

2021 HOUSE AGRICULTURE

HB 1172

2021 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Room JW327C, State Capitol

HB 1172
1/21/2021
a.m.

Relating to agricultural mediation and negotiation services

Chair D. Johnson called the meeting to order at 9:34 a.m.

Attendance	P or Ab
Chair D. Johnson	P
Vice Chair Trottier	P
Representative Beltz	P
Representative Buffalo	P
Representative Dobervich	P
Representative Fisher	P
Representative Headland	P
Representative Kiefert	AB
Representative Richter	P
Representative Satrom	P
Representative Schreiber-Beck	P
Representative Skroch	P
Representative Thomas	P
Representative Tveit	P

Discussion Topics:

- ND mediation service assistance
- Notice by registered mail
- 2-week timeout

Representative Kempenich introduced the bill

Opposition

Dana Bohn, Executive Director, ND Farm Credit Council: Attachment #2025 & 2026
Includes amendment

Kayla Pulvermacher, Legislative Director, Dakota Credit Union Association:
Attachment #2100

Neutral

John Schneider, Business and Marketing Information Director, ND Ag. Dept.:
testified (10:00)

Additional written testimony:

Phil Murphy, Government Liason, ND Soybean Growers Assn-Attachment #1748

Chair D. Johnson closed the hearing at 10:05 a.m.

ReMae Kuehn, Committee Clerk



NORTH DAKOTA FARM CREDIT COUNCIL

The North Dakota Farm Credit Council (NDFCC) is comprised of three independently farmer-owned cooperatives that provide credit and financial services to farmers, ranchers and agribusinesses of every size and income range.

The three cooperatives that make up the North Dakota Farm Credit Council are:

- AgCountry Farm Credit Services (headquartered in Fargo)
- Farm Credit Services of Mandan
- Farm Credit Services of North Dakota (headquartered in Minot)

Our Mission:

Farm Credit supports rural communities and agriculture with reliable, consistent credit and financial services, today and tomorrow.

Loan funds are obtained through bonds and discount notes sold in the national securities market, thereby enabling the three North Dakota-based Farm Credit cooperatives to infuse capital from outside sources into rural North Dakota.

PRODUCTS AND SERVICES

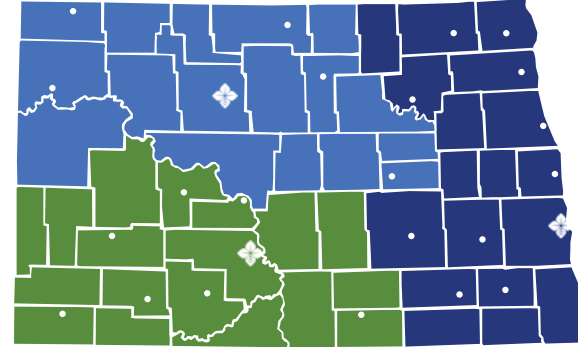
North Dakota Farm Credit associations provide:

- \$14.6 billion in loans to farmers, ranchers and agribusinesses.
- Financial services to approximately 26,000 customers.
- More than 9,000 loans to young farmers and more than 11,500 loans to small farmers.

We have been meeting the needs of agricultural producers for more than 100 years with a full spectrum of products and services, including:

- Real estate loans
- Operating loans
- Equipment and facility loans
- Facility, vehicle and equipment leases
- Agribusiness loans and services
- Equity stock financing
- Tax planning and preparation
- Record keeping services and software
- Multi-peril crop insurance
- Crop hail insurance
- Life and disability insurance
- Producer education
- Farm cash management
- Electronic commerce
- Young and beginning farmer support
- Business succession/transition services

OFFICE LOCATIONS



✦ Corporate Offices ● Branch Offices



AgCountry Farm Credit Services

1900 44th Street South
Fargo, ND 58108
701-282-9494 or 800-450-8933
www.agcountry.com



Farm Credit Services of Mandan

1600 Old Red Trail
Mandan, ND 58554
701-663-6487 or 800-660-6487
www.farmcreditmandan.com



Farm Credit Services of North Dakota

1400 31st Avenue SW
Minot, ND 58702
701-852-1265 or 800-264-1265
www.farmcreditnd.com

2025



NORTH DAKOTA FARM CREDIT COUNCIL

AgCountry Farm Credit Services
Farm Credit Services of Mandan
Farm Credit Services of North Dakota

2021 LEGISLATIVE POSITIONS



AGRICULTURAL LENDING

The financial sector of the United States economy is very integrated and highly competitive, therefore:

- This results in the most efficient delivery of financial services to our business and consumers.
- Anything that limits competition ultimately reduces the services available or increases the cost to consumers.
- Agriculture must compete with all other sectors of the economy for capital and loan funds.
- Financial regulations that make agriculture less competitive in credit markets ultimately hurt farmers through higher costs and reduced availability of credit.
- Legislation that delays collection or promotes only partial repayment of loans results in additional costs that are passed on to other farmer borrowers.

In order to ensure agriculture's ability to compete for credit and financial services, we believe legislative actions are appropriate when the efforts modernizes current law and improves the ability to provide service and reduce costs to the consumer yet protects the financial stability of the lending institution.

As such, NDFCC supports:

- Having all Uniform Commercial Code liens and statutory liens receive priority by the time of filing.
- Advancing electronic lending options and modernizing the title assurance process for all lending transactions to improve security and service and reduce costs.
- Dedicating the user fees paid to the North Dakota central notice system to maintain and improve the system.



2021 LEGISLATIVE POSITIONS

The **North Dakota Farm Credit Council** supports legislative action that: **enhances** the success of farmers, ranchers and agribusinesses by allowing greater access to credit; **strengthens** the well-being of rural North Dakota; and **protects** the safety of our food supply.

