

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

Referred to in §654.2C, 654A.1, 656.8