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States' Alternative Dispute Resolution Statutes

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States' Alternative Dispute Resolution Statutes

STATE OF IOWA

Index

<i>Informal Dispute Resolution</i>	2
<i>Arbitration</i>	6
<i>Boards of Arbitration and Conciliation</i>	11
<i>Mediation</i>	14
<i>Farm Mediation--Farmer-Creditor</i>	19
<i>Disputes</i>	
<i>Foreclosure</i>	23
<i>Farm Assistance Program</i>	25
<i>Farm Mediation--Care and Feeding</i>	28
<i>Contracts—Nuisances</i>	
<i>Farm Mediation--Animal Feeding</i>	31
<i>Operation Structures</i>	
<i>Iowa Mediation Program</i>	33

Informal Dispute Resolution

Title XV, Subtitle 5, Chapter 679.

Current through acts of the 2008 Regular Session

679.1. Definitions

As used in this chapter:

1. “Approved center” or “approved dispute resolution center” means a center that has applied for and received approval from the executive director under section 679.3.
2. “Center” or “dispute resolution center” means a program which is organized by one or more governmental subdivisions or nonprofit organizations and which makes informal dispute resolution procedures available.
3. “Council” means the prosecuting attorneys training coordination council in the department of justice, established by chapter 13A.

4. “Dispute resolution process” or “informal dispute resolution process” means a process by which the parties involved in a minor dispute voluntarily agree to enter into informal discussion and negotiation with the assistance of a mediator or member of the center's staff in order to resolve their dispute.

5. “Executive director” means the executive director of the prosecuting attorneys training coordination council.

6. “Mediator” means a person who assists parties involved in a minor dispute to reach a mutually acceptable resolution of their dispute.

679.2. Dispute resolution program--administration

1. There is established in the office of prosecuting attorneys training coordinator of the department of justice a program for the establishment and support of locally organized dispute resolution centers which make informal dispute resolution procedures available. The executive director of the prosecuting attorneys training coordination council shall administer the program under the direction of the council.

2. The executive director, subject to approval by the council, may appoint an advisory committee to advise the executive director and the council on the administration of the dispute resolution program. If an advisory committee is appointed it shall consist of not more than seven members and shall include at least three representatives of existing dispute resolution centers. The committee shall meet at the call of the executive director. Members shall serve without compensation but are entitled to actual expenses incurred in the performance of their duties. Payment shall be made from funds appropriated to the council for the administration of the dispute resolution program.

679.3. Establishment and approval of dispute resolution centers

A center, or entity proposing a center, may apply to the executive director for approval to participate in the dispute resolution program. The application shall set forth a plan for operation of the center, including such information as the center's objectives, areas or populations to be served, administrative organization, budget, recordkeeping, criteria for accepting cases, availability of mediators, and procedures for receiving and screening requests, scheduling and conducting sessions with the mediator, and terminating the dispute resolution process through agreement or otherwise. The executive director shall prescribe the form of application and specify the information to be included and shall set the deadline for filing. A center must submit an application for each year in which it desires to participate in the program.

The executive director shall review the applications and shall approve for participation in the program all applicants which meet the requirements of this chapter and rules adopted pursuant to this chapter.

679.4. Funding of dispute resolution centers

1. The executive director, subject to approval by the council, shall distribute state grants to approved dispute resolution centers from funds appropriated for that purpose. The amount distributed may vary among the centers based on need. The state grant shall not exceed fifty percent of the estimated annual cost of a center.

2. The administrator of each center may accept and disburse the state grants and grants and gifts from federal and other public and private sources for the operation of the center. Centers are encouraged to make use of local resources whenever possible, including the use of volunteers and available space in public facilities.

3. The executive director may accept and disburse grants and gifts from federal and other public and private sources for the dispute resolution program.

679.5. Referrals to dispute resolution centers

1. The following types of cases may be accepted for dispute resolution at an approved dispute resolution center, subject to such limitations as the council prescribes by rule:

a. Civil claims and disputes, including but not limited to neighborhood disputes, landlord-tenant disputes, debtor-creditor disputes and consumer complaints.

b. Disputes concerning child custody and visitation rights.

c. Juvenile offenses.

d. Criminal complaints.

2. A center may accept cases referred by a court, prosecuting attorney, law enforcement officer, social service agency or any other interested person or agency, or at the request of the parties involved in the dispute. A case may be referred prior to the commencement of formal judicial proceedings or at any stage of such proceedings. The center shall provide follow-up information on the disposition of a case if the case was referred by a court and the court requests the information.

679.6. Preliminary information

Before the dispute resolution process begins, the approved dispute resolution center shall provide the parties with a written statement setting forth the procedures to be followed. The statement shall be in the form prescribed in the rules adopted by the council under this chapter.

679.7. Fees

Except as otherwise provided in this section, an approved dispute resolution center shall require each party to pay a fee to help defray the administrative costs of the dispute resolution process. The council shall establish a sliding scale of fees to be charged, based upon ability to pay. A person shall not be denied the services of a dispute resolution center solely because of inability to pay the fee.

679.8. Mediators

An impartial mediator shall be assigned to each case scheduled for a mediation session. A person is not eligible to serve as a mediator in an approved center until the person has completed at least twenty-five hours of training in conflict resolution techniques approved by the executive director. The council may

by rule establish classifications of disputes and provide that a person is not eligible to serve as a mediator in a particular class of dispute unless the person possesses additional credentials or completes additional specialized training, or both.

A center may provide for the compensation of mediators or utilize the services of volunteer mediators, or both.

The mediator shall assist the parties to reach a mutually acceptable resolution of their dispute through discussion and negotiation. The mediator shall officially terminate the dispute resolution process if the parties are unable to agree. The termination shall be without prejudice to either party in any other proceeding. The mediator and the center have no authority to make or impose any adjudication, sanction or penalty upon the parties.

679.9. Agreement

If the parties involved in the dispute reach agreement, the agreement may be reduced to writing and signed by the parties. The agreement shall set forth the settlement of the issues and the future responsibilities of each party.

679.10. Rules

The council shall adopt rules to carry out the purposes of this chapter. In addition to matters expressly required elsewhere in this chapter, the rules may include the following:

1. Requirements relating to the administration of a dispute resolution center, including budgeting, recordkeeping, reporting, evaluation and administrative organization.
2. Requirements for advisory committees to assist dispute resolution centers.
3. Procedures to be followed in the dispute resolution process.
4. Forms to assist dispute resolution centers in carrying out their duties.

679.11. Report

The executive director shall report annually to the general assembly and the governor concerning the operation of the dispute resolution program.

679.12. Confidentiality

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

679.13. Limitation on liability

No mediator, employee or agent of a center, or member of a center's board may be held liable for civil damages for any statement or decision made in the process of dispute resolution unless the mediator,

employee, agent or member acted in bad faith, with malicious purpose or in a manner exhibiting willful and wanton disregard of human rights, safety or property.

679.14. Tolling of statute of limitations

During the period of the dispute resolution process, any applicable statute of limitations is tolled as to the participants. The tolling shall commence on the date the center accepts the case and shall end on the date the parties are notified in writing that the case has been closed by the center. Notices of the closing of cases shall be provided in accordance with appropriate rules adopted under this chapter.

Arbitration

Title XV, Subtitle 5, Chapter 679A

Current through acts of the 2008 Regular Session

679A.1. Validity of arbitration agreement

1. A written agreement to submit to arbitration an existing controversy is valid, enforceable, and irrevocable unless grounds exist at law or in equity for the revocation of the written agreement.
2. A provision in a written contract to submit to arbitration a future controversy arising between the parties is valid, enforceable, and irrevocable unless grounds exist at law or in equity for the revocation of the contract. This subsection shall not apply to any of the following:
 - a. A contract of adhesion.
 - b. A contract between employers and employees.
 - c. Unless otherwise provided in a separate writing executed by all parties to the contract, any claim sounding in tort whether or not involving a breach of contract.