ECONOMIC DIVERSIFICATION

Agriculture is the most important sector of North Dakota's economy and diversification of the agricultural economy benefits the overall economy. Public partnering with private industry should encourage and promote diversification, including:

- New or specialized crops
- Expansion of animal agriculture
- Value added in-state processing of ag commodities
- Alternative energy production

As such, NDFCC supports:

- Expanding new or specialized crop research.
- Creating storage and transportation facilities to allow more identity-preserved production and marketing.
- Enacting practical statewide environmental regulations that expand animal agriculture.
- Providing a stable source of funding to the Ag Products Utilization Commission to encourage diversification.
- Providing loan guarantee programs to leverage state resources in encouraging the development of agricultural processing.
- Maintaining a vibrant livestock sector and consumer confidence in the nation's food supply, and creating initiatives for livestock and poultry care based on sound information, science and economic feasibility.

LANDOWNER CONCERNS

Agricultural producers in North Dakota understand and support regulations for:

- Clean air and water
- Soil erosion reduction
- Wildlife protection
- The beauty of the landscape

As such, NDFCC supports:

- Considering the economic impact on landowners when developing regulations that deal with the above issues:
 - Environmental regulations that limit the landowner's ability to convert property to its highest and best economic use also limit the property owner's ability to make a living from the property and to repay debt.
 - When environmental regulations limit the economic value of farmland, the owner should be compensated.
- Basing farm real estate taxes on the land's production value for agricultural purposes to keep non-agricultural uses from raising taxes beyond what agriculture can support.
- Continuing favorable tax treatment for real estate improvements used for agriculture production.
- Ensuring the interests of landowners are protected in connection with energy development.
- Continuing the farm-residence tax exemption.

ENERGY

Agriculture supports and benefits from a diversified energy sector.

As such, NDFCC supports:

- Expanding production and consumption of ethanol, bio-diesel and wind energy to supplement traditional energy sources. This would benefit farmers and the state's economy.
- Organizing and promoting these new energy sources, as well as providing tax incentives and loan guarantees.
- Continuing to support a rural electric cooperative's ability to generate and deliver electricity to its existing service areas at reasonable prices.

AG EDUCATION AND PROMOTION

Agriculture is North Dakota's most important industry.

As such, NDFCC supports:

- Including agriculture in the statewide curriculum for all phases of our educational system.
- Providing grassroots direction through an organization, such as the State Board of Agricultural Research and Extension, to help set priorities for agricultural extension.
- Engaging general farm and agricultural commodity organizations and check-off groups in important educational and promotional activities for agriculture.





North Dakota Farm Credit Council

AgCountry Farm Credit Services Farm Credit Services of Mandan Farm Credit Services of North Dakota

**Testimony of Dana Bohn
North Dakota Farm Credit Council Executive Director
HB 1172
January 21, 2021**

Chairman Johnson and members of the House Ag Committee, my name is Dana Bohn and on behalf of the North Dakota Farm Credit Council (NDFCC), I'd like to express our opposition to HB 1172. We believe this bill puts Farm Credit Services at a significant disadvantage to other lenders and deters other lenders from wanting to participate in mediation. In addition, it changes the mediation process Farm Credit Services follows, which we believe works well and has worked well since the inception of the North Dakota Mediation Service (formerly the North Dakota Agricultural Mediation Service) in 1984.

NDFCC is comprised of three farmer/rancher-owned independent Farm Credit associations that provide credit and financial services to farmers, ranchers and agribusinesses of all sizes and income ranges in every county in North Dakota. North Dakota Farm Credit cooperatives provide about \$14.6 billion in credit in addition to providing financial services to approximately 26,000 customers.

NDFCC Supports Existing Mediation Service Program

The North Dakota Mediation Service (Mediation Service), administered by the North Dakota Department of Agriculture, is available to borrowers who have defaulted on loan terms or repayment with Farm Credit or other lenders. While Farm Credit associations provide distressed borrowers with many regulatory rights related to loan and collateral actions, the state's Mediation Service is a valuable tool that may keep farmers and ranchers from facing court action or foreclosure in the event of a distressed loan. Although mediation services have not been used extensively since the 1980s, the use increases when agriculture profitability is challenged. Mediation is an important tool to ensure the economic viability of North Dakota's farmers and ranchers during times of significant financial stress.

Although mediation is 100 percent voluntary in North Dakota, if a borrower wants to go through mediation, federal law requires Farm Credit Services to participate in good faith.

When a Farm Credit Services institution determines a borrower is distressed and may be foreclosed upon, Farm Credit Services must provide that borrower with a packet that gives them 45 days to apply to restructure their loan prior to our lending institution commencing any legal action.

The packet includes a notification that the Department of Agriculture has a Mediation Service in which they can participate, if they so desire. As I mentioned, the federal regulation that governs Farm Credit Services on this provision says if the borrower initiates mediation, then the Farm Credit Services institution must participate.

To summarize, all our borrowers are notified of the option to mediate prior to our commencing civil action. We also typically send a courtesy copy of what we call the “mediation letter” to the Department of Agriculture’s Mediation Service. This gives the staff at the Mediation Service an opportunity to contact the borrower to see if they have any desire to mediate the matter. In addition, it is not uncommon for a loan officer to contact the Department of Agriculture and encourage the staff to contact the borrower and encourage participation.

Although the existing system works well, HB 1172 has several negative consequences for Farm Credit Services including:

1. Discouraging participation in Mediation Service

Traditional banks and credit unions are not required to participate in mediation like Farm Credit Services. Mediation has been positive for Farm Credit associations, and we believe it would be positive for others. As drafted, the provision only applies to customers in mediation. If that is the case, why would a lender want to agree to mediate? If you, a lender, are in mediation then you cannot proceed with legal action. If you do agree to mediate, you tie the hands of the mediation participants and limit capability to engage in legal action. To avoid being subject to the 14-day notice period, the lender could just NOT agree to mediate. If you are not already in mediation, you are not subject to anything in this bill.

