
University of Arkansas

An Agricultural Law Research Project

# States' Alternative Dispute Resolution Statutes

## State of Minnesota

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States' Alternative Dispute Resolution Statutes

# STATE OF MINNESOTA

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## Chapter 484. District Courts

*Current with the laws of the 2008 Regular Session*

484.73. Judicial arbitration

Subdivision 1. Authorization. A majority of the judges of a judicial district may authorize the establishment of a system of mandatory, nonbinding arbitration within the district to assist the court in disposing of any controversy existing between two parties which is the subject of a civil action.

Subd. 2. Exclusions. Judicial arbitration may not be used to dispose of matters relating to guardianship, conservatorship, or civil commitment, matters within the juvenile court jurisdiction involving children in need of protection or services or delinquency, matters involving termination of parental rights under

sections 260C.301 to 260C.328, or matters arising under sections 518B.01, 626.557, or 144.651 to 144.652.

Subd. 3. Rules. Rules governing pleadings, practice, procedure, jurisdiction, and forms for judicial arbitration shall be promulgated by a majority of the judges in the district, subject to the approval of the Supreme Court. The Uniform Arbitration Act shall not be construed to apply to arbitration under this section except as otherwise provided in the rules of the judicial district.

Subd. 4. Fee on request for trial after arbitration. Upon making a request for trial, the moving party shall, unless permitted to proceed in forma pauperis, pay to the court administrator a fee of $100.

484.74. Alternative dispute resolution

Subdivision 1. Authorization. In litigation involving an amount in excess of $7,500 in controversy, the presiding judge may, by order, direct the parties to enter nonbinding alternative dispute resolution. Alternatives may include private trials, neutral expert fact-finding, mediation, minitrials, and other forms of alternative dispute resolution. The guidelines for the various alternatives must be established by the presiding judge and must emphasize early and inexpensive exchange of information and case evaluation in order to facilitate settlement.

Subd. 2. Neutral; appointment; removal. The judge shall appoint an impartial third-party neutral to conduct all proceedings held under subdivision 1. A party may file with the judge within five days of the notice of appointment of a neutral and serve on all other parties to the action a notice to remove the neutral. Upon receipt of the notice to remove, the judge shall assign another neutral. After a party has once disqualified a neutral as a matter of right, a substitute neutral may be disqualified by the party only by making an affirmative showing of prejudice to the judge.

Subd. 2a. Consensual special magistrates. In addition to the alternatives under subdivision 1, in cases where the amount in controversy exceeds $50,000, and with the consent of all of the parties, the presiding judge may submit to the parties a list of retired judges or qualified attorneys who are available to serve as special magistrates for binding proceedings under this subdivision. If the parties agree on selection of a person from the list, the presiding judge may appoint, by order, the person as a special magistrate. The special magistrate may preside over any pretrial and trial matters as determined by the presiding judge. If there is a right to a jury trial, the special magistrate shall conduct the jury trial pursuant to the rules of court and shall use the jury pool of the county in which the action is venued. The presiding judge may adopt the rulings and findings of the special magistrate and the results of any jury trial without modification. The parties have a right to appeal from the presiding judge's rulings and findings and from the jury verdict as in other civil matters.

Subject to chapter 563, the special magistrate's fees and expenses must be borne by the parties on a basis determined to be fair and equitable by the presiding judge, upon recommendation by the special magistrate. The special magistrate may assess costs against a party for failure to comply with rules or orders, or for litigation that is frivolous or brought in bad faith.

Subd. 3. Fees. Subject to chapter 563, the neutral's fees and expenses must be borne by the parties on a basis determined to be fair and equitable by the presiding judge.

Subd. 4. Application. This section applies only to the Second and Fourth Judicial Districts, which will

serve as pilot projects to evaluate the effectiveness of alternative forms of resolving commercial and personal injury disputes.

484.76. Alternative dispute resolution program

Subdivision 1. General. The Supreme Court shall establish a statewide alternative dispute resolution program for the resolution of civil cases filed with the courts. The Supreme Court shall adopt rules governing practice, procedure, and jurisdiction for alternative dispute resolution programs established under this section. Except for matters involving family law the rules shall require the use of nonbinding alternative dispute resolution processes in all civil cases, except for good cause shown by the presiding judge, and must provide an equitable means for the payment of fees and expenses for the use of alternative dispute resolution processes.

Subd. 2. Scope. Alternative dispute resolution methods provided for under the rules must include arbitration, private trials, neutral expert fact-finding, mediation, minitrials, consensual special magistrates including retired judges and qualified attorneys to serve as special magistrates for binding proceedings with a right of appeal, and any other methods developed by the Supreme Court. The methods provided must be nonbinding unless otherwise agreed to in a valid agreement between the parties. Alternative dispute resolution may not be required in guardianship, conservatorship, or civil commitment matters; proceedings in the juvenile court under chapter 260; or in matters arising under section 144.651, 144.652, 518B.01, or 626.557.

## Uniform Arbitration Act

Chapter 572.

*Current with the laws of the 2008 Regular Session*

572.08. Validity of arbitration agreements, application to specific agreements

A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable, and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract. The provisions of sections 572.08 to 572.30 shall apply to controversies arising out of any contract for the construction or repair of state trunk highways when such contract specifically provides for arbitration or when the parties agree to submit an existing controversy to arbitration. Sections 572.08 to 572.30 also apply to arbitration agreements between employers and employees or between their respective representatives unless otherwise provided in the agreement.

572.09. Procedure to compel or stay arbitration

(a) On application of a party showing an agreement described in section 572.08, and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue so raised and shall order arbitration if found for the moving party, otherwise, the application shall be denied.

(b) On application, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. Such an issue, when in substantial and bona fide dispute, shall be forthwith and summarily tried and the stay ordered if found for the moving party. If found for the opposing party, the court shall order the parties to proceed to arbitration.

(c) If an issue referable to arbitration under the alleged agreement is in an action or proceeding pending in a court having jurisdiction to hear applications under clause (a), the application shall be made therein. Otherwise and subject to section 572.25, the application may be made in any court of competent jurisdiction.

(d) Any action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application therefor has been made under this section or, if the issue is severable, the stay may be with respect thereto only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.

(e) An order for arbitration shall not be refused on the ground that the claim in issue lacks merit or bona fides or because any fault or grounds for the claim sought to be arbitrated have not been shown.

572.10. Appointment of arbitrators; disclosure required

Subdivision 1. Appointment by the court. If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. In the absence thereof, or if the agreed method fails or for any reason cannot be followed, or when an arbitrator appointed fails or is unable to act and a successor has not been duly appointed, the court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement.

Subd. 2. Disclosure by a neutral arbitrator. (a) A "neutral arbitrator" is the only arbitrator in a case or is one appointed by the court, by the other arbitrators, or by all parties together in agreement. A neutral arbitrator does not include one selected by fewer than all parties even though no other party objects.

(b) Except for arbitrations under the American Arbitration Association, prior to selection, a neutral arbitrator shall disclose any relationships the person has with any of the parties, their counsel, insurers, or representatives and any conflict of interest, or potential conflict of interest, the person may have.

(c) In all arbitrations:

(1) after a neutral arbitrator has been selected, any relationship, conflict of interest, or potential conflict of interest that arises must be immediately disclosed by the arbitrator in writing to all parties, and a party may move the district court or the arbitration tribunal for removal of the neutral arbitrator;

(2) the disclosure required under this section is in addition to that which may be required by applicable rules of law, ethics, or procedure; and

(3) if the neutral arbitrator fails to disclose a conflict of interest or material relationship, it is grounds for vacating an award for fraud as provided in section 572.19.

572.11. Majority action by arbitrators

The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by sections 572.08 to 572.30.

572.12. Hearing

Unless otherwise provided by the agreement:

(a) The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by certified mail not less than five days before the hearing. Appearance at the hearing waives such notice. The arbitrators may adjourn the hearing from time to time as necessary and, on a request of a party and for good cause, or upon their own motion may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. The court on application may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.

(b) The parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.

(c) The hearing shall be conducted by all the arbitrators but a majority may determine any question and render a final award. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.

572.13. Representation by attorney

A party has the right to be represented by an attorney at any proceeding or hearing under sections 572.08 to 572.30. A waiver thereof prior to the proceeding or hearing is ineffective.

572.14. Witnesses, subpoenas, depositions

(a) The arbitrators may issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and shall have the power to administer oaths. Subpoenas so issued shall be served, and upon application to the court by a party or the arbitrators, enforced, in the manner provided by law for the service and enforcement of subpoenas in a civil action.

(b) On application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.

(c) All provisions of law compelling a person under subpoena to testify are applicable.

(d) Fees for attendance as a witness shall be the same as for a witness in the district court.

572.15. Award

(a) The award shall be in writing and signed by the arbitrators joining in the award. The award must include interest, except this does not apply to arbitrations between employers and employees under chapter 179 or 179A. An arbitrator is neither required to nor prohibited from awarding interest under chapter 179 or under section 179A.16 for essential employees. The arbitrators shall deliver a copy to each party personally or by certified mail, or as provided in the agreement.

(b) An award shall be made within the time fixed therefor by the agreement or, if not so fixed, within such time as the court orders on application of a party. The parties may extend the time in writing either before or after the expiration thereof. A party waives the objection that an award was not made within the time required unless the party notifies the arbitrators of an objection prior to the delivery of the award to the party.

572.16. Change of award by arbitrators

Subdivision 1. Application of party. On application of a party, the arbitrator may modify or correct the award:

(1) upon the grounds stated in section 572.20, subdivision 1;

(2) for the purpose of clarifying the award; or

(3) where the award is based on an error of law.

Subd. 2. Submission by court. If an application to the court is pending under section 572.18, 572.19, or 572.20, on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in section 572.20, subdivision 1, or for the purpose of clarifying the award.

Subd. 3. Procedure. For purposes of subdivision 1 or 2, the application shall be made within 20 days after delivery of the award to the applicant. Written notice thereof shall be given forthwith to the opposing party, stating that the opposing party must serve objections thereto, if any, within ten days from the notice. The award so modified or corrected is subject to the provisions of sections 572.18, 572.19 and 572.20.

572.17. Fees and expenses of arbitration

Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be paid as provided in the award.

572.18. Confirmation of an award

Upon application of a party, the court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in sections 572.19 and 572.20.

572.19. Vacating an award

Subdivision 1. Application. Upon application of a party, the court shall vacate an award where:

(1) The award was procured by corruption, fraud or other undue means;

(2) There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;

(3) The arbitrators exceeded their powers;

(4) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of section 572.12, as to prejudice substantially the rights of a party; or

(5) There was no arbitration agreement and the issue was not adversely determined in proceedings under section 572.09 and the party did not participate in the arbitration hearing without raising the objection;

But the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

Subd. 2. Time limit for application. An application under this section shall be made within 90 days after delivery of a copy of the award to the applicant, except that, if predicated upon corruption, fraud or other undue means, it shall be made within 90 days after such grounds are known or should have been known.

Subd. 3. Rehearings. In vacating the award on grounds other than stated in clause (5) of subdivision 1, the court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence thereof, by the court in accordance with section 572.10, or, if the award is vacated on grounds set forth in clauses (3) and (4) of subdivision 1, the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with section 572.10. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

Subd. 4. Confirm award. If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

572.20. Modification or correction of award

Subdivision 1. Modification of award. Upon application made within 90 days after delivery of a copy of the award to the applicant, the court shall modify or correct the award where:

(1) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;

(2) The arbitrators have awarded upon a matter not submitted to them and the award may be corrected

without affecting the merits of the decision upon the issues submitted; or

(3) The award is imperfect in a matter of form, not affecting the merits of the controversy.

Subd. 2. Court disposition. If the application is granted, the court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the court shall confirm the award as made.

Subd. 3. Joinder in alternative. An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

572.21. Judgment or decree on award

Upon the granting of an order confirming, modifying or correcting an award, judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent thereto, and disbursements may be awarded by the court.

