

The National Agricultural
Law Center



University of Arkansas School of Law

An Agricultural Law Research Project

States' Alternative Dispute Resolution Statutes
State of North Dakota

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SCHOOL of LAW

States' Alternative Dispute Resolution Statutes

STATE OF NORTH DAKOTA

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Uniform Arbitration Act Title 32, Chapter 32-29.3.

Current through End of 2007 Regular Session

§ 32-29.3-01. Definitions

As used in this chapter:

1. "Arbitration organization" means an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers in an arbitration proceeding or is involved in the appointment of an arbitrator.
2. "Arbitrator" means an individual appointed to render an award, alone or with others, in a controversy that is subject to an agreement to arbitrate.
3. "Court" means the district court.
4. "Knowledge" means actual knowledge.
5. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

§ 32-29.3-02. Notice

1. Except as otherwise provided in this chapter, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in ordinary course, whether or not the other person acquires knowledge of the notice.
2. A person has notice if the person has knowledge of the notice or has received notice.

3. A person receives notice when it comes to the person's attention or the notice is delivered at the person's place of residence or place of business, or at another location held out by the person as a place of delivery of such communications.

§ 32-29.3-03. When chapter applies

1. This chapter governs an agreement to arbitrate made after July 31, 2003.
2. This chapter governs an agreement to arbitrate made before August 1, 2003, if all the parties to the agreement or to the arbitration proceeding so agree in a record.
3. After July 31, 2005, this chapter governs an agreement to arbitrate whenever made. Until August 1, 2005, chapter 32-29.2, as it existed on July 31, 2003, applies to agreements made after June 30, 1987.

§ 32-29.3-04. Effect of agreement to arbitrate--Nonwaivable provisions

1. Except as otherwise provided in subsections 2 and 3, a party to an agreement to arbitrate or to an arbitration proceeding may waive or, the parties may vary the effect of, the requirements of this chapter to the extent permitted by law.
2. Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not:
 - a. Waive or agree to vary the effect of the requirements of subsection 1 of section 32-29.3-05, subsection 1 of section 32-29.3-06, section 32-29.3-08, subsections 1 and 2 of section 32-29.3-17, section 32-29.3-26, or section 32-29.3-28;
 - b. Agree to unreasonably restrict the right under section 32-29.3-09 to notice of the initiation of an arbitration proceeding;
 - c. Agree to unreasonably restrict the right under section 32-29.3-12 to disclosure of any facts by a neutral arbitrator; or
 - d. Waive the right under section 32-29.3-16 of a party to an agreement to arbitrate to be represented by a lawyer at any proceeding or hearing under this chapter, but an employer and a labor organization may waive the right to representation by a lawyer in a labor arbitration.
3. A party to an agreement to arbitrate or arbitration proceeding may not waive, or the parties may not vary the effect of, the requirements of this section or subsection 1 or 3 of section 32-29.3-03, section 32-29.3-07, section 32-29.3-14, section 32-29.3-18, subsection 4 or 5 of section 32-29.3-20, section 32-29.3-22, section 32-29.3-23, section 32-29.3-24, subsection 1 or 2 of section 32-29.3-24, section 32-29.3-29, or section 32-29.3-30.

§ 32-29.3-05. Application for judicial relief

1. Except as otherwise provided in section 32-29.3-28, an application for judicial relief under this chapter must be made by motion to the court and heard in the manner provided by law or rule of court for making and hearing motions.
2. Unless a civil action involving the agreement to arbitrate is pending, notice of an initial motion to the court under this chapter must be served in the manner provided by law for the service of a summons in a civil action. Otherwise, notice of the motion must be given in the manner provided by law or rule of court of serving motions in pending cases.

§ 32-29.3-06. Validity of agreements to arbitrate

1. An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.
2. The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.
3. An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.
4. If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders.

§ 32-29.3-07. Motion to compel or stay arbitration

1. On motion to a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:
 - a. If the refusing party does not appear or does not oppose the motion, the court shall order the parties to arbitrate; and
 - b. If the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.
2. On motion of a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the court shall proceed summarily to decide the issue. If the court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate.
3. If the court finds that there is no enforceable agreement, it may not, pursuant to subsection 1 or 2, order the parties to arbitrate.
4. The court may not refuse to order arbitration because the claim subject to arbitration lacks merit or grounds for the claim have not been established.
5. If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in court, a motion under this section must be made in that court. Otherwise a motion under this section may be made in any court as provided in section 32-29.3-27.
6. If a party makes a motion to the court to order arbitration, the court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision under this section.
7. If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim.

§ 32-29.3-08. Provisional remedies

1. Before an arbitrator is appointed and is authorized and able to act, the court, upon motion of a party to an arbitration proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action.
2. After an arbitrator is appointed and is authorized and able to act:
 - a. The arbitrator may issue such orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action; and

- b. A party to an arbitration proceeding may move the court for a provisional remedy only if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy.
- 3. A party does not waive a right of arbitration by making a motion under subsection 1 or 2.

§ 32-29.3-09. Initiation of arbitration

- 1. A person initiates an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the agreed manner between the parties or, in the absence of agreement, by certified or registered mail, return receipt requested and obtained, or by service as authorized for the commencement of a civil action. The notice must describe the nature of the controversy and the remedy sought.
- 2. Unless a person objects for lack or insufficiency of notice under subsection 3 of section 32-29.3-15 not later than the beginning of the arbitration hearing, the person by appearing at the hearing waives any objection to lack of or insufficiency of notice.

§ 32-29.3-10. Consolidation of separate arbitration proceedings

- 1. Except as otherwise provided in subsection 3, upon motion of a party to an agreement to arbitrate or to an arbitration proceeding, the court may order consolidation of separate arbitration proceedings as to all or some of the claims if:
 - a. There are separate agreements to arbitrate or separate arbitration proceedings between the same persons or one of them is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;
 - b. The claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;
 - c. The existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and
 - d. Prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.
- 2. The court may order consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings.
- 3. The court may not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation.

§ 32-29.3-11. Appointment of arbitrator--Service as a neutral arbitrator

- 1. If the parties to an agreement to arbitrate agree on a method for appointing an arbitrator, that method must be followed, unless the method fails. If the parties have not agreed on a method, the agreed method fails, or an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court, on motion of a party to the arbitration proceeding, shall appoint the arbitrator. An arbitrator so appointed has all the powers of an arbitrator designated in the agreement to arbitrate or appointed pursuant to the agreed method.
- 2. An individual who has a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing and substantial relationship with a party may not serve as an arbitrator required by an agreement to be neutral.

§ 32-29.3-12. Disclosure by arbitrator

1. Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:
 - a. A financial or personal interest in the outcome of the arbitration proceeding; and
 - b. An existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, a witness, or other arbitrators.
2. An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any facts that the arbitrator learns after accepting appointment which a reasonable person would consider likely to affect the impartiality of the arbitrator.
3. If an arbitrator discloses a fact required by subsection 1 or 2 to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection may be a ground under subdivision b of subsection 1 of section 32-29.3-23 for vacating an award made by the arbitrator.
4. If the arbitrator did not disclose a fact as required by subsection 1 or 2, upon timely objection by a party, the court under subdivision b of subsection 1 of section 32-29.3-23 may vacate an award.
5. An arbitrator appointed as a neutral arbitrator who does not disclose a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party is presumed to act with evident partiality under subdivision b of subsection 1 of section 32-29.3-23.
6. If the parties to an arbitration proceeding agree to the procedures of an arbitration organization or any other procedures for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to a motion to vacate an award on that ground under subdivision b of subsection 1 of section 32-29.3-23.

