

The National Agricultural
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An Agricultural Law Research Project

States' Alternative Dispute Resolution Statutes
State of South Dakota

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States' Alternative Dispute Resolution Statutes

STATE OF SOUTH DAKOTA

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Enforcement of Arbitration Agreements

Title 21, Chapter 21-25A.

Current through the 2008 Regular Session

21-25A-1. Enforceability of arbitration clauses in written contracts--Labor contracts

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. This chapter also applies to arbitration agreements between employers and employees or between their respective representatives.

21-25A-2. Chapter prospective only

This chapter applies only to agreements made subsequent to June 30, 1971.

21-25A-3. Insurance policies not covered--Arbitration agreements void

This chapter does not apply to insurance policies and every provision in any such policy requiring arbitration or restricting a party thereto or beneficiary thereof from enforcing any right under it by usual legal proceedings in ordinary tribunals or limiting the time to do so is void and unenforceable. However, nothing in this chapter may be deemed to impair the enforcement of or invalidate a contractual provision for arbitration entered into between insurance companies.

21-25A-4. Circuit court jurisdiction of proceedings

The term, court, means a circuit court of this state. The making of an agreement described in § 21-25A-1 providing for arbitration in this state confers jurisdiction on the court to enforce the agreement under this chapter and to enter judgment on an award thereunder.

21-25A-5. Application to compel arbitration--Order to arbitrate or denial of application

On application of a party showing an agreement described in § 21-25A-1, 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.

21-25A-6. Merits of claim not considered on application to compel arbitration

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

21-25A-7. Stay of judicial proceedings on arbitrable issue--Severance of issues

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 § 21-25A-5 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.

21-25A-8. Application to stay arbitration--Order to arbitrate or staying arbitration--Venue of application

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.

If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under § 21-25A-5, the application shall be made therein. Otherwise and subject to § 21-25A-34, the application may be made in any court of competent jurisdiction.

21-25A-9. Appointment of arbitrators according to agreement--Appointment by court

Except as provided by chapter 21-25B, 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 his 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.

21-25A-10. Arbitrators acting by majority

The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by this chapter.

21-25A-11. Time and place of hearing--Notice to parties--Waiver of notice

Unless otherwise provided by the agreement, the arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered or certified mail not less than five days before the hearing. Appearance at the hearing waives such notice.

21-25A-12. Subpoenas issued by arbitrators--Service and enforcement

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 enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.

21-25A-13. Depositions permitted by arbitrators--Compelling testimony

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

21-25A-14. Hearing by all arbitrators--Continuation when arbitrator ceases to act

Unless otherwise provided by the agreement, 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.

21-25A-15. Evidence presented by parties--Cross-examination

Unless otherwise provided by the agreement, the parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.

21-25A-16. Right to representation by counsel--Waiver ineffective

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

21-25A-17. Adjournment or postponement of hearing--Failure of party to appear--Court order to proceed promptly

Unless otherwise provided by the agreement, the arbitrators may adjourn the hearing from time to time as necessary and, on 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.

21-25A-18. Witness fees

Fees for attendance as a witness shall be the same as for a witness in the circuit courts of this state.

21-25A-19. Time for making award--Extension of time

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 he notifies the arbitrators of his objection prior to the delivery of the award to him.

21-25A-20. Award in writing--Delivery to parties

The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally or by registered or certified mail, or as provided in the agreement.

21-25A-21. Modification or correction of award--Application--Notice

On application of a party or, if an application to the court is pending under §§ 21-25A-23 to 21-25A-30, inclusive, 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 subdivisions 21-25A-28(1) and (3), for the purpose of clarifying the award. The application shall be made within twenty days after delivery of the award to the applicant. Written notice thereof shall be given forthwith to the opposing party, stating that he must serve his objections thereto, if any, within ten days from the notice. The award so modified or corrected is subject to the provisions of §§ 21-25A-23 to 21-25A-30, inclusive.

21-25A-22. Payment of expenses of proceedings

Except as provided in §§ 21-25B-22 and 21-25B-25, 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 arbitration, shall be paid as provided in the award.

21-25A-23. Judicial confirmation of 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 §§ 21-25A-24 to 21-25A-30, inclusive.

21-25A-24. Grounds for vacation of award

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 §§ 21-25A-11 to 21-25A-17, inclusive, as to prejudice substantially the rights of a party;
- (5) There was no arbitration agreement and the issue was not adversely determined in proceedings under §§ 21-25A-5 to 21-25A-8, inclusive, and the party did not participate in the arbitration hearing without raising the objection; or
- (6) Conduct of a hearing officer which would prejudice substantially the rights of a party; provided that, 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.

21-25A-25. Time for application to vacate award

An application under § 21-25A-24 shall be made within ninety 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 ninety days after such grounds are known or should have been known, but in no case more than one year after delivery of a copy of the award to the applicant.