572.22. Judgment roll, docketing

Subdivision 1. Judgment roll. On entry of judgment or decree, the court administrator shall prepare the judgment roll consisting, to the extent filed, of the following:

(1) the agreement and each written extension of the time within which to make the award;

(2) the award;

(3) a copy of the order confirming, modifying or correcting the award; and

(4) the judgment or decree.

Subd. 2. Docketed; action. The judgment or decree may be docketed as if rendered in an action.

572.23. Applications to court

Except as otherwise provided, an application to the court under this chapter shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action.

572.24. Court, jurisdiction

The term “court” means any court of competent jurisdiction of this state. The making of an agreement described in section 572.08 providing for arbitration in this state confers jurisdiction on the court to enforce the agreement under sections 572.08 to 572.30 and to enter judgment on an award thereunder.

572.25. Venue

An initial application shall be made to the court of the county in which the agreement provides the arbitration hearing shall be held or, if the hearing has been held, in the county in which it was held. Otherwise the application shall be made in the county where the adverse party resides or has a place of business if there is one or the other in this state; if not, then to the court of any county. All subsequent applications shall be made to the court hearing the initial application unless the court otherwise directs.

572.26. Appeals

Subdivision 1. Authorization of appeal. An appeal may be taken from:

(1) an order denying an application to compel arbitration made under section 572.09;

(2) an order granting an application to stay arbitration made under section 572.09(b);

(3) an order confirming or denying confirmation of an award;

(4) an order modifying or correcting an award;

(5) an order vacating an award without directing a rehearing; or

(6) a judgment or decree entered pursuant to the provisions of this chapter.

Subd. 2. Manner. The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

572.27. Act not retroactive

This chapter applies only to agreements made subsequent to the taking effect of this chapter.

572.28. Uniformity of interpretation

This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

572.29. Severability

If any provision of sections 572.08 to 572.30 or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given without the invalid provision or application, and to this end the provisions of this chapter are severable.

572.30. Citation, Uniform Arbitration Act

Subdivision 1. Citation. Sections 572.08 to 572.30 may be cited as the Uniform Arbitration Act.

Subd. 2. Nonapplication. Section 358.06 does not apply to an arbitration proceeding coming within the provisions of this chapter.

Subd. 3. Superseding court rule. Rule 26.07, Rules of Civil Procedure for district courts, is superseded by the provisions of this chapter, insofar as inconsistent therewith.

## Chapter 17. Agricultural Marketing and Bargaining

*Current with the laws of the 2008 Regular Session*

17.697. Informational exchanges; dispute resolution

Subdivision 1. Definition. As used in sections 17.691 to 17.702, "informational exchange" means the mutual obligation of a handler and an association or their designated representatives to meet at a mutually agreed upon time in conformance with sections 17.691 to 17.702 and confer and provide information about their expectations for the upcoming marketing year. The informational exchange must be a serious, fair, and reasonable attempt to reach agreement by acknowledging or refuting with reason points brought up by either party with respect to the terms and conditions of a contract relative to trading between handlers and producers of the agricultural commodity. The topics may include, but are not limited to, the following:

(1) prices and terms of sale;

(2) quality specifications;

(3) quantity to be marketed by acreage or weight;

(4) transactions involving products and services utilized by one party and provided by the other party; and

(5) checkoff procedures pursuant to assessments levied by the association whereby a portion of the producers' annual production payments under a contract are collected by handlers from producers within the bargaining unit and paid to the association on some other arrangement.

Subd. 2. First two meetings. The handler and an association of producers or their designated representatives shall meet at least two times for informational exchanges prior to 60 days before the beginning of the marketing year. Neither party, however, is required to disclose proprietary business or financial records or information. Both parties shall inform the department in writing of the time of both informational exchanges at least ten days prior to the first meeting. Verification of completion of training in negotiation, as described in section 17.702, must be included with the notification sent to the commissioner.

Subd. 3. Continuing negotiations. After the conclusion of the second informational exchange and no agreement is reached, negotiations may continue between the parties at mutually agreed upon times. Mediation may be requested in accordance with this section by any party.

Subd. 4. Agreement not required. The parties may reach agreement for a contract during the informational exchanges. However, the obligation to meet for informational exchanges does not require either party to agree to a proposal, to make a concession, or to enter into a contract.

Subd. 5. If no agreement is reached. If an agreement is not reached during the informational exchanges, negotiations must be considered to continue and either party may request mediation as provided in this section. Negotiations may continue without mediation and an agreement may be reached without the use of mediation. Negotiations must be a serious, fair, and reasonable attempt to reach agreement by acknowledging or refuting with reason points brought up by either party with respect to the terms and conditions of a contract relative to trading between handlers and producers of the agricultural commodity. A request for mediation requires both parties to the negotiation to complete the mediation process described in this section, but does not obligate either party to agree to a proposal, to make a concession, or to enter into a contract. However, the parties are required to perform according to any agreement reached at the conclusion of the mediation process.

Subd. 6. Mediation request. An association of producers or a handler may request mediation only within ten days after the second informational exchange meeting. Written notice requesting mediation must be mailed to the commissioner and postmarked within ten days of the second informational exchange, with a copy to the nonrequesting party, and the notice for mediation must contain the last offer made by the party requesting mediation. Within three days after receiving the request for mediation, the commissioner shall require the nonrequesting party to provide reasons for rejecting the last offer made by the requesting party and revisions to the last offer that might be required to reach an agreement. The nonrequesting party will have five days from the date of the postmark to provide a response to the commissioner and also provide a copy of the response to the requesting party. The commissioner shall request the American Arbitration Association or a comparable dispute resolution organization to make available a list of at least three qualified mediators, but not more than six, for the parties to select one individual to mediate the dispute. Qualified mediators are those who have met the training requirements of Rule 114.12 of the Minnesota General Rules of Practice for the District Courts, are familiar with sections 17.691 to 17.702, and have served as mediator in at least three other commercial disputes or have commensurate experience. The handler and the association may agree on a mediator or, failing agreement, the commissioner may select the mediator from the list provided by allowing each party to strike one mediator and choosing one from the remaining names on the list.

Subd. 7. Mediation rules. The American Arbitration Association mediation rules must be followed during the mediation process. If there is a conflict between those rules and this statute, the statute prevails. Any information shared in the mediation process or offers to settle are to be considered confidential and must not be used against either party in any other proceeding, court action, or dispute resolution process unless otherwise discoverable from outside of the mediation process.

Subd. 8. Duration of mediation. The mediation process must conclude not more than 20 days after the mediator has been selected and notified by the department. If the mediator feels that additional time may result in an agreement between the parties, the mediator may extend the mediation process for an additional five days. However, the mediation must conclude, under any circumstance, no later than 15 days prior to the start of the marketing year, unless the parties agree to a different date, but no later than the first day of the marketing year.

Subd. 9. Mediation costs. All costs for retaining a mediator and proceedings during the mediation process must be shared equally by both parties.

Subd. 10. Subpoenas. The commissioner has the subpoena authority to compel participation in the

mediation process for either party after the informational exchanges.

Subd. 11. Enforceability. Any final written agreement reached during the mediation procedure is enforceable under the law and in the courts of this state. The parties are not required to reach an agreement, but they are required to proceed through the mediation process as outlined in this section.

Subd. 12. Binding arbitration. If an agreement is not reached during the mediation process, and upon written consent by both parties, binding arbitration as set forth in this chapter may be used to create a contract or resolve the dispute.

Subd. 13. Notification. The parties shall each notify the commissioner after the end of the mediation period, if an agreement has not been reached, of their desire to use binding arbitration to settle the dispute. An arbitrator must be selected as provided in subdivision 18. The notification must include its final offer in which it shall identify all matters as to which the parties agree with contractual language setting forth these agreements and all matters as to which the parties do not agree with contractual language setting forth the party's final offer for resolution of those disagreements.

Subd. 14. Process. For all matters submitted to arbitration, the arbitrator may choose between the final offers of the parties or fashion a different solution between, but not exceeding, the final offers of the parties. If the parties reach an agreement on the matters under arbitration before the arbitrator issues a decision, they may submit a joint final offer that the arbitrator shall accept and render as the decision. The arbitrator may hold hearings and administer oaths, examine witnesses and documents, take testimony and receive evidence, and issue subpoenas to compel the attendance of witnesses and the production of records. A person who fails to obey the subpoena of an arbitrator may be punished for contempt of court on application by the arbitrator to the district court for the county in which the failure occurs. The arbitrator may use other information in addition to that provided by or elicited from the parties. The arbitrator shall issue a decision within ten days of the commencement of arbitration and that decision is binding on the parties. If the parties reach an agreement on the matters in the arbitrator's decision prior to signing the contract, they may submit a joint final offer to the arbitrator. The arbitrator shall rescind the previous decision and accept and render the joint final offer as the decision.

Subd. 15. Contract. Within five days after the arbitrator's decision, the handler shall prepare a contract that must include all terms agreed to by the parties in bargaining or awarded in arbitration and shall present the contract to the association of producers who must accept the terms of the contract within five days of its presentation.

Subd. 16. List of arbitrators. The commissioner, in consultation with the American Arbitration Association or comparable dispute resolution organization, shall establish a list of arbitrators who are qualified by education, training, and experience to carry out the responsibilities of an arbitrator under this section.

Subd. 17. Costs of arbitration. All costs of arbitration must be borne equally by the parties. The arbitrator shall submit a statement of charges and expenses to the parties and to the commissioner. Each party shall pay the arbitrator directly.

Subd. 18. Selection of arbitrator. The arbitrator must be selected by the commissioner. The

commissioner shall submit a list composed of the names of three persons knowledgeable in the marketing of the agricultural commodity from which the arbitrator must be chosen. Qualified arbitrators are those who have met the training requirements of Rule 114.12 of the Minnesota General Rules of Practice for the District Courts, are familiar with sections 17.691 to 17.702, and have served as an arbitrator in at least three other commercial disputes or have commensurate experience. The selection must be made by the association representative and the handler representative, each striking one name from the list. If two names remain, the commissioner shall decide which one is the arbitrator.

17.698. Factors to be considered in mediation and arbitration

All decisions of mediation and arbitration which result from section 17.697 must consider the following factors:

(1) prices or projected prices for the agricultural commodity paid by the competing handlers in the market area or competing market areas worldwide;

(2) amount of the commodity produced or projections of production in the production area or competing marketing areas worldwide;

(3) relationship between the quantity produced and the quantity handled by the handler;

(4) the producers cost of production including the cost which would be involved in paying farm labor a fair wage rate and providing them with adequate housing;

(5) the efficiency of farm operations of similar size and the projected prices of alternative agricultural commodities grown in the market area;

(6) the cost of production of similar sized handlers;

(7) the average consumer prices for goods and services, commonly known as the cost of living;

(8) the component of the agricultural commodity that makes up the producer's income;

(9) the impact of the award on the competitive position of the handler in the marketing area or competing areas worldwide;

(10) the impact of the award on the competitive position of the agricultural commodity in relationship to competing commodities;

(11) a fair return on investment;

(12) kind, quality, or grade of the commodity involved;

(13) stipulation of the parties; and

(14) other factors which are normally or traditionally taken into consideration in determining prices, quality, quantity, and the costs of other services involved.

## Chapter 17. Agricultural Contracts

*Current with the laws of the 2008 Regular Session*

17.91. Required language

Subdivision 1. Mediation; arbitration. A contract for an agricultural commodity between a contractor and a producer must contain language providing for resolution of contract disputes by either mediation or arbitration. If there is a contract dispute, either party may make a written request to the commissioner for mediation or arbitration services as specified in the contract, to facilitate resolution of the dispute.