679A.2. Proceedings to compel or stay arbitration

1. On application of a party showing an agreement described in section 679A.1 and the opposing party's refusal to arbitrate, the district court shall order the parties to proceed with arbitration. However, if the opposing party denies the existence of a valid and enforceable agreement to arbitrate, the district court shall proceed to the determination of the issue and shall order arbitration if a valid and enforceable agreement is found to exist. If no such agreement exists, the court shall deny the application.
2. On application, the district court may stay an arbitration proceeding commenced or threatened on a showing that there is no valid and enforceable agreement to arbitrate. The issue, when in substantial and bona fide dispute, shall be tried and the stay ordered if a valid and enforceable agreement to arbitrate does not exist. If an agreement is found to exist, the court shall order the parties to proceed to arbitration.

3. If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a district court, the application shall be made to that court. Otherwise, the application may be made in a district court as provided in section 679A.16.

4. An action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application for an order to arbitrate has been made under this section or, if the issue is severable, the stay may be made with respect to the part of the issue which is subject to arbitration only. When the application is made in such an action or proceeding, the order for arbitration shall include the stay.

5. 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.

679A.3. Appointment of arbitrators by district court

If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. In the absence of a method of appointing, 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 appointed, the district court on application of a party shall appoint one or more arbitrators. An arbitrator appointed by the district court has the same powers as an arbitrator specifically named in the agreement.

679A.4. Majority action by arbitrators

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

679A.5. Hearing

Unless otherwise provided by the agreement:

1. The arbitrators shall determine a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than five days before the hearing. Appearance at the hearing waives the notice. The arbitrators may adjourn the hearing 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. The arbitrators may hear and determine the controversy upon the evidence produced even if a party duly notified fails to appear.

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

3. The hearing shall be conducted by all the arbitrators. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators may continue with the hearing and determination of the controversy.

679A.6. Representation by attorney

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

679A.7. Witnesses, subpoenas, depositions

1. The arbitrators may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence, and may administer oaths. Subpoenas shall be served, and upon application to the district 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.
2. 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.
3. All provisions of the law compelling a person under subpoena to testify are applicable.
4. Unless otherwise agreed, fees for attendance as a witness shall be the same as for a witness in the district court.

679A.8. Award

1. 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, by registered mail, or as provided in the agreement.
2. A party waives the objection that an award was not made within the proper time unless the party notifies the arbitrators of the party's objection before the award is received.
3. Unless otherwise agreed, an award shall be made within thirty days after the arbitration hearing.

679A.9. Change of award by arbitrators

On application of a party or, if an application to the district court is pending under sections 679A.11 to 679A.13, on submission to the arbitrators by the district court under the conditions the district court orders, the arbitrators may modify or correct the award upon the grounds stated in section 679A.13, subsection 1, paragraphs "a" and "c", or 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 of the application shall be given to the opposing party, stating that the opposing party must serve any objections to the application within ten days from the notice. The modified or corrected award is subject to sections 679A.11 to 679A.13.

679A.10. Fees and expenses of arbitration

Unless otherwise provided in the agreement to arbitrate, and except for counsel fees, the arbitrators' expenses and fees and any other expenses incurred in the conduct of the arbitration shall be paid as provided in the award.

679A.11. Confirmation of an award

Upon application of a party, the district court shall confirm an award, unless within the time limits imposed under sections 679A.12 and 679A.13 grounds are urged for vacating, modifying, or correcting the award, in which case the district court shall proceed as provided in sections 679A.12 and 679A.13.

679A.12. Vacating an award

1. Upon application of a party, the district court shall vacate an award if any of the following apply:
 - a. The award was procured by corruption, fraud, or other illegal means.
 - b. There was evident partiality by an arbitrator appointed as a neutral, corruption in any of the arbitrators, or misconduct prejudicing the rights of a party.
 - c. The arbitrators exceeded their powers.
 - d. The arbitrators refused to postpone the hearing upon sufficient cause being shown for the postponement, refused to hear evidence material to the controversy, or conducted the hearing contrary to the provisions of section 679A.5, in a manner which prejudiced substantially the rights of a party.
 - e. There was no arbitration agreement, the issue was not adversely determined in proceedings under section 679A.2, and the party did not participate in the arbitration hearing without raising the objection.
 - f. Substantial evidence on the record as a whole does not support the award. The court shall not vacate an award on this ground if a party urging the vacation has not caused the arbitration proceedings to be reported, if the parties have agreed that a vacation shall not be made on this ground, or if the arbitration has been conducted under the auspices of the American arbitration association.
2. The fact that the relief awarded 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.
3. An application under this section shall be made within ninety days after delivery of a copy of the award to the applicant. However, if the application to vacate an award is predicated upon corruption, fraud, or other illegal means, it shall be made within ninety days after those grounds are known or should have been known.
4. In vacating the award on grounds other than stated in subsection 1, paragraph “e”, the district court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence of a method in the agreement, by the district court in accordance with section 679A.3, or if the award is vacated on grounds set forth in subsection 1, paragraph “c” or “d” of this section, the district court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with section 679A.3. 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.

679A.13. Modification or correction of award

1. Upon application made within ninety days after delivery of a copy of the award to the applicant, the district court shall modify or correct the award if any of the following apply:

a. There is an evident miscalculation of figures or an evident mistake in the description of a person, thing, or property referred to in the award.

b. 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.

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

2. If the application is granted, the district court shall modify and correct the award to effect its intent and shall confirm the award as modified and corrected.

679A.14. Judgment or decree on award

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

679A.15. Applications to district court

Except as otherwise provided, an application to the district 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 civil procedure, 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 the Iowa rules of civil procedure for the service of original notice in an action.

679A.16. Venue

An initial application shall be made to the district 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 district court of the county where the adverse party resides or has a place of business or, if the adverse party has no residence or place of business in this state, to the district court of any county. All subsequent applications shall be made to the district court hearing the initial application unless the district court otherwise directs.

679A.17. Appeals

1. An appeal may be taken from:

a. An order denying an application to compel arbitration made under section 679A.2.

b. An order granting an application to stay arbitration made under section 679A., subsection 2.

c. An order confirming or denying confirmation of an award.

d. An order modifying or correcting an award.

e. An order vacating an award without directing a rehearing.

f. A judgment or decree entered pursuant to the provisions of this chapter.

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

679A.18. Chapter not retroactive

This chapter applies only to arbitration agreements made on or after July 1, 1981. Sections 679.1 to 679.18, Code 1981, do not apply to agreements to arbitrate entered into after July 1, 1981.

679A.19. Disputes between governmental agencies

Any litigation between administrative departments, commissions or boards of the state government is prohibited. All disputes between said governmental agencies shall be submitted to a board of arbitration of three members to be composed of two members to be appointed by the departments involved in the dispute and a third member to be appointed by the governor. The decision of the board shall be final.

Boards of Arbitration and Conciliation

Title XV, Subtitle 5, Chapter 679B.

