

ARTICLE 12:20

FARM LOAN MEDIATION

Chapter
12:20:01 Farm loan mediation program.

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FARM LOAN MEDIATION PROGRAM

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12:20:01:01. Definitions. Terms defined in SDCL 54-13-1 have the same meaning in this chapter. In addition, terms used in this chapter mean:

- (1) "Director," the director of mediation services;
- (2) "Mediation release," a document issued by the director to a creditor who files a request for mediation stating that the mediation conditions of SDCL 54-13 have been met.

Source: 15 SDR 20, effective August 7, 1988; 30 SDR 204, effective June 28, 2004.

General Authority: SDCL 54-13-2.

Law Implemented: SDCL 54-13-2.

12:20:01:02. Mediator training. The director, in conjunction with the department of agriculture, shall provide initial training in mediation techniques to the mediators. This training shall include at least 32 hours of initial training on the mediation process, mediation skills, and agricultural farm finance issues and shall include advice that a mediator does not have a duty to advise a creditor or debtor about the law or to encourage or assist a debtor or creditor in reserving or establishing legal rights. Subsequent and supplemental training of mediators may be conducted by the department of agriculture.

Successful completion of the initial training session constitutes the minimum qualification to serve as a mediator.

Source: 15 SDR 20, effective August 7, 1988; 30 SDR 204, effective June 28, 2004.

General Authority: SDCL 54-13-2.

Law Implemented: SDCL 54-13-2.

12:20:01:03. Mediation fees. Requests for mediation must be filed with the director on a form which may be obtained from the director. The form must be accompanied by a nonrefundable initial fee of \$50 to pay for the initiating party's share of the first hour of mediation in session. If the respondent replies in the affirmative to use mediation, that response shall also be accompanied by a nonrefundable initial fee of \$50 to pay for the respondent's share of the first hour of mediation in session.

No mediation services may be provided unless each party has paid the required initial fee. If mediation occurs, the initiating party and the respondent shall each pay a fee of \$25 for each additional hour or fraction of an hour of mediation in session after the first hour. The director shall bill any remaining amount due from the parties based on the mediator's time report.

Source: 15 SDR 20, effective August 7, 1988; 18 SDR 3, effective July 17, 1991; 30 SDR 204, effective June 28, 2004.

General Authority: SDCL 54-13-2.

Law Implemented: SDCL 54-13-2, 54-13-5.

12:20:01:04. Contents of request for mediation. The request for mediation must contain the following information:

(1) If filed by a creditor:

(a) The name, address, and telephone number of the creditor and the creditor's representative for service of notices;

(b) If possible, the names and positions of the creditor's representatives who plan to attend the mediation proceedings;

(c) The name, address, and telephone number of the debtor;

(d) The stated location of the real estate and location of chattel property or other collateral. 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;

(e) An affidavit that the creditor meets the qualification of a creditor as defined in SDCL 54-13-1;

(2) If filed by a borrower:

(a) The name, address, and telephone number of the borrower;

(b) If possible, the name, address, and telephone number of each person who will accompany the borrower to the mediation proceedings;

(c) The name, address, and telephone number of the creditor or creditors;

(d) The location of the real estate and the location of chattel property or other collateral listed by creditor. If the property is under the control of a third party or parties, the name, address, and telephone number of each party shall be provided.

Source: 15 SDR 20, effective August 7, 1988.

General Authority: SDCL 54-13-2.

Law Implemented: SDCL 54-13-2.

12:20:01:05. Form for notice of request for mandatory mediation. The form for the notice of request for mandatory mediation shall include the following:

- (1) The name of the party requesting mediation;
- (2) A brief description of the mediation process;
- (3) A statement informing all parties that the party or representative attending the mediation session must have the authority to negotiate agreements with other parties;
- (4) The information required to be brought to the initial mediation session;
- (5) A statement that both borrowers and the borrower's spouse must attend the mediation sessions;
- (6) A listing of services available to borrowers through various other agencies or organizations;
- (7) To the borrower, a waiver or mediation form;
- (8) A listing of any agency or organization that provides emotional or stress counseling or any other assistance;
- (9) Advice of availability of financial preparation assistance as required by SDCL 54-13-9.

Source: 15 SDR 20, effective August 7, 1988.

General Authority: SDCL 54-13-2.

Law Implemented: SDCL 54-13-2, 54-13-7, 54-13-9, 54-13-12.