21-25A-26. Confirmation of award on denial of application to vacate

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

21-25A-27. Rehearing ordered after vacation of award--Time allowed for award on rehearing

In vacating the award on grounds other than stated in subdivision 21-25A-24(5), 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 § 21-25A-9, or, if the award is vacated on grounds set forth in subdivisions 21-25A-24(3) and (4) the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with § 21-25A-9. 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.

21-25A-28. Grounds for modification or correction of award

Upon application made within ninety 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.

21-25A-29. Alternative application to modify, correct, or vacate

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

21-25A-30. Confirmation of award after determining application to correct or modify

If the application to modify or correct an award 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.

21-25A-31. Judgment or decree on confirmed award--Costs

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 the proceedings subsequent thereto, and disbursements may be awarded by the court.

21-25A-32. Filing and docketing of judgment or decree

On entry of judgment or decree, the clerk shall file the following:

- (1) The agreement and each written extension of the time within which to make the award;
- (2) The award;
- (3) The order confirming, modifying, or correcting the award; and
- (4) The judgment or decree.

The judgment or decree may be docketed as if rendered in an action.

21-25A-33. Applications by motion--Service of notices

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 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 a civil action.

21-25A-34. Venue of applications

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 or, if he has no residence or place of business in this state, to the court of any county. All subsequent applications shall be made to the court hearing the initial application.

21-25A-35. Appeals from orders, judgments, and decrees

An appeal may be taken from:

- (1) An order denying an application to compel arbitration made under § 21- 25A-5;
- (2) An order granting an application to stay arbitration made under § 21- 25A-8;
- (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.

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

21-25A-36. Uniformity of construction of chapter

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

21-25A-37. Severability of provisions

If any provision of this chapter or the application thereof to any person or circumstance 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.

21-25A-38. Citation of chapter

This chapter may be cited as the Uniform Arbitration Act.

Seed Standards and Labeling
Title 38, Chapter 38-12A.

Current through the 2008 Regular Session

38-12A-21. Right of consumer to submit claim to arbitration

If any consumer is damaged by the failure of seed to produce or perform as represented by the label attached to the seed, or by warranty, or as a result of negligence, the consumer shall have the right to submit the claim to arbitration as provided in this chapter. The filing of a claim for arbitration is not a prerequisite to the consumer's right to maintain a legal action.

38-12A-22. Right of seedsman, seed producer, or seed dealer to submit claim to arbitration--Statutes of limitations and legal proceedings tolled

The seedsman, seed producer, or seed dealer shall also have the right to submit a claim to arbitration if conspicuous language calling attention to the requirement for arbitration is referenced or included on the label or otherwise conspicuously attached or printed on the container. Any applicable statutes of limitation and legal proceedings shall be tolled and stayed pending the outcome of the arbitration proceedings.

38-12A-24. Referring of complaint to arbitration committee--Discontinuation of investigation

The secretary shall refer the complaint and the answer to the arbitration committee for investigation, findings, and recommendation on the matters complained of. Upon receipt of same, the secretary shall

transmit the findings and recommendation of the arbitration committee to the consumer and to the seedsman, seed producer, or seed dealer by United States registered mail. The investigation of the committee may be discontinued at any time if the consumer and the seedsman, seed producer, or seed dealer satisfy the complaint and the consumer requests that it be withdrawn.

38-12A-25. Appointment of committee members--Election of chairman and secretary

The secretary shall appoint an arbitration committee composed of five members and five alternate members.

One member and one alternate member shall be appointed upon recommendation of each of the following:

- (1) Director of extension at South Dakota State University;
- (2) Director of the agriculture experiment station at South Dakota State University;
- (3) President, South Dakota Seed Trade Association;
- (4) President, a farmer organization as the secretary may determine to be appropriate;
- (5) Secretary, Department of Agriculture.

Each member and alternate shall continue to serve until replaced by the secretary. Each alternate member shall serve only in the absence of the member for whom he is an alternate. The committee shall elect a chairman and a secretary from its membership. The chairman shall conduct all meetings and deliberations held by the committee and direct all other activities of the committee. The secretary shall keep accurate and correct records on all meetings and deliberations and perform other duties for the committee as directed by the chairman.

38-12A-26. Purpose of committee--Nonbinding report--Evidence in litigation

The purpose of the arbitration committee is to assist consumers and seedsmen, seed producers, and seed dealers in determining the validity of complaints made by consumers and recommend total money damages resulting from alleged failure of seed to produce as represented by label on the seed package. Any report of the arbitration committee is nonbinding. The consumer or the seedsman, seed producer, or seed dealer may offer the report as evidence in any litigation.

38-12A-27. Session called by secretary or upon direction of chairman

The arbitration committee may be called into session by the secretary or upon the direction of the chairman to consider matters referred to it by the secretary.