2. Fourteen-day notice period

As drafted, the notice requirements may obligate a lender to send another notice on a previously mediated debt. We are unclear on why we need to provide the administrator of the North Dakota Mediation Service notice of intent to commence legal action even after mediation and what that notice would entail. In addition, we are not sure our customers want the Department of Agriculture to know their business situation unless they are in mediation. This bill would force us to inform Mediation Service every time we deem a borrower distressed and likely to be foreclosed. Currently, we can respect a borrower’s wishes if they do not want mediation.

3. “Good Faith” provision

The Farm Credit Administration regulations governing Farm Credit Services mediation participation already requires “good faith” cooperation from Farm Credit Services institutions on request for information during mediation. These federal regulations require us to participate if mediation is initiated by the borrower and to do so in good faith. However, we are concerned about the definition of “good-faith effort to resolve the dispute” on the state level. It is unclear if it may be considered a “bad-faith” effort if we do not agree on a solution.

Therefore, we would request that the statutory language mimic Farm Credit Services' existing federal regulatory language regarding "good faith."

4. Self-help repossession

There may be times when the lender must act swiftly to seize collateral to enforce and protect the loan and security. For example, cattle not being fed or collateral starting to disappear. The bill is unclear if lenders could be ordered to return the collateral to a borrower because it did not seek mediation 14 days prior to seizing its collateral.

5. Registered mail

United States Postal Service (USPS) defines Registered Mail as such: [What is Registered Mail®? \(usps.com\)](https://www.usps.com/what-is-registered-mail). Of particular note is this: "Registered Mail is kept highly secured and is processed manually, which naturally slows the speed at which it travels. Registered Mail is not recommended if speed of delivery is important." Title 6 of the Century Code does not include a definition of "Registered Mail," thus the USPS Registered Mail is presumed (which is what the plain language says). Usually, *Certified Mail* is used to prove service of opposing party, not a neutral third party, like the state Department of Agriculture.

Thank you for the opportunity to express our support for North Dakota's Mediation Service. NDFCC wants to make sure it is well positioned to assist the state's farmers and ranchers should another credit crisis impact the state. We look forward to working with you to ensure those facing credit problems are provided the best resources possible.

NDFCC is opposed to HB 1172 because it creates a significant competitive disadvantage for us, and we already participate in mediation and feel there is an effective process in place. Therefore, we would ask for Farm Credit Services to be explicitly excluded from the requirements in this bill. Please see the attached amendment to exclude Farm Credit institutions from this provision.

In addition, Farm Credit Services does not see a need for creditors to be included in this bill, especially since it will discourage other creditors/lenders from participating in ag mediation, which we have found to be very beneficial. Therefore, we would also ask you to give HB 1172 a Do Not Pass recommendation.

Independently owned and operated associations serving North Dakota.

AgCountry FCS

1900 44th Street South
Fargo, ND 58108
701-282-9494 • 800-450-8933
www.agcountry.com

FCS of Mandan

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Minot, ND 58702
701-852-1265 • 800-264-1265
www.farmcreditnd.com

6-09.10-04. Request for assistance - Negotiation - Mediation.

A farmer, creditor, person dealing with a farmer, person eligible for mediation with an agency of the United States department of agriculture, a landowner, or an owner, lessee, or lessor of mineral interests may request assistance from the North Dakota mediation service. Upon receipt of the request, and upon consent of all parties to mediation, the administrator of the North Dakota mediation service may assign a negotiator or mediator to assist the parties in reaching a voluntary settlement. A party to negotiation or mediation under this section may not commence a civil action to resolve the dispute unless the party made a good-faith effort to resolve the dispute through negotiation or mediation and the party provided the administrator notice by registered mail at least fourteen days before commencing the action. Farm credit institutions organized under the laws of the United States are exempted from the notice requirement of this section.

**TESTIMONY OF KAYLA PULVERMACHER
TO THE
HOUSE AGRICULTURE COMMITTEE
ON
HB 1172**

January 21, 2021

Chairman Johnson:

My name is Kayla Pulvermacher, and I'm here to represent the members of Dakota Credit Union Association (DakCU). DakCu is the professional trade association serving 492,000 members in 71 credit unions with 230 branches between North Dakota and South Dakota. We oppose HB 1072; specifically, the new language added to NDCC 6-09.10-04.

DakCu is a strong supporter of North Dakota's agricultural mediation services. We believe it provides additional avenues for the financial institution and the producer to come to an agreement. However, this bill could do the opposite of what it intends to do. As we interpret the new language on lines 12 -15 of the bill, it will not allow a lender currently in mediation to commence legal action. We are not required to participate in mediation services, and it would become a risky endeavor to do so. We do not believe that this provision would be in the best interest of either party.

We understand the sponsor's intentions to help farmers and ranchers that are going through significant financial strain. Credit Unions also have that objective; in fact, it is part of our mission to help those that are financially stressed. We hope to work with the bill sponsors and other affected stakeholders to find a workable solution.

Thank you, Mr. Chairman. I welcome any questions the committee may have.

Testimony for 1172 Phil Murphy, ND Soybean Growers Association

Our organization supports 1172 and hope the committee sees its way to vote in favor.

2021 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Room JW327C, State Capitol

HB 1172
1/28/2021

Relating to agricultural mediation and negotiation services
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Chair D. Johnson started committee work at 11:41 a.m.

Attendance	P or Ab
Chair D. Johnson	P
Vice Chair Trottier	P
Representative Beltz	P
Representative Buffalo	AB
Representative Doberovich	P
Representative Fisher	P
Representative Headland	P
Representative Kiefert	P
Representative Richter	P
Representative Satrom	P
Representative Schreiber-Beck	P
Representative Skroch	P
Representative Thomas	P
Representative Tveit	P

Discussion Topics:

- Amendment
- Subcommittee

Representative Kempenich explains amendment #21.0062.01001-Attachment #4096

Chair D. Johnson assigned subcommittee: Representative Trottier as Chair, Representative Fisher, Representative Thomas

Chair D. Johnson closed at 11:50 a.m.