§ 32-29.3-13. Action by majority

If there is more than one arbitrator, the powers of an arbitrator must be exercised by a majority of the arbitrators, but all of them must conduct the hearing under subsection 3 of section 32-29.3-15.

§ 32-29.3-14. Immunity or arbitrator--Competency to testify--Attorney's fees and costs

1. An arbitrator or an arbitration organization acting in that capacity is immune from civil liability to the same extent as a judge of a court of this state acting in a judicial capacity.
2. The immunity afforded by this section supplements any immunity under other law.
3. The failure of an arbitrator to make a disclosure required by section 32-29.3-12 does not cause any loss of immunity under this section.
4. In a judicial, administrative, or similar proceeding, an arbitrator or representative of an arbitration organization is not competent to testify and may not be required to produce records as to any statement, conduct, decision, or ruling occurring during the arbitration proceeding, to the same extent as a judge of a court of this state acting in a judicial capacity. This subsection does not apply:
 - a. To the extent necessary to determine the claim of an arbitrator, arbitration organization, or representative of the arbitration organization against a party to the arbitration proceeding; or

- b. To a hearing on a motion to vacate an award under subdivision a or b of subsection 1 of section 32-29.3-23 if the movant establishes prima facie that a ground for vacating the award exists.
5. If a person commences a civil action against an arbitrator, arbitration organization, or representative of an arbitration organization arising from the services of the arbitrator, organization, or representative or if a person seeks to compel an arbitrator or a representative of an arbitration organization to testify or produce records in violation of subsection 4, and the court decides that the arbitrator, arbitration organization, or representative of an arbitration organization is immune from civil liability or that the arbitrator or representative of the organization is not competent to testify, the court shall award to the arbitrator, organization, or representative reasonable attorney's fees and other reasonable expenses of litigation.

§ 32-29.3-15. Arbitration process

1. An arbitrator may conduct an arbitration in such manner as the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and among other matters, determine the admissibility, relevance, materiality, and weight of any evidence.
2. An arbitrator may decide a request for summary disposition of a claim or particular issue:
 - a. If all interested parties agree; or
 - b. Upon request of one party to the arbitration proceeding if that party gives notice to all other parties to the proceeding, and the other parties have a reasonable opportunity to respond.
3. If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than five days before the hearing begins. Unless a party to the arbitration proceeding makes an objection to lack or insufficiency of notice not later than the beginning of the hearing, the party's appearance at the hearing waives the objection. Upon request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time as necessary but may not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the controversy upon the evidence produced although a party who was duly notified of the arbitration proceeding did not appear. The court, on request, may direct the arbitrator to conduct the hearing promptly and render a timely decision.
4. At a hearing under subsection 3, a party to the arbitration proceeding has a right to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.
5. If an arbitrator ceases or is unable to act during the arbitration proceeding, a replacement arbitrator must be appointed in accordance with section 32-29.3-11 to continue the proceeding and to resolve the controversy.

§ 32-29.3-16. Representation by lawyer

A party to an arbitration proceeding may be represented by a lawyer.

§ 32-29.3-17. Witnesses--Subpoenas--Depositions—Discovery

1. An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena must be served in the manner

for service of subpoenas in a civil action and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action.

2. In order to make the proceedings fair, expeditious, and cost-effective, upon request of a party to or a witness in an arbitration proceeding, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be subpoenaed for or is unable to attend a hearing. The arbitrator shall determine the conditions under which the deposition is taken.

3. An arbitrator may permit such discovery as the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost-effective.

4. If an arbitrator permits discovery under subsection 3, the arbitrator may order a party to the arbitration proceeding to comply with the arbitrator's discovery-related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, and take action against a noncomplying party to the extent a court could if the controversy were the subject of a civil action in this state.

5. An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in this state.

6. All laws compelling a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition, or a discovery proceeding as a witness apply to an arbitration proceeding as if the controversy were the subject of a civil action in this state.

7. The court may enforce a subpoena or discovery-related order for the attendance of a witness within this state and for the production of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in another state upon conditions determined by the court so as to make the arbitration proceeding fair, expeditious, and cost-effective. A subpoena or discovery-related order issued by an arbitrator in another state must be served in the manner provided by law for service of subpoenas in a civil action in this state and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner provided by law for enforcement of subpoenas in a civil action in this state.

§ 32-29.3-18. Judicial enforcement of preaward ruling by arbitrator

If an arbitrator makes a preaward ruling in favor of a party to the arbitration proceeding, the party may request the arbitrator to incorporate the ruling into an award under section 32-29.3-19. A prevailing party may make a motion to the court for an expedited order to confirm the award under section 32-29.3-22, in which case the court shall summarily decide the motion. The court shall issue an order to confirm the award unless the court vacates, modifies, or corrects the award under section 32-29.3-23 or 32-29.3-24.

§ 32-29.3-19. Award

1. An arbitrator shall make a record of an award. The record must be signed or otherwise authenticated by any arbitrator who concurs with the award. The arbitrator or the arbitration organization shall give notice of the award, including a copy of the award, to each party to the arbitration proceeding.

2. An award must be made within the time specified by the agreement to arbitrate or, if not specified therein, within the time ordered by the court. The court may extend or the parties to the arbitration proceeding may agree in a record to extend the time. The court or the parties may do so within or after

the time specified or ordered. A party waives any objection that an award was not timely made unless the party gives notice of the objection to the arbitrator before receiving notice of the award.

§ 32-29.3-20. Change of award by arbitrator

1. On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct an award:
 - a. Upon a ground stated in subdivision a or c of subsection 1 of section 32- 29.3-24;
 - b. Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or
 - c. To clarify the award.
2. A motion under subsection 1 must be made and notice given to all parties within twenty days after the movant receives notice of the award.
3. A party to the arbitration proceeding must give notice of any objection to the motion within ten days after receipt of the notice.
4. If a motion to the court is pending under section 32-29.3-22, 32-29.3- 23, or 32-29.3-24, the court may submit the claim to the arbitrator to consider whether to modify or correct the award:
 - a. Upon a ground stated in subdivision a or c of subsection 1 of section 32- 29.3-24;
 - b. Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or
 - c. To clarify the award.
5. An award modified or corrected pursuant to this section is subject to subsection 1 of section 32-29.3-19 and sections 32-29.3-22, 32-29.3- 23, and 32-29.3-24.

§ 32-29.3-21. Remedies--Fees and expenses of arbitration proceedings

1. An arbitrator may award punitive damages or other exemplary relief if such an award is authorized by law in a civil action involving the same claim and the evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim.
2. An arbitrator may award reasonable attorney's fees and other reasonable expenses of arbitration if such an award is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding.
3. As to all remedies other than those authorized by subsections 1 and 2, an arbitrator may order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that such a remedy could not or would not be granted by the court is not a ground for refusing to confirm an award under section 32-29.3-22 or for vacating an award under section 32-29.3-23.
4. An arbitrator's expenses and fees, together with other expenses, must be paid as provided in the award.
5. If an arbitrator awards punitive damages or other exemplary relief under subsection 1, the arbitrator shall specify in the award the basis in fact justifying and the basis in law authorizing the award and state separately the amount of the punitive damages or other exemplary relief.

