, article 16, section 8; and Laws 1990, chapter 525, section 1.

583.23 FARM MEDIATION.

Subdivision 1. Training. The director must provide training and support for mediators.

Subd. 2. Appointment. The director must provide mediators by contracting with qualified persons experienced in farm finance, agricultural law, and negotiation.

Subd. 3. Administration. The director may appoint a farm mediation administrator. The administrator and director shall provide training for farm mediators and credit analysts and coordinate community legal education programs for farmers.

History: 1986 c 398 art 1 s 8

NOTE: This section, as added by Laws 1986, chapter 398, article 1, section 8, is repealed July 1, 1992. See Laws 1986, chapter 398, article 1, section 18, as amended by Laws 1987, chapter 292, section 37; Laws 1989, chapter 350, article 16, section 8; and Laws 1990, chapter 525, section 1.

583.24 APPLICABILITY.

Subdivision 1. Creditors. (a) The farmer-lender mediation act applies to creditors who are owed debts subject to the farmer-lender mediation act and are:

- (1) the United States or an agency of the United States;
- (2) corporations, partnerships, and other business entities; and
- (3) individuals.

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

Subd. 2. Debtors. (a) Except as provided in paragraph (b) the farmer-lender mediation act applies to a debtor who is:

- (1) a person operating a family farm as defined in section 500.24, subdivision 2;
- (2) a family farm corporation as defined in section 500.24, subdivision 2; or
- (3) an authorized farm corporation as defined in section 500.24, subdivision 2.

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

Subd. 3. [Repealed, 1987 c 292 s 39]

Subd. 4. Debts. The farmer-lender mediation act does not apply to a debt:

(1) for which a proof of claim form has been filed in bankruptcy by a creditor or that was listed as a scheduled debt, of a debtor who has filed a petition in bankruptcy after July 1, 1987, under United States Code, title 11, chapter 7, 11, 12, or 13;

(2) if the debt was in default when the creditor received a mediation proceeding notice under the farmer-lender mediation act and the creditor filed a claim form, the debt was mediated during the mediation period under section 583.26, subdivision 8, and (i) the mediation was unresolved; or (ii) a mediation agreement with respect to that debt was signed;

(3) for which the creditor has served a mediation notice, the debtor has failed to make a timely request for mediation, and within 45 days after the debtor failed to make a timely request the creditor began a proceeding to enforce the debt against the agricultural property of the debtor;

(4) for which a creditor has received a mediation proceeding notice and the creditor and debtor have restructured the debt and have signed a separate mediation agreement with respect to that debt; or

(5) for which there is a lien for rental value of farm machinery under section 514.661 or a lien for rental value relating to a contract for deed subject to the farmer-lender mediation act under section 559.2091.

History: 1986 c 398 art 1 s 9; 1Sp1986 c 2 art 2 s 5,6; 1987 c 292 s 15,16; 1988 c 474 s 2; 1988 c 700 s 3; 1989 c 350 art 16 s 5

NOTE: This section, as added by Laws 1986, chapter 398, article 1, section 9, is repealed July 1, 1992. See Laws 1986, chapter 398, article 1, section 18, as amended by Laws 1987, chapter 292, section 37; Laws 1989, chapter 350, article 16, section 8; and Laws 1990, chapter 525, section 1.

583.25 VOLUNTARY MEDIATION PROCEEDINGS.

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

History: 1986 c 398 art 1 s 10

NOTE: This section, as added by Laws 1986, chapter 398, article 1, section 10, is repealed July 1, 1992. See Laws 1986, chapter 398, article 1, section 18, as amended by Laws 1987, chapter 292, section 37; Laws 1989, chapter 350, article 16, section 8; and Laws 1990, chapter 525, section 1.

583.26 MANDATORY MEDIATION PROCEEDINGS.

Subdivision 1. Mediation notice. (a) A creditor desiring to start a proceeding to enforce a debt against agricultural property under chapter 580 or 581 or sections 336.9-501 to 336.9-508, to terminate a contract for deed to purchase agricultural property under section 559.21, or to garnish, levy on, execute on, seize, or attach agricultural property, must serve an applicable mediation notice under sections 336.9-501, 550.365, 559.209, and 582.039 on the debtor and the director. The creditor must also file with the director proof of the date the mediation notice was served on the debtor. The creditor may not begin the proceeding until the stay of the creditor's remedies is lifted under subdivision 5, or as allowed under sections 583.20 to 583.32.

