

Chapter ATCP 2

FARM MEDIATION AND ARBITRATION PROGRAM

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Note: Chapter Ag 2 was renumbered ch. ATCP 2 under s. 13.93 (2m) (b) 1, Stats., Register, April, 1993, No. 448.

ATCP 2.01 Purpose. This chapter is adopted by the farm mediation and arbitration board to govern mediation and arbitration proceedings under s. 93.50, Stats. The farm mediation and arbitration board is a board created under s. 15.135 (5), Stats., and attached for administrative purposes to the department of agriculture, trade and consumer protection.

History: Cr. Register, April, 1988, No. 388, eff. 5-1-88.

ATCP 2.02 Definitions. As used in this chapter:

(1) "Agricultural property" means agricultural property as defined in s. 93.50 (1) (am).

(2) "Agriculturally related business" means any person, or any business association or entity, which is engaged in the sale or rental of farm supplies, services or equipment to farmers, provided that the sale or rental of farm supplies, services or equipment to farmers comprises at least 50% of the annual gross revenue of the person, association or entity. "Agriculturally related business" does not include a person, association or entity regulated under s. 100.03 or 100.06, or ch. 127, Stats.

(3) "Board" means the farm mediation and arbitration board.

(4) "Creditor" means any person or entity who has a claim to payment from a farmer or agriculturally related business, and includes a representative of creditors, such as an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an estate.

(5) "Farmer" means a farmer as defined in s. 93.50 (1) (d), Stats.

(6) "Party" means a farmer, agriculturally related business or creditor who requests or agrees to participate in a mediation or arbitration proceeding under this chapter.

(7) "Secured creditor" means a creditor whose claim is secured by a mortgage, lien or security interest in agricultural property, and includes a land contract vendor or lessor of agricultural property.

History: Cr. Register, April, 1988, No. 388, eff. 5-1-88.

ATCP 2.03 Mediators and arbitrators; general. (1) QUALIFICATIONS; SELECTION. Mediators and arbitrators shall meet the requirements under s. 93.50 (2) (a) and (am), Stats., and shall successfully complete all training required by the board. Mediators and arbitrators shall be impartial.

(2) **WRITTEN AGREEMENT.** Every mediator and arbitrator appointed by the board shall enter into a written agreement with the board setting forth the terms and conditions under which mediation and arbitration services are to be provided under s. 93.50, Stats., and this chapter.

(3) **FUNCTIONS.** (a) *Mediators.* Upon consent of the parties to mediation under s. 93.50, Stats., and this chapter, the appointed mediator shall encourage and assist the parties to reach a voluntary settlement of the matter, as provided in s. 93.50 (3) (f), Stats. Neither the mediator nor the board may impose a settlement upon any party.

(b) *Arbitrators.* Upon consent of the parties 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.

(4) **ADVISING PARTIES PROHIBITED; REFERRAL FOR CONSULTATION.** No mediator or arbitrator may provide legal, financial or therapeutic advice to the parties in a mediation or arbitration proceeding. A mediator may, upon request, refer a 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.

(5) **CONFIDENTIALITY.** Mediators and arbitrators shall keep confidential all information and records obtained in connection with a mediation or arbitration proceeding, except upon agreement with the parties and the board. At the conclusion of the proceeding, the mediator shall file all records with the board.

(6) **CODE OF ETHICS.** (a) *Prohibitions.* No mediator or arbitrator appointed under s. 93.50, Stats., and this chapter may:

1. Offer or deliver services, for compensation, to any party to a mediation or arbitration proceeding brought before the mediator or arbitrator:

a. Regarding any issue raised in the proceeding.

b. Regarding any other matter, not raised in the proceeding, for a period of one year after the proceeding is concluded.

2. Solicit or accept from any person or entity, directly or indirectly, anything of value if the thing of value:

a. 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.

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b. 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.

3. Disclose confidential information gained as a result of his or her service as a mediator or arbitrator, or use the information in any way which 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.

4. 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.

(b) *Disclosure; voluntary withdrawal.* A mediator or arbitrator shall disclose to the board, 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 may withdraw from the proceeding if the mediator or arbitrator is unable to act in a fair and impartial manner.

(c) *Compensation by board not affected.* This subsection does not prohibit a mediator or arbitrator from receiving normal compensation or reimbursement of expenses from the board, pursuant to s. 93.50 (2) (b), Stats.

