

61—17.12(654A,654B) Appeal procedures.

17.12(1) *Notice of denial of mediation release.* If the mediator determines that a mediation release should not be issued because the creditor, party seeking to initiate a civil proceeding against a farm resident or the DNR has not participated in a mediation meeting, the mediator shall within seven days of the mediation meeting give notice by certified mail or in person that a mediation release will not be issued. The notice shall inform the party seeking the mediation release that it has seven days from the date the notice is received to appeal the mediator's decision to the director of the mediation service. The notice shall also inform the party as to the reasons for the denial of the release and that another mediation meeting may be requested. A copy of the notice of denial of mediation release shall be filed with the director and mailed to the farm borrower, farm resident or affected landowner. In addition, the mediator shall prepare a report detailing the reasons for denial of the release and file the report with the director. Copies of the report shall be served on all parties to the mediation meeting in the manner and within the time provided for service of the notice of denial of mediation release.

17.12(2) *Appeal of denial of the mediation release.* The party seeking the mediation release may appeal the denial of the mediation release to the director of the mediation service within seven days of receipt of the notice stating that the release will not be issued. The appeal should be in writing and include: a listing of the parties who attended the mediation meeting, a summary of the reasons why denial of the mediation release should be reversed by the director and a certificate or affidavit of mailing indicating that it was mailed within seven days of receipt of the notice of denial of the mediation release. The appeal should be addressed to: Iowa Mediation Service, Inc., 315 East Fifth Street, Suite 4, Des Moines, Iowa 50309.

17.12(3) *Notice of hearing.* Within 15 days of receipt of the appeal the director or designee of the mediation service shall schedule a hearing on the appeal. The hearing shall be scheduled no later than 30 days of the receipt of the notice of appeal. Written notice of the hearing shall be delivered by the mediation service by certified mail to all parties or attorneys attending the mediation meeting. The notice shall specify the time, location, date and nature of the hearing.

17.12(4) *Continuances.* The director may upon application of a party to the appeal hearing continue the hearing to a date certain. A continuance may be granted for any cause not resulting from the fault or neglect of the applicant. Notice of the rescheduled hearing shall be served in the same manner as the notice of hearing.

17.12(5) *Failure to appear.* If a party who has received notice of the appeal hearing fails to appear, the director may proceed with the hearing and render a decision.

17.12(6) *Conduct of the hearing.* Appeal hearings shall be heard by the director. The hearing shall be recorded either by mechanical or electrical means, or by a certified shorthand reporter. The proceedings or any part thereof shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party. Hearings before the director shall follow the order established by these rules, subject to modification at the discretion of the director:

- a. The director shall read the notice of appeal.
- b. The party seeking the mediation release may present evidence as to why the mediation release should have been issued including any evidence which may rebut the mediator's report.
- c. Any other party of the mediation meeting may present any evidence regarding the denial of the issuance of the mediation release.

17.12(7) *Burden of proof.* The burden of proof rests upon the party seeking the mediation release to prove by clear and convincing evidence that the denial of the issuance of the mediation release was an abuse of discretion. In reviewing the mediator's decision, the director shall consider the mediator's report, the evidence introduced at the appeal hearing, and any written briefs filed by the parties.

17.12(8) *Rules of evidence.* Unless noted otherwise, Iowa Code section 17A.14 shall govern the rules of evidence for appeal hearings.

17.12(9) *Decision.* The director shall render a decision no later than 30 days after the appeal hearing. The director shall forward a copy of the decision by certified mail to all parties to the mediation meeting.

17.12(10) *Arrangement to conduct hearing.* The mediation service may make arrangements with the Iowa department of inspections and appeals to conduct an appeal hearing. If the appeal hearing is heard by

an administrative law judge, the hearing shall be governed by these rules. When an administrative law judge hears the appeal, the decision becomes the final decision of the director for purposes of judicial review unless there is an appeal to the director within seven days of the date of the decision. On appeal from the decision of the administrative law judge, the director has all the power which the director would initially have had in making the decision; however, the director will consider only the issues presented at the hearing before the administrative law judge.

17.12(11) *Prohibition against mediator testimony.* The mediator who denied issuance of the mediation release shall not testify at the appeal hearing.