Current through acts of the 2008 Regular Session

679B.1. Petition for appointment

When any dispute arises between any person, firm, corporation, or association of employers and their employees or association of employees, of this state, except employers or employees having trade relations directly or indirectly based upon interstate trade relations operating through or by state or international boards of conciliation, which has or is likely to cause a strike or lockout, involving ten or more wage earners, and which does or is likely to interfere with the due and ordinary course of business, or which menaces the public peace, or which jeopardizes the welfare of the community, and the parties thereto are unable to adjust the same, either or both parties to the dispute, or the mayor of the city, or the chairperson of the board of supervisors of the county in which said employment is carried on, or on petition of any twenty-five citizens thereof over the age of eighteen years, or the labor commissioner, after investigation, may make written application to the governor for the appointment of a board of arbitration and conciliation, to which board such dispute may be referred under the provisions of this chapter; and the manager of the business of any person, firm, corporation, or association of such employers, or any organization representing such employees, or if such employees are not members of any organization, then a majority of such employees affected may make the application as provided in this chapter, but in no case shall more than twenty employees be required to join in such application.

679B.2. Notification by governor

The governor shall at once upon application made to the governor as herein provided, and upon the governor's satisfaction that the dispute comes within the provisions of section 679B.1, notify the parties to the dispute of the application for the appointment of a board of arbitration and conciliation and make request upon each party to the dispute that each of them recommend within three days from the date of notice, the names of five persons who have no direct interest in such dispute and are willing and ready to act as members of the board, and the governor shall appoint from each list submitted one of such persons recommended.

679B.3. Governor to appoint for parties

Should either of the parties fail or neglect to make any recommendation within the said period, the governor shall, as soon thereafter as possible, appoint a fit person who shall be deemed to be appointed on the recommendation of the parties in default.

679B.4. Third appointee

The members of the board so appointed shall within five days of their appointment recommend to the governor the name of one person who is ready and willing to act as a third member of the board, and upon failure or neglect upon their part to make such recommendation within the said period, or upon the failure or refusal of the person so recommended to act, the governor shall as soon thereafter as possible appoint some person to act as the third member of the board.

679B.5. Agreement to be bound by decision

In all cases when the application is made by both parties to the dispute, they shall set forth in the application whether or not they agree to be bound by the decision of the board of arbitration and conciliation; and if both parties agree to be so bound by such decision, then the same shall be binding and enforceable as set out in section 679B.12.

679B.6. Oath--organization

Each member of the board shall, before entering upon the duties of the member's office, be sworn to a faithful and impartial discharge thereof; they shall organize at once by the choice of one of their number as chairperson, and one of their number as secretary, and shall have power to employ all necessary clerks and stenographers to properly carry out the duties of their appointment.

679B.7. Compensation and expenses

The members of the board shall be paid a per diem as specified in section 7E.6 and shall be reimbursed for actual and necessary expenses, these moneys to be payable out of the state treasury upon warrants drawn by the director of the department of administrative services.

679B.8. Evidence--witnesses

For the purpose of this inquiry the board shall have all the powers of summoning before it and

enforcing the attendance of witnesses, of administering oaths, and of requiring witnesses to give evidence, to produce books, papers, and other documents or things as the board may deem requisite to the full investigation of the matters into which it is inquiring, as are vested in the district court in civil cases.

679B.9. Oath--rule of evidence

Any member of the board may administer an oath, and the board may accept, admit, and call for such evidence as in equity and good conscience it thinks material and proper, whether strictly legal evidence or not.

679B.10. Subpoenas--by whom served--fees

A subpoena or any notice may be delivered or sent to any sheriff, constable, or any police officer who shall forthwith serve the same, and make due return thereof, according to directions. Witnesses in attendance and officers serving subpoenas or notices shall receive the same fees as are allowed in the district court, payable from the state treasury, upon the certificate of the board that such fees are due and correct. The board shall have the same power and authority to maintain and enforce order at the hearings and obedience to its writs of subpoena as is by law conferred upon the district court for like purposes.

679B.11. Investigation--report filed--public inspection

The board shall as soon as practical visit the place where the controversy exists and make careful inquiry into the cause, and the said board may, with the consent of the governor, conduct such inquiry beyond the limits of the state. The board shall hear all persons interested who come before it, advise the respective parties what ought to be done or submitted to by either or both of the parties to the dispute to adjust said controversy, and make a written decision thereof, which shall at once be made public and open to public inspection and shall be recorded by the secretary of the board, and a copy of such report shall be filed in the office of the clerk of the city in which the controversy arose and shall be open for public inspection.

679B.12. Investigation--decision

The board of arbitration and conciliation shall within ten days from the date of their appointment, unless such time shall be extended by the governor, complete the investigation of any controversy submitted to them, and during the pendency of such period neither party shall engage in any strike or lockout. Any decision made by the board shall date from the date of the appointment of the board and shall be binding upon the parties who join in the application as herein provided for a period of one year.

679B.13. Decision--report to governor

Within five days after the completion of the investigation, unless the time is extended by the governor for good cause shown, the board or a majority thereof shall render a decision, stating such details as will clearly show the nature of the controversy and the point disposed of by them, and make a written report to the governor of their findings of fact and of their recommendation to each party to the

controversy.

679B.14. Decision filed and published

Every decision and report shall be filed in the office of the governor, and a copy served upon each party to the controversy, and a copy furnished to the labor commissioner for publication in the report of the commissioner, who shall cause such decision and report to be published at a rate of not to exceed thirty-three and one-third cents per ten lines of brevier type or its equivalent in two newspapers of general circulation in the county in which the business is located upon which the dispute arose.

All evidence taken and exhibits and documents offered shall be carefully preserved and at the close of the investigation shall be filed in the office of the governor of the state and shall only be subject to inspection upon the governor's order.

Mediation

Title XV, Subtitle 5, Chapter 679C.

Current through the acts of the 2008 Regular Session

679C.101. Short title

This chapter shall be known as the “Uniform Mediation Act”.

679C.102. Definitions

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

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, 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. “Mediation party” means an individual who participates in a mediation and whose agreement is necessary to resolve the dispute.
4. “Mediator” means an individual who conducts a mediation.
5. “Nonparty participant” means a person, other than a mediation party or mediator, that participates in a mediation.
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 any of the following:

- a. A judicial, administrative, arbitral, or other adjudicative process, including related prehearing and posthearing motions, conferences, and discovery.
- 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 any of the following:

- a. To execute or adopt a tangible symbol with the present intent to authenticate a record.
- 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.

679C.103. Scope

1. Except as otherwise provided for in subsections 2 and 3, this chapter applies to a mediation that occurs under any of the following circumstances:

- a. 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.
- b. The mediation parties and the mediator agree to mediate in a record that demonstrates an expectation that mediation communications will be privileged against disclosure.
- c. The mediation parties use as a mediator a person who holds oneself out as a mediator or the mediation is provided by a person who holds oneself out as providing mediation.

2. This chapter shall not apply to a mediation relating to or conducted under any of the following circumstances:

- a. Relating to the establishment, negotiation, administration, or termination of a collective bargaining relationship.
- b. Relating to a dispute that is pending under or is part of the processes established by a collective bargaining agreement, except that this chapter applies to a mediation arising out of a dispute that has been filed with an administrative agency or court.
- c. Conducted by a judge who might make a ruling on the case.
- d. Conducted at any of the following:

(1) A primary or secondary school if all the parties are students.

(2) A correctional institution for youths if all the parties are residents of that institution.

3. If the mediation parties agree in advance in a signed record, or a record of proceeding reflects agreement by the mediation parties, that all or part of a mediation is not privileged, the privileges under sections 679C.104 through 679C.106 do not apply to the mediation or part agreed upon. However, sections 679C.104 through 679C.106 apply to a mediation communication made by a person that has not received actual notice of the agreement before the communication is made.