§ 32-29.3-22. Confirmation of award

After a party to an arbitration proceeding receives notice of an award, the party may make a motion to the court for an order confirming the award at which time the court shall issue a confirming order

unless the award is modified or corrected pursuant to section 32-29.3-20 or 32-29.3-24 or is vacated pursuant to section 32-29.3-23.

§ 32-29.3-23. Vacating award

1. Upon motion to the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if:

a. The award was procured by corruption, fraud, or other undue means;

b. There was:

(1) Evident partiality by an arbitrator appointed as a neutral arbitrator;

(2) Corruption by an arbitrator; or

(3) Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

c. An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to section 32-29.3-15, so as to prejudice substantially the rights of a party to the arbitration proceeding;

d. An arbitrator exceeded the arbitrator's powers;

e. There was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under subsection 3 of section 32-29.3-15 not later than the beginning of the arbitration hearing; or

f. The arbitration was conducted without proper notice of the initiation of an arbitration as required in section 32-29.3-09 so as to prejudice substantially the rights of a party to the arbitration proceeding.

2. A motion under this section must be filed within ninety days after the movant receives notice of the award pursuant to section 32-29.3-19 or within ninety days after the movant receives notice of a modified or corrected award pursuant to section 32-29.3-20, unless the movant alleges that the award was procured by corruption, fraud, or other undue means, in which case the motion must be made within ninety days after the ground is known or by the exercise of reasonable care would have been known by the movant.

3. If the court vacates an award on a ground other than that set forth in subdivision e of subsection 1, it may order a rehearing. If the award is vacated on a ground stated in subdivision a or b of subsection 1, the rehearing must be before a new arbitrator. If the award is vacated on a ground stated in subdivision c, d, or f of subsection 1, the rehearing may be before the arbitrator who made the award or the arbitrator's successor. The arbitrator must render the decision in the rehearing within the same time as that provided in subsection 2 of section 32-29.3-19 for an award.

4. If the court denies a motion to vacate an award, the court shall confirm the award unless a motion to modify or correct the award is pending.

§ 32-29.3-24. Modification or correction of award

1. Upon motion made within ninety days after the movant receives notice of the award pursuant to section 32-29.3-19 or within ninety days after the movant receives notice of a modified or corrected award pursuant to section 32-29.3-20, the court shall modify or correct the award if:

a. There was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;

b. The arbitrator has made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted; or

- c. The award is imperfect in a matter of form not affecting the merits of the decision on the claim submitted.
2. If a motion made under subsection 1 is granted, the court shall modify or correct and confirm the award as modified or corrected. Otherwise, unless a motion to vacate is pending, the court shall confirm the award.
3. A motion to modify or correct an award pursuant to this section may be joined with a motion to vacate the award.

§ 32-29.3-25. Judgment on award--Attorney's fees and litigation expenses

1. Upon granting an order confirming, vacating without directing a rehearing, modifying, or correcting an award, the court shall enter a judgment in conformity therewith. The judgment may be recorded, docketed, and enforced as any other judgment in a civil action.
2. A court may allow reasonable costs of the motion and subsequent judicial proceedings.
3. On application of a prevailing party to a contested judicial proceeding under section 32-29.3-22, 32-29.3-23, or 32-29.3-24, the court may add reasonable attorney's fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made to a judgment confirming, vacating without directing a rehearing, modifying, or correcting an award.

§ 32-29.3-26. Jurisdiction

1. A court of this state having jurisdiction over the controversy and the parties may enforce an agreement to arbitrate.
2. An agreement to arbitrate providing for arbitration in this state confers exclusive jurisdiction on the court to enter judgment on an award under this chapter.

§ 32-29.3-27. Venue

A motion pursuant to section 32-29.3-05 must be made in the court of the county in which the agreement to arbitrate specifies the arbitration hearing is to be held or, if the hearing has been held, in the court of the county in which it was held. Otherwise, the motion may be made in the court of any county in which an adverse party resides or has a place of business or, if no adverse party has a residence or place of business in this state, in the court of any county in this state. All subsequent motions must be made in the court hearing the initial motion unless the court otherwise directs.

§ 32-29.3-28. Appeals

1. An appeal may be taken from:
 - a. An order denying a motion to compel arbitration;
 - b. An order granting a motion to stay arbitration;
 - c. An order confirming or denying confirmation of an award;
 - d. An order modifying or correcting an award;
 - e. An order vacating an award without directing a rehearing; or
 - f. A final judgment entered pursuant to this chapter.
2. An appeal under this section must be taken as from an order or a judgment in a civil action.
3. Agreements to arbitrate between and among insurers and self-insured entities which explicitly renounce a right of appeal are fully enforceable in this state. This chapter does not alter those agreements to create a right of appeal.

§ 32-29.3-29. Relationship to Electronic Signatures in Global and National Commerce Act

The provisions of sections 32-29.3-01 and 32-29.3-19 which relate to the legal effect, validity, and enforceability of electronic records or electronic signatures, and of contracts performed with the use of such records or signatures must be construed to conform to the requirements of section 102 of the Electronic Signatures in Global and National Commerce Act [Pub. L. 106- 229; 15 U.S.C. 7001, 7002].

Alternative Dispute Resolution Statutes for Agricultural Seed
Title 4, Chapter 4-09.

Current through the 2007 Regular Session

§ 4-09-20.2. Seed arbitration board--Petition--Arbitration hearing

1. The state seed arbitration board consists of the agriculture commissioner, the state seed commissioner, the director of the North Dakota state university extension service, the director of the North Dakota agricultural experiment station, the chairman of the North Dakota seed trade committee of the North Dakota agriculture association, and a representative of a major North Dakota farm organization appointed by the agriculture commissioner or an authorized designee. Each board member is entitled to receive as per diem compensation sixty-two dollars and fifty cents, and reimbursement of expenses as provided by law for state officers, while attending meetings or performing duties directed by the board, except that compensation under this subsection may not be paid to any member who receives compensation or salary as a regular state employee or official. Compensation and expenses for board members who do not receive compensation or salary as a regular state employee or official must be paid by the department of agriculture.
2. A seed labeler, seed dealer, or seed customer may petition the agriculture commissioner in writing for a hearing to settle a dispute involving a seed transaction. The agriculture commissioner shall submit the dispute to the seed arbitration board, and the board shall arbitrate the dispute. The board, within thirty days after the hearing, shall make a nonbinding recommendation for the resolution of the dispute. Evidence presented to the board and any findings or recommendations by the board are admissible as evidence in any subsequent proceeding. The board shall adopt rules and procedures for arbitration proceedings, including a formula for reimbursement by the parties of the expenses of the arbitration process.