(b) For purposes of the farmer-lender mediation act, starting a proceeding to enforce a debt means initiating a proceeding under chapter 550, 580, or 581; sections 336.9-501 to 336.9-508; or section 559.21.

(c) The director shall combine all mediation notices for the same debtor that are received prior to the initial mediation meeting into one mediation proceeding.

Subd. 2. Mediation request. (a) A debtor must file a mediation request form with the director by 14 days after receiving a mediation notice. The debtor must state all known creditors with debts secured for agricultural property. The mediation request form must include an instruction that the debtor must state all known creditors with debts secured by agricultural property and unsecured creditors that are necessary for the farm operation of the debtor. It is the debtor's discretion as to which unsecured creditors are necessary for the farm operation. The mediation request must state the date that the notice was served on the debtor. The director shall make mediation request forms available in the county recorder's and county extension office of each county.

(b) Except as provided in section 583.24, subdivision 4, paragraph (a), clause (3), a debtor who fails to file a timely mediation request waives the right to mediation for that debt under the farmer-lender mediation act. The director shall notify the creditor who served the mediation notice stating that the creditor may proceed against the agricultural property because the debtor has failed to file a mediation request.

(c) If a debtor has not received a mediation notice and is subject to a proceeding of a creditor enforcing a debt against agricultural property under chapter 580 or 581 or sections 336.9-501 to 336.9-508, terminating a contract for deed to purchase agricultural property under section 559.21, or garnishing, levying on, executing on, seizing, or attaching agricultural property, the debtor may file a mediation request with the director. The mediation request form must indicate that the debtor has not received a mediation notice.

Subd. 3. Financial analyst and farm advocate. (a) Within three business days after

receiving a mediation request, the director shall provide a financial analyst to meet with the debtor and assure that information relative to the finances of the debtor is prepared for the initial mediation meeting. The financial analyst must review and, if necessary, prepare the debtor's financial records before the initial mediation meeting.

(b) After receiving the mediation notice, the director shall provide the debtor with a list of farm advocates that may be available without charge to assist the debtor and the financial analyst.

Subd. 3a. Orientation session. The director shall schedule an orientation session to be held at least five days before the first mediation meeting. The debtor, the financial analyst, and a mediator shall participate in the orientation session. The mediator at the session need not be the one assigned to the mediation proceeding under subdivision 4. Creditors participating in the mediation may participate in the orientation session. At the orientation session, the financial analyst shall review the debtor's financial and inventory records to determine if they are adequate for the mediation and inform the debtor of any inadequacies, and the mediator shall inform the debtor of the requirements of the mediation process.

Subd. 4. Mediation proceeding notice. (a) By ten days after receiving a mediation request, the director shall send: (1) a mediation proceeding notice to the debtor; (2) a mediation proceeding notice to all creditors listed by the debtor in the mediation request; and (3) a claim form to all secured creditors stated by the debtor.

(b) The mediation proceeding notice must state:

(1) the name and address of the debtor;
(2) that the debtor has requested mediation under the farmer-lender mediation act;

(3) the time and place for the orientation session;

(4) the time and place for the initial mediation meeting;

(5) a list of the names of three mediators that may be assigned to the proceeding, along with background information on those mediators including biographical information, a summary of previous mediation experience, and the number of agreements signed by parties to previous mediation;

(6) that the debtor and the initiating creditor may each request the director to exclude one mediator by notifying the director within three days after receiving the notice;

(7) that in lieu of having a mediator assigned by the director, the debtor and any one or more of the creditors may agree to select and pay for a professional mediator that is approved by the director;

(8) that the farmer-lender mediation act prohibits the creditor from beginning or continuing a proceeding to enforce the debt against agricultural property for 90 days after the debtor files a mediation request with the director unless otherwise allowed; and

(9) that the creditor must provide the debtor by the initial mediation meeting with copies of notes and contracts for debts subject to the farmer-lender mediation act and provide a statement of interest rates on the debts, delinquent payments, unpaid principal and interest balances, the creditor's value of the collateral, and debt restructuring programs available by the creditor.

(c) An initial mediation meeting must be held within 20 days of the notice.

(d) The initiating creditor and the debtor may each request the director to exclude one mediator from the list by sending the director a notice to exclude the mediator within three days after receiving the mediation proceeding notice.