679C.104. Privilege against disclosure --admissibility --discovery

1. Except as otherwise provided in section 679C.106, a mediation communication is privileged as provided in subsection 2 and is not subject to discovery or admissible in evidence in a proceeding unless the privilege is waived or precluded as provided by section 679C.105.

2. In a proceeding, the following privileges shall apply:

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

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

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

3. 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.

679C.105. Waiver and preclusion of privilege

1. A privilege under section 679C.104 may be waived in a record or orally during a proceeding if it is expressly waived by all mediation parties and if all of the following apply:

a. In the case of the privilege of a mediator, the privilege is expressly waived by the mediator.

b. In the case of the privilege of a nonparty participant, the privilege is expressly waived by the nonparty participant.

2. 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 section 679C.104, but only to the extent necessary for the person prejudiced to respond to the disclosure or representation.

3. A person that intentionally uses a mediation to plan, to attempt to commit, or to commit a crime, or to conceal an ongoing crime or ongoing criminal activity is precluded from asserting a privilege pursuant to section 679C.104.

679C.106. Exceptions to privilege

1. No privilege exists under section 679C.104 for a mediation communication that involves any of the following:

- a. An agreement evidenced by a record signed by all mediation parties to the agreement.
- b. A communication that is available to the public under chapter 22 or made during a session of a mediation which is open, or is required by law to be open, to the public.
- c. A threat or statement of a plan to inflict bodily injury or commit a crime of violence.
- d. A plan to commit or attempt to commit a crime, the commission of a crime, or activity to conceal an ongoing crime or ongoing criminal activity.
- e. A communication that is sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediator.
- f. Except as otherwise provided in subsection 3, a communication that is 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 mediation party based on conduct occurring during a mediation.
- g. A communication that is 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 child or adult protection case is referred by a court to mediation and a public agency participates.

2. There is no privilege under section 679C.104 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 any of the following situations:

- a. A court proceeding involving a felony or misdemeanor.
- b. Except as otherwise provided in subsection 3, a proceeding to prove a claim to rescind or reform a contract or a defense to avoid liability on a contract arising out of the mediation.

3. A mediator shall not be compelled to provide evidence of a mediation communication referred to in subsection 1, paragraph “f”, or subsection 2, paragraph “b”.

4. If a mediation communication is not privileged under subsection 1 or 2, only the portion of the communication necessary for the application of the exception from nondisclosure may be admitted. Admission of evidence under subsection 1 or 2 does not render the evidence, or any other mediation communication, discoverable or admissible for any other purpose.

679C.107. Prohibited mediator reports

1. Except as required in subsection 2, a mediator shall 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.

2. A mediator may disclose any of the following:

a. Whether the mediation occurred or has terminated, whether a settlement was reached, and attendance.

b. A mediation communication as permitted under section 679C.106.

c. A mediation communication evidencing abuse, neglect, abandonment, or exploitation of an individual to a public agency responsible for protecting individuals against such mistreatment.

3. A communication made in violation of subsection 1 shall not be considered by a court, administrative agency, or arbitrator.

679C.108. Confidentiality

Unless subject to chapter 21 or 22, mediation communications are confidential to the extent agreed to by the parties or provided by other law or rule of this state.

679C.109. Mediator's disclosure of conflicts of interest--background

1. Before accepting a mediation, an individual who is requested to serve as a mediator shall do all of the following:

a. 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.

b. Disclose any such known fact to the mediation parties as soon as is practicable before accepting a mediation.

2. If a mediator learns any fact described in subsection 1 after accepting a mediation, the mediator shall disclose it as soon as is practicable.

3. 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.

4. A person that violates subsection 1, 2, or 7 is precluded by the violation from asserting a privilege under section 679C.104.

5. Subsections 1, 2, 3, and 7 do not apply to an individual acting as a judge.

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

7. A mediator must be impartial, unless after disclosure of the facts required in subsections 1, 2, and 3 to be disclosed, the parties agree otherwise.

679C.110. Participation in mediation

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

679C.111. Relation to Electronic Signatures in Global and National Commerce Act

The provisions of this chapter modify or supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., but this chapter does not modify, limit, or supersede section 101c of that Act or authorize electronic delivery of any of the notices described in section 103b of that Act.

679C.112. Uniformity of application and construction

In applying and construing this chapter, consideration should be given to the need to promote uniformity of the law among states that enact the uniform mediation Act.

679C.113. Severability clause

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 this chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are severable.

679C.114. Application to existing agreements or referrals

1. This chapter governs a mediation pursuant to a referral or an agreement to mediate made on or after July 1, 2005.

2. On or after July 1, 2005, this chapter governs an agreement to mediate whenever made.

679C.115. Mediator immunity

A mediator or a mediation program shall not be liable for civil damages for a statement, decision, or omission made in the process of mediation unless the act or omission by the mediator or mediation program is made in bad faith, with malicious purpose, or in a manner exhibiting willful or wanton disregard of human rights, safety, or property. This section shall apply to mediation conducted before the workers' compensation commissioner and mediation conducted pursuant to chapter 216.

Title XV, Subtitle 5, Chapter 654A

Current through the acts of the 2008 Regular Session

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

Foreclosure

Title XV, Subtitle 5, Chapter 654.

Current through the acts of the 2008 Regular Session

654.2A. Agricultural land--notice, right to cure default

1. A creditor shall not initiate an action pursuant to this chapter to foreclose on a deed of trust or mortgage on agricultural land, as defined in section 9H.1, until the creditor has complied with this

section.

2. A creditor who believes in good faith that a borrower on a deed of trust or mortgage on agricultural land is in default may give the borrower notice of the alleged default, and, if the borrower has a right to cure the default, shall give the borrower the notice of right to cure provided in section 654.2B. The notice is deemed received if sent by certified mail to the borrower.

3. The borrower has a right to cure the default unless the creditor has given the borrower a proper notice of right to cure with respect to two prior defaults on the obligation secured by the deed of trust or mortgage, or the borrower has voluntarily surrendered possession of the agricultural land and the creditor has accepted it in full satisfaction of any debt owing on the obligation in default. The borrower does not have a right to cure the default if the creditor has given the borrower a proper notice of right to cure with respect to a prior default within twelve months prior to the alleged default.

4. If the borrower has a right to cure a default:

a. A creditor shall not accelerate the maturity of the unpaid balance of the obligation, demand or otherwise take possession of the land, other than by accepting a voluntary surrender of it, or otherwise attempt to enforce the obligation until forty-five days after a proper notice of right to cure is given. The time period for a request for mediation pursuant to chapter 654A shall run concurrently with the period for the notice to cure under this section.

b. Until the expiration of forty-five days after notice is given, the borrower may cure the default by tendering either the amount of all unpaid installments due at the time of tender, without acceleration, plus a delinquency charge of the scheduled annual interest rate plus five percent per annum for the period between the giving of the notice of right to cure and the tender, or the amount stated in the notice of right to cure, whichever is less, or by tendering any performance necessary to cure a default other than nonpayment of amounts due, which is described in the notice of right to cure.

5. The act of curing a default restores to the borrower the borrower's rights under the obligation and the deed of trust or mortgage, except as provided in subsection 3.

6. This section does not prohibit a borrower from voluntarily surrendering possession of the agricultural land, and does not prohibit the creditor from enforcing the creditor's interest in the land at any time after compliance with this section.