38-12A-28. Investigation by committee--Recommendation--Hearings

When the secretary refers a complaint to the arbitration committee, the committee shall make a full and complete investigation and report its findings and its recommendation to the secretary and the parties within sixty days of the referral or at a later date as agreed to by the consumer and the seedsman, seed producer or seed dealer. All hearings shall be conducted in the county in which the seed was planted, unless otherwise agreed by the parties.

38-12A-29. Investigation by majority of committee directed by chairman-- Summary

An investigation may be made by not less than a majority of the membership of the arbitration committee by written directive of the chairman. The investigation shall be summarized in writing and considered by the entire committee in reporting its findings and making its recommendation.

Privileges

Title 19, Chapter 19-13.

Current through the 2008 Regular Session

19-13-32. Privilege relating to mediation proceedings--Exceptions

All verbal or written information relating to the subject matter of a mediation which is transmitted between any party to a dispute and a mediator or any agent, employee, or representative of a party or a mediator is confidential. Any mediation proceeding shall be regarded as settlement negotiations, and no admission, representation, or statement made in mediation not otherwise discoverable is admissible as evidence or subject to discovery. A mediator is not subject to process requiring the disclosure of any material matter discussed during the mediation proceeding unless all the parties consent to a waiver. A meeting held to further the resolution of a dispute may be closed to the public at the discretion of the mediator. This section does not apply if a party brings an action against the mediator or if the communication was made in furtherance of a crime or fraud. This section does not apply to mediations conducted pursuant to chapter 25-4.

Uniform Mediation Act

Title 19, Chapter 19-13A.

Current through the 2008 Regular Session

19-13A-1. Title

This chapter may be cited as the Uniform Mediation Act.

19-13A-2. Definitions

In this chapter:

- (1) "Mediation" means a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.
- (2) "Mediation communication" means a statement, whether oral or in a record or verbal or nonverbal, that occurs during a mediation or is made for purposes of considering, conducting, participating in, initiating, continuing, or reconvening a mediation or retaining a mediator.
- (3) "Mediator" means an individual who conducts a mediation.
- (4) "Nonparty participant" means a person, other than a party or mediator, that participates in a mediation.
- (5) "Mediation party" means a person that participates in a mediation and whose agreement is necessary to resolve the dispute.

- (6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.
- (7) "Proceeding" means:
- (A) a judicial, administrative, arbitral, or other adjudicative process, including related pre-hearing and post-hearing motions, conferences, and discovery; or
 - (B) a legislative hearing or similar process.
- (8) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (9) "Sign" means:
- (A) to execute or adopt a tangible symbol with the present intent to authenticate a record; or
 - (B) to attach or logically associate an electronic symbol, sound, or process to or with a record with the present intent to authenticate a record.

19-13A-3. Scope

- (a) Except as otherwise provided in subsection (b) or (c), this chapter applies to a mediation in which:
- (1) the mediation parties are required to mediate by statute or court or administrative agency rule or referred to mediation by a court, administrative agency, or arbitrator;
 - (2) the mediation parties and the mediator agree to mediate in a record that demonstrates an expectation that mediation communications will be privileged against disclosure; or
 - (3) the mediation parties use as a mediator an individual who holds himself or herself out as a mediator or the mediation is provided by a person that holds itself out as providing mediation.
- (b) The chapter does not apply to a mediation:
- (1) relating to the establishment, negotiation, administration, or termination of a collective bargaining relationship;
 - (2) relating to a dispute that is pending under or is part of the processes established by a collective bargaining agreement, except that the chapter applies to a mediation arising out of a dispute that has been filed with an administrative agency or court;
 - (3) conducted by a judge who might make a ruling on the case; or
 - (4) conducted under the auspices of:
 - (A) a primary or secondary school if all the parties are students or
 - (B) a correctional institution for youths if all the parties are residents of that institution.
- (c) If the parties agree in advance in a signed record, or a record of proceeding reflects agreement by the parties, that all or part of a mediation is not privileged, the privileges under §§ 19-13A-4 to 19-13A-6, inclusive, do not apply to the mediation or part agreed upon. However, §§ 19-13A-4 to 19-13A-6, inclusive, apply to a mediation communication made by a person that has not received actual notice of the agreement before the communication is made.

19-13A-4. Privilege against disclosure--Admissibility--Discovery

- (a) Except as otherwise provided in § 19-13A-6, a mediation communication is privileged as provided in subsection (b) and is not subject to discovery or admissible in evidence in a proceeding unless waived or precluded as provided by § 19-13A-5.

(b) In a proceeding, the following privileges apply:

(1) A mediation party may refuse to disclose, and may prevent any other person from disclosing, a mediation communication.

(2) A mediator may refuse to disclose a mediation communication, and may prevent any other person from disclosing a mediation communication of the mediator.

(3) A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a mediation communication of the nonparty participant.

(c) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or use in a mediation.