§ 4-24-13. Genetically modified seed--Patent infringement--Sampling-- Mediation

1. For purposes of this section, farmer means the person responsible for planting a crop on, managing the crop, and harvesting the crop from land on which a patent infringement is alleged to have occurred.
2. a. Before a person holding a patent on a genetically modified seed may enter upon any land farmed by another for the purpose of obtaining crop samples to determine whether patent infringement has occurred, the person holding the patent:
 - (1) Shall notify the agriculture commissioner in writing of the person's belief that a patent infringement has occurred and include facts from the allegation;

- (2) Shall notify the farmer in writing of the allegation that a patent infringement has occurred and request written permission to enter upon the farmer's land; and
- (3) Must obtain the written permission of the farmer.
- b. If the farmer withholds written permission, the person holding a patent may petition the state district court for an order granting permission to enter upon the farmer's land.
3. The farmer may accompany the person holding the patent at the time any samples are taken.
4. If requested by the farmer or the person holding the patent, the state seed commissioner shall accompany the person holding the patent at the time any sample is taken. The state seed commissioner may impose a fee for providing that service. The patent holder and the farmer shall each pay one-half of the fee charged by the commissioner.
5. If the person holding a patent believes that the crop from which samples are to be taken may be subject to intentional damage or destruction, the person may seek a protection order from the state district court. The protection order may not interrupt or interfere with normal farming practices, including harvest and tillage.
6. The person holding the patent may take samples from a standing crop, from representative standing plants in the field, or from crops remaining in the field after harvest.
7. The person holding the patent may obtain no more samples than those reasonably necessary to make a determination regarding patent infringement. An equal number of samples must remain in the custody of the state seed commissioner or the farmer for future comparison and verification purposes. All samples taken must be placed in containers, labeled as to the date, time, and location from which they were taken, and the labels must be signed by the farmer, the person who took the samples, and the state seed commissioner if the commissioner was present at the time the samples were taken. The patent holder and the farmer shall share equally the cost of the containers needed for the second set of samples which are retained by the state seed commissioner or the farmer. The farmer and the person holding the patent shall share equally the cost of the containers and the cost of obtaining the samples.
8. Within sixty days from the date the samples are taken, an independent laboratory shall conduct all tests to determine whether patent infringement has occurred. The person holding the patent shall notify the farmer of the test results, by certified mail or by any other method of delivery for which a signature is required, within twenty-one days from the date the results were reported to the person holding the patent.
9. The parties may participate in mediation at any time. The mediation must be conducted by a mediator jointly selected by the farmer and the person holding the patent. If the farmer and the person holding the patent are unable to select a mediator, the mediation must be conducted by an independent agricultural mediation service.
10. If the case is not settled after mediation, either party may file a claim for relief with the federal district court having jurisdiction over the claim. Unless otherwise specified in a contract between the farmer and the person holding the patent, the appropriate state district court is the one that has jurisdiction over that portion of this state in which the farmer's land is located.

STATE SEED ARBITRATION BOARD
North Dakota Administrative Code Title 100.

Current through 2008

100-01-01-01. Organization of state seed arbitration board.

1. History and function. The state seed arbitration board was established by the legislative assembly in 1989 as a state seed mediation board. It was reestablished as a state seed arbitration board by the legislative assembly in 1991. Its function is to arbitrate disputes among seed labelers, seed dealers, and seed customers involving seed transactions.

2. Board membership. The board consists of six members as designated in North Dakota Century Code section 4-09-03.1. Any four members constitute a quorum for the transaction of business.

3. Officers - Duties. The board shall annually elect a chair from among its members. The chair shall conduct all meetings held by the board and direct all other activities of the board. The board shall keep accurate and correct records on all meetings, hearings, and deliberations. The meetings and hearings of the board shall be held at such times and places as the chair may determine.

4. Inquiries. General inquiries regarding the state seed arbitration board may be addressed to:

State Seed Arbitration Board
Attn: Agriculture Commissioner
600 East Boulevard Avenue, Dept. 602
Bismarck, ND 58505-0020
Telephone: (701) 328-2231 (800) 242-7535
Fax: (701) 328-4567

100-02-01-01.1. Definitions.

The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 4-09, except:

1. "Board" means the state seed arbitration board established under North Dakota Century Code section 4-09-03.1.

2. "Dispute involving a seed transaction" means an instance in which a seed customer suffers damage because seed does not produce or perform in conformance with the labeling or warranty or because of negligence by the seed dealer or seed labeler.

3. "Seed" has the same meaning as "agricultural seed" as defined in North Dakota Century Code chapter 4-09.

100-02-01-02. Petition procedure.

1. In the event of a dispute involving a seed transaction, a seed labeler, seed dealer, or seed customer may petition for seed arbitration by filing a written complaint with the agriculture commissioner. The complaint must be filed at the address listed in section 100-01-01-01. The petitioner shall, in addition to the written complaint, submit an initial fee of two hundred fifty dollars payable to the "state seed arbitration board". The petitioner shall serve a copy of the complaint upon each party to which the complaint is directed.

2. The filing of a petition for arbitration is not a prerequisite to a person's right to maintain a civil action.

3. If seed, which is the basis of the complaint, is labeled by a person other than a seed dealer who sells directly to the farmer or other purchaser of seed, the commissioner shall mail a copy of the complaint to the person responsible for labeling the seed in order for the person to have an opportunity to file an answer.

100-02-01-03. Content of complaint.

The complaint shall be legibly typed or printed and, if available to the complainant, must contain the following information or attachments:

1. Any factual information relevant to the dispute such as purchase dates, planting dates, field location, seeding rates, mechanical planting method, soil tests, fertilizer applications, pesticide usage, rates and timing, weather conditions, germination or yield tests or comparisons, and audiovisual records such as photographs or videotape;
2. Information alleging the extent of the seed's failure to perform or to conform to the legal requirements of, or representation made about, the seed;
3. A seed tag or label sample showing the information required for labeling requirements of seed under North Dakota Century Code chapter 4-09 or 4-10 and applicable rules. A sample shall be attached to the complaint for each separate identifiable lot of seed if relevant to the complaint;
4. The names and addresses of any persons with factual knowledge related to the complaint; and
5. Any damages sustained or to be sustained.

100-02-01-04. Answer.

Within twenty days after receiving a copy of the complaint, each party to which the complaint is directed may file with the commissioner an answer to the complaint and serve a copy of the answer on the complainant.

100-02-01-05. Arbitration hearing.

Upon receipt of the complaint and filing fee and after the time allowed for the filing and service of an answer, the commissioner shall submit a dispute involving a seed transaction to the chair of the board along with all documents received from the parties. The chair shall convene a hearing of the board for the purpose of gathering information from all parties to the dispute. The initial hearing must be held within sixty days after the date the commissioner received the complaint, unless a party to the dispute requests and receives, for good cause, an extension of time from the chair. The board may, following the initial hearing, hold additional hearings if necessary before submission of a final arbitration report.

100-02-01-06. Nonbinding recommendation.

The board shall issue a final report to the disputing parties within thirty days after the final hearing, unless otherwise determined by the board. The final report shall contain a nonbinding recommendation for the resolution of the dispute.

100-02-01-07. Procedural and evidentiary rules.

The North Dakota rules of evidence and North Dakota rules of civil procedure do not apply in seed arbitration hearings. The board shall mail to all parties to the dispute, at least thirty days before the hearing on the complaint, a copy of the arbitration hearing format and guidelines.

100-02-01-08. Witnesses - Fees.

The board may, at its discretion, call any witnesses. When so called, any fees, if charged, must be shared equally among the parties to the dispute. Each party is responsible for all costs associated with presenting its case. If the cost of arbitration to the board exceeds the initial fee, it shall determine the additional fees to be paid by any of the parties.

Assistance for Financially Distressed Farmers and Small Business Persons
Title 6, Chapter 6-09.10.

Current through the 2007 Regular Session

§ 6-09.10-01. Definitions

As used in this chapter, unless the context requires otherwise:

1. "Board" means the credit review board, or its authorized agent when applicable.
2. "Farmer" means a person who is or was involved in the production of an agricultural commodity or livestock.
3. "Fund" means the home-quarter purchase fund.
4. "Home-quarter" means a single contiguous tract of not more than one hundred sixty acres [64.75 hectares] which serves as the base unit of a farm and upon which the farm residence and buildings are located.
5. "Person" means an individual, corporation, limited liability company, partnership, or other legal entity.