654.2B. Requirements of notice of right to cure

The notice of right to cure shall be in writing and shall conspicuously state the name, address, and telephone number of the creditor or other person to which payment is to be made, a brief identification of the obligation secured by the deed of trust or mortgage and of the borrower's right to cure the default, a statement of the nature of the right to cure the default, a statement of the nature of the alleged default, a statement of the total payment, including an itemization of any delinquency or deferral charges, or other performance necessary to cure the alleged default, and the exact date by which the amount must be paid or performance tendered and a statement that if the borrower does not cure the alleged default the creditor or a person acting on behalf of the creditor is entitled to proceed with initiating a foreclosure action or procedure. The failure of the notice of right to cure to comply with one or more provisions of this section is not a defense or claim in any action pursuant to this chapter

and does not invalidate any procedure pursuant to chapter 655A, unless the person asserting the defense, claim, or invalidity proves that the person was substantially prejudiced by such failure.

654.2C. Mediation notice--foreclosure on agricultural property

A person shall not initiate a proceeding under this chapter to foreclose a deed of trust or mortgage on agricultural property, as defined in section 654A.1, which is subject to chapter 654A and which is subject to a debt of twenty thousand dollars or more under the deed of trust or mortgage unless the person receives a mediation release under section 654A.11, or unless the court determines after notice and hearing that the time delay required for the mediation would cause the person 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.

Farm Assistance Program

Title I, Subtitle 4, Chapter 13, Chapter II.

Current through the acts of the 2008 Regular Session

13.13. Farm assistance program coordinator--contract for mediation services

1. The attorney general or the attorney general's designee shall serve as the farm assistance program coordinator. The coordinator has the powers and duties specified in this subchapter.
2. The farm assistance program coordinator shall contract with a nonprofit organization chartered in this state to provide mediation services as provided in chapters 654A, 654B, and 654C. The contract may be terminated by the coordinator upon written notice and for good cause. The organization awarded the contract is designated as the farm mediation service for the duration of the contract. The organization may, upon approval by the coordinator, provide mediation services other than as provided by law. The farm mediation service is not a state agency for the purposes of chapter 8A, subchapter IV, and chapters 20 and 669.

13.14. Farm mediation service--confidentiality

1. Meetings of the farm mediation service are closed meetings and are not subject to chapter 21.
2. Confidentiality is also protected as provided in section 679C.108.

13.15. Rules and forms--fees

The farm mediation service shall recommend rules to the farm assistance program coordinator. The coordinator shall adopt rules pursuant to chapter 17A to set the compensation of mediators and to implement this subchapter and chapters 654A, 654B, and 654C.

The rules shall provide for an hourly mediation fee not to exceed fifty dollars for the borrower and one hundred dollars for the creditor. The hourly mediation fee may be waived for any party demonstrating financial hardship upon application to the farm mediation service.

The compensation of a mediator shall be no more than twenty-five dollars per hour, and all parties shall contribute an equal amount of the cost.

The coordinator shall adopt voluntary mediation application and mediation request forms.

13.16. Limitation on liability--immunity from special actions

1. A member of the farm mediation staff, including a mediator, employee, or agent of the service, or member of a board for the service, is not liable for civil damages for a statement or decision made in the process of mediation, unless the member acts in bad faith, with malicious purpose, or in a manner exhibiting willful and wanton disregard of human rights, safety, or property.

2. A judicial action which seeks an injunction, mandamus, or similar equitable relief shall not be brought against the farm mediation service, including a mediator, employee, or agent of the service, or a member of a board for the service until completion of the mediation process.

13.20. Authority to contract for legal assistance program

The farm assistance program coordinator, provided in this subchapter, shall contract with an eligible nonprofit organization to provide legal assistance to financially distressed farmers. The contract shall be awarded within thirty days after May 30, 1986. The contract may be terminated by the coordinator upon written notice and for good cause.

13.21. Eligible organization

To be eligible for a contract under section 13.20, an organization must:

1. Be a nonprofit organization chartered in the state.
2. Have attorneys admitted to practice in the Iowa supreme court and the United States district courts.
3. Have offices throughout the state of Iowa.
4. Have attorneys and staff qualified to address agricultural legal problems and agricultural credit problems affecting financially distressed farmers.

13.22. Program requirements

A legal services provider which enters into a contract with the coordinator under authority of section 13.20 shall:

1. Offer direct representation of individual farmers in litigation and administrative cases.
2. Offer technical support to individual farmers.
3. Cooperate to the fullest extent feasible with the Iowa state university agricultural extension service so that its economic and farm management counseling services are utilized by eligible persons.
4. Utilize, to the fullest extent feasible, existing resources of accredited law schools within the state of Iowa to provide consulting assistance to attorneys in the agricultural law field.
5. Assist, to the fullest extent feasible, accredited law schools within the state of Iowa in enhancing

their expertise in the area of agricultural law so that all attorneys within the state will have a resource available to provide training and experience in the agricultural law field.

6. Cooperate to the fullest extent feasible with the existing informational and referral networks among farmers, farmer advocates, and others concerned with the economic crisis in agricultural areas. The legal services provider is not a state agency for the purposes of chapter 8A, subchapter IV, and chapters 20 and 669.

13.23. Persons eligible for legal assistance

A person may obtain legal representation and legal assistance from the contracting legal services provider if the person meets all of the following criteria:

1. Is a resident of the state of Iowa.
2. Is a farmer, or a family shareholder of a family farm corporation, and has an occupation of farming.
3. Is engaged in a farm business that has a debt-to-asset ratio greater than fifty percent.
4. Has received less than twenty thousand dollars of taxable income in the last taxable year.
5. Is financially unable to acquire legal assistance.

13.24. Report

1. The legal services provider which enters into a contract with the coordinator under authority of 1986 Iowa Acts, ch. 1214 shall submit to the coordinator a working plan for the accomplishment of the objectives of 1986 Iowa Acts, ch. 1214 within thirty days after the contract is awarded. The plan must establish priorities and procedures, and set forth its annual operating budget for the fiscal year including projected salaries and all anticipated expenses. This budget shall set forth the maximum obligation of financial aid proposed for payment by the state and the availability of any additional funds or resources from the federal government and other sources to meet such expenses of operation.
2. At the end of each fiscal year the contracting legal services provider shall provide to the coordinator an audited statement of actual expenses incurred. The report shall also summarize the legal services provided and make recommendations for improved services for financially distressed farmers.
3. The contract entered into pursuant to section 13.20 shall provide that any contractual payments to the legal services provider are to be made monthly.

Farm Mediation--Care and Feeding Contracts--Nuisances Title XV, Subtitle 5, Chapter 654B.

Current through the acts of the 2008 Regular Session

654B.1. Definitions

1. "Care and feeding contract" means an agreement, either oral or written, between a farm resident and

the owner of livestock, under which the farm resident agrees to act as a feeder by promising to care for and feed the livestock on the farm resident's premises.

2. "Dispute" means a controversy between a person who is a farm resident and another person, which arises from a claim eligible to be resolved in a civil proceeding in law or equity, if the claim relates to either of the following:
 - a. The performance of either person under a care and feeding contract, if both persons are parties to the contract.
 - b. An action of one person which is alleged to be a nuisance interfering with the enjoyment of the other person.
3. "Farmland" means agricultural land that is principally used for farming as defined in section 9H.1.
4. "Farm mediation service" means the organization selected pursuant to section 13.13.
5. "Farm resident" means a person holding an interest in farmland, in fee, under a real estate contract, or under a lease, if the person manages farming operations on the land. A farm resident includes a natural person, or any corporation, trust, or limited partnership as defined in section 9H.1.
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 654B.8.
7. "Nuisance" means an action injurious to health, indecent, or offensive to the senses, or an obstruction to the free use of property, so as essentially to interfere with the comfortable enjoyment of life or property, including but not limited to nuisances defined in section 657.2, subsections 1 through 5, and 7.
8. "Other party" means any person having a dispute with a farm resident.
9. "Participate" or "participation" means attending a mediation meeting, and having knowledge about and discussing issues concerning a subject relating to a dispute.