19-13A-5. Waiver and preclusion of privilege

(a) A privilege under § 19-13A-4 may be waived in a record or orally during a proceeding if it is expressly waived by all parties to the mediation and:

(1) in the case of the privilege of a mediator, it is expressly waived by the mediator; and

(2) in the case of the privilege of a nonparty participant, it is expressly waived by the nonparty participant.

(b) A person that discloses or makes a representation about a mediation communication which prejudices another person in a proceeding is precluded from asserting a privilege under § 19-13A-4, but only to the extent necessary for the person prejudiced to respond to the representation or disclosure.

(c) A person that intentionally uses a mediation to plan, attempt to commit or commit a crime, or to conceal an ongoing crime or ongoing criminal activity is precluded from asserting a privilege under § 19-13A-4.

19-13A-6. Exceptions to privilege

(a) There is no privilege under § 19-13A-4 for a mediation communication that is:

(1) in an agreement evidenced by a record signed by all parties to the agreement;

(2) made during a session of a mediation which is open or is required by law to be open, to the public;

(3) a threat or statement of a plan to inflict bodily injury or commit a crime of violence;

(4) intentionally used to plan a crime, attempt to commit or commit a crime, or to conceal an ongoing crime or ongoing criminal activity;

(5) sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediator;

(6) except as otherwise provided in subsection (c), sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediation party, nonparty participant, or representative of a party based on conduct occurring during a mediation; or

(7) sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation in a proceeding in which a child or adult protective services agency is a party, unless the matter has been referred to mediation by a court under §§ 25-4-56 to 25-4-62, in which case the terms of those statutes shall apply.

(b) There is no privilege under § 19-13A-4 if a court, administrative agency, or arbitrator finds, after a

hearing in camera, that the party seeking discovery or the proponent of the evidence has shown that the evidence is not otherwise available, that there is a need for the evidence that substantially outweighs the interest in protecting confidentiality, and that the mediation communication is sought or offered in:

- (1) a court proceeding involving a felony or Class 1 misdemeanor;
- (2) except as otherwise provided in subsection (c), a proceeding to prove a claim to rescind or reform or a defense to avoid liability on an agreement arising out of the mediation.

(c) A mediator may not be compelled to provide evidence of a mediation communication referred to in subsection (a)(6) or (b)(2).

(d) If a mediation communication is not privileged under subsection (a) or (b), only the portion of the communication necessary for the application of the exception from nondisclosure may be admitted. Admission of evidence under subsection (a) or (b) does not render the evidence, or any other mediation communication, discoverable or admissible for any other purpose.

19-13A-7. Prohibited mediator reports

(a) Except as required in subsection (b), a mediator may not make a report, assessment, evaluation, recommendation, finding, or other communication regarding a mediation to a court, administrative agency, or other authority that may make a ruling on the dispute that is the subject of the mediation.

(b) A mediator may disclose:

- (1) whether the mediation occurred or has terminated, whether a settlement was reached and if so the terms thereof, and attendance;
- (2) a mediation communication as permitted under § 19-13A-6; or
- (3) a mediation communication evidencing abuse, neglect, abandonment, or exploitation of an individual to a public agency responsible for protecting individuals against such mistreatment.

(c) A communication made in violation of subsection (a) may not be considered by a court, administrative agency, or arbitrator.

19-13A-8. Confidentiality

Unless subject to § 1-25-1, mediation communications are confidential to the extent agreed by the parties or provided by other law or rule of this State.

19-13A-9. Mediator's disclosure of conflicts of interest--Background

(a) Before accepting a mediation, an individual who is requested to serve as a mediator shall:

- (1) make an inquiry that is reasonable under the circumstances to determine whether there are any known facts that a reasonable individual would consider likely to affect the impartiality of the mediator, including a financial or personal interest in the outcome of the mediation and an existing or past relationship with a mediation party or foreseeable participant in the mediation; and
- (2) disclose any such known fact to the mediation parties as soon as is practical before accepting a mediation.

(b) If a mediator learns any fact described in subsection (a)(1) after accepting a mediation, the mediator

shall disclose it as soon as is practicable.

(c) At the request of a mediation party, an individual who is requested to serve as a mediator shall disclose the mediator's qualifications to mediate a dispute.

(d) A person that violates subsection (a) or (b) is precluded by the violation from asserting a privilege under § 19-13A-4.

(e) Subsections (a), (b), and (c), do not apply to an individual acting as a judge.

(f) This chapter does not require that a mediator have a special qualification by background or profession.

19-13A-10. Participation in mediation

An attorney or other individual designated by a party may accompany the party to and participate in a mediation. A waiver of participation given before the mediation may be rescinded.

19-13A-11. International commercial mediation

(a) In this section, "Model Law" means the Model Law on International Commercial Conciliation adopted by the United Nations Commission on International Trade Law on 28 June 2002 and recommended by the United Nations General Assembly in a resolution (A/RES/57/18) dated 19 November 2002, and "international commercial mediation" means an international commercial conciliation as defined in Article 1 of the Model Law.

