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An Agricultural Law Research Project

States' Alternative Dispute Resolution Statutes
State of Wisconsin

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States' Alternative Dispute Resolution Statutes

STATE OF WISCONSIN

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Arbitration

Chapter 788.

Current through 2007

788.01. Arbitration clauses in contracts enforceable

A provision in any written contract to settle by arbitration a controversy thereafter arising out of the contract, or out of the refusal to perform the whole or any part of the contract, or an agreement in writing between 2 or more persons to submit to arbitration any controversy existing between them at the time of the agreement to submit, shall be valid, irrevocable and enforceable except upon such grounds as exist at law or in equity for the revocation of any contract. This chapter shall not apply to contracts between employers and employees, or between employers and associations of employees, except as provided in s. 111.10, nor to agreements to arbitrate disputes under s. 101.143(6s) or 230.44(4)(bm).

788.015. Agreement to arbitrate real estate transaction disputes

A provision in any written agreement between a purchaser or seller of real estate and a real estate broker, or between a purchaser and seller of real estate, to submit to arbitration any controversy between them arising out of the real estate transaction is valid, irrevocable and enforceable except upon any grounds that exist at law or in equity for the revocation of any agreement. The agreement may limit the types of controversies required to be arbitrated and specify a term during which the parties agree to be bound by the agreement.

788.02. Stay of action to permit arbitration

If any suit or proceeding be brought upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue

involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

788.03. Court order to arbitrate; procedure

The party aggrieved by the alleged failure, neglect or refusal of another to perform under a written agreement for arbitration may petition any court of record having jurisdiction of the parties or of the property for an order directing that such arbitration proceed as provided for in such agreement. Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made as provided by law for the service of a summons. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. If the making of the arbitration agreement or the failure, neglect or refusal to perform the same is in issue, the court shall proceed summarily to the trial thereof. If no jury trial is demanded, the court shall hear and determine such issue. Where such an issue is raised, either party may, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue to a jury summoned and selected under s. 756.06. If the jury finds that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury finds that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

788.04. Arbitrators, how chosen

(1) If, in the agreement, provision is made for a method of naming or appointing an arbitrator or arbitrators or an umpire that method shall be followed. If no method is provided in the agreement, or if a method is provided and any party thereto fails to make use of the method, or if for any other reason there is a lapse in the naming of an arbitrator or arbitrators or an umpire, or in filling a vacancy, then upon the application of either party to the controversy, the court specified in s. 788.02 or the circuit court for the county in which the arbitration is to be held shall designate and appoint an arbitrator, arbitrators or umpire, as the case or sub. (2) may require, who shall act under the agreement with the same force and effect as if specifically named in the agreement; and, except as provided in sub. (2) or unless otherwise provided in the agreement, the arbitration shall be by a single arbitrator.

(2) A panel of arbitrators, consisting of 3 persons shall be appointed to arbitrate actions to recover damages for injuries to the person arising from any treatment or operation performed by or any omission by any person who is required to be licensed, registered or certified to treat the sick as defined in s. 448.01(10).

(a) One arbitrator shall be appointed by the court from a list of attorneys with trial experience. The list shall be prepared and periodically revised by the State Bar of Wisconsin.

(b) One arbitrator shall be appointed by the court from lists of health professionals prepared and periodically revised by the appropriate statewide organizations of health professionals. The lists shall designate the specialty, if any, of each health professional listed. The organizations of health professionals shall assist the court to determine the appropriate specialty of the arbitrator for each

action to be arbitrated.

(c) One arbitrator who is not an attorney or a health professional shall be appointed by the court.

(d) Any person appointed to the arbitration panel may disqualify himself or herself or be disqualified by the court if any reason exists which requires disqualification. A substitute member of the arbitration panel shall be chosen in the same manner as the person disqualified was chosen.

(e) No member of the panel may participate in any subsequent court proceeding on the action arbitrated as either a counsel or a witness unless the court deems the member's testimony necessary for hearings under s. 788.10 or 788.11.

788.05. Court procedure

Any application to the court hereunder shall be made and heard in the manner provided by law for the making and hearing of motions, except as otherwise herein expressly provided.

788.06. Hearings before arbitrators; procedure

(1) When more than one arbitrator is agreed to, all of the arbitrators shall hear the case unless all parties agree in writing to proceed with a lesser number.