(7) **SUBSTITUTION.** Any party to a mediation or arbitration proceeding may petition the board for substitution of a mediator or arbitrator. A petition for substitution shall be made in writing, and shall specify the reason for the petition. The board may require the petitioner to substantiate his or her claim, and may conduct its own investigation as necessary. The board may order a substitution if the board 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. A substitution order shall be issued in writing, and served on all parties to the proceeding. If substitution is ordered, a new mediator or arbitrator shall be selected according to procedures provided under s. 93.50, Stats., and this chapter.

(8) **IMMUNITY FROM LIABILITY; LIMITATIONS.** Immunity from civil liability, as provided under s. 93.50 (2) (c), Stats., does not include immunity from liability because of fraud, or because of an intentional failure to disclose a conflict of interest in violation of this section. Immunity provided under s. 93.50 (2) (c), Stats., does not include immunity from criminal liability.

History: Cr. Register, April, 1988, No. 388, eff. 5-1-88.

ATCP 2.04 Mediation. (1) REQUEST FOR MEDIATION. A request for mediation shall be submitted to the board in writing, on a form provided by the board. The request form shall be signed by the party or parties requesting mediation, and shall be accompanied by an agreement to mediate under sub. (2). A request for mediation shall include:

(a) A statement of the issue or issues which the requesting party seeks to resolve by mediation.

(b) The name and address of each party, or the representative of each party, with which the requesting party seeks to mediate.

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Note: A request for mediation may be submitted to the farm mediation and arbitration board, in care of the Wisconsin department of agriculture, trade and consumer protection, P.O. Box 8911, 801 W. Badger Rd., Madison, Wisconsin 53708. Request forms may be obtained from the same address.

(2) **AGREEMENT TO MEDIATE.** Before a mediation proceeding is initiated, every party who agrees to participate in the mediation proceeding shall sign an agreement to mediate, on a form provided by the board. A separate form may be signed by each party. No mediation may be initiated with respect to a farmer or agriculturally related business unless an agreement to mediate is signed by the farmer or agriculturally related business, and at least one secured creditor of the farmer or agriculturally related business. Additional parties may also agree to participate in the mediation proceeding by signing an agreement to mediate. An agreement to mediate shall include a statement authorizing the board to appoint a mediator, or reserving the party's right to select a mediator from among a list of potential mediators provided by the board under s. 93.50 (3) (e), Stats.

(3) **INFORMATION REQUIRED PRIOR TO MEDIATION.** Before a mediator is appointed, the farmer or agriculturally related business requesting mediation shall complete and submit a confidential background questionnaire provided by the board. The completed questionnaire shall include:

(a) A current balance sheet setting forth the assets, liabilities and owner's equity of the farmer or agriculturally related business.

(b) An itemization of liabilities, including the name and address of each creditor.

(c) A statement authorizing or prohibiting the board from providing a copy of the completed background questionnaire to the mediator, if appointed.

(4) **ASSESSMENT AND PREPARATION FOR MEDIATION.** The board may ask a party to meet with a person chosen by the board to assess whether the party has voluntarily requested mediation and is prepared for mediation. The board may provide resources to assist a party in preparing for mediation, but may not take a position with respect to the competing claims of the parties in mediation.

(5) **APPOINTMENT OF MEDIATOR.** The board 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. If any party declines to authorize board appointment of a mediator, the parties shall choose a mediator from among those named by the board under s. 93.50 (3) (e), Stats. The chosen mediator shall then be appointed by the board. All parties shall be given notice of the mediator appointment. The appointed mediator shall enter into a written agreement with the board under s. ATCP 2.03 (2). Upon execution of the agreement, the mediator shall assume responsibility for directing the mediation proceeding.

(6) **TERMS OF MEDIATION.** Before a mediation proceeding is initiated, the parties shall sign a specific agreement setting forth the terms of mediation. The agreement shall be prepared under the direction of the mediator, and shall include:

(a) An identification of every court action currently pending between the parties. If any court action is pending, the agreement shall include a copy of any court order under s. 93.50 (2m), Stats., suspending the court action pending mediation, and a copy of any stipulation between the parties related to the status of the litigation pending mediation.

(b) 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 mediation is completed, whichever occurs first. This agreement may be waived or modified by consent of the parties. For the purposes of this section, the 60-day period for refraining from initiating any court action as between the farmer or agriculturally related business and each secured creditor shall run from the date that the farmer or agriculturally related business and secured creditor shall unconditionally agree to mediate.

(c) A statement prepared by the mediator, which sets forth the guidelines under which the mediator will conduct the mediation proceedings.