(b) Except as otherwise provided in subsections (c) and (d), if a mediation is an international commercial mediation, the mediation is governed by the Model Law.

(c) Unless the parties agree in accordance with § 19-13A-3(c) that all or part of an international commercial mediation is not privileged, §§ 19-13A-4 to 19-13A-6, inclusive, and any applicable definitions in § 19-13A-2 also apply to the mediation and nothing in Article 10 of the Model Law derogates from §§ 19-13A-4 to 19-13A-6, inclusive.

(d) If the parties to an international commercial mediation agree under Article 1, subsection (7), of the Model Law that the Model Law does not apply, this chapter applies.

19-13A-12. Relation to Electronic Signatures in Global and National Commerce Act

This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but this chapter does not modify, limit, or supersede Section 101(c) of that Act or authorize electronic delivery of any of the notices described in Section 103(b) of that Act.

19-13A-13. Uniformity of application and construction

In applying and construing this chapter, consideration should be given to the need to promote

uniformity of the law with respect to its subject matter among States that enact it.

19-13A-14. Severability clause

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

19-13A-15. Application to existing agreements or referrals

(a) This chapter governs a mediation pursuant to a referral or an agreement to mediate made on or after January 1, 2008.

(b) On or after January 1, 2008, this chapter governs an agreement to mediate whenever made.

Agricultural Contracts

Title 37, Chapter 37-4A.

Current through the 2008 Regular Session

37-4A-2. Resolution by mediation

Any contract for an agricultural commodity, of more than one year duration, between a contractor and a producer shall contain language attempting to provide for resolution of contract disputes by mediation. Either party to a contract may initiate mediation services, as specified in the contract, to facilitate resolution of the dispute. Mediation shall be completed within forty-five days unless both parties agree to extend the time period, or the parties shall be released. No party may proceed to litigation until an attempt has been made to mediate the dispute.

37-4A-3. Liability of contractor

Any mediation or litigation to resolve a contract dispute shall apply the substantive contract law of the State of South Dakota.

State Farm Mediation Board

Title 54, Chapter 54-13.

Current through the 2008 Regular Session

54-13-1. Definition of terms

Terms used in this chapter mean:

(1) "Agricultural land," a parcel of land larger than forty acres not located in any municipality and used in farming or ranching operations carried on by the owner or operator within the preceding three- year period for the production of farm products as defined in subdivision 57A-9-102(a)(34) and includes

wasteland lying within or contiguous to and in common ownership with land used in farming or ranching operations for the production of farming or ranching products;

- (2) "Ag finance counselor," a person contracted by the Department of Agriculture mediation program who is trained to assist in resolving agricultural loan disputes;
- (3) "Agricultural property," agricultural land or personal property or a combination thereof used in the pursuit of, or arising out of, or related to, the occupation of farming or ranching;
- (4) "Borrower," an individual, corporation, trust, cooperative, joint venture, or any other entity entitled to contract who is engaged in farming or ranching and who derives more than sixty percent of total gross income from farming or ranching and who has borrowed from any one creditor on any single farm related debt in excess of fifty thousand dollars;
- (5) "Creditor," any individual, organization, cooperative, partnership, trust, or state or federally chartered corporation to whom is owed debt in excess of fifty thousand dollars by a borrower. A judgment creditor with a judgment of fifty thousand dollars or more against a debtor with agricultural property is a creditor within the meaning of this chapter;
- (6) "Mediation," a process by which creditors and borrowers present, discuss, and explore practical and realistic alternatives to the resolution of a borrower's debts; and
- (7) "Mediator," anyone responsible for and engaged in the performance of mediation pursuant to this chapter, who is trained and certified by the Department of Agriculture.

54-13-2. Agriculture mediation program--Purposes--Administration

The Department of Agriculture shall administer an agriculture mediation program to provide assistance to borrowers and creditors who seek to use mediation as a method for resolving loan disputes.

The secretary of the Department of Agriculture shall adopt rules pursuant to chapter 1-26 necessary to carry out the general purposes of this chapter, including the establishment of fees, training requirements for mediators and ag finance counselors and their certification, mediation request forms, and any other procedures as may be necessary for the prompt and expeditious implementation of this chapter, including the receipt of funds pursuant to the Agricultural Credit Act of 1987.

The agriculture mediation program may not, as a condition to mediation, require that the borrower or any creditor waive any respective legal or equitable remedies or rights.

54-13-4. Staff services--Employment of director and other employees--Payment of expenses

All staff services required by the agriculture mediation program shall be provided by the Department of Agriculture. The secretary of agriculture may employ a director of mediation services and such other agents and employees as the secretary deems necessary. The director shall serve at the pleasure of the secretary of agriculture. The mediation services shall be administered under the direction and supervision of the Department of Agriculture. All expenses incurred in carrying on the work of the agriculture mediation program, including the per diem and expenses of the staff, salaries, contract payments, and any other items of expense shall be paid out of funds appropriated or otherwise made available to the farm mediation operating fund.

