

Chapter ATCP 162

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. Chapter ATCP 2 as it existed on June 30, 1999 was renumbered chapter ATCP 162, Register, June, 1999, No. 522, eff. 7-1-99. **Chapter ATCP 162 as it existed on October 31, 2004 was repealed and a new chapter ATCP 162 was created Register October 2004 No. 586, eff. 11-1-04.**

ATCP 162.01 Purpose. This chapter governs farm mediation and arbitration proceedings under s. 93.50, Stats.

History: CR 04-005; cr. Register October 2004 No. 586, eff. 11-1-04.

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.

History: CR 04-005; cr. Register October 2004 No. 586, eff. 11-1-04.

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.

History: CR 04-005; cr. Register October 2004 No. 586, eff. 11-1-04.

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:

(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.

History: CR 04-005; cr. Register October 2004 No. 586, eff. 11-1-04.

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.

History: CR 04-005: cr. Register October 2004 No. 586, eff. 11-1-04.