Subd. 2. Written disclosure of risks. An agricultural contract must be accompanied by a clear written disclosure setting forth the nature of the material risks faced by the producer if the producer enters into the contract. The statement must meet the plain language requirements of section 17.943. The statement may be in the form of a written statement or checklist and may be developed in cooperation with producers or producer organizations. A contractor may submit a sample material risk disclosure statement to the commissioner for examination. If the commissioner approves of the statement or fails to respond within 30 days of receipt of the statement, the statement will be deemed to comply with this subdivision and with the plain language requirements of section 17.943.

## Chapter 17B. Grain Inspection, Weighing, Sampling, and Analysis

*Current with the laws of the 2008 Regular Session*

17B.05. Disputes on grades, dockage; state arbitration

(a) If a disagreement arises between a person receiving and a person delivering grain in this state as to the proper grade, dockage, moisture content, protein content, or other factors used in establishing the market price of the grain, an average sample of the grain in dispute may be taken by either or both of the parties interested. The commissioner shall prescribe a procedure for taking samples and having the samples certified by both the person receiving and the person delivering the grain as being true samples of the grain in dispute on the day the grain is delivered and sampled. Samples must be forwarded prepaid in suitable air-tight containers, with the names and addresses of the person receiving and the person delivering the grain, to the head of the Grain Inspection Division of the department. The head of the Grain Inspection Division shall examine samples submitted, and determine the proper grade, dockage, moisture content, protein content, and other factors used in establishing the market price of the samples of grain in accordance with the inspection rules and the standards established by the United States Department of Agriculture and the state of Minnesota. The test results must be based on the arithmetic mean of the samples submitted. If a person requesting the inspection asks for determination of some but not all of the factors that affect market price, the department shall perform only the requested tests on the samples. A person requesting the inspection must pay the required fee before the results of the inspection are released. The fee charged must be the same as that required for similar services rendered by the Grain Inspection Division. Payment for the grain involved in a disagreement must be made on the basis of grade, dockage, moisture content, protein content, and other market pricing factors certified by the department on samples submitted. An appeal of the determination made by the department may be made as provided under the United States Grain

Standards Act, United States Code, title 7, section 79, subsection (c), and the Code of Federal Regulations, title 7, sections 800.125 to 800.140. A person receiving or delivering grain that is subject to this section is liable for damages resulting from not abiding by the determination made by the department. A person who violates this section is subject to penalties prescribed in section 17B.29.

(b) A licensed business that uses test equipment as defined in section 17B.02 to perform tests or analysis on grain to be purchased or placed in storage must post at the place of business a notice informing persons selling or delivering grain of their right to have a representative sample of the grain forwarded to the Grain Inspection Division for analysis. The commissioner shall provide copies of the notice to each business licensed to buy or receive grain. The business must display the notice in a conspicuous location as prescribed by the commissioner.

## Minnesota Civil Mediation Act

Chapter 572.

*Current with the laws of the Second Regular Session*

572.31. Minnesota Civil Mediation Act, citation

Sections 572.31 to 572.40 may be cited as the "Minnesota Civil Mediation Act."

572.33. Definitions

Subdivision 1. Scope. When used in sections 572.31 to 572.40 the terms defined in this section have the meanings given them.

Subd. 2. Mediator. "Mediator" means a third party with no formal coercive power whose function is to promote and facilitate a voluntary settlement of a controversy identified in an agreement to mediate.

Subd. 3. Agreement to mediate. "Agreement to mediate" means a written agreement which identifies a controversy between the parties to the agreement, states that the parties will seek to resolve the controversy through mediation, provides for termination of mediation upon written notice from either party or the mediator delivered by certified mail or personally to the other people who signed the agreement, is signed by the parties and mediator and is dated.

Subd. 4. Mediated settlement agreement. "Mediated settlement agreement" means a written agreement setting out the terms of a partial or complete settlement of a controversy identified in an agreement to mediate, signed by the parties, and dated.

Subd. 5. Nonprofit regional alternative dispute resolution corporation. "Nonprofit regional alternative dispute resolution corporation" has the meaning given in section 480.24, subdivision 5.

572.35. Effect of mediated settlement agreement

Subdivision 1. General. The effect of a mediated settlement agreement shall be determined under principles of law applicable to contract. A mediated settlement agreement is not binding unless:

(1) it contains a provision stating that it is binding and a provision stating substantially that the parties were advised in writing that (a) the mediator has no duty to protect their interests or provide them with information about their legal rights; (b) signing a mediated settlement agreement may adversely affect their legal rights; and (c) they should consult an attorney before signing a mediated settlement agreement if they are uncertain of their rights; or

(2) the parties were otherwise advised of the conditions in clause (1).

Subd. 2. Debtor and creditor mediation. In addition to the requirements of subdivision 1, a mediated settlement agreement between a debtor and creditor is not binding until 72 hours after it is signed by the debtor and creditor, during which time either party may withdraw consent to the binding character of the agreement.

572.36. Setting aside or reforming a mediated settlement agreement

In any action, a court of competent jurisdiction shall set aside or reform a mediated settlement agreement if appropriate under the principles of law applicable to contracts, or if there was evident partiality, corruption, or misconduct by a mediator prejudicing the rights of a party. That the relief could not or would not be granted by a court of law or equity is not ground for setting aside or reforming the mediated settlement agreement unless it violates public policy.

572.37. Presentation of mediator to public

No individual may act as a mediator pursuant to the Minnesota Civil Mediation Act for compensation without providing the individuals to the conflict with a written statement of qualifications prior to beginning mediation. The statement shall describe educational background and relevant training and experience in the field.

Nothing in this section shall limit the pursuits of professionals consistent with their training and code of ethics; nor shall this section apply to service provided through a governmental agency. The requirement of this section may be satisfied by a nonprofit corporation on behalf of its service providers by providing a statement of the education, training, and experience requirements for eligibility on its mediation panel.

A person who violates this section is guilty of a petty misdemeanor.

572.39. Statutes of limitation

The running of the limitation of time within which an action may be brought is suspended from the date of the agreement to mediate until 20 days after notice of termination of mediation is delivered by certified mail or personally delivered as provided in the agreement to mediate.

572.40. Scope

Sections 572.31 to 572.36 do not apply to proceedings relating to the determination of criminal liability or proceedings brought under chapters 518, 518A, 518B, and 518C, or proceedings relating to guardianship, conservatorship, or civil commitment.

**Debtor and Creditor Mediation**

572.41. Debtor and creditor mediation

Subdivision 1. General. The debtor and creditor in any transaction may request the other party to the transaction to enter mediation concerning possible adjustment, refinancing, or payment under this section and sections 572.31 to 572.40.

Subd. 2. Mediators. An individual who meets the qualifications established under subdivision 5 and who is willing to mediate in matters involving debtors and creditors may register with a nonprofit regional alternative dispute resolution corporation or, in a county where one does not exist, with the court administrator. The court administrator shall develop a list of mediators available in the county. It is desirable but not necessary that mediators under this section have knowledge of debtor and creditor law and relevant areas of finance. A mediator must not mediate a matter involving a debtor or creditor with whom the mediator has or has had a credit relationship.

Subd. 3. Request for mediator. A debtor and creditor who agree to mediate may submit a written request for referral to a mediator to the court administrator in the county where either party resides or has a place of business. The court administrator shall assign a mediator from the list developed under subdivision 2. The court administrator may charge a fee for the referral not to exceed the conciliation court fee in that county.

Subd. 4. Compensation. Prior to commencing mediation the debtor and creditor shall agree with each other and the mediator on the amount and allocation between them of any fee for the mediator's services.

Subd. 5. Rules. The state court administrator, in consultation with the Bureau of Mediation Services, shall adopt rules to implement this section and may use portions of existing rules on certification of alternative dispute resolution programs that satisfy the purposes of this section. The rules must include qualifications of mediators under this section and grounds for challenging and removing mediators.

**Planning Dispute Resolution; Mediation; Arbitration**

572A.01. Comprehensive planning disputes; mediation

Subdivision 1. Filing. In the event of a dispute between a county and the Office of Strategic and Long-Range Planning under section 394.232 or a county and a city under section 462.3535, regarding the development, content, or approval of a community-based comprehensive land use plan, an aggrieved party may file a written request for mediation, as provided in subdivision 2, with the Bureau of Mediation services at any time prior to a final action on a community-based comprehensive plan or within 30 days of a final action on a community-based comprehensive plan.

Subd. 2. Mediation. Within ten days of receiving a request for mediation in subdivision 1, the Bureau of Mediation Services shall provide written notice of the request for mediation to the parties and provide a list of neutrals experienced in land use planning or local government issues obtained from the Supreme Court, chief administrative law judge of the state Office of Administrative Hearings,

Bureau of Mediation Services, Minnesota State Bar Association, Hennepin County Bar Association, Office of Dispute Resolution, and others. Within 30 days thereafter, the affected parties shall select a mediator from the list of neutrals or someone else acceptable to the parties and submit to mediation for a period of 30 days facilitated by the bureau. If the dispute remains unresolved after the close of the 30-day mediation period, the bureau shall prepare a report of its recommendations and transmit the report within 30 days to the parties. Within 60 days after the date of issuance of the mediator's report, the dispute shall be submitted to binding arbitration as provided in this chapter. The mediator's report submitted to the parties is informational only and is not admissible in arbitration.

572A.015. Chapter 414 disputes; mediation

Subd. 2. Mediation. Within ten days of receiving a request for mediation that the chief administrative law judge of the state Office of Administrative Hearings has required under section 414.12, subdivision 1, the bureau shall provide written notice of the request for mediation to the parties and provide a list of neutrals experienced in land use planning and local government issues obtained from the Supreme Court, Bureau of Mediation Services, Minnesota State Bar Association, Hennepin County Bar Association, Office of Dispute Resolution, and others. Within 30 days thereafter, the affected parties, shall select a mediator from the list of neutrals or someone else acceptable to the parties and submit to mediation for a period of 30 days facilitated by the bureau. If the dispute remains unresolved after the close of the 30-day mediation period, the bureau shall prepare a report of its recommendations and transmit the report within 30 days to the parties. Within 60 days after the date of issuance of the mediator's report, the dispute shall be submitted to binding arbitration as provided in this chapter. The mediator's report submitted to the parties is informational only and is not admissible in arbitration.

572A.02. Arbitration

Subdivision 1. Submittal to binding arbitration. If a dispute remains unresolved after the close of mediation, the dispute shall be submitted to binding arbitration within 60 days of issuance of the mediation report pursuant to the terms of this section and the Uniform Arbitration Act, sections 572.08 to 572.30, except the period may be extended for an additional 15 days as provided in this section. In the event of a conflict between the provisions of the Uniform Arbitration Act and this section, this section controls.

Subd. 2. Appointment of panel. (a) The parties shall each appoint one qualified arbitrator within 30 days of issuance of the mediation report. If a party does not appoint an arbitrator within 30 days, the Bureau of Mediation Services shall appoint a qualified arbitrator from the list of neutrals under sections 572A.01, subdivision 2, and 572A.015, subdivision 2, or someone else for the party. The parties shall notify the bureau prior to the close of the 30-day appointment period of the name and address of their respective appointed arbitrator. Each party is responsible for the fees and expenses for the arbitrator it selects.

(b) After appointment of the two arbitrators to the arbitration panel by the parties, or by the bureau should one or both of the parties fail to act, the two appointed arbitrators shall appoint a third arbitrator who must be learned in the law, within 15 days of the close of the initial 30-day arbitrator appointment period. If the arbitrators cannot agree on the selection of the third arbitrator within 15 days, the arbitrators shall jointly submit a request to the district court of the county in which the disputed area is located in accordance with the selection procedures established in section 572.10. Within 15 days of

receipt of an application by the district court, the district court shall select a neutral arbitrator and notify the parties and the Bureau of Mediation Services of the name and address of the selected arbitrator. The fees and expenses of the third arbitrator shall be shared equally by the parties. The third appointed arbitrator shall act as chair of the arbitration panel and shall conduct the proceedings. If the district court selects the third arbitrator, the date required for first hearing the matter may be extended an additional 15 days.