(2) Any arbitrator may issue a subpoena under ch. 885 or may furnish blank forms therefor to a representative for any party to the arbitration. The representative may issue a subpoena under s. 805.07. The arbitrator or representative who issues the subpoena shall sign the subpoena and provide that the subpoena is served as prescribed in s. 805.07(5). If any person so served neglects or refuses to obey the subpoena, the issuing party may petition the circuit court for the county in which the hearing is held to impose a remedial sanction under ch. 785 in the same manner provided for witnesses in circuit court. Witnesses and interpreters attending before an arbitration shall receive fees as prescribed in s. 814.67.

788.07. Depositions

Upon petition, approved by the arbitrators or by a majority of them, any court of record in and for the county in which such arbitrators, or a majority of them, are sitting may direct the taking of depositions to be used as evidence before the arbitrators, in the same manner and for the same reasons as provided by law for the taking of depositions in suits or proceedings pending in the courts of record in this state.

788.08. Written awards

The award must be in writing and must be signed by the arbitrators or by a majority of them.

788.09. Court confirmation award, time limit

At any time within one year after the award is made any party to the arbitration may apply to the court in and for the county within which such award was made for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified or corrected under s. 788.10 or 788.11. Notice in writing of the application shall be served upon the adverse party or the adverse party's attorney 5 days before the hearing thereof.

788.10. Vacation of award, rehearing by arbitrators

(1) In either of the following cases the court in and for the county wherein the award was made must make an order vacating the award upon the application of any party to the arbitration:

(a) Where the award was procured by corruption, fraud or undue means;

(b) Where there was evident partiality or corruption on the part of the arbitrators, or either of them;

(c) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced;

(d) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made.

(2) Where an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators.

788.11. Modification of award

(1) In either of the following cases the court in and for the county wherein the award was made must make an order modifying or correcting the award upon the application of any party to the arbitration:

(a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the award;

(b) Where the arbitrators have awarded upon a matter not submitted to them unless it is a matter not affecting the merits of the decision upon the matters submitted;

(c) Where the award is imperfect in matter of form not affecting the merits of the controversy.

(2) The order must modify and correct the award, so as to effect the intent thereof and promote justice between the parties.

788.12. Judgment

Upon the granting of an order confirming, modifying or correcting an award, judgment may be entered in conformity therewith in the court wherein the order was granted.

788.13. Notice of motion to change award

Notice of a motion to vacate, modify or correct an award must be served upon the adverse party or attorney within 3 months after the award is filed or delivered, as prescribed by law for service of notice of a motion in an action. For the purposes of the motion any judge who might make an order to stay the proceedings in an action brought in the same court may make an order, to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award.

788.14. Papers filed with motion regarding award; entry of judgment, effect of judgment

(1) Any party to a proceeding for an order confirming, modifying or correcting an award shall, at the time the order is filed with the clerk of circuit court for the entry of judgment thereon, also file the

following papers with the clerk of circuit court:

(a) The agreement, the selection or appointment, if any, of an additional arbitrator or umpire, and each written extension of the time, if any, within which to make the award;

(b) The award;

(c) Each notice, affidavit or other paper used upon an application to confirm, modify or correct the award, and a copy of each order of the court upon such an application.

(2) The judgment shall be entered in the judgment and lien docket as if it was rendered in an action.

(3) The judgment so entered shall have the same force and effect, in all respects, as, and be subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered.

788.15. Appeal from order or judgment

An appeal may be taken from an order confirming, modifying, correcting or vacating an award, or from a judgment entered upon an award, as from an order or judgment in an action.

788.17. Title of act

This chapter may be referred to as "The Wisconsin Arbitration Act".

788.18. Not retroactive

The provisions of this chapter shall not apply to contracts made prior to June 19, 1931.

Agriculture, Food and Trade Practices

Chapter 93.

Current through 2007

93.50. Farm mediation and arbitration program

(1) Definitions. In this section:

(a) "Action" means a court action involving a dispute described in sub. (3)(am)2 to 6 in which at least one party is a farmer or a court action by a creditor against a farmer for payment of a debt; to enforce or foreclose a security interest, lien or mortgage; or to repossess or declare a creditor's interest in real property. "Action" includes garnishment, replevin, execution of judgment, involuntary receivership and supplementary creditor's proceedings.

(am) "Agricultural property" means real property that is used principally for farming, real property that is a farmer's principal residence and any land contiguous to the residence, personal property that is used as security to finance farming or personal property that is used for farming.

(c) "Creditor" means any person who has a claim against agricultural property or against a farmer affecting the farmer's agricultural property, whether the claim is matured or unmatured, liquidated or unliquidated, secured or unsecured, fixed or contingent. "Creditor" includes the county treasurer of a county in which agricultural property is located if property taxes, special assessments that have been settled in full by the county under s. 74.29, special charges or special taxes levied or assessed against the agricultural property are subject to a tax certificate issued under s. 74.57.