Additional Testimony: #4097

ReMae Kuehn, Committee Clerk

21.0062.01001
Title.

Prepared by the Legislative Council staff for
Representative Kempenich
January 27, 2021

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1172

Page 1, after line 6, insert:

"1."

Page 1, after line 9, insert:

"2. If a creditor is a financial institution that is involved in a dispute with an eligible person under subsection 1, the creditor shall offer to negotiate or mediate the dispute through the North Dakota mediation service. Upon receipt of an offer to negotiate or mediate, a farmer or producer may choose to negotiate or mediate the dispute through the North Dakota mediation service. For purposes of this section, "financial institution" has the same meaning as in section 6-01-02.

3."

Page 1, line 15, replace "fourteen" with "forty-five"

Page 1, after line 15, insert:

"4. The United States department of agriculture farm service agency or any other farm credit institution organized under the laws of the United States is exempt from the notice requirement in subsection 3."

Renumber accordingly

How do I request mediation or get more information about mediation? Call 800-616-7863 and ask for Kate or email inquire@agmediation.org Kate will listen to you, explain the mediation process, and answer any questions you might have. She can also suggest other resources that may be helpful. If you request mediation, Kate will also communicate with the other party. If they agree to mediate, she will then arrange for a session with a mediator. If the process is successful, you will leave the mediation session with a written, signed, legally binding agreement. If the process is unsuccessful, you can still pursue other resolution or appeal options. At the end of the process, Kate will ask for your feedback and any suggestions for improving the process.

Additional information about AMPs is available at <https://www.agmediation.org/>

MEDIATION STEPS

1. FARMER REQUESTS MEDIATION
2. AMP ARRANGES MEETING
3. BOTH PARTIES GATHER INFORMATION FOR PRESENTATION AT THE MEETING
4. AMP PRESIDES AT MEETING
5. AMP WRITES AGREEMENT WITH CONSENT OF BOTH PARTIES
6. BOTH PARTIES SIGN AND IMPLEMENT LEGALLY BINDING AGREEMENT

BETTER, FASTER RESULTS **45 DAYS**

The Agricultural Mediation Program works within a 45-day window to obtain results allowing farmers to get back to what they do best.

How Mediation Works

In mediation, participants work with a mediator trained in agricultural issues who is skilled at fostering productive discussions.

At the mediation session, the mediator asks the parties to define the issues that need to be addressed and suggest solutions. Along the way, the mediator ensures that all participants have the opportunity for input so that all involved are heard. The parties, not the mediator, determine which solutions are acceptable to them. If the parties reach an agreement, a written document is drafted containing the agreement terms. The parties sign the agreement and each party receives a copy.



Mediation in Action

CASE 1

Facts: A fruit producer faced a demand for Disaster Payment Repayment in excess of \$10,000 from the Farm Service Agency. Repayment would have put the producer out of business.

Outcome: An agreement to determine accurate acreage resulted in reduced repayment. The repayment reduction enabled the producer to remain in business.

CASE 2

Facts: A property owner faced an action for non-payment of a USDA Rural Development Loan. She had lost her job due to the economic downturn and was waiting to find out if she qualified for unemployment and Department of Health and Human Services benefits. She had applied for a moratorium with the USDA Rural Development but was turned down.

Outcome: An agreement to have the property owner demonstrate she had applied for benefits and have the USDA facilitate a redetermination. Pending redetermination, the property owner was awarded benefits and was able to resume loan payments.

Requesting Mediation Services

There are three ways to request mediation:

- Complete and mail the adjacent Mediation Request Form.
- Complete and send the Mediation Request Form online at www.agmediation.org.
- Contact the program at 800-616-7863.

On the form under Nature of Dispute, state the issues in dispute clearly and concisely. If the dispute involves an adverse determination letter from a USDA agency and you are sending the form by mail, please include a copy of the letter. The form must be returned within 30 calendar days from the date of the adverse determination letter. Persons with disabilities who require program information in alternative formats should contact the USDA's TARGET center at 202-720-2600 (voice and TDD) or 844-433-2774.

Upon receiving your request, a MAMP representative will contact you to explain the mediation process. If you wish to participate in mediation, the representative will ask you for some background information about the case. The representative will then send the mediation request to the other party and inform you whether the request is accepted or not.

If the mediation request is accepted, the MAMP will schedule a mediation session at a time and location convenient to the parties. Sessions are usually scheduled within 45 days after the receipt of the mediation request. Once scheduled, a notice is sent to all participants. There is no charge to the parties for mediation services.

Mediation Request Form

To request mediation, please complete the form below and send it to:

Michigan Agricultural Mediation Program
516 S. Creyts Rd, Suite A
Lansing, MI 48917
Phone: 800-616-7863
Fax: 800-283-7531
Email: Inquire@agmediation.org

(If a USDA adverse determination letter is received, this form must be returned within 30 days from the date of that letter.)

Name: _____

Date: _____

County: _____

Address: _____

City: _____

State: _____

Zip: _____

Phone: _____

Fax: _____

Email: _____

Other Party: _____

Nature of Dispute:

Lansing Office

Michigan Agricultural Mediation Program

516 S. Creyts Rd, Suite A

Lansing, MI 48917

Phone: 800-616-7863

Fax: 800-283-7531

Email: Inquire@agmediation.org

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at How to File a Program Discrimination Complaint and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9392. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

USDA is an equal opportunity provider, employer, and lender.



MICHIGAN AGRICULTURAL
MEDIATION PROGRAM

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02/2020

Michigan Agricultural Mediation Program

Farming on agreeable terms.



agmediation.org

About the Agricultural Mediation Program

If you have an agricultural dispute, the Michigan Agricultural Mediation Program (MAMP) is here to help you.