Subd. 3. Hearing. Except as otherwise provided, within 60 days, the matter must be brought on for hearing in accordance with section 572.12. The Bureau of Mediation Services shall provide for the proceedings to occur in the county in which the majority of the affected property is located.

Subd. 4. Contracts; information. The arbitration panel shall have authority to contract with regional, state, county, or local planning commissions or to hire expert consultants to provide specialized information and assistance. Any member of the panel conducting or participating in any hearing shall have the power to administer oaths and affirmations, to issue subpoenas, and to compel the attendance and testimony of witnesses and the production of papers, books, and documents. Any costs related to this subdivision shall be shared equally by the parties.

Subd. 5. Decision factors. In comprehensive planning disputes, the arbitration panel shall consider the goals stated in section 4A.08 and the following factors in making a decision. In all other disputes brought under this section, the arbitration panel shall consider the following factors in making a decision:

(1) present population and number of households, past population, and projected population growth of the subject area and adjacent units of local government;

(2) quantity of land within the subject area and adjacent units of local government; and natural terrain including recognizable physical features, general topography, major watersheds, soil conditions, and such natural features as rivers, lakes, and major bluffs;

(3) degree of contiguity of the boundaries between the municipality and the subject area;

(4) present pattern of physical development, planning, and intended land uses in the subject area and the municipality including residential, industrial, commercial, agricultural, and institutional land uses and the impact of the proposed action on those land uses;

(5) the present transportation network and potential transportation issues, including proposed highway development;

(6) land use controls and planning presently being utilized in the municipality and the subject area, including comprehensive plans for development in the area and plans and policies of the Metropolitan Council, and whether there are inconsistencies between proposed development and existing land use controls and the reasons therefore;

(7) existing levels of governmental services being provided in the municipality and the subject area, including water and sewer service, fire rating and protection, law enforcement, street improvements and maintenance, administrative services, and recreational facilities and the impact of the proposed

action on the delivery of said services;

(8) existing or potential environmental problems and whether the proposed action is likely to improve or resolve these problems;

(9) plans and programs by the municipality for providing needed governmental services to the subject area;

(10) an analysis of the fiscal impact on the municipality, the subject area, and adjacent units of local government, including net tax capacity and the present bonded indebtedness, and the local tax rates of the county, school district, and township;

(11) relationship and effect of the proposed action on affected and adjacent school districts and communities;

(12) adequacy of town government to deliver services to the subject area;

(13) analysis of whether necessary governmental services can best be provided through the proposed action or another type of boundary adjustment; and

(14) if only a part of a township is annexed, the ability of the remainder of the township to continue or the feasibility of it being incorporated separately or being annexed to another municipality.

Any party to the proceeding may present evidence and testimony on any of the above factors at the hearing on the matter.

Subd. 6. Decision. The arbitrators, after a hearing on the matter, shall make a decision regarding the dispute within 60 days and transmit an order to the parties and to the Office of Strategic and Long-Range Planning in comprehensive planning disputes or to the chief administrative law judge in chapter 414 disputes. Unless appealed by an aggrieved party within 30 days of receipt of the arbitration panel's order by the office, the office shall execute an order in accordance with the arbitration panel's order and shall cause copies of the same to be mailed to all parties entitled to mailed notice, the secretary of state, the Department of Revenue, the state demographer, individual property owners if initiated in that manner, the affected county auditor, and any other party of record. The affected county auditor shall record the order against the affected property.

572A.03. Arbitration panel decision standards

Subdivision 1. Decision standards. The arbitration panel, based upon the factors in section 572A.02, subdivision 5, shall decide the matter based upon the decision standards in subdivisions 2 to 6.

Subd. 2. Comprehensive land use planning. For comprehensive land use planning disputes under section 462.3535, if a community-based comprehensive plan addresses the goals of section 4A.08 and the arbitrators find that the city's projected estimates found in its comprehensive plan are reasonable with respect to an identified urban growth area, the arbitration panel may order approval of the city plan. If the order is to approve the community-based comprehensive plan, the order shall contain notice directing the county to approve the city plan within ten days of receipt of the arbitration order.

The city shall, thereafter, adopt the plan. If the order is to deny the plan, the arbitration order shall state the reasons for the denial in the order and transmit the order to the city, the county, and the Office of Strategic and Long-Range planning. The city shall within 30 days of receipt of the order amend its plan and resubmit the plan to the county for review and approval under this subdivision. The county shall not unreasonably withhold approval of the plan if the resubmitted city plan is in keeping with the arbitration panel's order.

Subd. 3. Municipal incorporations. For municipal incorporations under section 414.02, the arbitration panel may order the incorporation if it finds that: (1) the property to be incorporated is now, or is about to become, urban or suburban in character; (2) that the existing township form of government is not adequate to protect the public health, safety, and welfare; or (3) the proposed incorporation would be in the best interests of the area under consideration. The panel may deny the incorporation if the area, or a part of it, would be better served by annexation to an adjacent municipality. The panel may alter the boundaries of the proposed incorporation by increasing or decreasing the area to be incorporated so as to include only that property which is now, or is about to become, urban or suburban in character, or may exclude property that may be better served by another unit of government. The panel may also alter the boundaries of the proposed incorporation so as to follow visible, clearly recognizable physical features for municipal boundaries. In all cases, the panel shall set forth the factors which are the basis for the decision.

Subd. 4. Annexations of unincorporated property. For annexations of unincorporated property under section 414.031 or 414.033, subdivisions 3 and 5, the arbitration panel may order the annexation: (1) if it finds that the subject area is now, or is about to become, urban or suburban in character; (2) if it finds that municipal government in the area proposed for annexation is required to protect the public health, safety, and welfare; or (3) if it finds that the annexation would be in the best interest of the subject area. If only a part of a township is to be annexed, the panel shall consider whether the remainder of the township can continue to carry on the functions of government without undue hardship. The panel shall deny the annexation if it finds that the increase in revenues for the annexing municipality bears no reasonable relation to the monetary value of benefits conferred upon the annexed area. The panel may deny the annexation: (1) if it appears that annexation of all or a part of the property to an adjacent municipality would better serve the interests of the residents of the property; or (2) if the remainder of the township would suffer undue hardship.

The panel may alter the boundaries of the area to be annexed by increasing or decreasing the area so as to include only that property which is now or is about to become urban or suburban in character or to add property of that character abutting the area proposed for annexation in order to preserve or improve the symmetry of the area, or to exclude property that may better be served by another unit of government. The panel may also alter the boundaries of the proposed annexation so as to follow visible, clearly recognizable physical features. If the panel determines that part of the area would be better served by another municipality or township, the panel may initiate and approve annexation on its own motion by conducting further hearings. In all cases, the arbitration panel shall set forth the factors that are the basis for the decision.

Subd. 5. Orderly annexations within a designated area. For orderly annexations within a designated area under section 414.0325, which require a hearing, the arbitration panel may order the annexation: (1) if it finds that the subject area is now or is about to become urban or suburban in character and that the annexing municipality is capable of providing the services required by the area within a reasonable

time; (2) if it finds that the existing township form of government is not adequate to protect the public health, safety, and welfare; or (3) if it finds that annexation would be in the best interests of the subject area. The panel may deny the annexation if it conflicts with any provision of the joint agreement. The panel may alter the boundaries of the proposed annexation by increasing or decreasing the area so as to include that property within the designated area which is in need of municipal services or will be in need of municipal services.

If the annexation is denied, no proceeding for the annexation of substantially the same area may be initiated within two years from the date of the board's order unless the new proceeding is initiated by a majority of the area's property owners and the petition is supported by affected parties to the resolution. In all cases, the arbitration panel shall set forth the factors which are the basis for the decision.

Subd. 6. Consolidation of municipalities. For municipal consolidations under section 414.041, the arbitration panel shall consider and may accept, amend, return to the commission for amendment or further study, or reject the commission's findings and recommendations based upon the panel's written determination of what is in the best interests of the affected municipalities. The panel shall order the consolidation if it finds that consolidation will be for the best interests of the municipalities. In all cases, the arbitration panel shall set forth the factors that are the basis for the decision.

Subd. 7. Detachment of property from a municipality. For detachments of property from a municipality under section 414.06, the arbitration panel may order the detachment if it finds that the requisite number of property owners have signed the petition if initiated by the property owners, that the property is rural in character and not developed for urban residential, commercial, or industrial purposes, that the property is within the boundaries of the municipality and abuts a boundary, that the detachment would not unreasonably affect the symmetry of the detaching municipality, and that the land is not needed for reasonably anticipated future development. The panel shall deny the detachment if it finds that the remainder of the municipality cannot continue to carry on the functions of government without undue hardship. The panel shall have authority to decrease the area of property to be detached and may include only a part of the proposed area to be detached. If the tract abuts more than one township, it shall become a part of each township, being divided by projecting through it the boundary line between the townships. The detached area may be relieved of the primary responsibility for existing indebtedness of the municipality and be required to assume the indebtedness of the township of which it becomes a part, in the proportion that the panel deems just and equitable considering the amount of taxes due and delinquent and the indebtedness of each township and the municipality affected, if any, and for what purpose the indebtedness was incurred, in relation to the benefit inuring to the detached area as a result of the indebtedness and the last net tax capacity of the taxable property in each township and municipality.

Subd. 8. Concurrent detachment and annexation of incorporated property. For concurrent detachment and annexation of incorporated property under section 414.061, subdivision 4 and 5, the arbitration panel shall order the proposed action if it finds that it will be for the best interests of the municipalities and the property owner. In all cases, the arbitration panel shall set forth the factors which are the basis for the decision.

**Rule 114. Alternative Dispute Resolution**

General Rules of Practice for the District Courts. Title II, Part B.

*Current with amendments received through October 2008*

Rule 114.01. Applicability

All civil cases are subject to Alternative Dispute Resolution (ADR) processes, except for those actions enumerated in Minn.Stat. § 484.76 and Rules 111.01 and 310.01 of these rules.

Rule 114.02. Definitions

The following terms shall have the meanings set forth in this rule in construing these rules and applying them to court-affiliated ADR programs.

(a) ADR Processes.

Adjudicative Processes

(1) Arbitration. A forum in which a neutral third party renders a specific award after presiding over an adversarial hearing at which each party and its counsel present its position. If the parties stipulate in writing that the arbitration will be binding, then the proceeding will be conducted pursuant to the Uniform Arbitration Act (Minn. Stat. §§ 572.08-.30.). If the parties do not stipulate that the arbitration will be binding, then the award is non-binding and will be conducted pursuant to Rule 114.09.

(2) Consensual Special Magistrate. A forum in which the parties present their positions to a neutral in the same manner as a civil lawsuit is presented to a judge. This process is binding and includes the right of appeal to the Minnesota Court of Appeals.

(3) Summary Jury Trial. A forum in which each party and their counsel present a summary of their position before a panel of jurors. The number of jurors on the panel is six unless the parties agree otherwise. The panel may issue a non-binding advisory opinion regarding liability, damages, or both.

Evaluative Processes

(4) Early Neutral Evaluation (ENE). A forum in which attorneys present the core of the dispute to a neutral evaluator in the presence of the parties. This occurs after the case is filed but before discovery is conducted. The neutral then gives an assessment of the strengths and weaknesses of the case. If settlement does not result, the neutral helps narrow the dispute and suggests guidelines for managing discovery.

(5) Non-Binding Advisory Opinion. A forum in which the parties and their counsel present their position before one or more neutral(s). The neutral(s) then issue(s) a non-binding advisory opinion regarding liability, damages or both.

Investigation and Report Process

(6) Neutral Fact Finding. A forum in which a neutral investigates and analyzes a factual dispute and issues findings. The findings are non-binding unless the parties agree to be bound by them.

Facilitative Processes

(7) Mediation. A forum in which a neutral third party facilitates communication between parties to promote settlement. A mediator may not impose his or her own judgment on the issues for that of the parties.