§ 6-09.10-02. Credit review board

The board consists of six members. The governor, the attorney general, and the agriculture commissioner shall each appoint two members to the board. The governor and attorney general shall each appoint one member with experience as a director or officer of a financial institution and one member actively engaged in farming in the state. The agriculture commissioner shall appoint two members who are actively engaged in farming in the state. No member of the board may hold state office or serve in state office or serve in state government in any capacity at any time of appointment or during service on the board. The credit review board members shall serve terms of two years.

§ 6-09.10-02.1. Additional duties of board

In addition to other powers and duties enumerated in this chapter, the board shall:

1. Establish policy for the North Dakota agricultural mediation service.
2. Recommend policies and procedures to the industrial commission regarding farm loan programs of the Bank of North Dakota.

§ 6-09.10-03. North Dakota agricultural mediation service--Powers-- Compensation and expenses-- Fees

The board shall meet at the call of the chair, as is necessary to fulfill its duties under this chapter. The agriculture commissioner shall administer the agricultural mediation service. The commissioner shall establish an agricultural mediation service to disseminate information to farmers concerning farm credit problems and to provide assistance to seek to resolve farm credit problems. The commissioner shall appoint an administrator of the agricultural mediation service. The commissioner shall hire staff, negotiators, and mediators who may mediate disputes involving farmers or other persons eligible for mediation with an agency of the United States department of agriculture. The board may charge the farmer and others a reasonable fee for any assistance, provided the fees are used to continue the service. Fees charged to mediation participants are limited to twenty-five dollars per hour, each, for the time spent in mediation sessions. The board shall adopt policies governing the negotiators, staff, and mediators hired under this section. Board members are entitled to receive seventy-five dollars for each day of official service, as directed by the board. The board members are entitled to expenses as provided in sections 44-08-04 and 54-06-09. The expenses provided under this section may be paid from any funds available in the home-quarter purchase fund.

§ 6-09.10-04. Request for assistance--Negotiation--Mediation

Any farmer, creditor, person dealing with a farmer, or other person eligible for mediation with an agency of the United States department of agriculture may request assistance from the administrator. Upon receipt of the request, and upon consent of all parties to mediation, the negotiator or mediator shall encourage and assist the parties in reaching a voluntary settlement.

§ 6-09.10-04.1. Liability

The board, commissioner, administrator, staff, negotiators, and mediators are not subject to any liability arising from any actions undertaken regarding a farmer, creditor, or other person in attempting to reach a settlement.

§ 6-09.10-05. Interest rate buy downs by the board

1. If the board, or its authorized agent, is unable to mediate a settlement with regard to a farmer's debt, the board may approve the purchase, refinancing, or redemption of the farmer's home-quarter. If the board approves the purchase, refinancing, or redemption of the home-quarter, it shall subsidize the interest rate paid by the farmer after credit has been obtained by the farmer from any governmental or private financial institution or agency.
2. The board may only approve an interest subsidy if the farmer has the financial ability to meet all payments and financial responsibilities, including the payment of principal and interest on loans subsidized under this chapter.

3. The board may defer or waive payment, restructure payment, or enter into other reasonable loan servicing options with a farmer who has received an interest subsidy, upon proof of financial hardship, or if the farmer, after deferral, restructure, or other loan servicing options, has the ability to make all the payments and meet all the financial responsibilities with regard to the change in payments.

§ 6-09.10-06. Fund--Appropriation

1. A revolving fund must be maintained at the Bank of North Dakota for the subsidy of interest rates on home-quarter purchases and coordination and operation of a farm management delivery system as provided in this chapter. All moneys transferred into the fund, interest upon moneys in the fund, and payments to the fund are hereby appropriated for the purposes of this chapter. Any moneys generated by the farm management delivery system must be transferred to the state board for career and technical education and allocated by the state board for career and technical education to the adult farm management program, the agricultural mediation services, and North Dakota state university for expenses related to the jointly developed and implemented farm management delivery system.

2. The board may petition the emergency commission for a transfer from the state contingency fund whenever it appears to the board that the moneys remaining in the fund are not sufficient to meet demands on the fund. The emergency commission may grant the transfer request, or so much thereof as may be necessary, if it finds that an emergency situation exists in the industry of farming, due to increasing numbers of farm foreclosures.

3. The board and the Bank of North Dakota shall enter into an agreement through which the Bank shall supervise and monitor the payment and repayment of interest subsidies approved by the board.

§ 6-09.10-07. Interest rates--Repayment--Loan qualification

An interest subsidy may only be approved on the first fifty thousand dollars of principal loaned to the farmer for the purchase or refinancing of the home-quarter. For the first year after approval of any loan, the board shall subsidize ten percentage points per annum of the interest payments due from the farmer, not to exceed the amount of interest actually charged on the first fifty thousand dollars of principal. For the second and third years of the loan, the board shall subsidize six percentage points per annum of the interest payments due from the farmer, not to exceed the amount of interest actually charged on the first fifty thousand dollars of principal. The amount of any interest payments subsidized by the board must be added to the principal amount of the loan, and the lender shall repay this amount into the fund as it is repaid by the borrower. Loans approved by the board must be amortized and may have terms of up to forty years.

§ 6-09.10-08. Home-quarter--Appraised value

The board shall determine the appraised value of home-quarters for the purposes of this chapter. In determining appraised value, the board shall receive testimony, from either party, on the value of the home-quarter as a single tract of land.

§ 6-09.10-09. Rulemaking authority

The board may adopt rules under chapter 28-32 as are necessary to implement this chapter.

§ 6-09.10-10. Mediation--Open records and meetings exception

Information created, collected, and maintained by the agricultural mediation service in the course of any formal or informal mediation is confidential and is not subject to the open records requirements of section 44-04-18. Such information may be released only upon written consent of all parties to the mediation or pursuant to an order issued by the court upon a showing of good cause. All mediation meetings and meetings involving the board, staff, negotiators, or mediators wherein the finances of specific farmers, creditors, and others are discussed, are confidential, closed meetings and are not subject to the open meetings requirements of section 44-04-19.

§ 6-09.10-11. Agriculture commissioner--Authorization

The agriculture commissioner is authorized to receive and expend any federal, private, or other funds that become available for the purpose of defraying the expenses of the agricultural mediation service.

MEDIATION AND CREDIT ASSISTANCE
North Dakota Administrative Code Title 18.5.

Current through 2008

18.5-02-01-00.1. Definitions.

In title 18.5, unless the context or subject matter otherwise requires:

1. "Administrator" means the administrator of the agricultural mediation service, appointed by the commissioner to administer the service.
2. "Commissioner" means the commissioner of the state department of agriculture.
3. "Formal mediation" means the process of formal meetings between a farmer and another person, initiated by request of either the farmer or another person. Formal mediation meetings must be held with the objective of obtaining a voluntary settlement of the farmer's problems and providing for the future conduct of financial relations between the parties. Settlement must be satisfactory to all parties and must have a goal of permitting the farmer to reside in the farm residence and to continue to produce agricultural commodities. Formal mediation must always result in issuance of a mediation report. A negotiator may be assigned to assist a farmer in formal mediation.
4. "Informal mediation" means the process of assisting a farmer to obtain settlement. The administrator shall assign a negotiator to assist an eligible farmer in informal mediation. The negotiator will provide negotiation assistance and information to the farmer regarding problems.
5. "Initiating creditor" means a creditor that has notified the farmer of the availability of mediation.
6. "Mediator" means a person hired by or contracting with the commissioner to do formal mediation work as directed by the administrator.
7. "Negotiator" means a person hired by or contracting with the commissioner to do the negotiating work of informal and formal mediation as directed by the administrator.

