

FARM MEDIATION FARMER-CREDITOR DISPUTES

Footnotes

Legislative findings; 90 Acts, ch 1143, § 1

654A.1 Definitions.

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

1. "*Agricultural property*" means agricultural land that is principally used for farming as defined in section 9H.1, 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, and proceeds of the security.
2. "*Coordinator*" means the farm assistance program coordinator provided in section 13.13.
3. "*Creditor*" means the holder of a mortgage on agricultural property, a vendor of a real estate contract for 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.
4. "*Farm mediation service*" means the organization selected pursuant to section 13.13.
5. "*File*" means to deliver by the required date by certified mail or another method acknowledging receipt.
6. "*Mediation release*" means an agreement or statement signed by all parties or by less than all the parties and the mediator pursuant to section 654A.11.
7. "*Participate*" or "*participation*" means attending a mediation meeting, and discussing issues, stating a position regarding restructuring, and exchanging information, relating to any of the following: a debt against agricultural property which is real estate under chapter 654; a forfeiture of a contract to purchase agricultural property under chapter 656; a secured interest in agricultural property under chapter 554; or a garnishment, levy, execution, seizure, or attachment of agricultural property; all as referenced in section 654A.6.

86 Acts, ch 1214, § 14; 90 Acts, ch 1143, § 9, 10

654A.2 and 654A.3 Repealed by 90 Acts, ch 1143, § 30. See § 13.13.

654A.4 Applicability of chapter.

1. This chapter applies to all creditors of a borrower described under subsection 2 with a secured debt against the borrower of twenty thousand dollars or more.
2. This chapter applies to a borrower who is a natural person operating a farm or any corporation, trust, or limited partnership as defined in section 9H.1.

86 Acts, ch 1214, § 17; 89 Acts, ch 108, § 2

654A.5 Voluntary mediation proceedings.

A borrower who owns agricultural property or a creditor of that borrower may request mediation of the indebtedness by applying to the farm mediation service. The farm mediation service shall make voluntary mediation application forms available. The farm mediation service shall evaluate each request and may direct a mediator to meet with the borrower and creditor to assist in mediation.

654A.6 Mandatory mediation proceedings.

1. *a.* A creditor subject to this chapter desiring to initiate a proceeding to enforce a debt against agricultural property which is real estate under chapter 654, to forfeit a contract to purchase agricultural property under chapter 656, to enforce a secured interest in agricultural property under chapter 554, or to otherwise garnish, levy on, execute on, seize, or attach agricultural property, shall file a request for mediation with the farm mediation service. The creditor shall not begin the proceeding subject to this chapter until the creditor receives a mediation release, or until the court determines after notice and hearing that the time delay required for the mediation would cause the creditor to suffer irreparable harm. Title to land that is agricultural property is not affected by the failure of any creditor to receive a mediation release regardless of its validity. The time period for the notice of right to cure provided in section 654.2A shall run concurrently with the time period for the mediation period provided in this section and section 654A.10.

b. The requirements of paragraph "a" are jurisdictional prerequisites to a creditor filing a civil action that initiates a proceeding subject to this chapter.

2. Upon the receipt of a request for mediation, the farm mediation service shall conduct an initial consultation with the borrower without charge. The borrower may waive mediation after the initial consultation.

3. Unless the borrower waives mediation, the borrower shall file a list containing at least the name and place of business for each creditor as defined in section 654A.1 or apply for an extension to file the list with the farm mediation service within twenty-one days of the service's receipt of a request for mediation.

86 Acts, ch 1214, § 19; 87 Acts, ch 73, § 2; 89 Acts, ch 108, § 3; 2000 Acts, ch 1129, § 1

654A.7 Financial analyst and legal assistance.

1. After receiving a mediation request, the farm mediation service shall refer the borrower to a financial analyst associated with the Iowa state university extension service ASSIST program. The financial analyst shall assist the borrower in the preparation of information relative to the finances of the borrower for the initial mediation meeting.

2. After receiving the mediation request, the farm mediation service shall notify the borrower that legal assistance may be available without charge through the legal assistance for farmers program provided in chapter 13.

86 Acts, ch 1214, § 20

654A.8 Initial mediation meeting.

1. Unless the borrower waives mediation, within twenty-one days after receiving a mediation request the farm mediation service shall send a mediation meeting notice to the borrower and to all known creditors of the borrower setting a time and place for an initial mediation meeting between the borrower, the creditors, and a mediator directed by the farm mediation service to assist in mediation. An initial mediation meeting shall be held within twenty-one days of the issuance of the mediation meeting notice.