(e) In lieu of the director assigning a mediator, the debtor and any one or more of the creditors may agree to select and pay for a professional mediator for the mediation proceeding. The director must approve the professional mediator before the professional mediator may be assigned to the mediation proceeding. The professional mediator may not be approved unless the professional mediator prepares and signs an affidavit:

- (1) disclosing any biases, relationships, or previous associations with the debtor or creditors subject to the mediation proceedings;
 - (2) stating certifications, training, or qualifications as a professional mediator;
 - (3) disclosing fees to be charged or a rate schedule of fees for the mediation proceeding; and
 - (4) affirming to uphold the farmer-lender mediation act and faithfully discharge the duties of a mediator.
- (f) After receiving a mediation proceeding notice, a secured creditor must return a claim form if the debt is not subject to the farmer-lender mediation act and specify why the debt is not subject to sections 583.20 to 583.32.

Subd. 5. Effect of mediation proceeding notice. (a) Except as provided in paragraphs (b), (c), and (d), if a creditor receives a mediation proceeding notice under subdivision 4 the creditor and the creditor's successors in interest may not begin or continue proceedings to enforce a debt subject to the farmer-lender mediation act against agricultural property of the debtor under chapter 580 or 581 or sections 336.9-501 to 336.9-508, to terminate a contract for deed to purchase agricultural property under section 559.21, or to garnish, levy on, execute on, seize, or attach agricultural property until 90 days after the date the debtor files a mediation request with the director.

(b) Except as provided in paragraph (c), if a creditor is an agency of the United States and receives a mediation proceeding notice under subdivision 4, the creditor and the creditor's successors in interest may not begin or continue proceedings to enforce a debt against agricultural property of the debtor under chapter 580 or 581 or sections 336.9-501 to 336.9-508, to terminate a contract for deed to purchase agricultural property under section 559.21, or to garnish, levy on, execute on, seize, or attach agricultural property until 90 days after the date the debtor files a mediation request with the director.

(c) Notwithstanding paragraphs (a) and (b) or subdivision 1, a creditor receiving a mediation proceeding notice may begin proceedings to enforce a debt against agricultural property of the debtor:

- (1) at the time the creditor receives a mediator's affidavit of the debtor's lack of good faith under section 583.27; or
- (2) five days after the date the debtor and creditor sign an agreement allowing the creditor to proceed to enforce the debt against agricultural property if the debtor has not rescinded the agreement within the five days.

(d) A creditor receiving a mediation proceeding notice must provide the debtor by the initial mediation meeting with copies of notes and contracts for debts subject to the farmer-lender mediation act and provide a statement of interest rates on the debts, delinquent payments, unpaid principal balance, a list of all collateral securing debts, a creditor's estimate of the value of the collateral, and debt restructuring programs available by the creditor.

(e) The provisions of this subdivision are subject to section 583.27, relating to extension or reduction in the period before a creditor may begin to enforce a debt and court-supervised mediation.

Subd. 6. Eligibility and duties of mediator. (a) A person is not eligible to be a mediator if the person has a conflict of interest that does not allow the person to be impartial. A conflict of interest includes being a current officer or board member or officer of the initiating creditor.

- (b) At the initial mediation meeting and subsequent meetings, the mediator shall:
- (1) listen to the debtor and the creditors desiring to be heard;
 - (2) attempt to mediate between the debtor and the creditors;
 - (3) advise the debtor and creditors of assistance programs available;
 - (4) attempt to arrive at an agreement to fairly adjust, refinance, or pay the debts;
- and

(5) advise, counsel, and assist the debtor and creditors in attempting to arrive at an agreement for the future conduct of financial relations among them.

Subd. 7. Mediator liability and immunity. (a) A mediator is immune from civil liability for actions within the scope of the position as mediator. A mediator does not have a duty to advise a creditor or debtor about the law or to encourage or assist a debtor or creditor in reserving or establishing legal rights. This subdivision is an addition to and not a limitation of immunity otherwise accorded to a mediator under law.

(b) A mediator cannot be examined about a communication or document, including worknotes, made or used in the course of or because of mediation under this section and section 583.27. This paragraph does not apply to the parties in the dispute in an application to a court by a party to have a mediated settlement agreement set aside or reformed. A communication or document otherwise not privileged does not become privileged because it is used in the cause of mediation. This paragraph is not intended to limit the privilege accorded to communication during mediation by the common law.

Subd. 8. Mediation period. The mediator may call mediation meetings during the mediation period, which is up to 60 days after the initial mediation meeting.

Subd. 9. Mediation agreement. (a) If an agreement is reached among the debtor and creditors the mediator shall witness and sign a written mediation agreement, have it signed by the debtor and creditors, and, if applicable, submit the agreement to the Minnesota rural finance authority for approval of debt restructuring.