8. "Party" means the following:

a. For the purposes of chapters 18.5-02-03 and 18.5-02-03.1, any person notified of or attending a formal mediation meeting. For noncredit mediations, only participants who requested, initiated, or offered mediation will be charged mediation fees. Participants attending mediation for the purpose of providing technical support will not be charged.

b. For the purposes of chapter 18.5-02-02, any person as determined by the administrator based upon a review of the file and interviews with the negotiator and farmer, if necessary. Parties include persons who provided to, or discussed with, the negotiator information ordinarily deemed confidential, such as financial, mental health, and similar personal information.

9. "Person" means a person as defined in subsection 5 of North Dakota Century Code section 6-09.10-01.

10. "Requesting creditor" means a creditor that has requested mediation.

11. "Service" means the agricultural mediation service established by the commissioner to disseminate information to farmers concerning farm problems, to assist in resolving problems, to provide negotiators to negotiate on behalf of the farmer, and to provide mediators to mediate between a farmer and any other person.

12. "Staff" means a person or those persons hired by the commissioner, who are not mediators or negotiators, but who work directly under the supervision of the administrator to assist in administering the service or to assist the credit review board in its responsibilities and duties.

18.5-02-01-01. Eligibility for interest subsidy.

1. Applicants for assistance in the form of an interest subsidy provided by the board pursuant to North Dakota Century Code sections 6-09.10-05, 6-09.10-07, and 6-09.10-08 shall submit or have a negotiator submit on their behalf:

a. A signed written petition requiring assistance;

b. A completed application form;

c. Financial statements as required by the board; and

d. Any other information required by the board to determine eligibility or necessary to provide an interest subsidy.

2. An applicant for an interest subsidy provided by the board must be a farmer as defined in subsection 2 of North Dakota Century Code section 6-09.10-01 and otherwise meet the requirements of North Dakota Century Code chapter 6-09.10 and rules adopted pursuant to it.

3. Any person whose right of redemption has expired by the filing of a sheriff's deed prior to

submitting an application form or petition is ineligible for assistance in the form of an interest subsidy provided under the provisions of North Dakota Century Code chapter 6-09.10.

18.5-02-01-02. Application process for interest subsidy.

The credit review board will process applications for an interest subsidy as follows:

1. The board will, within thirty days of receipt of a completed application, advise the applicant, in writing, as to eligibility or ineligibility, including a statement as to the reasons for ineligibility.
2. If the information submitted by the applicant is inadequate for further processing, the board shall, as necessary, advise the applicant that the service can assist the applicant in preparation of the application.
3. Any applicant aggrieved by a denial of an interest subsidy by the board may appear in person before the board to present facts or arguments as to why assistance should be provided.

18.5-02-01-04. Interest subsidies.

The following factors and criteria shall be considered by the credit review board in making a determination as to whether interest subsidies shall be provided pursuant to the provisions of North Dakota Century Code chapter 6- 09.10:

1. Financial ability to make all payments and meet all financial responsibilities with regard to the proposed loan.
2. The commercial reasonability of the lender's actual rate of interest on the proposed loan.
3. The applicant's desire to stay in the area where the land, which is the subject of the loan, is located, due to community ties, family, and other related reasons.
4. The terms and conditions of the loan, including the amortization schedule and terms of repayment.
5. The lack of other available assets, financing, or resources for financing a home in the area or for refinancing, repurchase, or redemption of the home-quarter.
6. The relationship of the amount of the principal of the loan to the appraised value of the home-quarter as determined by the board.
7. Whether the farmer has an interest in returning to farming and continuing to produce agricultural commodities.
8. The security for the loan and the security for the interest subsidy.

The principal upon which an interest subsidy is approved by the board may not exceed the appraised value of the home-quarter as determined by the board. No interest may be paid by the farmer on any interest rates subsidized by the board for loans made pursuant to the provisions of North Dakota

Century Code chapter 6-09.10.

18.5-02-01-06. Written policies.

The board shall adopt written policies governing the results sought to be achieved by the board for mediators, negotiators, and staff of the agricultural mediation service in carrying out the provisions of North Dakota Century Code chapter 6-09.10, and this chapter. The agricultural mediation service administrator shall implement the written policies of the board to achieve the results desired by the board as set forth in its written policies.

18.5-02-01-07. Recommendations.

1. The board will meet at least quarterly with representatives of the Bank of North Dakota regarding the Bank's farm loan programs to review policies and procedures of the Bank. Annually, or more frequently if needed, the board will develop and present recommendations to the industrial commission regarding the farm loan programs of the Bank of North Dakota.
2. The board will meet at least quarterly with representatives of the state board of vocational education to review policies and procedures of the board. Annually, or more frequently if needed, the credit review board will develop and present recommendations to the state board of vocational education regarding the adult farm management program.

INFORMAL MEDIATION

18.5-02-02-01. Eligibility for informal mediation.

The board may require that an applicant for the assistance of a negotiator in informal mediation make written application on such a form as may be required by the board. To be eligible for assistance in informal mediation pursuant to North Dakota Century Code chapter 6-09.10, a farmer must be a farmer as defined in subsection 2 of North Dakota Century Code section 6-09.10-01.

18.5-02-02-02. Informal mediation proceedings.

1. Upon receipt of the application or request and a determination that the person is eligible for assistance, the administrator shall assign a negotiator to assist in the informal mediation of a settlement between the farmer and another person that accomplishes the objectives of the informal mediation process.
2. The objectives of the informal mediation process are to assist the farmer in obtaining a settlement that will permit the farmer to reside in the farm residence and to continue to produce agricultural commodities, as well as to provide negotiation assistance and information regarding farm problems. If the negotiator is unable to effect a settlement of the farmer's debt or other resolution of the farmer's problems, the negotiator may, upon written application by the farmer to the board, work with the lender and the farmer to negotiate a purchase, repurchase, refinancing, or redemption of the farmer's home-quarter.
3. The negotiator is an authorized agent of the service and the board who shall report to and be

responsible to the administrator in the informal mediation process. At the conclusion of the informal mediation, the negotiator shall report to the administrator the outcome of the negotiations and any settlement that may have been accomplished.

4. Because each farmer's situation is fact specific, the negotiator shall have broad discretion to work out a financial settlement as appropriate and as approved by the farmer.

18.5-02-02-03. Duties of a negotiator.

During the informal mediation process, the negotiator shall:

1. Assist the farmer in compiling information about the farm operation and its financing and organizing that information into a useful format.
2. Assist the farmer in mediating a settlement so as to achieve the objectives of the informal mediation process.
3. Advise the farmer of the various alternatives that may be open to the farmer in negotiating a settlement or other resolution.
4. Where legal or tax issues are involved, advise the farmer of the necessity of seeking competent legal and tax advice from qualified professionals before entering into any binding agreement regarding the settlement or other resolution of the farmer's problems. The negotiator should make it clear to the farmer that the negotiator is not qualified to give legal or tax advice and cannot be held responsible for decisions regarding legal or tax issues, defenses, or counterclaims.