12:20:01:06. Procedure for voluntary mediation. The following procedure applies upon receipt of a request for voluntary mediation:

- (1) The director shall determine whether a mediator is available and evaluate the request;
- (2) Within 3 business days after receiving the request, the director shall mail a notice of a request for voluntary mediation to all parties;
- (3) Mailing of the notice of request for mandatory mediation to the respondent begins the 42-day mediation period as provided in SDCL 54-13-12;
- (4) A respondent receiving a notice of a request for mediation must answer in writing to the director within 10 days after the notice was mailed;

(5) If an answer is not received by the director within the 10-day period, the director shall notify the requester that the respondent refused mediation.

Source: 15 SDR 20, effective August 7, 1988; 30 SDR 204, effective June 28, 2004.

General Authority: SDCL 54-13-2.

Law Implemented: SDCL 54-13-2, 54-13-13.

12:20:01:07. Mediation meeting notice form. The form for the notice of the mediation meeting shall include the following:

- (1) The time and place of the initial mediation session;
- (2) The name of the parties involved in mediation;
- (3) The name of the mediator assigned;
- (4) A brief description of the mediation process;
- (5) A statement informing all parties that the party or representative attending the mediation session must have the authority to negotiate agreements with other parties;
- (6) The information required to be brought to the initial mediation session; and
- (7) A statement that both the borrower and the borrower's spouse must attend the mediation sessions.

Source: 15 SDR 20, effective August 7, 1988.

General Authority: SDCL 54-13-2.

Law Implemented: SDCL 54-13-2, 54-13-11, 54-13-13.

12:20:01:08. Response to notice. A recipient of a notice of a request for mediation shall indicate the intent to mediate by responding in writing to the director within 10 days after the director mailed the notice. If the borrower agrees to mediation the borrower shall provide to the director the name, address, and telephone number of any other creditor or creditors to whom there is indebtedness. Upon receipt of the responding party's written intent to mediate, the director shall schedule a mediation.

If the borrower waives the rights of mediation, the borrower shall execute the waiver of mediation form and return it to the director within 10 days. A borrower who fails to respond to the director within 21 days of the receipt of the request of mediation is considered to have waived mediation. Once the respondent has waived the rights of mediation either by written notification or failing to respond, the director may issue a mediation release to the initiating party.

Source: 15 SDR 20, effective August 7, 1988; 30 SDR 204, effective June 28, 2004.

General Authority: SDCL 54-13-2.

Law Implemented: SDCL 54-13-2, 54-13-10.

12:20:01:09. Director to notify other creditors. If a borrower assents to mediation and is indebted to other creditors, the director shall notify those creditors by mail within three working days after receipt of the information.

Source: 15 SDR 20, effective August 7, 1988.

General Authority: SDCL 54-13-2.

Law Implemented: SDCL 54-13-2, 54-13-10.

12:20:01:10. Response from other creditor. A creditor named in the borrower's response shall notify the director in writing within 10 days if that creditor desires to become a party to the mediation.

Source: 15 SDR 20, effective August 7, 1988.

General Authority: SDCL 54-13-2.

Law Implemented: SDCL 54-13-2, 54-13-10.

12:20:01:11. Conduct at mediation sessions. Mediation sessions shall be conducted as follows:

- (1) Mediation sessions are under the control of the mediator;
- (2) The mediator must hold in strict confidence all information provided by the parties to the mediation;
- (3) All parties must have the opportunity to speak and state their positions;
- (4) Legal counsel may advise clients regarding legal rights and the implication of suggested solutions;
- (5) All parties to the proceedings must make a good faith effort to resolve the dispute.

Source: 15 SDR 20, effective August 7, 1988.

General Authority: SDCL 54-13-2.

Law Implemented: SDCL 54-13-2, 54-13-18.

12:20:01:12. Mediation agreement. If the parties involved in mediation reach tentative agreement, the mediator shall provide information for the preparation of a mediation agreement.

After the details of the agreement are reviewed and approved by all agreeing parties, those parties and the mediator shall agree upon the person who is to prepare the actual document. All agreeing parties are required to sign the agreement.

Those parties who do not reach agreement may request another mediation session, although the request may be declined by either party. The request may be made in writing or verbally to the mediator and may include a request for extension of time. If the parties agree that a mediated solution is not possible, the borrower may sign a waiver which will allow the director to issue a mediation release to creditors.

Source: 15 SDR 20, effective August 7, 1988; 30 SDR 204, effective June 28, 2004.

General Authority: SDCL 54-13-2.

Law Implemented: SDCL 16-18-1, 54-13-2, 54-13-15.