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

- (1) are bound by the terms of the agreement;
- (2) may enforce the mediation agreement as a legal contract; and
- (3) may use the mediation agreement as a defense against an action contrary to the mediation agreement.

(c) A debtor may agree to allow a creditor to proceed to enforce a debt against agricultural property before the enforcement is otherwise allowed under subdivision 5, but the debtor or creditor may rescind the agreement within five business days after the debtor and particular creditor both sign the agreement.

Subd. 10. End of mediation. (a) The mediator shall sign and serve to the parties and the director a termination statement by the end of the time period specified in subdivision 5.

(b) The mediator shall prepare a termination statement that:

- (1) acknowledges that mediation has ended; and
- (2) describes or references agreements reached between a creditor and the debtor, if any, and agreements reached among creditors, if any.

(c) Mediation agreements may be included as part of the termination statement.

History: 1986 c 398 art 1 s 11; 1Sp1986 c 2 art 2 s 7; 1Sp1986 c 3 art 2 s 13; 1987 c 292 s 17-25,38; 1987 c 396 art 1 s 31; 1988 c 474 s 3; 1989 c 350 art 16 s 6

NOTE: This section, as added by Laws 1986, chapter 398, article 1, section 11, is repealed July 1, 1992. See Laws 1986, chapter 398, article 1, section 18, as amended by Laws 1987, chapter 292, section 37; Laws 1989, chapter 350, article 16, section 8; and Laws 1990, chapter 525, section 1.

583.27 GOOD FAITH REQUIRED, COURT SUPERVISED MEDIATION.

Subdivision 1. Obligation of good faith. (a) The parties must engage in mediation in good faith. Not participating in good faith includes: (1) a failure on a regular or continuing basis to attend and participate in mediation sessions without cause; (2) failure to provide full information regarding the financial obligations of the parties and other creditors including the obligation of a creditor to provide information under section 583.26, subdivision 5, paragraph (d); (3) failure of the creditor to designate a representative to participate in the mediation with authority to make binding commitments within one business day to fully settle, compromise, or otherwise mediate the matter; (4) lack of a written statement of debt restructuring alternatives and a statement of reasons why alternatives are unacceptable to one of the parties; (5) failure of a creditor to

release funds from the sale of farm products to the debtor for necessary living and farm operating expenses; or (6) other similar behavior which evidences lack of good faith by the party. A failure to agree to reduce, restructure, refinance, or forgive debt does not, in itself, evidence lack of good faith by the creditor.

(b) The amount that the creditor is required to release for necessary living expenses under this section is limited to \$1,600 per month less the debtor's off-farm income.

(c) If the debtor and creditor do not agree on the amount of necessary living expenses to be released, the debtor or creditor may petition conciliation court in the county of the debtor's residence to make a determination of the amount to be released. The conciliation court must make the determination within ten days after receiving the petition.

(d) If the debtor and creditors do not agree on the amount of necessary operating expenses or necessary living and operating expenses to be released, the debtor or a creditor requested to release necessary living or operating expenses may petition the district court of the debtor's residence to make a determination of the amount to be released. The court shall hear and make a determination of the amount of living and operating expenses to be released within ten days after receiving the petition. The court shall also add or subtract up to ten days to the time when the creditor can begin to enforce a proceeding to collect the debt against agricultural property of the debtor and assess costs, including any attorney fees, among the parties to the court proceeding. The court shall equitably adjust the time to begin a creditor's proceeding and the assessment of costs based on the parties' good faith claim to the amount of living and operating expenses to be released.

Subd. 2. Lack of good faith affidavit; mediator's responsibility. If the mediator determines that either party is not participating in good faith as defined in subdivision 1, the mediator shall file an affidavit indicating the reasons for the finding with the director and with parties to the mediation.

Subd. 3. Creditor's lack of good faith; court supervised mediation. If the mediator finds the creditor has not participated in mediation in good faith, the debtor may require court supervised mandatory mediation by filing the affidavit with the district court of the county of the debtor's residence with a request for court supervision of mediation and serving a copy of the request on the creditor. Upon request the court shall require both parties to mediate under the supervision of the court in good faith for a period of not more than 60 days. All creditor remedies must be suspended during this period. The court may issue orders necessary to effect good faith mediation. Following the mediation period, if the court finds the creditor has not participated in mediation in good faith, the court shall by order suspend the creditor's remedies for an additional period of 180 days. A creditor found by the mediator not to have participated in good faith shall pay attorneys' fees and costs of the debtor requesting court-supervision of mediation or additional suspension of creditor's remedies.