18.5-02-03-00.1. Eligibility for formal mediation for secured debts.

1. To be eligible for assistance pursuant to North Dakota Century Code chapter 6-09.10, a farmer must be a farmer as defined in subsection 2 of North Dakota Century Code section 6-09.10-01.
2. To be eligible for formal mediation, the farmer must have a loan secured by agricultural property in default.
3. Any creditor of a farmer who is eligible for assistance pursuant to North Dakota Century Code chapter 6-09.10 and this section is eligible to request formal mediation.

18.5-02-03-01. Request for formal mediation.

1. A farmer or a farmer's creditor may request formal mediation by filing a request for formal mediation with the administrator. The request for formal mediation must be in writing and on forms provided by the administrator. The request for formal mediation must be deemed filed on the date it is received by the administrator. A farmer or the farmer's creditor may request formal mediation proceedings even though the farmer has previously participated in informal mediation proceedings. The request for formal mediation may be filed by mailing it by first-class mail, or by delivering to:

Administrator

Agricultural Mediation Service
Department of Agriculture
State Capitol
600 East Boulevard Avenue
Bismarck, North Dakota 58505

2. Institutions of the farm credit system may notify a farmer in default of a loan obligation of the availability of and the right to request formal mediation, if the farmer's loan is secured by agricultural property. Institutions of the farm credit system may enter into agreements with the service that require the institutions to give farmers specific notice under certain circumstances. The failure of a farmer to respond within fourteen days to a receipt of notice of the availability of and the right to request mediation shall be deemed as a waiver of mediation rights. For the purposes of this chapter, "institutions of the farm credit system" means those institutions under the supervision of the farm credit administration required to participate in state agricultural loan and mediation programs pursuant to 7 U.S.C. 5101 et seq., Pub. L. 100-233, title V, January 6, 1988, 101 Stat. 1663.

3. Requests for formal mediation proceedings by the United States department of agriculture through its agencies such as the farmers home administration (FmHA), the commodity credit corporation (CCC) and other agencies or programs under the jurisdiction of the United States secretary of agriculture, must be made through the administrator. The failure of a farmer to respond within fourteen days to notification by the administrator of a request for mediation by the United States department of agriculture, or one of its agencies, must be deemed as a waiver of mediation rights.

FORMAL MEDIATION

18.5-02-03-02. Formal mediation proceedings.

1. Upon receipt of a request for formal mediation, the administrator shall assign a mediator to conduct formal mediation proceedings. If a farmer requests assistance, the administrator shall assign a negotiator to assist the farmer in preparing for formal mediation and to negotiate on behalf of the farmer during mediation.

2. When a creditor requests formal mediation, the administrator shall notify the farmer of the request, by first-class mail, and obtain the farmer's signed statement consenting to formal mediation and a list of all of the creditors of the farmer.

a. If the farmer refuses to consent to formal mediation, the administrator shall dismiss the formal mediation and give notice of the dismissal to the creditor requesting mediation. After dismissal of the formal mediation, the creditors may proceed to enforce any debts owed by the farmer. After a farmer has refused to consent to a request for formal mediation by a creditor, the farmer may not thereafter request formal mediation, with regard to that creditor, within six months following such refusal.

b. If the farmer consents to formal mediation, the farmer shall provide to the administrator a list of all of the creditors of the farmer. Upon consent of the farmer to formal mediation, the administrator shall send a meeting notice to the farmer and all known creditors of the farmer. The notice must set forth the time and place for an initial mediation meeting among the farmer, the creditors of the farmer, and the mediator. The initial mediation meeting must be held within forty-five days after the filing of the

request for mediation, unless the farmer or a creditor requests and receives, for good cause, an extension from the administrator.

3. When a farmer requests formal mediation, the farmer shall provide a list of all the creditors of the farmer to the administrator. The administrator shall send a meeting notice to the farmer and all known creditors of the farmer. The notice must set forth the time and place for an initial mediation meeting among the farmer, the creditors of the farmer, and the mediator. The initial meeting must be held within forty-five days after the filing of the request for mediation unless the farmer or a creditor requests and receives, for good cause, an extension from the administrator. The administrator may dismiss the mediation if the farmer fails to furnish a list of creditors within fifteen days of the request for formal mediation.

4. The mediator may call additional meetings among the farmer and all creditors or between the farmer and individual creditors, as the mediator deems appropriate, following the initial mediation meeting and before the filing of the final mediation report.

5. Any creditor required to participate in mediation pursuant to the Agricultural Credit Act of 1987 [Pub. L. 100-233; 101 Stat. 1664; 7 U.S.C. 5101 et seq.] and providing notice to the farmer shall include in the notice, at a minimum, notice of the availability of and the right to participate in formal mediation, a general description of how the mediation process works, and a request for formal mediation form. The notice must be sent to the farmer's last known address by first-class mail. A copy of the notice must be sent to the administrator.

6. Any creditor, other than a creditor required to participate in mediation pursuant to the Agricultural Credit Act of 1987 (see subsection 5) must be released from participation in mediation at any time, upon the creditor's written request. Written requests for release from participation in mediation must be addressed to the administrator.

18.5-02-03-03. Mediation report.

Within seventy-five days after the filing of the request for formal mediation, the mediator shall prepare and file with the administrator a mediation report summarizing the outcome of the formal mediation. If additional mediation meetings are held either before or after the seventy-five-day period following the filing of the request for formal mediation, so that the mediator is unable to prepare and file the mediation report within the seventy-five-day period, the mediator shall prepare and file the mediation report within ten days of the conclusion of those additional mediation meetings.

The administrator shall send a copy of the mediation report to the farmer and the participating creditors. If mediation results in an impasse between the farmer and the farmer's creditors, the mediation report must contain a discharge from formal mediation and the creditors may proceed to enforce any debts owed by the farmer. Once the mediation report is filed with the administrator the formal mediation meetings are closed, unless a declaration of not participating in good faith is issued by the mediator, in which case mediation proceedings may be reopened pursuant to section 18.5-02-03-06. If mediation proceedings are reopened, the mediator may file an amended mediation report, if necessary. Otherwise, formal mediation by the same participants may only begin again pursuant to a new request for mediation.

18.5-02-03-04. Duties of the mediator.

During the mediation process, the mediator shall:

1. Listen to the farmer and the creditors desiring to be heard.
2. Attempt to mediate between the farmer and the creditors.
3. Advise the farmer and the creditors as to the existence of available assistance programs.
4. Encourage the parties to adjust, refinance, or provide for payment of the debts.
5. Advise, counsel, and assist the farmer and the creditors in attempting to arrive at an agreement for the future conduct of financial relations among them.
6. State, at the beginning of the mediation process, that the mediator's role is that of a facilitator and not a negotiator for either party.

18.5-02-03-05. Confidentiality of mediation proceedings.

As a condition for participation in mediation and except as otherwise provided in this section, all parties shall agree to keep confidential (1) the financial information and records of the debtor and the creditors presented in the mediation proceedings and (2) the substance of all discussions conducted during the course of mediation. The parties may disclose confidential information only as permitted by North Dakota Century Code section 6-09.10-10.

18.5-02-03-06. Good faith participation.