(d) "Farmer" means a farmer, as defined in s. 102.04 (3), who owns or leases land that is agricultural property and whose gross sales of farm products for the preceding year equaled or exceeded the product of 2,088 multiplied by the federal minimum hourly wage under 29 USC 206 (a) 1., except that the department may waive the gross sales requirement if the department determines that extraordinary personal circumstances warrant a waiver.

(e) "Farming" has the meaning given under s. 102.04(3).

(f) "Livestock feeding contract" means an agreement between a farmer and another person under which one party cares for and feeds livestock owned by the other party.

(g) "Procurement contract" has the meaning given "for vegetable procurement contract" in s. 126.55(15).

(2) Mediators and arbitrators. (a) Selection of mediators. The department shall select as mediators persons who have the character and ability to serve as mediators and who have knowledge of financial or agricultural matters or of mediation processes. The department shall ensure that each mediator receives sufficient training in mediation processes, resolving conflicts, farm credit and other subjects to develop or maintain the skills necessary to perform his or her functions under this section.

(am) Selection of arbitrators. The department shall select as arbitrators persons who have the character and ability to serve as arbitrators and who have knowledge of arbitration or other conflict resolution processes. The department may provide training in arbitration processes, resolving conflicts or agricultural issues as part of process of selecting arbitrators or to arbitrators selected by the department to enable arbitrators to maintain the skills necessary to perform their functions under this section.

(b) Compensation of mediators and arbitrators. Mediators and arbitrators shall be compensated for travel and other necessary expenses in amounts approved by the department.

(c) Immunity of mediators and arbitrators. Mediators and arbitrators are immune from civil liability for any act or omission within the scope of their performance of their powers and duties under this section.

(d) Forms and publicity. The department shall prepare all forms necessary for the administration of this section and shall ensure that forms are disseminated and that the availability of mediation and arbitration under this section is publicized.

(e) Exclusion from open records law. All mediators and arbitrators shall keep confidential all information and records obtained in conducting mediation and arbitration. The department shall keep confidential all information and records that may serve to identify any party to mediation and arbitration under this section. Any information required to be kept confidential under this paragraph

may be disclosed if the department and the parties agree to disclosure.

(f) Rule making. The department may promulgate rules necessary to implement this section. The department may promulgate rules defining owners and creditors of agriculturally related businesses and permitting owners and creditors of such businesses to participate in mediation and arbitration subject to the same terms and conditions applicable to farmers and creditors under this section.

(2m) Suspension of court action to allow for voluntary mediation or arbitration. (a) During the pendency of any action, the court may, upon the written stipulation of all parties to the action that they wish to engage in mediation or arbitration under this section, enter an order suspending the action.

(b) A suspension order under par. (a) suspends all orders and proceedings for the time period specified in the suspension order. In specifying the time period, the court shall exercise its discretion for the purpose of permitting the parties to engage in mediation or arbitration without prejudice to the rights of any person. The suspension order may include such other terms and conditions as the court may deem appropriate. The suspension order may be revoked upon motion of any person or upon motion of the court.

(c) If all parties to the action agree, by written stipulation, that all issues before the court are resolved by mediation or arbitration under this section, the court shall dismiss the action.

(d) If the parties do not agree under par. (c) or if the court revokes the suspension order under par. (b), the action shall proceed as if no mediation or arbitration had been attempted.

(3) Mediation process. (a) Participation in mediation. A farmer or a person having a dispute with a farmer who wishes to resolve a dispute between them, either before an action has been initiated to which they are parties or after entry of a suspension order in an action to which they are parties under sub. (2m), may participate in mediation under this section in accordance with this subsection if the dispute is of a kind specified in par. (am).

(am) Disputes that may be mediated. The following kinds of disputes may be mediated under this section:

1. A dispute between a farmer and a creditor involving the farmer's agricultural property and the creditor's claim affecting the agricultural property.
2. A dispute over a procurement contract.
3. A dispute over a livestock feeding contract.
4. A dispute in which one party alleges that an action by, or condition of the property of, the other party is a nuisance.
5. A dispute involving air, water or soil contamination or other environmental issues.
6. A kind of dispute specified as eligible for mediation by the department by rule.

7. A dispute that is not specified under subds. 1 to 6 if all of the parties to the dispute request mediation of the dispute.

(b) Request for mediation; agreement to mediate. To participate in mediation, the farmer or other party to a dispute described in par. (am) shall submit a request for mediation to the department on forms prepared by the department. The department may not proceed under this section until the farmer and the other party have submitted an agreement to mediate.