54-13-5. Responsibility for fees--Farm mediation operating fund created-- Appropriation--Annual review--Disbursements

Any fees provided under this chapter and by rule shall be borne equally between the borrower and the creditor. Such fees and any funds received pursuant to the Agricultural Credit Act of 1987 shall be deposited in the farm mediation operating fund which is hereby created. All money in the farm mediation operating fund created by this section is continuously appropriated for the purposes of administering the farm mediation program. All funds received by the agriculture mediation program shall be set forth in an informational budget as described in § 4-7-7.2 and be annually reviewed by the Legislature. Any disbursements from the farm mediation operating fund shall be by authorization of the secretary of agriculture.

54-13-6. Contracts with state agencies or nonprofit corporations or individuals--Termination

The Department of Agriculture, in the administration of this chapter, may contract with one or more established agencies of state government, nonprofit corporations, or individuals to provide mediation services for borrowers and creditors and to provide financial preparation assistance for borrowers involved in mediation. Any contract executed under this section is exempt from chapter 5-18. The contract may include such terms and conditions as the board deems appropriate.

54-13-7. Assistance to borrower by department

Any borrower involved in mediation shall be offered assistance by the Department of Agriculture in the analysis of the borrower's business and personal financial situation, which analysis shall be conducted in a manner that assists the borrower and the borrower's family to prepare for mediation. This assistance may include emotion support, information and referral networks among borrowers and programs concerned with economic crisis in rural areas, assist the borrower and the borrower's family in developing goals which define reasonable expectations for mediation and shall assist the borrower in evaluating the viability of his current farm or ranch business organization given reasonable current price and yield expectations.

54-13-9. Notice to borrower of availability of financial preparation assistance

Upon receipt of a mediation request, the director of the agriculture mediation program shall advise the borrower that financial preparation assistance is available and may be obtained through the financial preparation assistance for borrowers provided in § 54-13-7 and shall provide any other information available regarding assistance programs to borrowers.

54-13-10. Request for mediation prerequisite for action against agricultural land or property-- Mediation release, waiver, or court determination required

A creditor desiring to commence an action or a proceeding in this state to enforce a debt totaling fifty thousand dollars or greater against agricultural land or agricultural property of the borrower or to foreclose a contract to sell agricultural land or agricultural property or to enforce a secured interest in agricultural land or agricultural property or pursue any other action, proceeding or remedy relating to agricultural land or agricultural property of the borrower shall file a request for mediation with the director of the agriculture mediation program. No creditor may commence any such action or proceeding until the creditor receives a mediation release as described in this chapter, or the debtor waives mediation or until a court determines after notice and hearing, that the time delay required for

mediation would cause the creditor to suffer irreparable harm because there are reasonable grounds to believe that the borrower may waste, dissipate or divert agricultural property or that the agricultural property is in imminent danger of deterioration. Dismissal of a bankruptcy proceeding, abandonment by a bankruptcy trustee, release or relief from a bankruptcy stay, or release or termination of a receivership proceeding shall have the effect of a mediation release.

54-13-11. Notice of mediation meeting--Initial meeting--Exempt creditors-- Waiver of right to mediate--Debt collection limitations

Unless the borrower waives mediation, the director of the agriculture mediation program shall promptly send a mediation meeting notice to the borrower and to all creditors as defined in subdivision 54-13-1(5), setting a time and place for an initial mediation meeting between the borrower, the creditor or creditors, and a mediator. An initial mediation meeting shall be held within twenty-one days of the issuance of the mediation meeting notice. Any creditors of the borrower who are not included in the definition of creditor under subdivision 54-13-1(5) are exempt from the requirements of this section. Any borrower's failure to furnish timely information requested by the director of the agriculture mediation program constitutes a waiver of the right to mediate under this chapter. Also, the failure of the borrower and the borrower's spouse, unless excused by the initiating creditor, to attend all mediation meetings constitutes a waiver of the right to mediate under this chapter.

Any creditor subject to mandatory mediation under this chapter who receives notice pursuant to this section and who participates in all mediation sessions shall be treated as an initiating creditor and be subject to the same debt collection limitations as provided in § 54-13-10.

54-13-12. Length of mediation period--Notice to borrower--Additional meetings

The total mediation period shall be for a term of forty-two days after the date the director of the agriculture mediation program issues the notice to the borrower. The director of the agriculture mediation program must issue a notice to the borrower within three business days following receipt of the request for mediation from the creditor. The mediator may, after the initial meeting, schedule additional mediation meetings during the mediation period.