The program was created by the U.S. Congress in 1987, when farming faced tough times. The MAMP today can help address an expanded range of agricultural challenges. The MAMP brings participants in a dispute together to seek solutions within the law that work for all concerned.

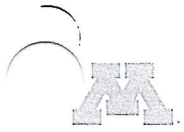
Mediation is:

- Successful most of the time
- Voluntary and confidential
- Speedy and flexible
- Provided at no cost to participants

When to Use Mediation

Mediation is available when issues arise involving:

- Agricultural loans
- Agricultural credit
- Wetland determinations
- Compliance with farm programs, including conservation programs
- Crop insurance
- Pesticides
- Rural development loans
- Organic certification
- Leases
- Family farm transitions
- Farmer-neighbor disputes
- Other agriculture-related topics deemed appropriate by USDA or the state department of agriculture



Extension is expanding its **online education** and resources to adapt to COVID-19 restrictions.

Farmer-Lender Mediation



Seeking solutions in difficult times

Credit is essential to farmers. In fact, the need for investments in land and equipment requires most farmers to carry debt. Unfortunately, debt can lead to farm foreclosures and major lifestyle changes.

About Farmer-Lender Mediation

What is Mandatory Farmer-Lender Mediation?

Mediation is the use of a trained neutral facilitator — a mediator — to assist in the negotiations of parties in a dispute. Mediation is an informal and confidential process that generally requires less cost and time than adversarial court litigation.

A farmer in debt has the opportunity to renegotiate, restructure, or resolve farm debt through Mandatory Farmer-Lender Mediation. During a 90-day period, creditors in mediation may or may not collect on the debt. The use of the term mandatory does not mean that the farmer must use mediation. It means that no creditor can start a proceeding to collect debt against a property until the offer of mediation has been extended and, if the farmer so chooses, completed.

The goals of Farmer-Lender Mediation are to:

- achieve open communications between the parties in order to resolve differences
- create a non-hostile environment
- define the rights and responsibilities of the debtor and creditor
- treat all parties with dignity and respect
- produce agreements that are acceptable to all the parties involved

How does mediation work?

Starting on August 1, 2017, a creditor with a secured debt of more than \$15,000 against an agricultural property must offer Farmer-Lender Mediation before proceeding with foreclosure, repossession, cancellation of contract, or collection of a judgment.

The first step is an orientation meeting if the farmer chooses to take advantage of the mediation offer. The farmer, creditor, financial analyst and the mediator meet to explain the process and to determine if financial information needs to be prepared.

What is the role of the mediator?

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The mediator leads and manages discussion as a neutral party without making decisions or judgments. Mediators are trained to use conflict resolution skills to facilitate effective negotiation.

The mediator ensures that all participants in mediation get to speak and be heard, helps to define issues, emphasizes common goals, keeps the discussion focused and moving forward, looks at all options, and reduces fault finding.

The mediator may advise, counsel and assist the parties on ways to come to an agreement, but does not tell the parties how they should conduct their business or personal affairs. The mediator does not take sides or decide how the dispute should be resolved.

What are the outcomes of mediation?

Successful mediation requires compromise on the part of both debtor and creditor.

Farmers may have to:

- change operation to make it profitable
- liquidate assets

Creditors may need to:

- restructure debt and security
- reschedule loan payments

The parties involved retain control over the outcome of the negotiations in a joint decision-making process, regardless of the specific outcomes of the mediation.

Trust is built and solutions are uncovered when parties meet face-to-face to exchange information in an orderly way. The parties have strong incentives to make their agreements work, because they created the agreements themselves.

Those who have participated in mediation commonly report that the process resulted in:

- the farmer becoming more prepared to make decisions about the future
- communication between lenders and borrowers being improved
- frustration and tension between parties being minimized

If mediation does not result in an agreement, the parties are free to pursue whatever course of action is available to them - most often with a clearer understanding of the facts, the issues and the positions of the other parties.


How does mediation begin?

Creditors begin the mediation process by sending our Farmer-Lender Mediation office a notice of debts of \$15,000. Our office then sends debtors information, including a Request for Mandatory Mediation Form. Debtors must return that form within 14 days if they want mediation. Make sure to identify all the creditors necessary for your farming operation.

Send the form to:

Statewide Mediation Coordinator
Mary Nell Preisler
1526 170th Avenue
Bejou, MN 56516

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If you do not return the request form within 14 days, you will waive your mediation rights.

Be as prepared as possible. Review your position carefully and the reasons you hold that position.

University of Minnesota Extension administers the Mandatory Farmer–Lender Mediation Program and has provided mediation services to more than 24,000 cases since 1986.

Remember, to take advantage of the mediation opportunity, the debtor must request services within 14 days of a creditor's notice.

Other choices

Mandatory Farmer–Lender Mediation is one of four types of mediation services provided for under the Omnibus Farm Bill. Under certain circumstances, farmers/debtors may also choose to participate in:

- Voluntary Mediation
- Rural Dispute Resolution
- USDA **National Appeals Division (NADS)**. <<https://www.nad.usda.gov/>>

Statute packet

Read the **Farmer–Lender Mediation Act – Statute Packet** <<https://drive.google.com/file/d/1EIM5kTQRNGNvdFKVwg2Q-lzwUMifKM7n/view>> .

Program results



View 2016–2020 executive summaries below.

- **2020 Executive Summary** <<https://drive.google.com/file/d/1gha9I5FRHsyRxqQIEXRInJoT7YYOEU0N/view>>
- **2019 Executive Summary** <<https://drive.google.com/file/d/1noNYvFiJPjNuKvLmEa81uDXJ8RmM16/view>>
- **2018 Executive Summary** <<https://drive.google.com/open?id=0B9zpP3B4DDIpdGVhT3I1LVNPMGJORVU5RH1yaEVCQ0ZTYnNn>>
- **2017 Executive Summary** <<https://drive.google.com/file/d/11JAiooEoaVpJmFAaiYiSH9YJD3nm9URm>>
- **2016 Executive Summary** <<https://drive.google.com/file/d/1fxthI0VsAluQicXqxd516kA6mwKNusey/view>>


Additional resources

Find **resources for difficult times** in Minnesota, including counseling, advocacy, legal and referral resources.