2. If a creditor subject to this chapter receives a mediation meeting notice under subsection 1, the creditor and the creditor's successors in interest may not continue proceedings to enforce a debt against agricultural property of the borrower under chapter 654, to forfeit a real estate contract for the purchase of agricultural property of the borrower under chapter 656, to enforce a secured interest in agricultural property under

chapter 554, or to otherwise garnish, levy on, execute on, seize, or attach agricultural property. Time periods under and affecting those procedures stop running until the farm mediation service issues a mediation release to the creditor.

86 Acts, ch 1214, § 21

654A.9 Duties of mediator.

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

1. Listen to the borrower and the creditors desiring to be heard.
2. Attempt to mediate between the borrower and the creditors.
3. Advise the borrower and the creditors as to the existence of available assistance programs.
4. Encourage the parties to adjust, refinance, or provide for payment of the debts.
5. Advise, counsel, and assist the borrower and creditors in attempting to arrive at an agreement for the future conduct of financial relations among them.

86 Acts, ch 1214, § 22

654A.10 Mediation period.

The mediator may call mediation meetings during the mediation period, which is up to forty-two days after the farm mediation service received the mediation request. However, if all parties consent, mediation may continue after the end of the mediation period.

86 Acts, ch 1214, § 23

654A.11 Mediation release.

1. If an agreement is reached between the borrower and the creditors, the mediator shall draft a written mediation agreement, have it signed by the creditors, and submit the agreement to the farm mediation service.
2. The borrower and the creditors who are parties to the mediation agreement may enforce the mediation agreement as a legal contract. The agreement constitutes a mediation release.
3. *a.* If the borrower waives mediation, or if a mediation agreement is not reached, the borrower and the creditors may sign a statement prepared by the mediator that mediation was waived or that the parties did not reach an agreement. If any party does not sign the statement, the mediator shall sign the statement. The statement constitutes a mediation release.
b. The mediator shall issue a mediation release unless the creditor fails to personally attend and participate in all mediation meetings. The mediator shall issue a mediation release if the borrower waives or fails to personally attend and participate in all mediation meetings, regardless of participation by the creditor. However, if a creditor or borrower is not a natural person, the creditor or borrower must be represented by a natural person who is an officer, director, employee, or partner of the creditor or borrower. If a person acts in a fiduciary capacity for the creditor or borrower, the fiduciary may represent the creditor or borrower. If the creditor or borrower or eligible representative is not able to attend and participate as required in this paragraph due to physical infirmity, mental infirmity, or other exigent circumstances determined reasonable by the farm mediation service, the creditor or borrower must be represented by another natural person. Any

representative of the creditor or borrower must be authorized to sign instruments provided by this chapter, including a mediation agreement or a statement prepared by the mediator that mediation was waived. This section does not require the creditor or borrower to reach an agreement, including restructuring a debt, in order to receive a mediation release.

4. The mediator shall promptly notify a creditor by certified mail of a denial to issue a mediation release and the reasons for the denial. The notice shall state that the creditor has seven days from the date that the notice is delivered to appeal the mediator's decision to the administrative head of the mediation service, pursuant to procedures adopted by the service. The notice shall state that the creditor may also request another mediation meeting. The action for judicial review shall be brought in equity, and the action shall be limited to whether, based on clear and convincing evidence, the decision of the administrative head is an abuse of discretion. The action may be brought either in the district court of Polk county or in the district court in which the farmer or creditor resides. Upon reversing the decision by the service, the court shall order that the service issue the mediation release.

86 Acts, ch 1214, § 24; 89 Acts, ch 108, § 4; 90 Acts, ch 1143, § 11, 12; 98 Acts, ch 1122, § 1

654A.12 Extension of deadlines.

Upon petition by the borrower and all known creditors, the farm mediation service may, for good cause, extend a deadline imposed by section 654A.8 or section 654A.10 for up to thirty days.

86 Acts, ch 1214, § 25

654A.13 Confidentiality.

If mediation is conducted pursuant to this chapter, the confidentiality of all mediation communications is protected as provided in section 679C.108.

86 Acts, ch 1214, § 26; 89 Acts, ch 108, § 5; 90 Acts, ch 1143, § 13, 14; 98 Acts, ch 1062, § 11; 2005 Acts, ch 68, §4

654A.14 and 654A.15 Repealed by 90 Acts, ch 1143, § 30.

654A.16 Wetland designation.

The farm mediation service shall provide for mediation between the department of natural resources and a landowner affected by the preliminary wetland designation provided in section 456B.12. The department shall cease actions relating to inventorying or designating affected land until a mediation release is issued by the farm mediation service. The mediation process shall be conducted according to rules adopted by the attorney general after consultation with the farm mediation service. The rules shall to the extent practical be based on mediation provided under this chapter for borrowers and lenders.

90 Acts, ch 1199, §9

654A.17 Repealed by 94 Acts, ch 1106, § 1.