54-13-13. Mediation of indebtedness requested by borrower--Procedure-- Attendance at meetings not required

A borrower may request mediation of any type or amount of indebtedness by applying to the director of the agriculture mediation program. The director of the agriculture mediation program may make the appropriate mediation request forms available for such purpose. The director of the agriculture mediation program may follow the same procedure as for mandatory mediation. Neither the borrower nor the creditor may be required to attend any mediation meetings under this section. Failure to attend mediation meetings or to participate in mediation under this section does not affect the rights of a borrower or a creditor in any manner. Participation in mediation under this section is not a prerequisite to or a bar to the commencement of an action of legal proceedings by the borrower or the creditor. No mediation release may be issued unless the borrower and creditor agree in writing.

54-13-14. State or federal time periods deemed to run concurrently

The time period provided in any state or federal statutes, rules, or regulations are not to be affected by this chapter but shall be deemed to have run concurrently with the time period for mediation.

54-13-15. Continuation of mediation--Expiration of mediation period-- Agreement between borrower and creditors

If the borrower and the initiating creditor consent, mediation may continue beyond the forty-two day mediation period with the same force and effect as though held within the forty-two day period. If no meeting is held within the forty-two day mediation period, absent a waiver thereof, extension, or further agreement between borrower and creditor, the expiration of the mediation period shall conclusively constitute a mediation release. The director of the agriculture mediation program shall so inform the borrower and creditors and certify accordingly.

Any agreement reached between borrower and creditors as a result of mediation shall be drafted into a written agreement. If signed by borrower and creditors, the agreement shall constitute a mediation release, and the mediator shall so certify on the agreement.

54-13-16. Statement of waiver or failure to reach agreement deemed release

If the borrower waives mediation or if a mediation agreement is not reached, a statement to that effect shall be prepared by the mediator and such statement shall constitute a mediation release. Unless the borrower waives mediation, a creditor may not receive a mediation release pursuant to § 54-13-10 until that creditor has attended at least one scheduled mediation meeting.

54-13-17. Time limitation on waiver by borrower

Any waiver by the borrower pursuant to this chapter may not be made more than sixty days prior to the commencement of any action or proceeding as described in § 54-13-10.

54-13-18. Information regarding finances of borrowers and creditors not public records--Mediation meetings not open

All data and information regarding the finances of borrowers and creditors which is created, collected, or maintained by the director of the agriculture mediation program pursuant to the terms of this chapter or disclosed to the mediator are not public records and are confidential and discussions with the mediators are privileged communications.

All mediation meetings, and all mediation activities provided by this chapter are exempt from the provisions of chapter 1-27.

54-13-19. Other rights and duties, penalties, and actions not affected

This chapter does not affect rights and duties that matured, penalties that were incurred, and actions or proceedings that were begun before the effective date of this chapter, and any actions or proceedings which have been filed shall be exempt from any requirements of this chapter.

54-13-20. Mediator or ag finance counselor immunity from civil liability-- Qualifications

Any person serving as a mediator or ag finance counselor pursuant to this chapter is immune from civil liability in any action brought in any court in this state on the basis of any act or omission resulting in

damage or injury if the individual was acting in good faith, in a reasonable and prudent manner, and within the scope of such individual's official functions and duties as a mediator or ag finance counselor pursuant to this chapter.

Farm Loan Mediation Program

Chapter 12:20

Current through the Regular Session of 2008

12:20:01:01. Definitions.

Terms defined in SDCL 54-13-1 have the same meaning in this chapter. In addition, terms used in this chapter mean:

- (1) "Director," the director of mediation services;
- (2) "Mediation release," a document issued by the director to a creditor who files a request for mediation stating that the mediation conditions of SDCL 54-13 have been met.

12:20:01:02. Mediator training.

The director, in conjunction with the department of agriculture, shall provide initial training in mediation techniques to the mediators. This training shall include at least 32 hours of initial training on the mediation process, mediation skills, and agricultural farm finance issues and shall include advice that 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. Subsequent and supplemental training of mediators may be conducted by the department of agriculture.

Successful completion of the initial training session constitutes the minimum qualification to serve as a mediator.

12:20:01:03. Mediation fees.

Requests for mediation must be filed with the director on a form which may be obtained from the director. The form must be accompanied by a nonrefundable initial fee of \$50 to pay for the initiating party's share of the first hour of mediation in session. If the respondent replies in the affirmative to use mediation, that response shall also be accompanied by a nonrefundable initial fee of \$50 to pay for the respondent's share of the first hour of mediation in session.

No mediation services may be provided unless each party has paid the required initial fee. If mediation occurs, the initiating party and the respondent shall each pay a fee of \$25 for each additional hour or fraction of an hour of mediation in session after the first hour. The director shall bill any remaining amount due from the parties based on the mediator's time report.

12:20:01:04. Contents of request for mediation.