(7) MEDIATION PROCEEDINGS. Mediation proceedings shall be conducted by the mediator at times and locations which are agreed upon by the parties and the mediator. The mediator may hold joint or separate meetings with the parties, as the mediator deems necessary. Upon agreement by the parties, the mediator may request other persons to participate in the mediation proceedings. Parties may have representatives present at mediation sessions. The mediator may regulate the proceedings to prevent disruptions, and may terminate mediation sessions in his or her discretion. Mediation may be conducted by telephone. Mediation proceedings shall be concluded within 60 days unless the parties and the mediator agree to extend the proceedings. Upon consent of the parties, mediation proceedings may be initiated or continued during the pendency of a court action between the parties, whether or not the court action is stayed under s. 93.50 (2m), Stats. This does not authorize any proceedings in violation of a court order or an automatic stay in bankruptcy.

(8) AGREEMENT AFTER MEDIATION. Interim and final agreements of the parties, if any, shall be reduced to writing. At the conclusion of the mediation proceedings, the mediator shall provide copies of all written agreements to the board. Agreements may provide for continued mediation at a future date. The parties to a mediation proceeding are solely responsible for any agreement reached, and for the enforcement of any agreement. An agreement is subject to applicable laws and court orders, and is subject to the exercise of rights by persons not parties to the agreement.

(9) WITHDRAWAL FROM MEDIATION. A party may withdraw from mediation at any time prior to final agreement or other conclusion of the mediation proceeding.

History: Cr. Register, April, 1988, No. 388, eff. 5-1-88.

ATCP 2.05 Arbitration. (1) REQUEST FOR ARBITRATION. A request for arbitration shall be submitted to the board in writing, on a form provided by the board, and be signed by every party who agrees to participate in the arbitration proceeding. No arbitration may be initiated with respect to a farmer or agriculturally related business unless the arbitration request form is signed by the farmer or agricul-

turally related business, and at least one secured creditor of the farmer or agriculturally related business. Additional parties may also agree to participate in the arbitration proceeding. A request for arbitration shall include:

(a) A preliminary agreement by all parties to participate in arbitration.

(b) A preliminary statement of the issue or issues which 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) A statement authorizing the board to appoint an arbitrator, or reserving the parties' right to select an arbitrator from among a list of potential arbitrators provided by the board under s. 93.50 (4) (e), Stats.

(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 which is contested between the parties in a court action may be arbitrated under this chapter unless the court has entered an order suspending the action.

(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: A request for arbitration may be submitted to the farm mediation and arbitration board, in care of the Wisconsin department of agriculture, trade and consumer protection, P.O. Box 8911, 801 W. Badger Rd., Madison, Wisconsin 53708. Request forms may be obtained from the same address.

(2) APPOINTMENT OF ARBITRATOR. The board 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. If any party declines to authorize board appointment of an arbitrator, the parties may choose an arbitrator from among those named by the board under s. 93.50 (4) (e), Stats. The chosen arbitrator shall then be appointed by the board. All parties shall be given notice of the arbitrator appointment. The appointed arbitrator shall enter into a written agreement with the board under s. ATCP 2.03 (2). Upon execution of the agreement, the arbitrator shall assume responsibility for directing the arbitration proceeding.

(3) ARBITRATION AGREEMENT. Following the appointment of an arbitrator, the parties shall enter into a specific arbitration agreement which shall be prepared under the auspices of the board. The arbitration agreement shall include:

(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) An agreement on the type of arbitration which will be used, such as whole package final offer, issue-by-issue final offer, or open arbitration.

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(d) An agreement on whether evidence in the arbitration proceeding will be received at hearing or in writing, or both.

(e) An agreement on whether the arbitrator will make a physical examination of property.

(f) An agreement on transcript and briefing procedures.

(g) Other matters which the arbitrator and the parties consider necessary and relevant.

(4) ARBITRATION PROCEEDINGS. Arbitration proceedings shall be conducted by the arbitrator in conformity with ch. 788, Stats., and the arbitration agreement under sub. (3). Arbitrators have the authority provided under ch. 788, Stats., and the arbitration agreement. This section

does not authorize any proceedings in violation of a court order or an automatic stay in bankruptcy.

(5) ARBITRATION AWARD. An award by the arbitrator shall be in writing. The arbitrator shall serve a copy of the award on each party and on the board.

(6) ENFORCEMENT. Arbitration agreements may be enforced by a court as provided in s. 788.03, Stats. Arbitration awards may be confirmed, modified or corrected by court order, subject to the limitations of ch. 788, Stats., and judgment may be entered in conformity with the court order as provided in ch. 788, Stats.

History: Cr. Register, April, 1988, No. 388, eff. 5-1-88.