Subd. 4. Debtor lack of good faith. (a) A debtor is not mediating in good faith if the debtor fraudulently conceals, removes, or transfers agricultural property in which the debtor knows there is a security interest. The concealing, removing, or transferring must be in violation of a security agreement without remitting the proceeds to the secured party and must have occurred during the mediation period.

(b) A creditor may immediately proceed with creditor's remedies upon receipt of a mediator's affidavit of a debtor's lack of good faith notwithstanding any other requirements of sections 583.20 to 583.32.

Subd. 5. Inspection of collateral. (a) After a debtor requests mediation under section 583.26, subdivision 2, a creditor who is participating in the mediation and who has a security agreement relating to agricultural property under the debtor's control may inspect the secured agricultural property during normal business hours on 24 hours' notice to the debtor. For purposes of this subdivision, "normal business hours" means 8:00 a.m. to 6:00 p.m. Monday through Saturday but excludes legal Minnesota and United States holidays.

(b) Failure to permit this inspection by the creditor, or destruction or waste of the property securing the debt, is evidence of the debtor's lack of good faith under subdivision 1, clause (6).

Subd. 6. Review of good faith finding. (a) Upon petition by a debtor or creditor, a court may review a mediator's affidavit of lack of good faith or a mediator's failure to file an affidavit of lack of good faith of a creditor under subdivision 3 or a debtor under subdivision 4. The review is limited to whether the mediator committed an abuse of discretion in filing or failing to file an affidavit of lack of good faith. The petition must be reviewed by the court within ten days after the petition is filed.

(b) If the court finds that the mediator committed an abuse of discretion in filing, or failing to file, an affidavit of lack of good faith, the court may: (1) reinstate mediation and the stay of creditors' enforcement actions; (2) order court supervised mediation; or (3) allow creditors to proceed immediately with creditors' remedies.

(c) A mediator may offer testimony but is not required to testify as part of the court's review.

Subd. 7. Conversion of security. A debtor who fraudulently conceals, removes, or transfers agricultural property in which the debtor knows there is a security interest is ineligible for mediation under the farmer-lender mediation act if the concealing, removing, or transferring was in violation of a security agreement without remitting the proceeds to the secured party. The secured party must petition the district court in the county of the debtor's residence for an order permitting the secured party to proceed with the secured party's remedies notwithstanding sections 583.20 to 583.32. The petition must be brought within one year after the concealing, removing, or transferring occurred. The district court shall issue a summons within seven days commanding the person against whom the petition is made to appear before the court on a day and place stated in the summons. The appearance must be no less than seven and no more than 14 days from the issuance of the summons. The district court must deliver findings within ten days after the close of the hearing. A petition under this subdivision cannot be brought after the secured party has served a mediation notice on the debtor under section 583.26.

Subd. 8. Market value of real property; how established if in dispute. In case of a dispute between the debtor and creditors concerning the market value of real property involved in mediation, the true and acceptable market value must be determined by appraisal as provided in this subdivision. The appraisal to determine true market value must be performed by an accredited appraiser and made within 45 days of the date of the dispute. The accredited appraiser shall be selected as follows:

(1) the mediator shall submit the names of three accredited appraisers to the principal creditor and debtor;

(2) the principal creditor and the debtor may each, within a time determined by the mediator, strike the name of one of the appraisers submitted by the mediator;

(3) the accredited appraiser whose name is not stricken by either the principal creditor or the debtor shall perform an appraisal which shall be the true market value accepted by all parties to the dispute.

The cost of the appraisal shall be divided equally between the principal creditor and debtor.

History: 1986 c 398 art 1 s 12; 1Sp1986 c 2 art 2 s 8; 1987 c 292 s 26-31; 1988 c 700 s 11

NOTE: This section, as added by Laws 1986, chapter 398, article 1, section 12, is repealed July 1, 1992. See Laws 1986, chapter 398, article 1, section 18, as amended by Laws 1987, chapter 292, section 37; Laws 1989, chapter 350, article 16, section 8; and Laws 1990, chapter 525, section 1.

583.28 CREDITOR NOT ATTENDING MEDIATION MEETING.

Subdivision 1. Filing and effect of claim form. A creditor that is notified of the initial mediation meeting is subject to and bound by a mediation agreement if the creditor does not attend mediation meetings unless the creditor files a claim form. In lieu of

attending a mediation meeting, a creditor may file a notice of claim and proof of claim on a claim form with the mediator before the scheduled meeting. By filing a claim form the creditor agrees to be bound by a mediation agreement reached at the mediation meeting unless an objection is filed within the time specified. The mediator must notify the creditors who have filed claim forms of the terms of any agreement.