(e) Selection of mediator. If the department has obtained the agreement under par. (b), the farmer and the other party may request the department to provide the names, mailing addresses and qualifications of up to 3 mediators located in the geographical area in which the agricultural property or farmer is located. The parties shall select a mediator or, upon request of the parties, the department shall designate a mediator for the parties.

(f) Mediation. The function of the mediator is to encourage a voluntary settlement among the parties. The mediator may not compel a settlement. The mediator shall schedule meetings of the parties, direct the parties to prepare for the meetings, attempt to achieve a mediated resolution to the issues among the parties and, if the parties request, assist the parties in preparing a written agreement. All mediation meetings shall be held in this state and be conducted under the laws of this state.

(g) Effect of mediation. The parties may at any time withdraw from mediation. The parties have full responsibility for reaching and enforcing any agreement among them. A mediation agreement may include an agreement for the payment of property taxes, special assessments that have been settled in full by the county under s. 74.29, special charges or special taxes assessed against agricultural property that are subject to a tax certificate issued under s. 74.57 in installments, as long as the agreement is not inconsistent with county board policy. After the expiration of the time period specified in the suspension order under sub. (2m), the parties may no longer participate in the mediation process regarding the same subject matter under this section unless the parties and the mediator agree to continue the mediation.

(4) Arbitration process. (a) Disputes for arbitration. A party to a procurement contract that contains an agreement to submit contract disputes to arbitration wishing to resolve a dispute over the procurement contract or a farmer or creditor wishing to resolve a dispute between them involving the farmer's agricultural property and the creditor's interest in a mortgage, land contract, lien, security interest or judgment affecting the agricultural property, either before an action has been initiated to which they are parties or after entry of a suspension order in an action to which they are parties under sub. (2m), may participate in arbitration under this section in accordance with this subsection and subject to ch. 788.

(b) Request for arbitration; agreement to arbitrate. To participate in arbitration, the farmer and other party under par. (a) shall submit a request for arbitration to the department on a form prepared by the department. After receipt of the request, if the parties wish to proceed to arbitration under this subsection, the department shall require the parties to enter into an agreement to binding arbitration on a form prepared by the department.

(e) Selection of arbitrator. After the department has obtained the agreement under par. (b), the farmer and the other party may request the department to provide the names, mailing addresses and

qualifications of up to 3 arbitrators located in the geographical area in which the agricultural property or farmer is located. The parties shall select an arbitrator or, upon request of the parties, the department shall designate an arbitrator for the parties.

(5) Other creditors; no delay. With respect to mediation or arbitration between parties before an action has been initiated to which they are parties, no agreement to mediate or to arbitrate, or the fact that mediation or arbitration is currently occurring, may have the effect of delaying, postponing or extending any time limits in any legal proceeding commenced to enforce a mortgage, land contract, lien, security interest or judgment commenced by a creditor other than the creditor or creditors participating in the mediation or arbitration.

Civil Procedure. Alternative Dispute Resolution
Chapter 802.

Current through 2007

802.12. Alternative dispute resolution

(1) Definitions. In this section:

(a) "Binding arbitration" means a dispute resolution process that meets all of the following conditions:

1. A neutral 3rd person is given the authority to render a decision that is legally binding.
2. It is used only with the consent of all of the parties.
3. The parties present evidence and examine witnesses.
4. A contract or the neutral 3rd person determines the applicability of the rules of evidence.
5. The award is subject to judicial review under ss. 788.10 and 788.11.

(b) "Direct negotiation" means a dispute resolution process that involves an exchange of offers and counteroffers by the parties or a discussion of the strengths and weaknesses or the merits of the parties' positions, without the use of a 3rd person.

(c) "Early neutral evaluation" means a dispute resolution process in which a neutral 3rd person evaluates brief written and oral presentations early in the litigation and provides an initial appraisal of the merits of the case with suggestions for conducting discovery and obtaining legal rulings to resolve the case as efficiently as possible. If all of the parties agree, the neutral 3rd person may assist in settlement negotiations.

(d) "Focus group" means a dispute resolution process in which a panel of citizens selected in a manner agreed upon by all of the parties receives abbreviated presentations from the parties, deliberates, renders an advisory opinion about how the dispute should be resolved and discusses the opinion with the parties.

(e) "Mediation" means a dispute resolution process in which a neutral 3rd person, who has no power to impose a decision if all of the parties do not agree to settle the case, helps the parties reach an agreement by focusing on the key issues in a case, exchanging information between the parties and exploring options for settlement.