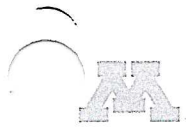
For more information

If you have questions or would like more information about Mandatory Farmer–Lender Mediation, contact the Statewide Mediation Coordinator, **Mary Nell Preisler**.

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These analysts will help you understand your financial situation, explore options, and identify alternatives to help alleviate the financial stress caused by the current agricultural climate.

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Call: 1-800-232-9077

Hours: 9 a.m. to 12 p.m., Monday through Friday.

Afterhours: Leave a voicemail and we'll return your call the next business day.

Anytime: Email us at fil@umn.edu.

2021 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Room JW327C, State Capitol

HB 1172
2/4/2021
Subcommittee

Relating to agricultural mediation and negotiation services

Representative Trottier called the meeting to order at 11:00 a.m.

Members present Chair Trottier, Representative Thomas, Representative Fisher

Discussion Topics:

- Credit Unions
- Mediation information
- Time-out period
- What qualifies as a “dispute”

Chair Trottier: referred to Amendment #21.0062.01001-Attachment #4096

Tom Bodine, Deputy Commissioner, ND Dept. of Agriculture: additional neutral information (11:10)

Betty Schneider, Administrator of Mediation Service, ND Dept. of Agriculture: additional neutral information

Barry Haugen, President, Independent Community Banks of ND: in opposition

Rick Clayburgh, President of ND Bankers Assn: in opposition

Kayla Pulvermacher, Dakota Credit Union Association: in opposition

Representative Kempenich, Bill Sponsor: answered committee questions from Amendment # 21.0062.01001-Attachments #4096 & 4097

Chair Trottier closed the meeting at 12:02 p.m.

ReMae Kuehn, Committee Clerk

21.0062.01001
Title.

Prepared by the Legislative Council staff for
Representative Kempenich
January 27, 2021

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1172

Page 1, after line 6, insert:

"1."

Page 1, after line 9, insert:

"2. If a creditor is a financial institution that is involved in a dispute with an eligible person under subsection 1, the creditor shall offer to negotiate or mediate the dispute through the North Dakota mediation service. Upon receipt of an offer to negotiate or mediate, a farmer or producer may choose to negotiate or mediate the dispute through the North Dakota mediation service. For purposes of this section, "financial institution" has the same meaning as in section 6-01-02.

3."

Page 1, line 15, replace "fourteen" with "forty-five"

Page 1, after line 15, insert:

"4. The United States department of agriculture farm service agency or any other farm credit institution organized under the laws of the United States is exempt from the notice requirement in subsection 3."

Renumber accordingly

How do I request mediation or get more information about mediation? Call 800-616-7863 and ask for Kate or email inquire@agmediation.org Kate will listen to you, explain the mediation process, and answer any questions you might have. She can also suggest other resources that may be helpful. If you request mediation, Kate will also communicate with the other party. If they agree to mediate, she will then arrange for a session with a mediator. If the process is successful, you will leave the mediation session with a written, signed, legally binding agreement. If the process is unsuccessful, you can still pursue other resolution or appeal options. At the end of the process, Kate will ask for your feedback and any suggestions for improving the process.

Additional information about AMPs is available at <https://www.agmediation.org/>

MEDIATION STEPS

1. FARMER REQUESTS MEDIATION
2. AMP ARRANGES MEETING
3. BOTH PARTIES GATHER INFORMATION FOR PRESENTATION AT THE MEETING
4. AMP PRESIDES AT MEETING
5. AMP WRITES AGREEMENT WITH CONSENT OF BOTH PARTIES
6. BOTH PARTIES SIGN AND IMPLEMENT LEGALLY BINDING AGREEMENT

BETTER, FASTER RESULTS **45 DAYS**

The Agricultural Mediation Program works within a 45-day window to obtain results allowing farmers to get back to what they do best.

How Mediation Works

In mediation, participants work with a mediator trained in agricultural issues who is skilled at fostering productive discussions.

At the mediation session, the mediator asks the parties to define the issues that need to be addressed and suggest solutions. Along the way, the mediator ensures that all participants have the opportunity for input so that all involved are heard. The parties, not the mediator, determine which solutions are acceptable to them. If the parties reach an agreement, a written document is drafted containing the agreement terms. The parties sign the agreement and each party receives a copy.



Mediation in Action

CASE 1

Facts: A fruit producer faced a demand for Disaster Payment Repayment in excess of \$10,000 from the Farm Service Agency. Repayment would have put the producer out of business.

Outcome: An agreement to determine accurate acreage resulted in reduced repayment. The repayment reduction enabled the producer to remain in business.

CASE 2

Facts: A property owner faced an action for non-payment of a USDA Rural Development Loan. She had lost her job due to the economic downturn and was waiting to find out if she qualified for unemployment and Department of Health and Human Services benefits. She had applied for a moratorium with the USDA Rural Development but was turned down.

Outcome: An agreement to have the property owner demonstrate she had applied for benefits and have the USDA facilitate a redetermination. Pending redetermination, the property owner was awarded benefits and was able to resume loan payments.

Requesting Mediation Services

There are three ways to request mediation:

- Complete and mail the adjacent Mediation Request Form.
- Complete and send the Mediation Request Form online at www.agmediation.org.
- Contact the program at 800-616-7863.

On the form under Nature of Dispute, state the issues in dispute clearly and concisely. If the dispute involves an adverse determination letter from a USDA agency and you are sending the form by mail, please include a copy of the letter. The form must be returned within 30 calendar days from the date of the adverse determination letter. Persons with disabilities who require program information in alternative formats should contact the USDA's TARGET center at 202-720-2600 (voice and TDD) or 844-433-2774.