654B.2. Voluntary mediation proceedings

A farm resident or other party may request mediation of a dispute 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 farm resident and other party to assist in mediation.

654B.3. Mandatory mediation proceedings

1. a. A person who is a farm resident, or other party, desiring to initiate a civil proceeding to resolve a dispute, shall file a request for mediation with the farm mediation service. The person shall not begin the proceeding until the person receives a mediation release or until the court determines after notice and hearing that one of the following applies:

(1) The time delay required for the mediation would cause the person to suffer irreparable harm.

(2) The dispute involves a claim which has been brought as a class action.

b. The requirements of paragraph “a” are jurisdictional prerequisites to a person filing a civil action that initiates a civil proceeding to resolve a dispute subject to this chapter.

2. Upon receipt of the request for mediation, the farm mediation service shall conduct an initial consultation with each party to the dispute privately and without charge. Mediation may be waived after the initial consultation, if the parties agree.

3. Unless mediation is waived by the parties to the dispute, the parties shall file with the farm mediation service information required by the service to conduct mediation.

654B.4. Initial mediation meeting

1. Unless both parties to the dispute waive mediation, within twenty-one days after receiving a mediation request, the farm mediation service shall send a mediation meeting notice to all parties to the dispute setting a time and place for an initial mediation meeting between the parties 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 person receives a mediation meeting notice under this section, the person shall not continue civil proceedings based on a claim relating to a dispute subject to this chapter, unless the court determines after notice and hearing that one of the following applies:

a. The time delay required for the mediation would cause the person to suffer irreparable harm.

b. The dispute involves a claim which has been brought as a class action.

3. At the meeting, a party participating in mediation may be accompanied by counsel or a consultant to assist the party in mediation.

654B.5. Duties of the mediator--training program

1. The farm mediation service, with the assistance of knowledgeable persons, shall provide a program to train mediators to assist in the mediation of nuisance disputes.

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

a. Listen to all involved parties.

b. Attempt to mediate between all involved parties.

c. Encourage compromise and workable solutions.

d. Advise, counsel, and assist the parties in attempting to arrive at an agreement for the future conduct of relations among them.

654B.7. 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.

654B.8. Mediation release

1. If an agreement is reached between all parties, the mediator shall draft a written mediation agreement, have it signed by the parties, and submit the agreement to the farm mediation service.

2. a. The mediator shall issue a mediation release unless the other party desiring to initiate a civil proceeding to resolve the dispute fails to personally attend and participate in all mediation meetings. The mediator shall issue a mediation release if the farm resident waives or fails to personally attend and participate in all mediation meetings, regardless of participation by the other party. However, if the other party or the farm resident is not a natural person, the other party or farm resident must be represented by a natural person who is an officer, director, employee, or partner of the other party or farm resident. If a person acts in a fiduciary capacity for the other party or farm resident, the fiduciary may represent the other party or farm resident. If the other party or farm resident 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 other party or farm resident must be represented by another natural person. Any representative of the other party or the farm resident 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 a party to reach an agreement. This section does not require a person to change a position, alter an activity which is a subject of the dispute, or restructure a contract in order to receive a mediation release.

b. The mediator shall promptly notify a party by certified mail of a denial to issue a mediation release and the reasons for the denial. The notice shall state that the party has seven days from the date that the notice is delivered to appeal the mediator's decision, pursuant to procedures adopted by the service. After a final decision by the farm mediation service, the party may seek an action for judicial review pursuant to section 654B.10.

3. The parties to the mediation agreement may enforce the mediation agreement as a legal contract. The agreement constitutes a mediation release.

4. If the parties waive mediation, or if a mediation agreement is not reached, the parties 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.

654B.9. Extension of deadlines

Upon petition by all parties, the farm mediation service may, for good cause, extend a deadline imposed by section 654B.4 or section 654B.7 for up to thirty days.

654B.10. Judicial review

An 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 by the administrative head of the mediation service is an abuse of discretion. The action may be brought in either the district court of Polk county or in the district court in which the affected farm resident resides. Upon reversing the decision by the service, the court shall order that the service issue a mediation release.

654B.11. Effect of mediation

An interest in property, or rights and obligations under a contract are not affected by the failure of a person to obtain a mediation release regardless of its validity.

Time periods relating to a claim, including applicable statutes of limitations, shall be suspended upon filing a mediation request. Time periods affecting a claim in a civil proceeding shall be suspended upon filing a mediation request. The suspension shall terminate upon signing a mediation release.

Farm Mediation--Animal Feeding Operation Structures

Title XV, Subtitle 5, Chapter 654C.

Current through the acts of the 2008 Regular Session

654C.1. Definitions

As used in this chapter, unless otherwise required:

1. "Animal feeding operation structure" means the same as defined in section 459.102.
2. "Dispute" means a controversy between an owner and a neighbor, which arises from negotiations between the parties to establish an animal feeding operation structure within the separation distance.
3. "Farm mediation service" means the organization selected pursuant to section 13.13.
4. "Neighbor" means a person benefiting from a separation distance required pursuant to section 459.202 or 459.204, including a person owning a residence other than the owner of the animal feeding operation, a commercial enterprise, bona fide religious institution, educational institution, or a city, authorized to execute a waiver.
5. "Owner" means the owner of an animal feeding operation, as defined in section 459.102, which utilizes an animal feeding operation structure.
6. "Participate" or "participation" means attending a mediation meeting, and having knowledge about and discussing issues concerning a subject relating to a dispute.

7. “Waiver” means a waiver executed between an owner and a neighbor as provided in section 455B.165.

654C.2. Mediation proceedings

1. A person who is an owner or a neighbor may file a request for mediation with the farm mediation service. Upon receipt of the request for mediation, the farm mediation service shall conduct an initial consultation with each party to the dispute privately and without charge. Mediation shall be canceled after the initial consultation, unless both parties agree to proceed.

2. Both parties to the dispute shall file with the farm mediation service information required by the service to conduct mediation.

3. Unless mediation is canceled, within twenty-one days after receiving a mediation request, the farm mediation service shall send a mediation meeting notice to all parties to the dispute setting a time and place for an initial mediation meeting between the parties 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.

654C.3. Duties of the mediator

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

1. Listen to all involved parties.

2. Attempt to mediate between all involved parties.

3. Encourage compromise and workable solutions.

4. Advise, counsel, and assist the parties in attempting to arrive at an agreement for the future conduct of relations among themselves.

654C.4. 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.

654C.5. Mediation agreement

1. If an agreement is reached between all parties, the mediator shall draft a written mediation agreement, which shall be signed by the parties. The mediation agreement shall provide for a waiver which the mediator shall file in the office of the recorder of deeds of the county in which the benefited land is located, as provided in section 459.205. The mediator shall forward a mediation agreement to the farm mediation service.

2. The parties agreeing to mediation shall personally attend and participate in all mediation meetings.

However, if a party is not a natural person, the party must be represented by a natural person who is an officer, director, employee, or partner of the party. If a person acts in a fiduciary capacity for a party, the fiduciary may represent the party. If the party or an eligible representative is not able to attend and participate as required in this subsection due to physical infirmity, mental infirmity, or other exigent circumstances determined reasonable by the farm mediation service, the party must be represented by another natural person. Any representative of a party 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 a party to reach an agreement. This section does not require a person to change a position, alter an activity which is a subject of the dispute, alter an application for a permit for construction of an animal feeding operation, or restructure a contract.