(f) "Mini-trial" means a dispute resolution process that consists of presentations by the parties to a panel of persons selected and authorized by all of the parties to negotiate a settlement of the dispute that, after the presentations, considers the legal and factual issues and attempts to negotiate a settlement. Mini-trials may include a neutral advisor with relevant expertise to facilitate the process, who may express opinions on the issues.

(g) "Moderated settlement conference" means a dispute resolution process in which settlement conferences are conducted by one or more neutral 3rd persons who receive brief presentations by the parties in order to facilitate settlement negotiations and who may render an advisory opinion in aid of negotiation.

(h) "Nonbinding arbitration" means a dispute resolution process in which a neutral 3rd person is given the authority to render a nonbinding decision as a basis for subsequent negotiation between the parties after the parties present evidence and examine witnesses under the rules of evidence agreed to by the parties or determined by the neutral 3rd person.

(i) "Settlement alternative" means any of the following: binding arbitration, direct negotiation, early neutral evaluation, focus group, mediation, mini-trial, moderated settlement conference, nonbinding arbitration, summary jury trial.

(j) "Summary jury trial" means a dispute resolution process that meets all of the following conditions:

1. Attorneys make abbreviated presentations to a small jury selected from the regular jury list.
2. A judge presides over the summary jury trial and determines the applicability of the rules of evidence.
3. The parties may discuss the jury's advisory verdict with the jury.
4. The jury's assessment of the case may be used in subsequent negotiations.

(2) Referral. (a) A judge may, with or without a motion having been filed, upon determining that an action or proceeding is an appropriate one in which to invoke a settlement alternative, order the parties to select a settlement alternative as a means to attempt settlement. An order under this paragraph may include a requirement that the parties participate personally in the settlement alternative. Any party aggrieved by an order under this paragraph shall be afforded a hearing to show cause why the order should be vacated or modified. Unless all of the parties consent, an order under this paragraph shall not delay the setting of the trial date, discovery proceedings, trial or other matters addressed in the scheduling order or conference.

(b) The parties shall inform the judge of the settlement alternative they select and the person they select to provide the settlement alternative. If the parties cannot agree on a settlement alternative, the

judge shall specify the least costly settlement alternative that the judge believes is likely to bring the parties together in settlement, except that unless all of the parties consent, the judge may not order the parties to attempt settlement through binding arbitration, nonbinding arbitration or summary jury trial or through more than one of the following: binding arbitration, early neutral evaluation, focus group, mediation, mini-trial, moderated settlement conference, nonbinding arbitration, summary jury trial.

(c) If the parties cannot agree on a person to provide the settlement alternative, the judge may appoint any person who the judge believes has the ability and skills necessary to bring the parties together in settlement.

(d) If the parties cannot agree regarding the payment of a provider of a settlement alternative, the judge shall direct that the parties pay the reasonable fees and expenses of the provider of the settlement alternative. The judge may order the parties to pay into an escrow account an amount estimated to be sufficient to pay the reasonable fees and expenses of the provider of the settlement alternative.

(3) Actions affecting the family. In actions affecting the family under ch. 767, all of the following apply:

(a) All settlement alternatives are available except focus group, mini-trial and summary jury trial.

(b) If a guardian ad litem has been appointed, he or she shall be a party to any settlement alternative regarding custody, physical placement, visitation rights, support or other interests of the ward.

(c) If the parties agree to binding arbitration, the court shall, subject to ss. 788.10 and 788.11, confirm the arbitrator's award and incorporate the award into the judgment or postjudgment modification order with respect to all of the following:

1. Property division under s. 767.61.

2. Maintenance under s. 767.56.

3. Attorney fees under s. 767.241.

4. Postjudgment orders modifying maintenance under s. 767.59.

(d) The parties, including any guardian ad litem for their child, may agree to resolve any of the following issues through binding arbitration:

1. Custody and physical placement under s. 767.41, 767.805(4), 767.863(3) or 767.89(3).

2. Visitation rights under s. 767.43.

3. Child support under s. 767.511, 767.805(4), 767.863(3) or 767.89(3).

4. Modification of subd. 1, 2 or 3 under s. 767.451 or 767.59.

(e) The court may not confirm the arbitrator's award under par. (d) and incorporate the award into the

judgment or postjudgment modification order unless all of the following apply:

1. The arbitrator's award sets forth detailed findings of fact.
2. The arbitrator certifies that all applicable statutory requirements have been satisfied.
3. The court finds that custody and physical placement have been determined in the manner required under ss. 767.405, 767.407 and 767.41.
4. The court finds that visitation rights have been determined in the manner required under ss. 767.405, 767.407 and 767.43.
5. The court finds that child support has been determined in the manner required under s. 767.511 or 767.89.

