



# Financial Services Update: Amendments to Farmer-Lender Mediation Act

May 31, 2017

On May 30, 2017, Governor Mark Dayton signed a bill amending the Farmer-Lender Mediation Act, Minn. Stat. 583.01 *et al.*

## The Existing Law

The Farmer-Lender Mediation Act is a statutorily required mediation process that must be followed prior to executing on or enforcing a lien on agricultural property. See Minn. Stat. §§ 583.20-583.32. The Farmer-Lender Mediation Act was enacted in 1986 in response to the farm financial crisis of the mid-1980s.

Per the act's requirements, a creditor initiating a procedure against a debtor to enforce a remedy against agricultural property must serve a mediation notice prior to beginning the proceeding. Minn. Stat. § 583.26. This applies to a creditor's attempt to enforce a security interest on agricultural property including a real property foreclosure (Minn. Stat. §§ 580 and 581), personal property foreclosure (Minn. Stat. § 336 *et al.*), judgment execution (Minn. Stat. § 550.365), or terminating a contract for deed (Minn. Stat. § 559.209).

## The Amendments

Effective August 1, 2017, the Farmer-Lender Mediation Act is amended as follows:

- **Increases the minimum debt threshold to \$15,000.** Under existing law, the creditor only has to offer mediation if the debt is more than \$5,000. The amendment increases the debt threshold to \$15,000 and, commencing in 2022 and every five years after 2022, the debt threshold amount will be adjusted for inflation.
- **Requires additional farmer disclosures.** Under existing law, the farmer is required to provide financial information to the mediator including all known creditors secured by agricultural property and unsecured creditors necessary for the farming operation. Failure to provide the information under existing law may

constitute a bad faith determination and the termination of the mediation. The amendment:

- Requires farmers requesting mediation to authorize a credit report when the mediation is requested; and
- Requires farmers to list all significant unsecured debts.

Authorizing the credit report and requiring additional disclosures will allow the director to provide notice to a wider group of creditors.

- **Imposes additional requirements on the director and mediator.** Under existing law, the director is required to provide notice to all disclosed creditors and a financial analyst to meet with the farmer. The amendment:
  - Requires the director to provide all financial information relative to the finances of the debtor to be reviewed by a financial analyst prior to the initial mediation.
  - Requires the director to give notice to all secured creditors identified on the credit report but not disclosed by the farmer.
  - Requires the mediator to disclose at the orientation session the requirement that the farmer participate in good faith and the consequences of failing to participate in good faith and provide a similar notice in writing to all other parties prior to the initial mediation.
  - Requires the director to specify in the termination statement the date on which the mediation ended.
  - Requires the director to identify in the termination statement any mediated agreement, including any agreement to advance new funds.

- **Increases the allowance for living expenses.** Under existing law, the creditor is required to release \$1,600 per month in collateral for living expenses less off-farm income. The amendment increases the amount creditors must release to a farmer for living expenses to \$3,600 per month.
  
- **GPM comment:** Under existing law, the creditor must also release collateral for necessary operating expenses. There is no cap (other than it must be for necessary operating expenses). The amendment does not address. The Farmer-Lender Mediation Act does not require the creditor to advance funds for these expenses; therefore, the creditor is not required to re-advance for collateral proceeds already applied against the debt.
  
- **Carves out an exception for funds advanced as a result of the mediation.** Under existing law, the Farmer-Lender Mediation Act does not apply under certain circumstances including: (a) the failure of the farmer to respond to the mediation notice and the creditor commencing its action within 60 days; (b) the subsequent default by the farmer as to a mediated agreement; and (c) prior to mediation, the farmer conceals, removes, or knowingly converts a creditor's collateral subject to a security agreement without remitting the proceeds.

The amendment expands these exceptions to include any new advances made to the farmer "as a result of the mediation." Any subsequent action as to these new advances must be commenced within two years of the termination of the mediation. The amendments are not clear on what constitutes advances made "as a result of the mediation" and whether the exception only relates to the new advances (as opposed to the existing debt obligations).

- **GPM comment:** For any new advances made in conjunction with the mediation, the creditor should obtain a mediated agreement that allows for the later enforcement of the loan as to the existing debt obligation and as to any ongoing debts obligations incurred "as a result of the mediation" without requiring a second mediation.



- **Extends the Farmer-Lender Mediation Act to June 30, 2022.** The existing law historically sunsetted or expired every two years, requiring a separate legislature action to extend the Farmer-Lender Mediation Act. The amendment extends the act to June 30, 2022.

While the amendment does provide some benefit for financial institutions, the Farmer-Lender Mediation Act remains substantially unchanged. If you are uncertain about the impact of the amendments on your financial institution, please feel free to reach out to any member of Gray Plant Mooty's Banking & Financial Services Practice Group.