3. The parties to the mediation agreement may enforce the mediation agreement as a legal contract.

4. If the parties do not agree to proceed with mediation, or if a mediation agreement is not reached, the parties may sign a statement prepared by the mediator that mediation proceedings were not conducted or concluded or that the parties did not reach an agreement.

654C.6. Extension of deadlines

Upon petition by all parties, the farm mediation service may, for good cause, extend a deadline imposed by section 654C.2 or 654C.4 for up to thirty days.

654C.7. Effect of mediation

An interest in property or rights and obligations under a contract are not affected by the failure of a person to obtain a mediation agreement.

IOWA MEDIATION PROGRAM Iowa Admin. Code 61-17.1(654A, 654B).

This database is current with amendments effective through December 2008.

61-17.1(654A, 654B) Application.

These rules are promulgated by the attorney general as the farm assistance coordinator on the recommendation of the Iowa Mediation Service, Inc. These rules will apply to and implement all mediation proceedings undertaken pursuant to Iowa Code chapters 654A and 654B unless otherwise noted. These rules do not apply to any other mediation proceedings which may be undertaken by the Iowa Mediation Service, Inc. pursuant to its bylaws and general corporate powers.

61-17.3(654A, 654B) Mediation services.

The mediation services required under these rules shall be provided pursuant to a contract with the farm assistance program coordinator.

61-17.3(654A, 654B) Mediation services.

The mediation services required under these rules shall be provided pursuant to a contract with the

farm assistance program coordinator.

61-17.5(654A, 654B) Time.

Any time periods prescribed by the rules shall be computed as provided in Iowa Code section 4.1(34).

61-17.7(654A, 654B) Oversight.

The farm division of the attorney general's office is the designee of the attorney general to serve as the farm assistance program coordinator under the supervision of the attorney general. The farm assistance program coordinator shall monitor compliance by the mediation service with these rules and the terms of the contract and may terminate the contract upon written notice and for good cause.

61-17.8(654A, 654B) Initial consultation.

The mediation service shall have personnel available for initial consultation for purposes of preparing a party for the mediation proceedings. This consultation may be in person or by telephone. The consultation shall include educating the parties regarding the mediation process and the need for the party to develop proposals prior to the actual mediation meeting. There shall be no charge for the initial consultation.

61-17.10(654A, 654B) Voluntary mediation.

17.10(1) Request for mediation. A borrower who owns agricultural property, a creditor of that borrower, a farm resident, or other party with a dispute with a farm resident may request mediation by applying to the mediation service on forms made available for voluntary mediation by the mediation service.

17.10(2) Evaluation. Upon receipt of a request for voluntary mediation, the mediation service shall review the request and contact the farm borrower, creditor, farm resident or other party and advise them that voluntary mediation has been requested. If all parties agree to enter voluntary mediation, the mediation service shall assign a mediator to meet with the parties to assist in the voluntary mediation and shall schedule a time and place convenient to the parties for the mediation.

61-17.11(654A, 654B) Assignment and removal of mediators.

17.11(1) Assignment of mediator. The assignment of mediators shall be made by the director of the mediation service. The director of the mediation service may substitute the assigned mediator.

17.11(2) Removal upon request. During the mediation period, upon the written request of any party or all parties participating in mediation, removal of the mediator may be requested of the mediation service. This request must be filed in writing with the mediation service and, as soon as practicable, the director shall review the request. At the discretion of the director, a new mediator may be assigned to participate in the mediation.

17.11(3) Effect of removal. In the event of the removal of a mediator, the mediation service shall comply with the 42-day time period required by statute unless there is written agreement by the parties extending the time period.

17.11(4) Self-removal. Mediators may remove themselves from the mediation proceeding.

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.

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.

61-17.14(654A, 654B) Request for mediation.

All parties for whom mediation is mandatory shall file a request for mediation with the Iowa Mediation Service, Inc., at 315 East 5th Street, Suite 4, Des Moines, Iowa 50309. An affected landowner may file a request for mediation at the same address within 60 days of the date of the notice of the designation of protected wetlands.

61-17.15(654A, 654B) Contents of the request for mediation.

17.15(1) Farmer/creditor. The request for farmer/creditor mediation shall contain the following information: the name of the creditor and a person designated as the creditor's representative for service, the address and telephone number of the creditor and the creditor's representative and, where possible, the names and positions of the representatives who plan to attend the mediation proceedings. In addition, it may contain the name and address of the debtor, the telephone number of the debtor, and the location of the collateral real estate or chattel property. 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.

17.15(2) Contract feeding and nuisance disputes. The request for contract feeding and nuisance dispute mediation shall contain the following information: the name and address of the farm resident or other party requesting mediation and the person(s) designated as the representative for service, and the name and position of the person who will attend the mediation proceeding; if the request for mediation concerns a contract feeding dispute, a copy of the contract, a description of the livestock, the name and address of the farm resident caring for the livestock, the name and address of the owner of the livestock if not the party requesting mediation, and a summary of the dispute; if the request for mediation concerns a nuisance dispute, the name and address of the person(s) alleged to be creating the nuisance and a description of the actions which are alleged to create the nuisance.

17.15(3) Wetlands designation. The request for wetland designation mediation shall contain the following information: the name, address and telephone number of the affected landowner and the person(s) designated as the representative for service, the name and position of the person(s) who will attend the mediation proceeding, a statement as to whether the affected landowner either challenges in whole or in part the designation of protected wetlands or requests the designation of additional marshes or wetlands as protected wetlands, and a copy of the DNR's notice of preliminary wetlands designation.

61-17.16(654A, 654B) Failure to furnish complete information.

Failure to provide a complete request for mediation may cause the initiation of the mandatory mediation time period to be delayed until complete information is furnished. If the director determines that the mediation time period shall be delayed, the director shall immediately notify the party failing

to furnish complete information, specifying what information is necessary to make the request for mediation complete. Failure to complete the request for mediation within 21 days may result, at the director's discretion, in the termination of the mediation proceeding. A new request for mediation may then be initiated.

61-17.17(654A, 654B) Bankruptcy.

If the director learns that the creditor is barred from taking action against the farm borrower by the automatic stay provision of 11 U.S.C. Section 362, the director shall terminate the mediation proceeding, subject to reopening without filing a new request for mediation, in the event the automatic stay is lifted. The 42-day mediation period shall commence from the date the director receives notice that the stay has been lifted. The proceedings shall otherwise follow the time periods and rules applicable to mediation proceedings.

61-17.18(654A, 654B) Notice of mediation request.

17.18(1) Farmer/creditor. Upon receipt of the mediation request, the mediation service shall, within three working days, send by regular mail notice to the borrower of the creditor's request for mediation. The notice of the request for mediation shall include the name of the creditor requesting mediation, describe the mediation process in brief, explain the availability of legal services and the ASSIST program, and set forth the procedure for the farm borrower to follow in mediation. The notice shall require the farm borrower to file a list of creditors and their addresses with the mediation service within ten days of the receipt of the notice. This list shall include all secured creditors and any unsecured creditors to whom the farm borrower owes \$2,000 or more. The notice shall further require the farm borrower, where possible, to include the names of persons who will attend the mediation meeting with the farm borrower, including legal counsel and family members.

17.18(2) Contract feeding and nuisance disputes. Upon receipt of the contract feeding or nuisance mediation request, the mediation service has three working days in which to send by regular mail notice to the farm resident or other party of the mediation request. The notice of the request for mediation shall indicate the name of the person requesting mediation, describe the mediation process in brief, explain the possible availability of legal services, and set forth the procedure for the parties to follow in mediation. The notice shall require the farm resident or other party to file the names of persons who will attend the mediation meeting, including legal counsel or family members, within ten days of receipt of this notice.