(4) Admissibility. Except for binding arbitration, all settlement alternatives are compromise negotiations for purposes of s. 904.08 and mediation for purposes of s. 904.085.

809.17. Expedited appeals program, voluntary alternative dispute resolution and presubmission conference

- (1) In order to minimize appellate delay and reduce its backlog, the court of appeals may develop an expedited appeals program. The program may involve mandatory completion of docketing statements by appellant's counsel and participation in presubmission conferences at the direction of the court, but participation in the court's accelerated briefing and decision process is voluntary. The rules and procedures governing the program shall be set forth in the court of appeals' internal operating procedures.
- (2) The court of appeals may require all attorneys of record in any appeal to participate in a presubmission conference, either by telephone or in person, with an officer of the court. An attorney of record with no direct briefing interest in the appeal may waive his or her participation in the conference by written notice to the court.
- (2m) The court of appeals may establish an appellate mediation program and make and enforce all rules necessary for the prompt and orderly dispatch of the business of the program. Participation in the appellate mediation program is voluntary, but the program may involve mandatory participation in the presubmission conferences at the direction of the court. Only those cases in which a docketing statement is required to be filed under s. 809.10 (1)(a) are eligible for participation in the appellate mediation program. The parties to the appeal shall pay the fees of a mediator providing services under the program, unless those fees are waived or deferred by the court. The rules and procedures governing the program shall be set forth in the court of appeals' internal operating procedures.

Farm Mediation and Arbitration Program
Wis. Admin. Code s ATCP 162.01

Current through November of 2008

ATCP 162.01 Purpose.

This chapter governs farm mediation and arbitration proceedings under s. 93.50, Stats.

ATCP 162.02 Definitions.

In this chapter:

- (1) "Creditor" has the meaning given in s. 93.50 (1) (c), Stats.
- (2) "Department" means the state of Wisconsin department of agriculture, trade and consumer protection.
- (3) "Farmer" has the meaning given in s. 93.50 (1) (d), Stats.
- (4) "Party" means a farmer, creditor or other person who requests or agrees to participate in a mediation or arbitration proceeding under this chapter.
- (5) "Person" means an individual, corporation, cooperative, partnership, limited liability company, business trust, or other legal entity. "Person" includes a government entity.

ATCP 162.03 Mediators and arbitrators; general.

- (1) APPOINTMENT AND QUALIFICATIONS. The department shall appoint mediators according to s. ATCP 162.04 (4). The department shall appoint arbitrators according to s. ATCP 162.05 (2). Mediators and arbitrators shall possess the qualifications required under ss. 93.50 (2) (a) and (am), Stats. Mediators and arbitrators shall successfully complete all training required by the department. Mediators and arbitrators shall be impartial.
- (2) WRITTEN AGREEMENT. The department shall enter into a written agreement with each mediator or arbitrator. The agreement shall set forth the terms and conditions under which the mediator or arbitrator will provide mediation and arbitration services under s. 93.50, Stats., and this chapter.
- (3) MEDIATOR FUNCTIONS. If parties consent to mediation under s. 93.50, Stats., and this chapter, the appointed mediator shall encourage and assist the parties to reach a voluntary settlement as provided in s. 93.50 (3) (f), Stats. Neither the mediator nor the department may impose a settlement upon any party.
- (4) ARBITRATOR FUNCTIONS. If parties consent to arbitration under s. 93.50, Stats., and this chapter, an arbitrator shall conduct an arbitration proceeding and render an arbitration award. Arbitration proceedings shall conform to ch. 788, Stats., and this chapter.
- (5) ADVISING PARTIES. No mediator or arbitrator may provide legal, financial or therapeutic advice to any party in a mediation or arbitration proceeding. At the request of a party, a mediator may refer the party to alternative sources of professional consultation or assistance. A mediator may not solicit or accept any payment or thing of value, either directly or indirectly, in return for making a referral.

(6) CONFIDENTIALITY. Except as otherwise agreed by the parties and the department, or as provided in s. 904.085, Stats., mediators and arbitrators shall keep confidential all information and records obtained in connection with a mediation or arbitration proceeding. At the conclusion of the proceeding, the mediator shall file all records with the department.

(7) ETHICS. (a) No mediator or arbitrator may, during a mediation or arbitration proceeding or within one year after that proceeding is concluded, provide or offer to provide, for compensation, any service to a person who is a party to that proceeding before that mediator or arbitrator.