The request for mediation must contain the following information:

(1) If filed by a creditor:

(a) The name, address, and telephone number of the creditor and the creditor's representative for service of notices;

(b) If possible, the names and positions of the creditor's representatives who plan to attend the mediation proceedings;

(c) The name, address, and telephone number of the debtor;

(d) The stated location of the real estate and location of chattel property or other collateral. If the debtor's property is under the control of a third party, the creditor shall list the same information, if available, for the third party;

(e) An affidavit that the creditor meets the qualification of a creditor as defined in SDCL 54-13-1;

(2) If filed by a borrower:

(a) The name, address, and telephone number of the borrower;

(b) If possible, the name, address, and telephone number of each person who will accompany the borrower to the mediation proceedings;

(c) The name, address, and telephone number of the creditor or creditors;

(d) The location of the real estate and the location of chattel property or other collateral listed by creditor. If the property is under the control of a third party or parties, the name, address, and telephone number of each party shall be provided.

12:20:01:05. Form for notice of request for mandatory mediation.

The form for the notice of request for mandatory mediation shall include the following:

(1) The name of the party requesting mediation;

(2) A brief description of the mediation process;

(3) A statement informing all parties that the party or representative attending the mediation session must have the authority to negotiate agreements with other parties;

(4) The information required to be brought to the initial mediation session;

(5) A statement that both borrowers and the borrower's spouse must attend the mediation sessions;

- (6) A listing of services available to borrowers through various other agencies or organizations;
- (7) To the borrower, a waiver or mediation form;
- (8) A listing of any agency or organization that provides emotional or stress counseling or any other assistance;
- (9) Advice of availability of financial preparation assistance as required by SDCL 54-13-9.

12:20:01:06. Procedure for voluntary mediation.

The following procedure applies upon receipt of a request for voluntary mediation:

- (1) The director shall determine whether a mediator is available and evaluate the request;
- (2) Within 3 business days after receiving the request, the director shall mail a notice of a request for voluntary mediation to all parties;
- (3) Mailing of the notice of request for mandatory mediation to the respondent begins the 42-day mediation period as provided in SDCL 54-13-12;
- (4) A respondent receiving a notice of a request for mediation must answer in writing to the director within 10 days after the notice was mailed;
- (5) If an answer is not received by the director within the 10-day period, the director shall notify the requester that the respondent refused mediation.

12:20:01:07. Mediation meeting notice form.

The form for the notice of the mediation meeting shall include the following:

- (1) The time and place of the initial mediation session;
- (2) The name of the parties involved in mediation;
- (3) The name of the mediator assigned;
- (4) A brief description of the mediation process;
- (5) A statement informing all parties that the party or representative attending the mediation session must have the authority to negotiate agreements with other parties;
- (6) The information required to be brought to the initial mediation session; and
- (7) A statement that both the borrower and the borrower's spouse must attend the mediation sessions.

12:20:01:08. Response to notice.

A recipient of a notice of a request for mediation shall indicate the intent to mediate by responding in writing to the director within 10 days after the director mailed the notice. If the borrower agrees to mediation the borrower shall provide to the director the name, address, and telephone number of any other creditor or creditors to whom there is indebtedness. Upon receipt of the responding party's written intent to mediate, the director shall schedule a mediation.

If the borrower waives the rights of mediation, the borrower shall execute the waiver of mediation form and return it to the director within 10 days. A borrower who fails to respond to the director within 21 days of the receipt of the request of mediation is considered to have waived mediation. Once the respondent has waived the rights of mediation either by written notification or failing to respond, the director may issue a mediation release to the initiating party.

12:20:01:09. Director to notify other creditors.

If a borrower assents to mediation and is indebted to other creditors, the director shall notify those creditors by mail within three working days after receipt of the information.

12:20:01:10. Response from other creditor.

A creditor named in the borrower's response shall notify the director in writing within 10 days if that creditor desires to become a party to the mediation.

12:20:01:11. Conduct at mediation sessions.

Mediation sessions shall be conducted as follows:

- (1) Mediation sessions are under the control of the mediator;
- (2) The mediator must hold in strict confidence all information provided by the parties to the mediation;
- (3) All parties must have the opportunity to speak and state their positions;
- (4) Legal counsel may advise clients regarding legal rights and the implication of suggested solutions;
- (5) All parties to the proceedings must make a good faith effort to resolve the dispute.

12:20:01:12. Mediation agreement.

If the parties involved in mediation reach tentative agreement, the mediator shall provide information for the preparation of a mediation agreement.

After the details of the agreement are reviewed and approved by all agreeing parties, those parties and the mediator shall agree upon the person who is to prepare the actual document. All agreeing parties are required to sign the agreement.

Those parties who do not reach agreement may request another mediation session, although the request may be declined by either party. The request may be made in writing or verbally to the mediator and may include a request for extension of time. If the parties agree that a mediated solution is not possible, the borrower may sign a waiver which will allow the director to issue a mediation release to creditors.