Hybrid Processes

(8) Mini-Trial. A forum in which each party and their counsel present its position before a selected representative for each party, a neutral third party, or both, to develop a basis for settlement negotiations. A neutral may issue an advisory opinion regarding the merits of the case. The advisory opinion is not binding unless the parties agree that it is binding and enter into a written settlement agreement.

(9) Mediation-Arbitration (Med-Arb). A hybrid of mediation and arbitration in which the parties initially mediate their disputes; but if they reach impasse, they arbitrate any deadlocked issues.

(10) Other. Parties may by agreement create an ADR process. They shall explain their process in the Informational Statement.

(b) Neutral. A "neutral" is an individual or organization who provides an ADR process. A "qualified neutral" is an individual or organization included on the State Court Administrator's roster as provided in Rule 114.12. An individual neutral must have completed the training and continuing education requirements provided in Rule 114.13. An organization on the roster must certify that an individual neutral provided by the organization has met the training and continuing education requirements of Rule 114.13. Neutral fact-finders selected by the parties for their expertise need not undergo training nor be on the State Court Administrator's roster.

Rule 114.03. Notice of ADR Processes

(a) Notice. The court administrator shall provide, on request, information about ADR processes available to the county and the availability of a list of neutrals who provide ADR services in that county.

(b) Duty to Advise Clients of ADR Processes. Attorneys shall provide clients with the ADR information.

Rule 114.04. Selection of ADR Process

(a) Conference. After the service of a complaint or petition, the parties shall promptly confer regarding case management issues, including the selection and timing of the ADR process. Following this conference ADR information shall be included in the informational statement required by Rule 111.02 and 304.02.

In family law matters, the parties need not meet and confer where one of the parties claims to be the victim of domestic abuse by the other party or where the court determines there is probable cause that one of the parties or a child of the parties has been physically abused or threatened with physical abuse by the other party. In such cases, both parties shall complete and submit form 9A or 9B, specifying the

form(s) of ADR the parties individually prefer, not what is agreed upon.

(b) Court Involvement. If the parties cannot agree on the appropriate ADR process, the timing of the process, or the selection of neutral, or if the court does not approve the parties' agreement, the court shall, in cases subject to Rule 111, schedule a telephone or in-court conference of the attorneys and any unrepresented parties within thirty days after the due date for filing informational statements pursuant to Rule 111.02 or 304.02 to discuss ADR and other scheduling and case management issues.

Except as otherwise provided in Minn. Stat. § 604.11 or Rule 310.01, the court, at its discretion, may order the parties to utilize one of the non-binding processes; provided that no ADR process shall be approved if the court finds that ADR is not appropriate or if it amounts to a sanction on a non-moving party. Where the parties have proceeded in good faith to attempt to resolve the matter using collaborative law, the court should not ordinarily order the parties to use further ADR processes.

(c) Scheduling Order. The court's Scheduling Order pursuant to Rule 111.03 or 304.03 shall designate the ADR process selected, the deadline for completing the procedure, and the name of the neutral selected or the deadline for the selection of the neutral. If ADR is determined to be inappropriate, the Scheduling Order pursuant to Rule 111.03 or 304.03 shall so indicate.

(d) Post-Decree Family Law Matters. Post-decree matters in family law are subject to ADR under this rule. ADR may be ordered following the conference required by Rule 303.03(c).

Rule 114.05. Selection of Neutral

(a) Court Appointment. If the parties are unable to agree on either a neutral or the date upon which the neutral will be selected, the court shall, in those cases subject to Rule 111, appoint a qualified neutral at the time of the issuance of the scheduling order required by Rule 111.03 or 304.03. In cases not subject to Rule 111, the court may appoint a qualified neutral at its discretion, after obtaining the views of the parties. In all cases, the order may establish a deadline for the completion of the ADR process.

(b) Exception from Qualification. Except when mediation or med-arb is chosen as a dispute resolution process, the court, in its discretion, or upon recommendation of the parties, may appoint a neutral who does not qualify under Rule 114.12 of these rules, if the appointment is based on legal or other professional training or experience. A neutral so selected shall be deemed to consent to the jurisdiction of the ADR Review Board and compliance with the Code of Ethics set forth in the Appendix to Rule 114.

(c) Removal. Any party or the party's attorney may file with the court administrator within 10 days of notice of the appointment of the neutral and serve on the opposing party a notice to remove. Upon receipt of the notice to remove the court administrator shall immediately assign another neutral. After a party has once disqualified a neutral as a matter of right, a substitute neutral may be disqualified by the party only by making an affirmative showing of prejudice to the chief judge or his or her designee.

(d) Availability of Child Custody Investigator. A neutral serving in a family law matter may conduct a custody investigation, or evaluation only (1) where the parties agree in writing executed after the termination of mediation, that the neutral shall conduct the investigation or evaluation; or (2) where there is no other person reasonably available to conduct the investigation or evaluation. Where the neutral is also the sole investigator for a county agency charged with making recommendations to the

court regarding child custody and visitation, the neutral may make such recommendations, but only after the court administrator has made all reasonable attempts to obtain reciprocal services from an adjacent county. Where such reciprocal services are obtainable, the custody evaluation must be conducted by a person from the adjacent county agency, and not by the neutral who served in the family law matter.

Rule 114.06. Time and Place of Proceedings

(a) Notice. The court shall send to the neutral a copy of the Order of Appointment.

(b) Scheduling. Upon receipt of the court's order, the neutral shall promptly schedule the ADR process in accordance with the scheduling order and inform the parties of the date. ADR processes shall be held at a time and place set by the neutral, unless otherwise ordered by the court.

(c) Final Disposition. If the case is settled through an ADR process, the attorneys shall complete the appropriate court documents to bring the case to a final disposition.

Rule 114.07. Attendance at ADR Proceedings

(a) Privacy. Non-binding ADR processes are not open to the public except with the consent of all parties.

(b) Attendance. The court may require that the attorneys who will try the case attend ADR proceedings.

(c) Attendance at Adjudicative Sessions. Individuals with the authority to settle the case need not attend adjudicative processes aimed at reaching a decision in the case, such as arbitration, as long as such individuals are reasonably accessible, unless otherwise directed by the court.

(d) Attendance at Non-Adjudicative Sessions. Individuals with the authority to settle the case shall attend non-adjudicative processes aimed at settlement of the case, such as mediation, mini-trial, or med-arb, unless otherwise directed by the court.

(e) Sanctions. The court may impose sanctions for failure to attend a scheduled ADR process only if this rule is violated.

Rule 114.08. Confidentiality

(a) Evidence. Without the consent of all parties and an order of the court, or except as provided in Rule 114.09(e)(4), no evidence that there has been an ADR proceeding or any fact concerning the proceeding may be admitted in a trial de novo or in any subsequent proceeding involving any of the issues or parties to the proceeding.

(b) Inadmissibility. Subject to Minn. Stat. § 595.02 and except as provided in paragraphs (a) and (d), no statements made nor documents produced in non-binding ADR processes which are not otherwise discoverable shall be subject to discovery or other disclosure. Such evidence is inadmissible for any purpose at the trial, including impeachment.

(c) Adjudicative Evidence. Evidence in consensual special master proceedings, binding arbitration, or

in non-binding arbitration after the period for a demand for trial expires, may be used in subsequent proceedings for any purpose for which it is admissible under the rules of evidence.

(d) Sworn Testimony. Sworn testimony in a summary jury trial may be used in subsequent proceedings for any purpose for which it is admissible under the rules of evidence.

(e) Records of Neutral. Notes, records, and recollections of the neutral are confidential, which means that they shall not be disclosed to the parties, the public, or anyone other than the neutral, unless (1) all parties and the neutral agree to such disclosure or (2) required by law or other applicable professional codes. No record shall be made without the agreement of both parties, except for a memorandum of issues that are resolved.

Rule 114.09. Arbitration Proceedings
(a) General.

Parties are free to opt for binding or non-binding arbitration. Whether they elect binding or non-binding arbitration, the parties may construct or select a set of rules to govern the process. The agreement to arbitrate must state what rules govern. If the parties elect binding arbitration, and their agreement to arbitrate is otherwise silent, the arbitration will be deemed to be conducted pursuant to Minn. Stat. § 572.08 et seq. ("Uniform Arbitration Act"). If they elect non-binding arbitration, and their agreement is otherwise silent, they shall conduct the arbitration pursuant to Rule 114.09, subsections (b)-(f). Parties are free, however, to contract to use provisions from both processes or to modify the arbitration procedure as they deem appropriate to their case.

(b) Evidence.

(1) Except where a party has waived the right to be present or is absent after due notice of the hearing, the arbitrator and all parties shall be present at the taking of all evidence.

(2) The arbitrator shall receive evidence that the arbitrator deems necessary to understand and determine the dispute. Relevancy shall be liberally construed in favor of admission. The following principles apply:

(I) Documents. If copies have been delivered to all other parties at least 10 days prior to the hearing, the arbitrator may consider written medical and hospital reports, records, and bills; documentary evidence of loss of income, property damage, repair bills or estimates; and police reports concerning an accident which gave rise to the case. Any other party may subpoena as a witness the author of a report, bill, or estimate, and examine that person as if under cross-examination. Any repair estimate offered as an exhibit, as well as copies delivered to other parties, shall be accompanied by a statement indicating whether or not the property was repaired. If the property was repaired, the statement must indicate whether the estimated repairs were made in full or in part and must be accompanied by a copy of the receipted bill showing the items repaired and the amount paid. The arbitrator shall not consider any police report opinion as to ultimate fault. In family law matters, the arbitrator may consider property valuations, business valuations, custody reports and similar documents.

(II) Other Reports. The written statement of any other witness, including written reports of expert witnesses not enumerated above and statements of opinion which the witness would be qualified to

express if testifying in person, shall be received in evidence if: (1) copies have been delivered to all other parties at least 10 days prior to the hearing; and (2) no other party has delivered to the proponent of the evidence a written demand at least 5 days before the hearing that the witness be produced in person to testify at the hearing. The arbitrator shall disregard any portion of a statement received pursuant to the rule that would be inadmissible if the witness were testifying in person, but the inclusion of inadmissible matter does not render the entire statement inadmissible.

(III) Depositions. Subject to objections, the deposition of any witness shall be received in evidence, even if the deponent is not unavailable as a witness and if no exceptional circumstances exist, if: (1) the deposition was taken in the manner provided for by law or by stipulation of the parties; and (2) not fewer than 10 days prior to the hearing, the proponent of the deposition serves on all other parties notice of the intention to offer the deposition in evidence.

(IV) Affidavits. The arbitrator may receive and consider witness affidavits, but shall give them only such weight to which they are entitled after consideration of any objections. A party offering opinion testimony in the form of an affidavit, statement, or deposition, shall have the right to withdraw such testimony, and attendance of the witness at the hearing shall not then be required.

(3) Attorneys must obtain subpoenas for attendance at hearings through the court administrator, pursuant to Minn. R. Civ. P. 45. The party requesting the subpoena shall modify the form of the subpoena to show that the appearance is before the arbitrator and to give the time and place set for the arbitration hearing. At the discretion of the arbitrator, nonappearance of a properly subpoenaed witness may be grounds for an adjournment or continuance of the hearing. If any witness properly served with a subpoena fails to appear or refuses to be sworn or answer, the court may conduct proceedings to compel compliance.

(c) Powers of Arbitrator

The arbitrator has the following powers:

(1) to administer oaths or affirmations to witnesses;

(2) to take adjournments upon the request of a party or upon the arbitrator's initiative;

(3) to permit testimony to be offered by deposition;

(4) to permit evidence to be introduced as provided in these rules;

(5) to rule upon admissibility and relevance of evidence offered;

(6) To invite the parties, upon reasonable notice, to submit pre-hearing or post-hearing briefs or pre-hearing statements of evidence;

(7) to decide the law and facts of the case and make an award accordingly;

(8) to award costs, within statutory limits;

(9) to view any site or object relevant to the case; and

(10) any other powers agreed upon by the parties.