All participants in mediation shall participate and act in good faith. Because mediation is an attempt to reach a voluntary settlement, the fact that the parties cannot reach agreement to resolve the farmer's farm credit problems is not, standing alone, evidence of bad faith. Any party to formal mediation may request a declaration from the mediator that another party is not participating in good faith. A mediator shall issue a declaration, including the reasons for the declaration, when the mediator determines that the party against whom the declaration is sought:

1. Has failed to attend any meeting called by the mediator without good cause;
2. Has, after January 13, 1989, and before completion of formal mediation proceedings, taken steps to initiate legal action against a participating party or to enforce the obligation of a party, including the sending of any notices required to be sent as a necessary prerequisite for commencing legal action, foreclosure, or repossession;
3. Has failed to produce, at the request of the mediator, within a reasonable time after requested, any relevant information within the party's possession;
4. Has failed to respond within ten business days to any proposal made by the farmer or any creditor;

or

5. Has engaged in other behavior that evidences an intention not to honestly and sincerely participate in the effort to resolve the farmer's credit problems.

No declaration from a mediator that a party is not participating in good faith may be based upon any actions of the party prior to January 13, 1989. If a mediator determines that a party is not participating in good faith, an affidavit to that effect may be filed by the mediator with the administrator indicating the reasons for the determination. If the mediator finds that any party is not participating in good faith, the mediator may terminate the mediation proceedings and issue the mediation report or continue or reopen the mediation proceedings for up to an additional sixty days to attempt to find an acceptable solution to the farmer's credit problems.

18.5-02-04-01. Eligibility for formal mediation.

1. Parties not eligible for formal mediation for secured debts under chapter 18.5-02-03 may request formal mediation under this chapter.
2. To be eligible for assistance pursuant to North Dakota Century Code chapter 6-09.10, a farmer must be a farmer as defined in subsection 2 of North Dakota Century Code section 6-09.10-01.
3. Any creditor required to participate in mediation pursuant to 7 U.S.C. 5101 et seq., Pub. L. 100-233, title V, January 6, 1988, 101 Stat. 1663, may not be required to participate in mediation under this chapter.

18.5-02-04-02. Request for formal mediation.

A farmer or other person may request formal mediation by filing a request for formal mediation with the administrator. The request for formal mediation must be in writing and on forms provided by the administrator. The request for formal mediation must be deemed filed on the date it is received by the administrator. A farmer or other person may request formal mediation proceedings even though the farmer has previously participated in informal mediation proceedings or has previously participated in secured debt formal mediation. The request for formal mediation may be filed by mailing it by first class, or by delivering to:

Administrator
Agricultural Mediation Service
Department of Agriculture
State Capitol
600 East Boulevard Avenue
Bismarck, North Dakota 58505

18.5-02-04-03. Formal mediation proceedings.

1. Upon receipt of a request for formal mediation, the administrator may assign a mediator to conduct formal mediation proceedings. If a farmer requests assistance, the administrator may assign a negotiator to assist the farmer in preparing for formal mediation and to negotiate on behalf of the

farmer during the mediation.

2. When any other person requests formal mediation, the administrator shall notify the farmer of the request, by first-class mail, and obtain the farmer's signed statement consenting to formal mediation and a list of other potential parties to the mediation.

a. If the farmer refuses to consent to formal mediation, the administrator shall dismiss the formal mediation and give notice of the dismissal to the other party requesting mediation. After dismissal of the formal mediation, the other person may proceed to enforce any claims against the farmer.

b. If the farmer consents to formal mediation, the farmer shall provide to the administrator a list of all potential parties to the mediation. Upon consent of the farmer to formal mediation, the administrator shall send a meeting notice to the farmer and all other persons. The notice must set forth the time and place for an initial mediation meeting among the farmer and other persons. The initial mediation meeting must be held within forty-five days after the filing of the request for mediation, unless the farmer or other person requests and receives, for good cause, an extension from the administrator.

3. When a farmer requests formal mediation, the farmer shall provide a list of all potential parties to the mediation to the administrator. The administrator shall send a meeting notice to the farmer and all other potential parties. The notice must set forth the time and place for an initial mediation meeting among the farmer, other persons, and the mediator. The initial meeting must be held within forty-five days after the filing of the request for mediation unless the farmer or other person requests and receives, for good cause, an extension from the administrator. The administrator may dismiss the mediation if the farmer fails to furnish a list of potential parties within fifteen days of the request for formal mediation.

4. The mediator may call additional meetings among the farmer and other persons or between the farmer and any party to the mediation, as the mediator deems appropriate, following the initial mediation meeting and before the filing of the final mediation report.

18.5-02-04-04. Mediation report.

Within seventy-five days after the filing of the request for formal mediation, the mediator shall prepare and file with the administrator a mediation report summarizing the outcome of the formal mediation. If additional mediation meetings are held either before or after the seventy-five-day period following the filing of the request for formal mediation, so that the mediator is unable to prepare and file the mediation report within the seventy-five-day period, the mediator shall prepare and file the mediation report within ten days of the conclusion of those additional mediation meetings. The administrator shall send a copy of the mediation report to the farmer and other participating parties. If mediation results in an impasse between the farmer and other persons, the mediation report must contain a discharge from formal mediation and the parties may proceed to enforce any claims against each other. Once the mediation report is filed with the administrator the formal mediation meetings are closed, unless a declaration of not participating in good faith is issued by the mediator, in which case mediation proceedings may be reopened pursuant to section 18.5-02-04-07. If mediation proceedings are reopened, the mediator may file an amended mediation report, if necessary. Otherwise, formal mediation by the same participants may only begin again pursuant to a new request for mediation.

18.5-02-04-05. Duties of the mediator.

During the mediation process, the mediator shall:

1. Listen to the farmer and other persons desiring to be heard.
2. Attempt to mediate between the farmer and the other persons.
3. Advise the farmer and other persons as to the existence of available assistance programs.
4. Determine what other parties should be involved in the mediation.
5. Advise, counsel, and assist the farmer and other persons in attempting to arrive at an agreement for the future conduct of relations among them.
6. State, at the beginning of the mediation process, that the mediator's role is that of a facilitator and not a negotiator for either party.

18.5-02-04-06. Confidentiality of mediation proceedings.

As a condition for participation in mediation and except as otherwise provided in this section, all parties shall agree to keep confidential the substance of all discussions conducted during the course of mediation. The parties may disclose confidential information only as permitted by North Dakota Century Code section 6-09.10-10.

18.5-02-04-07. Good faith participation.

All participants in mediation shall participate and act in good faith. Because mediation is an attempt to reach a voluntary settlement, the fact that the parties cannot reach an agreement to resolve the farmer's problems is not, standing alone, evidence of bad faith. Any party to formal mediation may request a declaration from the mediator that another party is not participating in good faith. A mediator shall issue a declaration, including the reasons for the declaration, when the mediator determines that the party against whom the declaration is sought:

1. Has failed to attend any meeting called by the mediator without good cause;
2. Has taken steps to initiate legal action against a participating party or to enforce the obligation of a party during the formal mediation proceedings;
3. Has failed to produce, at the request of the mediator, within a reasonable time after requested, any relevant information within the party's possession;
4. Has failed to respond within ten business days to any proposal; or
5. Has engaged in other behavior that evidences an intention not to honestly and sincerely participate in the effort to resolve the farmer's problems.

If a mediator determines that a party is not participating in good faith, an affidavit to that effect may be filed by the mediator with the administrator indicating the reasons for the determination. If the mediator finds that any party is not participating in good faith, the mediator may terminate the mediation proceedings and issue the mediation report or continue or reopen the mediation proceeding for up to an additional sixty days to attempt to find an acceptable solution to the farmer's problems.