(b) No mediator or arbitrator may provide or offer to provide, for compensation, to a person who is a party to a mediation or arbitration proceeding before that mediator or arbitrator, any service related to any issue raised in that proceeding.

(c) No mediator or arbitrator may solicit or accept, directly or indirectly, from a party to a mediation or arbitration proceeding, any of the following:

1. Anything of value that could reasonably be expected to influence the actions or judgment of the mediator or arbitrator, in his or her capacity as a mediator or arbitrator.

2. Anything of value that could reasonably be considered as a reward for any action or inaction by the mediator or arbitrator, in his or her capacity as a mediator or arbitrator.

(d) No mediator or arbitrator may disclose confidential information gained as a result of his or her service as a mediator or arbitrator, or use that information in any way that could result in the receipt of anything of value by the mediator or arbitrator, or any person or organization with which the mediator or arbitrator is associated.

(e) No mediator or arbitrator may use or attempt to use his or her position as a mediator or arbitrator to gain unlawful benefits, advantages or privileges for himself or herself, or for others.

(f) A mediator or arbitrator shall disclose to the department, and to the parties to a mediation or arbitration proceeding, every potential conflict of interest and every other matter which may affect the mediator's or arbitrator's ability to act in a fair and impartial manner in the proceeding. A mediator or arbitrator shall withdraw from the proceeding if the mediator or arbitrator is unable to act in a fair and impartial manner.

(g) This subsection does not prohibit a mediator or arbitrator from receiving normal compensation or reimbursement of expenses from the department, pursuant to s. 93.50 (2) (b), Stats.

(8) SUBSTITUTION. (a) A party to a mediation or arbitration proceeding may petition the department for substitution of a mediator or arbitrator. The party shall submit the petition in writing, and shall specify the reason for the petition. The department may require the petitioner to substantiate his or her claim, and may conduct its own investigation as necessary. The department may order a substitution if the department determines that a conflict of interest exists, or that there are reasonable grounds to believe that the mediator or arbitrator cannot act fairly and impartially in the matter. The department shall issue its decision in writing and shall serve a copy on all parties to the proceeding. If the

department orders a substitution, the department shall appoint a new mediator according to s. ATCP 162.04 (4) or a new arbitrator according to s. ATCP 162.05 (2).

(9) IMMUNITY FROM LIABILITY; LIMITATIONS. The civil immunity provided to mediators and arbitrators under s. 93.50 (2) (c), Stats., does not include any of the following:

(a) Immunity from liability related to fraud or an intentional violation of sub. (7).

(b) Immunity from criminal liability.

ATCP 162.04 Mediation.

(1) REQUEST FOR MEDIATION. A person requesting mediation shall submit the request to the department in writing, on a form provided by the department. The request shall include all the following:

TEXT (1) (a)

(a) A statement of the issue or issues that the requester seeks to resolve by mediation.

(b) The name and address of each proposed party, or that party's authorized representative.

Note: You may obtain a mediation request form from the department, and submit a completed request form to the department, at the following address:

Wisconsin Department of Agriculture, Trade and Consumer Protection

Agricultural Development Division, Farm Center

2811 Agriculture Drive

P.O. Box 8911

Madison, WI 53708-8911

(2) AGREEMENT TO MEDIATE. If the parties to a proposed mediation agree to mediate, they shall sign a mediation agreement, on a form provided by the department. The parties may sign the same form or separate identical forms that identify all the parties to the proposed mediation. The agreement shall set forth the terms and conditions of mediation.

Note: The department will normally provide each party with a copy of the mediation agreement form prior to the initial mediation session. The mediator will normally review the agreement with the parties and have them sign the agreement at the first mediation session. You may obtain a copy of the mediation agreement form by contacting the department at:

Wisconsin Department of Agriculture, Trade and Consumer Protection

Agricultural Development Division, Farm Center

2811 Agriculture Drive

P.O. Box 8911

Madison, WI 53708-8911

(3) **MEDIATION ASSISTANCE.** The department may assign an advisor under s. 93.51, Stats., to help a farmer prepare for mediation. The advisor may help a farmer prepare for mediation, but may not take a position with respect to the competing claims of the parties in mediation.

(4) **MEDIATOR APPOINTMENT.** (a) The department may provide the parties with the names, addresses and qualifications of potential mediators, as provided in s. 93.50 (3) (e), Stats., or may appoint a mediator with the authorization of the parties.

(b) If any party declines to authorize department appointment of a mediator, the parties shall choose a mediator from among those named by the department. The department shall then appoint the chosen mediator.

(c) When the department appoints a mediator under par. (a) or (b), the department shall notify all parties of the appointment.