(d) Record

(1) No record of the proceedings shall be made unless permitted by the arbitrator and agreed to by the parties.

(2) The arbitrator's personal notes are not subject to discovery.

(e) The Award

(1) No later than 10 days from the date of the arbitration hearing or the arbitrator's receipt of the final post-hearing memorandum, whichever is later, the arbitrator shall file with the court the decision, together with proof of service by first class mail on all parties.

(2) If no party has filed a request for a trial within 20 days after the award is filed, the court administrator shall enter the decision as a judgment and shall promptly mail notice of entry of judgment to the parties. The judgment shall have the same force and effect as, and is subject to all provisions of law relating to, a judgment in a civil action or proceeding, except that it is not subject to appeal, and may not be attacked or set aside. The judgment may be enforced as if it had been rendered by the court in which it is entered.

(3) No findings of fact, conclusions of law, or opinions supporting an arbitrator's decision are required.

(4) Within 90 days after its entry, a party against whom a judgment is entered pursuant to an arbitration award may move to vacate the judgment on only those grounds set forth in Minnesota Statutes Chapter 572.

(f) Trial after Arbitration

(1) Within 20 days after the arbitrator files the decision with the court, any party may request a trial by filing a request for trial with the court, along with proof of service upon all other parties. This 20-day period shall not be extended.

(2) The court may set the matter for trial on the first available date, or shall restore the case to the civil calendar in the same position as it would have had if there had been no arbitration.

(3) Upon request for a trial, the decision of the arbitrator shall be sealed and placed in the court file.

(4) A trial de novo shall be conducted as if there had been no arbitration.

Rule 114.10. Communication with Neutral

(a) Adjudicative Processes. Neither the parties nor their representatives shall communicate ex parte with the neutral unless approved in advance by all parties and the neutral.

(b) Non-Adjudicative Processes. Parties and their counsel may communicate ex parte with the neutral in non-adjudicative ADR processes with the consent of the neutral, so long as the communication encourages or facilitates settlement.

(c) Communications to Court During ADR Process. During an ADR process the court may be informed only of the following:

(1) The failure of a party or an attorney to comply with the order to attend the process;

(2) Any request by the parties for additional time to complete the ADR process;

(3) With the written consent of the parties, any procedural action by the court that would facilitate the ADR process; and

(4) The neutral's assessment that the case is inappropriate for that ADR process.

(d) Communications to Court After ADR Process. When the ADR process has concluded, the court may only be informed of the following:

(1) If the parties do not reach an agreement on any matter, the neutral shall report the lack of an agreement to the court without comment or recommendations;

(2) If agreement is reached, any requirement that its terms be reported to the court should be consistent with the jurisdiction's policies governing settlements in general; and

(3) With the written consent of the parties, the neutral's report also may identify any pending motions or outstanding legal issues, discovery process, or other action by any party which, if resolved or completed, would facilitate the possibility of a settlement.

Rule 114.11. Funding

(a) Setting of Fee. The neutral and the parties will determine the fee. All fees of neutral(s) for ADR services shall be fair and reasonable.

(b) Responsibility for Payment. The parties shall pay for the neutral. It is presumed that the parties shall split the costs of the ADR process on an equal basis. The parties may, however, agree on a different allocation. Where the parties cannot agree, the court retains the authority to determine a final and equitable allocation of the costs of the ADR process.

(c) Sanctions for Non-Payment. If a party fails to pay for the neutral, the court may, upon motion, issue an order for the payment of such costs and impose appropriate sanctions.

(d) Inability to Pay. If a party qualifies for waiver of filing fees under Minn. Stat. § 563.01 or if the court determines on other grounds that the party is unable to pay for ADR services, and free or low-cost ADR services are not available, the court shall not order that party to participate in ADR and shall proceed with the judicial handling of the case.

Rule 114.12. Rosters of Neutrals

(a) Roster. The State Court Administrator shall establish one roster of neutrals for civil matters and one roster of neutrals for family law. Each roster shall be updated and published on a regular basis. The State Court Administrator shall not place on, and shall delete from, the rosters the name of any applicant or neutral whose professional license has been revoked. A qualified neutral may not provide services during a period of suspension of a professional license. The State Court Administrator shall review applications from those who wish to be listed on the roster of qualified neutrals, which shall include those who meet the training requirements established in Rule 114.13, or who have received a waiver under Rule 114.14.

(b) Fees. The State Court Administrator shall establish reasonable fees for qualified individuals and organizations to be placed on either roster.

Rule 114.13. Training, Standards and Qualifications for Neutral Rosters

(a) Civil Facilitative/Hybrid Neutrals. All qualified neutrals providing facilitative or hybrid services in civil, non-family matters, must have received a minimum of 30 hours of classroom training, with an emphasis on experiential learning. The training must include the following topics:

(1) Conflict resolution and mediation theory, including causes of conflict and interest-based versus positional bargaining and models of conflict resolution;

(2) Mediation skills and techniques, including information gathering skills, communication skills, problem solving skills, interaction skills, conflict management skills, negotiation techniques, caucusing, cultural and gender issues and power balancing;

(3) Components in the mediation process, including an introduction to the mediation process, fact gathering, interest identification, option building, problem solving, agreement building, decision making, closure, drafting agreements, and evaluation of the mediation process;

(4) Mediator conduct, including conflicts of interest, confidentiality, neutrality, ethics, standards of practice and mediator introduction pursuant to the Civil Mediation Act, Minn. Stat. § 572.31.

(5) Rules, statutes and practices governing mediation in the trial court system, including these rules, Special Rules of Court, and applicable statutes, including the Civil Mediation Act.

The training outlined in this subdivision shall include a maximum of 15 hours of lectures and a minimum of 15 hours of role-playing.

(b) Civil Adjudicative/Evaluative Neutrals. All qualified neutrals serving in arbitration, summary jury trial, early neutral evaluation and adjudicative or evaluative processes or serving as a consensual special magistrate must have received a minimum of 6 hours of classroom training on the following topics:

(1) Pre-hearing communications between parties and between parties and neutral; and

(2) Components of the hearing process including evidence; presentation of the case; witness, exhibits and objectives; awards; and dismissals; and

(3) Settlement techniques; and

(4) Rules, statutes, and practices covering arbitration in the trial court system, including Supreme Court ADR rules, special rules of court and applicable state and federal statutes; and

(5) Management of presentations made during early neutral evaluation procedures and moderated settlement conferences.

(c) Family Law Facilitative Neutrals.

All qualified neutrals serving in family law facilitative processes must have:

(1) Completed or taught a minimum of 40 hours of family mediation training which is certified by the Minnesota Supreme Court. The certified training shall include at least:

(a) 4 hours of conflict resolution theory;

(b) 4 hours of psychological issues related to separation and divorce, and family dynamics;

(c) 4 hours of the issues and needs of children in divorce;

(d) 6 hours of family law including custody and visitation, support, asset distribution and evaluation, and taxation as it relates to divorce;

(e) 5 hours of family economics; and,

(f) 2 hours of ethics, including: (I) the role of mediators and parties' attorneys in the facilitative process; (ii) the prohibition against mediators dispensing legal advice; and, (iii) a party's right of termination.

Certified training for mediation of custody issues only need not include 5 hours of family economics. The certified training shall consist of at least 40 percent role-playing and simulations.

(2) Completed or taught a minimum of 6 hours of certified training in domestic abuse issues, which may be a part of the 40-hour training above, to include at least:

(a) 2 hours about domestic abuse in general, including definition of battery and types of power imbalance;

(b) 3 hours of domestic abuse screening, including simulations or role-playing; and,

(c) 1 hour of legal issues relative to domestic abuse cases.

(d) Family Law Adjudicative Neutrals.

All qualified neutrals serving in a family law adjudicative capacity must have had at least 5 years of professional experience in the area of family law and be recognized as qualified practitioners in their

field. Recognition may be demonstrated by submitting proof of professional licensure; professional certification; faculty membership of approved continuing education courses for family law; service as court-appointed adjudicative neutral, including consensual special magistrates; service as referees or guardians ad litem; or acceptance by peers as experts in their field. All qualified family law adjudicative neutrals shall have also completed or taught a minimum of 6 hours of certified training on the following topics:

(1) Pre-hearing communications among parties and between the parties and neutral(s);

(2) Components of the family court hearing process including evidence, presentation of the case, witnesses, exhibits, awards, dismissals, and vacation of awards;

(3) Settlement techniques; and,

(4) Rules, statutes, and practices pertaining to arbitration in the trial court system, including Minnesota Supreme Court ADR rules, special rules of court, and applicable state and federal statutes.

In addition to the 6-hour training required above, all qualified family law adjudicative neutrals must have completed or taught a minimum of 6 hours of certified training in domestic abuse issues, to include at least:

(1) 2 hours about domestic abuse in general, including definition of battery and types of power imbalance;

(2) 3 hours of domestic abuse screening, including simulations or role-playing; and,

(3) 1 hour of legal issues relative to domestic abuse cases.

(e) Family Law Evaluative Neutrals. All qualified neutrals offering early neutral evaluations or non-binding advisory opinions (1) shall have at least 5 years of experience as family law attorneys, as accountants dealing with divorce-related matters, as custody and visitation psychologists, or as other professionals working in the area of family law who are recognized as qualified practitioners in their field; and (2) shall have completed or taught a minimum of 2 hours of certified training on management of presentations made during evaluative processes. Evaluative neutrals shall have knowledge on all issues on which they render opinions.

In addition to the 2-hour training required above, all qualified family law evaluative neutrals must have completed or taught a minimum of 6 hours of certified training in domestic abuse issues, to include at least:

(1) 2 hours about domestic abuse in general, including definition of battery and types of power imbalance;

(2) 3 hours of domestic abuse screening, including simulations or role-playing; and,

(3) 1 hour of legal issues relative to domestic abuse cases.

(f) Exceptions to Roster Requirements. Neutral fact-finders selected by the parties for their expertise need not undergo training nor be included on the State Court Administrator's roster.

(g) Continuing Training. All qualified neutrals providing facilitative or hybrid services must attend 18 hours of continuing education about alternative dispute resolution subjects within the 3-year period in which the qualified neutral is required to complete the continuing education requirements. All other qualified neutrals must attend 9 hours of continuing education about alternative dispute resolution subjects during the 3-year period in which the qualified neutral is required to complete the continuing education requirements. These hours may be attained through course work and attendance at state and national ADR conferences. The qualified neutral is responsible for maintaining attendance records and shall disclose the information to program administrators and the parties to any dispute. The qualified neutral shall submit continuing education credit information to the State Court Administrator's office within sixty days after the close of the period during which his or her education requirements must be completed.

(h) Certification of Training Programs. The State Court Administrator shall certify training programs which meet the training criteria of this rule.

Rule 114.14. Waiver of Training Requirement

A neutral seeking to be included on the roster of qualified neutrals without having to complete training requirements under Rule 114.13 shall apply for a waiver to the Minnesota Supreme Court ADR Review Board. Waivers may be granted when an individual's training and experience clearly demonstrate exceptional competence to serve as a neutral.

## Minn. Stat. § 582.039. Mediation notice for agricultural property

Chapter 582.

*Current with the laws of the 2008 Regular Session*

Subdivision 1. Requirement. A person may not begin a proceeding under this chapter or chapter 580 to foreclose a mortgage on agricultural property subject to sections 583.20 to 583.32 that has a secured debt of more than $5,000 unless: (1) a mediation notice is served on the mortgagor after a default has occurred in the mortgage and a copy is served on the director and the mortgagor and mortgagee have completed mediation under sections 583.20 to 583.32; or (2) as otherwise allowed under sections 583.20 to 583.32.

Subd. 2. Contents. A mediation notice must contain the following notice with the blanks properly filled in.