Upon receiving your request, a MAMP representative will contact you to explain the mediation process. If you wish to participate in mediation, the representative will ask you for some background information about the case. The representative will then send the mediation request to the other party and inform you whether the request is accepted or not.

If the mediation request is accepted, the MAMP will schedule a mediation session at a time and location convenient to the parties. Sessions are usually scheduled within 45 days after the receipt of the mediation request. Once scheduled, a notice is sent to all participants. There is no charge to the parties for mediation services.

Mediation Request Form

To request mediation, please complete the form below and send it to:

Michigan Agricultural Mediation Program
516 S. Creyts Rd, Suite A
Lansing, MI 48917
Phone: 800-616-7863
Fax: 800-283-7531
Email: Inquire@agmediation.org

(If a USDA adverse determination letter is received, this form must be returned within 30 days from the date of that letter.)

Name: _____

Date: _____

County: _____

Address: _____

City: _____

State: _____

Zip: _____

Phone: _____

Fax: _____

Email: _____

Other Party: _____

Nature of Dispute:

Lansing Office

Michigan Agricultural Mediation Program

516 S. Creyts Rd, Suite A

Lansing, MI 48917

Phone: 800-616-7863

Fax: 800-283-7531

Email: Inquire@agmediation.org

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at How to File a Program Discrimination Complaint and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

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02/2020

Michigan Agricultural Mediation Program

Farming on agreeable terms.



agmediation.org

About the Agricultural Mediation Program

If you have an agricultural dispute, the Michigan Agricultural Mediation Program (MAMP) is here to help you.

The program was created by the U.S. Congress in 1987, when farming faced tough times. The MAMP today can help address an expanded range of agricultural challenges. The MAMP brings participants in a dispute together to seek solutions within the law that work for all concerned.

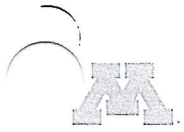
Mediation is:

- Successful most of the time
- Voluntary and confidential
- Speedy and flexible
- Provided at no cost to participants

When to Use Mediation

Mediation is available when issues arise involving:

- Agricultural loans
- Agricultural credit
- Wetland determinations
- Compliance with farm programs, including conservation programs
- Crop insurance
- Pesticides
- Rural development loans
- Organic certification
- Leases
- Family farm transitions
- Farmer-neighbor disputes
- Other agriculture-related topics deemed appropriate by USDA or the state department of agriculture



Extension is expanding its **online education** and resources to adapt to COVID-19 restrictions.

Farmer-Lender Mediation



Seeking solutions in difficult times

Credit is essential to farmers. In fact, the need for investments in land and equipment requires most farmers to carry debt. Unfortunately, debt can lead to farm foreclosures and major lifestyle changes.

About Farmer-Lender Mediation

What is Mandatory Farmer-Lender Mediation?

Mediation is the use of a trained neutral facilitator — a mediator — to assist in the negotiations of parties in a dispute. Mediation is an informal and confidential process that generally requires less cost and time than adversarial court litigation.

A farmer in debt has the opportunity to renegotiate, restructure, or resolve farm debt through Mandatory Farmer-Lender Mediation. During a 90-day period, creditors in mediation may or may not collect on the debt. The use of the term mandatory does not mean that the farmer must use mediation. It means that no creditor can start a proceeding to collect debt against a property until the offer of mediation has been extended and, if the farmer so chooses, completed.

The goals of Farmer-Lender Mediation are to:

- achieve open communications between the parties in order to resolve differences
- create a non-hostile environment
- define the rights and responsibilities of the debtor and creditor
- treat all parties with dignity and respect
- produce agreements that are acceptable to all the parties involved

How does mediation work?

Starting on August 1, 2017, a creditor with a secured debt of more than \$15,000 against an agricultural property must offer Farmer-Lender Mediation before proceeding with foreclosure, repossession, cancellation of contract, or collection of a judgment.

The first step is an orientation meeting if the farmer chooses to take advantage of the mediation offer. The farmer, creditor, financial analyst and the mediator meet to explain the process and to determine if financial information needs to be prepared.

What is the role of the mediator?

[Back to top](#)

The mediator leads and manages discussion as a neutral party without making decisions or judgments. Mediators are trained to use conflict resolution skills to facilitate effective negotiation.

The mediator ensures that all participants in mediation get to speak and be heard, helps to define issues, emphasizes common goals, keeps the discussion focused and moving forward, looks at all options, and reduces fault finding.

The mediator may advise, counsel and assist the parties on ways to come to an agreement, but does not tell the parties how they should conduct their business or personal affairs. The mediator does not take sides or decide how the dispute should be resolved.

What are the outcomes of mediation?

Successful mediation requires compromise on the part of both debtor and creditor.

Farmers may have to:

- change operation to make it profitable
- liquidate assets

Creditors may need to:

- restructure debt and security
- reschedule loan payments

The parties involved retain control over the outcome of the negotiations in a joint decision-making process, regardless of the specific outcomes of the mediation.

Trust is built and solutions are uncovered when parties meet face-to-face to exchange information in an orderly way. The parties have strong incentives to make their agreements work, because they created the agreements themselves.

Those who have participated in mediation commonly report that the process resulted in:

- the farmer becoming more prepared to make decisions about the future
- communication between lenders and borrowers being improved
- frustration and tension between parties being minimized

If mediation does not result in an agreement, the parties are free to pursue whatever course of action is available to them - most often with a clearer understanding of the facts, the issues and the positions of the other parties.


How does mediation begin?

Creditors begin the mediation process by sending our Farmer-Lender Mediation office a notice of debts of \$15,000. Our office then sends debtors information, including a Request for Mandatory Mediation Form. Debtors must return that form within 14 days if they want mediation. Make sure to identify all the creditors necessary for your farming operation.

Send the form to:

Statewide Mediation Coordinator
Mary Nell Preisler
1526 170th Avenue
Bejou, MN 56516

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If you do not return the request form within 14 days, you will waive your mediation rights.