17.18(3) Wetlands designation. Upon receipt of the mediation request, the mediation service has three working days in which to send by regular mail notice to the DNR of the mediation request. The notice of the request for mediation shall indicate the name of the affected landowner and set forth the procedure for the parties to follow in mediation and indicate whether the landowner challenges the designation of protected wetlands or requests the designation of additional marshes or wetlands as protected wetlands. Within ten days of receipt of the notice of mediation request, the DNR shall designate to the mediation service the name(s) of the person(s) who, with authority to negotiate agreements, will appear at the mediation meeting on its behalf.

61-17.19(654A, 654B) Failure to respond.

If the farm borrower, farm resident or other party fails to respond to the notice of the request for mediation within ten days of receipt of the notice, the mediation service shall, if possible, contact the

farm borrower, farm resident or other party by telephone or by registered or certified mail, to advise of the request for mediation.

61-17.20(654A, 654B) Automatic waiver.

Any farm borrower, farm resident or other party who fails to respond to the request for mediation within 21 days of the receipt of the request for mediation shall be deemed to have waived mediation.

61-17.21(654A, 654B) Notice of automatic waiver.

In the event of an automatic waiver, the mediation service shall notify, by regular mail, the creditor, farm resident or other party who made the request for mediation that there has been an automatic waiver. The mediation service shall issue a release to the initiating creditor, farm resident or other party requesting mediation stating that the creditor may proceed against the agricultural property or that a civil proceeding may be initiated to resolve the dispute. The notice of waiver and release shall be mailed within 21 days of the automatic waiver. A copy of the notice of waiver and release shall also be sent to the party who failed to respond.

61-17.22(654A, 654B) Availability of legal services and ASSIST program of Iowa State University extension service.

The mediation service shall, at the time notice is given of the request for mediation, advise farm borrowers, farm residents, and affected landowners of the possible availability of legal services to qualifying persons under Iowa Code section 13.23. The notice shall include the WATS telephone number of the Legal Services Corporation of Iowa with whom the farm assistance program coordinator has contracted to provide legal services to farmers. The farm borrower, farm resident or affected landowner shall be responsible for obtaining information and assistance from Legal Services Corporation of Iowa. The mediation service shall also, at the time notice is given of the request for mediation, advise farm borrowers of the availability of financial preparation services to farm borrowers through the ASSIST program offered by the Iowa State University extension service. The notice shall include the location of the nearest county extension office and a description of the services offered. The farm borrower shall be responsible for obtaining information and assistance from the ASSIST program.

61-17.23(654A, 654B) Extension of time.

In the event that legal services or financial preparations cannot be provided on a timely basis, the farm borrower or the Legal Services Corporation on behalf of the farm borrower, farm resident or affected landowner or the ASSIST program on the farm borrower's behalf, may file a written request for an extension of time in which to obtain these services. Upon receipt of this written request, the mediation service shall notify the creditor, other party or the DNR that the written request has been filed and shall consult with the creditor, other party or the DNR and with the provider of the legal or financial services to determine if an extension is justified. The extension may be granted by agreement of the parties or at the discretion of the director of the mediation service for good cause.

61-17.25(654A, 654B) Expedited procedure.

Any party may, by filing a written request with the director, request that the time frames for mediation be expedited. The written request shall be served on all other parties to the mediation by certified mail. Upon receipt of the written request, the director shall notify all other parties to the mediation meeting

of the request and provide an opportunity for response. The opportunity to respond is limited to three days and the director shall evaluate all materials submitted concerning the request and decide whether the proceedings should be expedited within three days of the response. The burden to show irreparable harm unless the proceedings are expedited rests with the party requesting that the proceedings be expedited. If all parties agree, or if upon review of the written request and other information the director finds that the party filing the written request will suffer irreparable harm unless mediation is expedited, the director shall expedite the time frames for mediation. The director shall serve by certified mail a notification of the expedited mediation schedule within 48 hours of that decision.

61-17.27(654A, 654B) Cancellation.

17.27(1) Farmer/creditor. After the commencement of the mediation proceedings, the mediation service may cancel the proceedings upon any of the following grounds:

- a. The receipt of notice from the creditor requesting mediation that the default has been cured;
- b. The receipt of notice that an agreement has been reached between the creditor requesting mediation and the farm borrower;
- c. The farm borrower has waived mediation;
- d. The creditor requesting mediation withdraws the request for mediation.

17.27(2) Contract feeding and nuisance disputes. The mediation service may cancel the proceedings upon any of the following grounds:

- a. The receipt of notice from either the farm resident or other party requesting mediation that the dispute has been resolved;
- b. The farm resident has waived mediation;
- c. The farm resident or other party requesting mediation withdraws the request for mediation.

17.27(3) Wetlands designation. The mediation service may cancel the proceedings upon either of the following grounds:

- a. The receipt of notice from the affected landowner that the request for mediation is withdrawn;
- b. The receipt of notice from either the affected landowner or the DNR that the parties have reached an agreement concerning the designation of protected wetlands.

61-17.29(654A, 654B) Mediation period.

17.29(1) Meetings. The mediation service or the assigned mediator shall schedule the mediation meetings at a neutral and convenient place and at a time as convenient as possible for the parties including nights and weekends, if necessary.

17.29(2) Mediation period conclusion. The mediation period shall be concluded within 42 days after the mediation service has received the mediation request.

17.29(3) Extension. Upon agreement of the parties participating in mediation, the mediation period may be extended beyond 42 days. If a mediation agreement is under active consideration at the time the mediation period expires, and the parties so agree, the mediation period shall be extended and no release issued until the time that the mediation agreement has been approved or rejected.

61-17.30(654A, 654B) Tentative agreement.

If a tentative agreement is reached among the parties during the mediation meeting, the mediator shall draft a written statement summarizing what the parties have agreed to perform. Before the completion of the meeting the mediator and the parties shall review the specific terms of the written statement. The mediator shall utilize the assistance of the parties or their representatives as appropriate.

61-17.32(654A, 654B) Mediation agreement.

After the tentative agreement has been reviewed and approved, the mediator shall formalize the mediation agreement by affixing the mediator's signature and obtaining the parties' signatures to the Mediation Agreement form. The original mediation agreement shall be retained by the mediation service and each party shall be given a copy.

61-17.33(654A) Mediation release.

The following constitute a mediation release:

1. A mediation agreement;
2. A statement of waiver of mediation executed by the farm borrower, farm resident or affected landowner;
3. A notice to creditors that the farm borrower, farm resident or other party has failed to provide the required information to the mediation service within the prescribed 21 days;
4. A statement executed by the mediator indicating that a mediation meeting has been held in which the parties participated with no provision for extension of time, and that no tentative agreement is under consideration.

61-17.34(654A,654B) Participation.

The mediator shall issue a mediation release unless the creditor, other party or DNR fails to participate in at least one mediation meeting. The mediator shall issue a mediation release if the borrower waives or fails to participate in at least one mediation meeting, if the farm resident waives or fails to participate in at least one mediation meeting, or if the affected landowner withdraws the request for mediation or fails to attend the mediation meeting without seeking an extension of time, regardless of participation by the creditor, other party, or the DNR. The creditor, farm borrower, other party or affected landowner may be represented by another person, if the person participates in mediation and has authority to discuss the issues. These rules shall not be construed to require the creditor, other party or the DNR to reach an agreement to receive a mediation release.