“TO: .... (Name of Record Owner)....

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

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

YOU HAVE THE RIGHT TO HAVE THE MORTGAGE DEBT REVIEWED FOR MEDIATION. IF YOU REQUEST MEDIATION, A DEBT THAT IS IN DEFAULT WILL BE MEDIATED ONLY ONCE. IF YOU DO NOT REQUEST MEDIATION, THIS DEBT WILL NOT BE SUBJECT TO FUTURE MEDIATION IF THE SECURED PARTY ENFORCES THE DEBT.

IF YOU PARTICIPATE IN MEDIATION, THE DIRECTOR OF THE AGRICULTURAL EXTENSION SERVICE WILL PROVIDE AN ORIENTATION MEETING AND A FINANCIAL ANALYST TO HELP YOU PREPARE FINANCIAL INFORMATION. IF YOU DECIDE TO PARTICIPATE IN MEDIATION, IT WILL BE TO YOUR ADVANTAGE TO ASSEMBLE YOUR FARM FINANCE AND OPERATION RECORDS AND TO CONTACT A COUNTY EXTENSION OFFICE AS SOON AS POSSIBLE. MEDIATION WILL ATTEMPT TO ARRIVE AT AN AGREEMENT FOR HANDLING FUTURE FINANCIAL RELATIONS.

TO HAVE THE MORTGAGE DEBT REVIEWED FOR MEDIATION YOU MUST FILE A MEDIATION REQUEST WITH THE DIRECTOR WITHIN 14 DAYS AFTER YOU RECEIVE THIS NOTICE. THE MEDIATION REQUEST FORM IS AVAILABLE AT ANY COUNTY RECORDER'S OR COUNTY EXTENSION OFFICE.

FROM: ....(Name and Address of Holder of Mortgage)....”

## Farmer--Lender Mediation Act

Chapter 583.

*Current with the laws of Second Regular Session of 2008*

583.20. Citation

Sections 583.20 to 583.32 may be cited as the “Farmer-Lender Mediation Act.”

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.

583.215. Expiration

(a) Sections 336.9-601, subsections (h) and (i); 550.365; 559.209; 582.039; and 583.20 to 583.32, expire June 30, 2009.

(b) Laws 1986, chapter 398, article 1, section 18, as amended, is repealed.

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. 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 Minnesota 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 chapter 256J, 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.

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.

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. 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 60 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.

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.

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 336.9-601 to 336.9-628, 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 336.9-601, 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 336.9-601 to 336.9-628; 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 336.9-601 to 336.9-628, 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.

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. Party's bad faith; mediator's affidavit. 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 bad faith; court supervision. 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's 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. Appraisal if value disputed. 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.

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.

Subdivision 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.

583.284. Retention of purchase money security interest

If a creditor has a purchase money security interest under section 336.9-103, 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.

583.285. Mediation 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.

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.

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.

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.

583.31. Enforcement

The mediation agreement must be enforced by the district court.

583.311. Voluntary alternative dispute resolution

The administrator shall establish procedures and measures to ensure maximum use of alternative dispute resolution under this chapter for disputes in rural areas. Referrals may be accepted from courts, state agencies, local units of government, or any party to a dispute involving rural land, regulation, rural individuals, businesses, or property, or any matter affecting rural quality of life. The legislature encourages state and federal agencies and governmental subdivisions to use the services provided by the administrator under this chapter and to cooperate fully when matters under this jurisdiction are subjected to alternative dispute resolution methods. The administrator may set fees for participation in voluntary procedures to pay all or part of the costs of providing such services.

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.

**Mediation and Arbitration**

Minn. R. 1500.0901

*Current with amendments received through December 2008*

1500.0901 MEDIATION AND ARBITRATION.
Subpart 1. Definitions. The definitions in items A and B apply to this part.

A. ""Mediation" is a process by which the parties to a dispute jointly explore and resolve all or a part of their differences with the assistance of a neutral person. The mediator's role is to assist the parties in resolving the dispute themselves. The mediator has no authority to impose a settlement.

B. ""Arbitration" is a process by which the parties to a dispute submit their differences to the judgment of an impartial party. The arbitrator's role is to hear the parties' arguments and issue a decision (grant an award) resolving the dispute.

Subp. 2. Procedure. If mediation or arbitration services are requested, the commissioner may refer the parties to outside mediation or arbitration services or conduct the services within the Department of Agriculture. Mediation and arbitration activities of the commissioner must be conducted according to Minnesota Statutes, chapter 572.

Subp. 3. Required clauses. Mediation or arbitration clauses are required in all contracts signed by Minnesota producers.

## FARMER-LENDER MEDIATION

Minn. R. 1502.0001

*Current with amendments received through December 2008*

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

1502.0002 DEFINITIONS.
Subpart 1. Scope. The definitions in this part and Minnesota Statutes, section 583.22, apply to parts 1502.0001 to 1502.0026.

Subp. 2. [Repealed, 28 SR 1360]

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

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

Subp. 5. Mediation proceeding notice. ""Mediation proceeding notice" means the mediation

proceeding notice sent by the statewide program office under Minnesota Statutes, section 583.24, subdivision 4.

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

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

Subp. 8. Statewide program office. ""Statewide program office" means the Farmer-Lender Mediation Statewide Program Office of the University of Minnesota Extension Service.

1502.0002 DEFINITIONS.

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

Subp. 2. [Repealed, 28 SR 1360]

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

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

Subp. 5. Mediation proceeding notice. ""Mediation proceeding notice" means the mediation proceeding notice sent by the statewide program office under Minnesota Statutes, section 583.24, subdivision 4.

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

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

Subp. 8. Statewide program office. ""Statewide program office" means the Farmer-Lender Mediation Statewide Program Office of the University of Minnesota Extension Service.

1502.0003 ADMINISTRATION.

The director of Minnesota extension services shall administer the Farmer-Lender Mediation Act subject to the delegation power prescribed in Minnesota Statutes, sections 583.22, subdivision 5, and 583.23, subdivision 3. Under the delegation power in Minnesota Statutes, section 583.22, subdivision 5, the statewide program office is the director's designee as provided in parts 1502.0001 to 1502.0026

and for purposes of service, filing, and other purposes specified by the director.

1502.0004 RESPONSIBILITIES.
The director's responsibilities under the Farmer-Lender Mediation Act include, but are not limited to, the following:

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

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

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

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

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

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

1502.0005 FORMS.
The director shall make forms for mediation under the Farmer-Lender Mediation Act available through the statewide program office for use by debtors, creditors, and mediators.

1502.0006 SUBSTANTIVE RIGHTS.
The fact that the director or director's designee has in any way acted upon a request for mediation does not determine the substantive rights of the debtor or creditors under the Farmer-Lender Mediation Act or parts 1502.0001 to 1502.0026.

1502.0007 FILING AND WITHDRAWAL OF MEDIATION REQUEST.
A debtor must file a mediation request form with the statewide program office within 14 days after receiving a mediation notice. A debtor may withdraw a mediation request at any time before 14 days after receiving a mediation notice. The debtor's withdrawal must be in writing. Withdrawal of the mediation request constitutes a waiver of the debtor's right to mediate the debt that initiated the service of the mediation notice under the Farmer-Lender Mediation Act unless the debtor refiles the mediation request within the 14 days permitted to file the original mediation request.

1502.0008 FAILURE TO REQUEST MEDIATION.
The creditor must serve the mediation notice on the statewide program office within three days of service of the notice on the debtor. If a debtor fails to file a timely mediation request or withdraws a mediation request, the statewide program office shall send a copy of the Extension Notice of Debtor(s) Failure to Request Mediation (Form 3) to the debtor and the creditor who served the mediation notice. The extension Notice of Debtor(s) Failure to Request Mediation (Form 3) must be sent within 20 days

after service of the mediation notice on the debtor or within three days after the creditor's filing with the statewide program office proof of the date of service of the mediation notice, whichever is later.

1502.0009 CANCELLATION OF MEDIATION PROCEEDING.

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

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

1502.0010 PROOF OF FILING MEDIATION REQUEST.

When a debtor files a mediation request with the statewide program office, the mediation request must be filed by certified mail using return receipt, by actual delivery of the mediation request with a signed receipt of the statewide program office, by facsimile with a receipt returned by facsimile, or electronically with a receipt returned electronically.

1502.0011 CREDITOR CLAIM FORMS FOR DEBTS NOT SUBJECT TO MEDIATION.

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

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

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

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

(2) a copy of the mediation proceeding notice;

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

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

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

(1) a copy of the mediation notice;

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

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

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

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

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

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

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

1502.0012 FINANCIAL ANALYST AND FARM ADVOCATE.

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

1502.0014 ORIENTATION SESSION.

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

1502.0014 ORIENTATION SESSION.

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

1502.0015 SELECTION OF MEDIATOR.

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

Subp. 2. Replacement mediator. If the appointed mediator withdraws from the case, the farmer-lender mediation coordinator of the statewide program office shall appoint a replacement mediator not previously stricken from the mediator list by the debtor or the initiating creditor, or if an unstricken mediator is not available, the farmer-lender mediation coordinator of the statewide program office shall appoint an available mediator, subject to the disapproval of either the debtor or creditor, upon a showing of conflict of interest.

Subp. 3. Comediators. At the discretion of the statewide program office, more than one mediator may be assigned to a mediation proceeding.

1502.0016 DUTIES OF MEDIATOR.

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

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

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

C. explain the rules of conduct for mediation meetings;

D. explain the confidentiality of mediation; and

E. facilitate written agreement on:

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

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

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

1502.0018 REMOVAL OF MEDIATOR.

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

of conflict of interest.

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

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

1502.0018 REMOVAL OF MEDIATOR.

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

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

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

1502.0019 MEDIATION AGREEMENT.

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

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

1502.0020 REJECTION OF DEBT RESTRUCTURING ALTERNATIVES.

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

1502.0021 ABUSIVE BEHAVIOR.

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

1502.0022 LACK OF GOOD FAITH AFFIDAVIT.

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

1502.0022 LACK OF GOOD FAITH AFFIDAVIT.

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

1502.0023 CREDITOR'S LACK OF GOOD FAITH.
If the mediator finds the creditor has not participated in mediation in good faith, the debtor may require court-supervised mediation by:

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

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

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

1502.0024 DOCUMENTS NECESSARY FOR MEDIATION.
Not participating in good faith may include failure of the debtor or creditor to provide the following records and documents if the mediator determines that they are necessary:

A. a current, signed financial statement of assets and liabilities;

B. a copy of the most recent depreciation schedule;

C. farm record books for the past three years or evidence of crop and livestock production;

D. projected farm budget for the current 12 months;

E. copies of any other legal documents that are necessary for the mediation and pertain to the farm business;

F. copies of FINPACK printout analysis for the farm operation where applicable;

G. appraisals, including in-house appraisals, of the debtor's property; and

H. worksheets on foreclosure cost analysis, if any have been done by the lender.

1502.0025 COURT-SUPERVISED MEDIATION.
Subpart 1. List of mediators. If requested to do so by the court, the statewide program office shall provide the court with a list of mediators to be used in the selection of the mediator for court-supervised mediation.

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

1502.0026 CREDITOR NOT ATTENDING MEDIATION MEETING.
Subpart 1. Initiating creditor. The initiating creditor shall not file a proof of claim form in lieu of attending meetings.

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

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

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

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

1502.0027 ADVOCATE SERVICES FEES.
As allowed in Minnesota Statutes, section 17.03, subdivision 9, the Department of Agriculture shall charge $15 per hour following a free two-hour consultation for farm advocate services. The department shall waive the fees upon proof that the farm advocate's client has a reportable federal adjusted gross income of $15,000 or less and a debt to asset ratio of greater than 50 percent.