Subd. 2. Objections to agreements. A creditor who has filed a claim form 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 a creditor files an objection to the terms of an agreement, the mediator shall meet again with debtors and creditors within ten days after receiving the objection to mediate a new agreement. Notwithstanding the mediation period under section 583.26, subdivision 8, if an objection is filed, the mediator shall call mediation meetings during the ten-day period following receipt of the objection.

History: 1986 c 398 art 1 s 13; 1Sp1986 c 2 art 2 s 9

NOTE: This section, as added by Laws 1986, chapter 398, article 1, section 13, is repealed July 1, 1992. See Laws 1986, chapter 398, article 1, section 18, as amended by Laws 1987, chapter 292, section 37; Laws 1989, chapter 350, article 16, section 8; and Laws 1990, chapter 525, section 1.

583.284 RETENTION OF PURCHASE MONEY SECURITY INTEREST.

If a creditor has a purchase money security interest as defined in section 336.9-107, and renegotiates the debt under the farmer-lender mediation act to reduce the principal balance or the interest rate or to extend the repayment period, the creditor retains the purchase money security interest for the renegotiated debt.

History: 1987 c 292 s 32

NOTE: This section is repealed effective July 1, 1992, by Laws 1989, chapter 350, article 16, section 8, as amended by Laws 1990, chapter 525, section 1.

583.285 RULES.

The commissioner of agriculture, in consultation with the commissioner of the bureau of mediation services and the director of the University of Minnesota agricultural extension service, shall make rules under chapter 14, to implement the farmer-lender mediation act. The commissioner of agriculture may adopt emergency rules.

History: 1Sp1986 c 2 art 2 s 10; 1987 c 186 s 15; 1987 c 292 s 33

NOTE: This section is repealed effective July 1, 1992, by Laws 1989, chapter 350, article 16, section 8, as amended by Laws 1990, chapter 525, section 1.

583.29 PRIVATE DATA.

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

History: 1986 c 398 art 1 s 14; 1Sp1986 c 2 art 2 s 11

NOTE: This section, as added by Laws 1986, chapter 398, article 1, section 14, is repealed July 1, 1992. See Laws 1986, chapter 398, article 1, section 18, as amended by Laws 1987, chapter 292, section 37; Laws 1989, chapter 350, article 16, section 8; and Laws 1990, chapter 525, section 1.

583.30 FORMS AND COMPENSATION.

Subdivision 1. Compensation. The director shall set the compensation of mediators and credit analysts.

Subd. 2. Forms. The director shall adopt voluntary mediation application, mediation request, and claim forms.

History: 1986 c 398 art 1 s 15

NOTE: This section, as added by Laws 1986, chapter 398, article 1, section 15, is repealed July 1, 1992. See Laws 1986, chapter 398, article 1, section 18, as amended by Laws 1987, chapter 292, section 37; Laws 1989, chapter 350, article 16, section 8; and Laws 1990, chapter 525, section 1.

MINNESOTA STATUTES 1990

10967

MORTGAGE AND CONTRACT FOR DEED MORATORIUMS 583.32

583.305 PROHIBITED WAIVERS.

A waiver of mediation rights under the farmer-lender mediation act is void except as expressly allowed under the farmer-lender mediation act.

History: 1987 c 292 s 34

NOTE: This section is repealed effective July 1, 1992, by Laws 1989, chapter 350, article 16, section 8, as amended by Laws 1990, chapter 525, section 1.

583.31 ENFORCEMENT.

The mediation agreement must be enforced by the district court.

History: 1986 c 398 art 1 s 16

NOTE: This section, as added by Laws 1986, chapter 398, article 1, section 16, is repealed July 1, 1992. See Laws 1986, chapter 398, article 1, section 18, as amended by Laws 1987, chapter 292, section 37; Laws 1989, chapter 350, article 16, section 8; and Laws 1990, chapter 525, section 1.

583.32 INCONSISTENT LAWS.

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

History: 1986 c 398 art 1 s 17

NOTE: This section, as added by Laws 1986, chapter 398, article 1, section 17, is repealed July 1, 1989. See Laws 1986, chapter 398, article 1, section 18, as amended by Laws 1987, chapter 292, section 37.