(d) The appointed mediator shall enter into a written agreement with the department under s. ATCP 162.03 (2), and shall then assume responsibility for directing the mediation proceeding.

(5) **MEDIATION PROCEEDINGS.** (a) A mediator shall conduct mediation proceedings at times and places agreed upon by the parties and the mediator. A mediator may conduct mediation proceedings with the parties by telephone. The mediator may hold joint or separate sessions with the parties, as the mediator deems necessary.

(b) With the agreement of the parties, the mediator may request other persons to participate in the mediation proceedings. Parties may have representatives present at mediation sessions.

(c) The mediator may regulate mediation proceedings to prevent disruptions, and may terminate mediation sessions in his or her discretion.

(d) The parties may agree to start or continue mediation proceedings while a court action is pending between the parties, regardless of whether the court action is stayed under s. 93.50 (2m), Stats. Mediation proceedings may not violate a court order or an automatic stay in bankruptcy.

(6) **AGREEMENT AFTER MEDIATION.** The parties to a mediation proceeding may reduce their interim and final agreements, if any, to writing. At the conclusion of the mediation proceedings, the mediator shall provide the department with copies of all written agreements. Agreements may provide for continued mediation at a future date. The parties are solely responsible for their agreements and for the enforcement of their agreements. An agreement is subject to applicable laws and court orders, and is subject to the exercise of rights by persons who are not parties to the agreement.

(7) WITHDRAWING FROM MEDIATION. A party may withdraw from mediation at any time.

ATCP 162.05 Arbitration.

(1) REQUEST FOR ARBITRATION. A person requesting arbitration shall submit that request to the department in writing, on a form provided by the department. A request for arbitration shall include all the following:

(a) A signed agreement by all parties to participate in arbitration. No person may be included as a party in an arbitration proceeding without that person's signed agreement.

(b) A preliminary statement of the issue or issues the parties seek to resolve by arbitration.

(c) The name and address of each party, or the party's representative in the arbitration proceeding.

(d) An agreed method for appointing an arbitrator under sub. (5).

(e) An identification of every court action currently pending between the parties. If any court action is pending, the request for arbitration shall include a copy of any court order under s. 93.50 (2m), Stats., suspending the court action pending arbitration. No issue contested between the parties in a court action may be arbitrated under this chapter unless the court enters an order suspending the court action pending arbitration.

(f) If no court action is currently pending between the parties, an agreement by the parties to refrain from initiating any court action against another party for at least 60 days, or until arbitration is completed, whichever occurs first.

Note: You may obtain an arbitration request form from the department, and submit a completed request form to the department, at the following address:

Wisconsin Department of Agriculture, Trade and Consumer Protection

Agricultural Development Division, Farm Center

2811 Agriculture Drive

P.O. Box 8911

Madison. WI 53708-8911

(2) ARBITRATOR APPOINTMENT. (a) The department may provide the parties with the names, addresses and qualifications of potential arbitrators, as provided in s. 93.50 (4) (e), Stats., or may appoint an arbitrator with the authorization of the parties.

(b) If any party declines to authorize department appointment of an arbitrator, the parties may choose an arbitrator from among those named by the department under s. 93.50 (4) (e), Stats. The department

shall then appoint the chosen arbitrator.

(c) When the department appoints an arbitrator under par. (a) or (b), the department shall give all parties notice of the appointment.

(d) The appointed arbitrator shall enter into a written agreement with the department under s. ATCP 162.03 (2), Stats., and shall then assume responsibility for directing the arbitration proceeding.

(3) **ARBITRATION AGREEMENT.** After the arbitrator is appointed and before the arbitration proceeding begins, the parties shall enter into a specific arbitration agreement. The department shall oversee the preparation of the agreement. The agreement shall include all the following:

(a) A specific agreement by all parties to arbitrate, and to abide by the arbitration award.

(b) A specific statement of the issue or issues to be decided in arbitration.

(c) The procedures that the arbitrator will follow.

(4) **ARBITRATION PROCEEDINGS.** An arbitrator shall conduct arbitration proceedings according to ch. 788, Stats., and the arbitration agreement under sub. (3). Arbitrators have the authority provided under ch. 788, Stats., and the arbitration agreement. This subsection does not authorize any proceedings in violation of a court order or an automatic stay in bankruptcy.

(5) **ARBITRATION AWARD.** An arbitrator shall issue an award in writing. The arbitrator shall serve a copy of the award on each party and on the department.

(6) **COURT REVIEW AND ENFORCEMENT.** A court may confirm, modify, correct or enforce an arbitration award, as provided in s. 788.03, Stats.