Be as prepared as possible. Review your position carefully and the reasons you hold that position.

University of Minnesota Extension administers the Mandatory Farmer–Lender Mediation Program and has provided mediation services to more than 24,000 cases since 1986.

Remember, to take advantage of the mediation opportunity, the debtor must request services within 14 days of a creditor's notice.

Other choices

Mandatory Farmer–Lender Mediation is one of four types of mediation services provided for under the Omnibus Farm Bill. Under certain circumstances, farmers/debtors may also choose to participate in:

- Voluntary Mediation
- Rural Dispute Resolution
- USDA **National Appeals Division (NADS)**. <<https://www.nad.usda.gov/>>

Statute packet

Read the **Farmer–Lender Mediation Act – Statute Packet** <<https://drive.google.com/file/d/1EIM5kTQRNGNvdFKVwg2Q-lzwUMifKM7n/view>> .

Program results



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- **2017 Executive Summary** <<https://drive.google.com/file/d/11JAiooEoaVpJmFAaiYiSH9YJD3nm9URm>>
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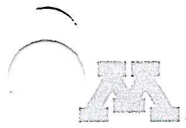
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2021 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Room JW327C, State Capitol

HB 1172
2/5/2021
Subcommittee

Relating to agricultural mediation and negotiation services

Representative Trottier called the meeting to order at 8:06 a.m.

Members present Chair Trottier, Representative Thomas, Representative Fisher

- Farm Service Agency
- Mediation initiation by either party

Representative Kempenich: explained changes to amendment #21.0062.01001 which includes exempting FSA and “dispute” changed to “civil action.”

Barry Haugen, President of Independent Community Banks of ND: additional information in a neutral position.

Rick Clayburgh, President of ND Bankers Association: in a neutral position with amendment #21.0062.01001.

Chair Trottier closed at 8:16 a.m.

Committee in agreement to amendment changes.

ReMae Kuehn, Committee Clerk

2021 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Room JW327C, State Capitol

HB 1172—Committee Work
2/11/2021

Relating to agricultural mediation and negotiation services
--

Chair D. Johnson started committee work at 9:00 a.m.

Attendance	P or Ab
Chair D. Johnson	P
Vice Chair Trottier	P
Representative Beltz	P
Representative Buffalo	P
Representative Doberovich	P
Representative Fisher	P
Representative Headland	P
Representative Kiefert	P
Representative Richter	P
Representative Satrom	P
Representative Schreiber-Beck	P
Representative Skroch	P
Representative Thomas	P
Representative Tveit	P

Discussion Topics:

- Time-out before action
- Options before mediation

Subcommittee Chair Trottier explained amendment #21.0062.01003-Attachment #6294

Representative Thomas: Subcommittee report (9:05)

Representative Fisher: Subcommittee report

Tom Bodine, Deputy Ag. Commission, ND Department of Agriculture: further explanation in neutral position

Jesse Pfaff, Vice President of Independent Community Banks of ND: further information in neutral position

Representative Thomas moved amendment #21.0062.01003.

Representative Headland seconded the motion.

Voice vote. Motion passed.

Representative Thomas moved Do Not Pass as Amended.

Representative Beltz seconded the motion.

Vote	
Chair D. Johnson	Y
Vice Chair Trottier	N
Representative Beltz	Y
Representative Fisher	Y
Representative Headland	Y
Representative Kiefert	Y
Representative Richter	Y
Representative Satrom	Y
Representative Schreiber-Beck	Y
Representative Skroch	Y
Representative Thomas	Y
Representative Tveit	Y
Representative Buffalo	N
Representative Dobervich	Y

Roll call vote. Motion passed 12-2-0. **Representative Thomas** is the carrier. (9:35 a.m.)

ReMae Kuehn, Committee Clerk

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1172

GF
2/11/21

Page 1, after line 6, insert:

"1."

Page 1, after line 9, insert:

"2."

Page 1, line 13, remove "to resolve the dispute"

Page 1, after line 15, insert:

"3. The United States department of agriculture farm service agency or any other farm credit institution organized under the laws of the United States is exempt from the notice requirement in subsection 2."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1172: Agriculture Committee (Rep. D. Johnson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (12 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1172 was placed on the Sixth order on the calendar.

Page 1, after line 6, insert:

"1."

Page 1, after line 9, insert:

"2."

Page 1, line 13, remove "to resolve the dispute"

Page 1, after line 15, insert:

"3. The United States department of agriculture farm service agency or any other farm credit institution organized under the laws of the United States is exempt from the notice requirement in subsection 2."

Renumber accordingly

21.0062.01003

Sixty-seventh
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1172

Introduced by

Representatives Kempenich, Brandenburg, Hagert

Senators Schaible, Wanzek

1 A BILL for an Act to amend and reenact section 6-09.10-04 of the North Dakota Century Code,
2 relating to agricultural mediation and negotiation services.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 6-09.10-04 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **6-09.10-04. Request for assistance - Negotiation - Mediation.**

7 1. A farmer, creditor, person dealing with a farmer, person eligible for mediation with an
8 agency of the United States department of agriculture, a landowner, or an owner,
9 lessee, or lessor of mineral interests may request assistance from the North Dakota
10 mediation service.

11 2. Upon receipt of the request, and upon consent of all parties to mediation, the
12 administrator of the North Dakota mediation service may assign a negotiator or
13 mediator to assist the parties in reaching a voluntary settlement. A party to negotiation
14 or mediation under this section may not commence a civil action to resolve the dispute
15 unless the party made a good-faith effort to resolve the ^{dispute} ~~dispute~~ civil action through
16 negotiation or mediation and the party provided the administrator notice by registered
17 mail at least fourteen days before commencing the action.

18 3. The United States department of agriculture farm service agency or any other farm
19 credit institution organized under the laws of the United States is exempt from the
20 notice requirement in subsection 2.