## AGRICULTURAL CONTRACTS

Minn. R. 1572.0010

*Current with amendments received through December 2008*

1572.0010 DEFINITIONS.
Subpart 1. Scope. The definitions in this part apply to parts 1572.0010 to 1572.0050.

Subp. 2. Arbitration. ""Arbitration" means a process by which the parties to a dispute submit their differences to the judgment of an impartial party. The arbitrator's role is to hear the parties' arguments and issue a decision or grant an award, resolving the dispute.

Subp. 3. Commissioner. ""Commissioner" means the commissioner of agriculture or a designee.

Subp. 4. Contract. ""Contract" means a legally enforceable agreement between two or more parties. Contract includes a written commodity contract signed by all parties. If the parties have not signed a written commodity contract, contract includes an invoice, purchase order, memorandum, or confirmation of sale unless the terms of the document have been objected to by a party to the proposed

agreement within ten days of receipt of the document by the objecting party. Contract does not include a grain scale ticket.

Subp. 5. Mediation. ""Mediation" means a process by which parties to a dispute jointly explore and resolve all or a part of their differences with the assistance of a neutral person. The mediator's role is to assist the parties in resolving the dispute. The mediator has no authority to impose a settlement.

1572.0020 MEDIATION AND ARBITRATION.

Subpart 1. Procedure. If mediation or arbitration services are requested, the commissioner may refer the parties to outside mediation or arbitration services or conduct the services within the department of agriculture. Mediation and arbitration activities of the commissioner must be conducted according to the Uniform Arbitration Act in Minnesota Statutes, sections 572.08 to 572.30, and the Minnesota Civil Mediation Act in Minnesota Statutes, sections 572.31 to 572.40.

Mediation or arbitration services provided by the commissioner under this part must be provided according to the terms of the contract between the parties. In addition, the commissioner shall require the providers of any outside mediation or arbitration services to which the commissioner refers the parties to conduct arbitration or mediation proceedings according to the terms of the contract between the parties.

Subp. 2. Limitations. The commissioner may not accept a request under subpart 1 if the contract governing the dispute between the parties contains an arbitration or mediation clause, and if:

A. mediation or arbitration procedures have started before a mediator or arbitrator who has been appointed in accordance with the contract or who otherwise is agreeable to the parties; or

B. whether or not mediation or arbitration has started, the arbitration or mediation clause or terms adopted under it contains a mechanism for designating a mediator or arbitrator the parties are legally obligated to use under the Uniform Arbitration Act or the Minnesota Civil Mediation Act, whichever is appropriate.

Subp. 3. No review. The commissioner shall not review decisions made under a mediation or arbitration proceeding between a contractor and a producer, or otherwise provide services under subpart 1 relative to a matter that was disputed in the arbitration or mediation proceedings.

Subp. 4. Findings. The findings and order of an arbitrator under this part are prima facie evidence of the matters contained in them.

Subp. 5. Seed. If arbitration is required in a contract for seed, as defined in Minnesota Statutes, section 21.81, subdivisions 3, 8, and 32, the arbitration procedure in items A to C applies.

A. A notice in the following form, or equivalent language must be part of a seed contract:

""Arbitration is required as a precondition of maintaining certain legal actions, counterclaims, or defenses against a seller of seed for damages for the failure of seed for planting to produce or perform as represented by a seed tag or label."

B. The commissioner shall appoint an arbitration council composed of five members and five alternate members. One member and one alternate must be appointed upon the recommendation of each of the following:

(1) the dean and director of the College of Agriculture, University of Minnesota;

(2) the director of the Minnesota Agricultural Experiment Station;

(3) the president of the Minnesota Crop Improvement Association;

(4) the president of a farm organization designated by the commissioner; and

(5) the commissioner.

An alternate member may serve only in the absence of the member for whom the person is an alternate.

The council shall select a chair and a secretary from its membership. The chair shall conduct meetings and deliberations of the council and direct all of its other activities. The secretary shall keep accurate records of all meetings and deliberations and perform other duties for the council as the chair may direct.

The purpose of the council is to conduct arbitration as provided in this part. The council may be called into session by or at the direction of the commissioner or upon direction of its chair to consider matters referred to it by the commissioner or the chair in accordance with this part.

C. Procedures:

(1) A buyer may invoke arbitration by filing a sworn complaint with the commissioner. The buyer shall serve a copy of the complaint upon the seller by certified mail. Except in case of seed that has not been planted, the claims must be filed within a time that permits effective inspection of the plants under field conditions.

(2) Within 15 days after receipt of a copy of the complaint, the seller shall file with the commissioner an answer to the complaint and serve a copy of the answer upon the buyer by certified mail.

(3) The commissioner shall refer the complaint and answer to the council for investigation, findings, and recommendations.

(4) Upon referral of a complaint for investigation the council shall make a prompt and full investigation of the matters complained of and report its findings and recommendations to the commissioner within 60 days of the referral or a later date as the parties may determine.

(5) The report of the council must include findings of fact and recommendations as to costs, if any.

(6) In the course of its investigation, the council or any of its members may examine the buyer and the seller on all matters the council considers relevant; may grow to production a representative sample of

the seed through the facilities of the commissioner or a designated university under the commissioner's supervision if considered necessary; and may hold informal hearings at a time and place the council chair may direct upon a reasonable notice to all parties.

(7) The council may delegate all or any part of an investigation to one or more of its members. Any delegated investigation must be summarized in writing and considered by the council in its report.

(8) After the council has made its report, the commissioner shall promptly transmit the report by certified mail to all the parties.

(9) All expenses of the arbitration, including required travel and other expenses of the council, must be borne equally by the parties, unless the council, in the award, assesses the expenses or any part of them against a specified party or parties.

Subp. 6. Clause required. Contract mediation or arbitration clauses are required in contracts signed by Minnesota producers.

Subp. 7. Sample copies of contracts. A contractor using a written commodity contract must submit to the commissioner a sample copy of each contract offered to producers. Schedules of prices and charges need not be included. Contract samples must be submitted to the commissioner and made available to producers at least 30 days before the contract crops are planted or the contract livestock is placed in the producer's facility.

Subp. 8. Effective date. Minnesota Statutes, section 17.91, applies only to contracts signed after August 1, 1990.

## PROCEEDINGS BEFORE BOARDS OF ARBITRATION

Minn. R. 5500.2200

*Current with amendments received through December 2008*

5500.2200 APPLICABILITY.

Parts 5500.2200 to 5500.2800 shall apply to all arbitration proceedings under Minnesota Statutes, chapter 179A, subject to all applicable provisions of the law.

5500.2300 ARRANGEMENTS FOR HEARING.

When a board of arbitrators has been appointed, it shall immediately fix a time and place for the first hearing before said board. The chair shall mail to each of the parties to the dispute, at least five days before the date set for the first hearing, a notice thereof, together with a copy of parts 5500.2200 to 5500.2800; provided that notice may be waived or the time therefor shortened by agreement of the parties. Any hearing may be adjourned to a certain time, which shall be announced at the close of the hearing, without further notice, but if no time be fixed for further hearing upon adjournment, notice shall be given as for the first hearing.

5500.2400 PROCEEDINGS DURING THE HEARING.

Any party to the dispute may be represented by a representative or an attorney at law. The first party requesting any action shall be called the moving party. The other party shall be called the defending party. Each party shall have the right to cross-examine the witnesses of the other party. The order of the proceedings shall be as follows: the moving party shall outline that party's case, call witnesses, and present evidence; upon the completion of the case of the moving party, the defending party shall outline that party's case, call witnesses, and present evidence. The opportunity to call witnesses in rebuttal shall be accorded to each party. Exhibits may be offered by either party and when received in evidence by the board shall be made a part of the record. After the parties have concluded the presentation of their evidence, they may make arguments in the same order as hereinbefore provided for submission of evidence, and thereupon the hearings shall be closed. All proceedings and the record thereof shall be confidential unless both parties agree in writing to the release thereof by the board. No member of the board shall present the case or examine the witnesses of any party to the dispute except so far as such examination may be necessary to amplify the testimony disclosed by the examination by the parties to the dispute.

5500.2500 EVIDENCE.

The board shall hear all evidence which is competent, relevant, and material to the issue. The board shall not conduct any hearing hereunder unless all parties to the dispute are present in person or by their designated representatives; provided, however, that a hearing may proceed in the absence of any party who consents thereto, or who fails to appear after due notice of the hearing, or who leaves without being excused by the board. The board may, however, make any independent inspection of the subject matter of the dispute, or make such inquiries or obtain such information outside of the hearings as it may deem necessary and proper; provided, however, that the parties to the dispute shall be afforded an opportunity to examine any evidence so secured, and to introduce evidence in opposition thereto, unless the right to such examination and introduction of evidence is waived in writing. The parties shall furnish such evidence as the board may require, as far as possible and the failure to produce such evidence when required may be considered by the board in making its award. The board may, at its discretion, receive written briefs, and shall fix at the close of the hearings the time within which the same shall be served upon the opposing parties and filed with proof of such service.

5500.2600 AMENDMENTS.

The original statement of the dispute may be amended by a supplemental written agreement signed by all parties and filed with the board at any time before the final decision. No issues shall be considered by the board except as specified in the original agreement or a supplemental agreement executed and filed as herein provided.

5500.2700 AWARD.

When the board shall have concluded its hearings and investigations, it shall make an award. The award shall be in writing, signed by a majority of the arbitrators, and shall set forth in detail the findings of the board upon all the issues before it and its decision thereon. The board shall file with the commissioner the stenographic record of its proceedings, if kept, together with all exhibits and records and the original findings, opinion, and award made by it. In case before a final award is made a written agreement shall be filed with the board, duly executed by all of the parties to the dispute, settling all questions at issue, the board shall cease its activities without making an award and shall file its records with the commissioner as hereinbefore provided.

5500.2800 RECONSIDERATION OF THE AWARD.

Any party to an arbitration proceeding may request a reconsideration of the award made by the board therein upon any or all of the following grounds: that there is material evidence, newly discovered, which with reasonable diligence could not have been found and produced at the prior hearings; that the award is not justified by the evidence or is contrary to law; that any adverse party has been guilty of misconduct which materially affected the result. Such request shall be in writing and shall set forth the facts constituting grounds upon which it is based. Copies of such request shall be served upon all other parties to the proceedings, upon the chair of the board, and upon the commissioner. The board may then proceed to consider the request, if it deems the grounds stated sufficient, or may reject the same if it deems the grounds insufficient. If the board determines to consider the request, it shall order a preliminary hearing thereon, notice of which shall be given as provided for the first hearing upon an arbitration agreement. After such hearing, the board shall make its order granting or denying the request. If the request is granted, the board shall proceed to reconsider the award and shall fix a time and place for the hearing thereon, of which notice shall be given as for the first hearing. The board may by order limit the matters upon which it will receive new or additional evidence. Thereupon further proceedings shall be had as upon the original arbitration agreement. At the conclusion thereof the board shall affirm the award or shall make and file amended award which shall supersede the original award.

## WHOLESALE PRODUCE DEALERS

Minn. R. 1500.0901

*Current with amendments received through December 2008*

1500.0901 MEDIATION AND ARBITRATION.

Subpart 1. Definitions. The definitions in items A and B apply to this part.

A. ""Mediation" is a process by which the parties to a dispute jointly explore and resolve all or a part of their differences with the assistance of a neutral person. The mediator's role is to assist the parties in resolving the dispute themselves. The mediator has no authority to impose a settlement.

B. ""Arbitration" is a process by which the parties to a dispute submit their differences to the judgment of an impartial party. The arbitrator's role is to hear the parties' arguments and issue a decision (grant an award) resolving the dispute.

Subp. 2. Procedure. If mediation or arbitration services are requested, the commissioner may refer the parties to outside mediation or arbitration services or conduct the services within the Department of Agriculture. Mediation and arbitration activities of the commissioner must be conducted according to Minnesota Statutes, chapter 572.

Subp. 3. Required clauses. Mediation or arbitration clauses are required in all contracts signed by Minnesota producers.