

UNDERSTANDING THE VALUE OF MEDIATION IN PROBLEM SOLVING

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Most people prefer not to think about disputes or conflicts. Unfortunately, if you are in business for any period of time, disputes happen. The best time for an insurance agent or Approved Insurance Providers (AIP) to think about a conflict is before it happens. Most, if not all insurance providers, attempt to have a customer friendly response when things don't meet the customer's satisfaction. However, there are times that disputes or complaints cannot be solved between the agent or AIP and the customer. When this happens, there is help available through the USDA Certified Agricultural Mediation Program.

Federal Crop Insurance policies authorize the use of mediation to resolve disputes between producers and their AIPs. The Basic Provisions of the Common Crop Insurance Policy (Section 20), and similar provisions in other plans of insurance contain information on requesting mediation with an insurance company. Specifically Section 20 states that if a producer disagrees with a crop insurance determination (except Good Farming Practice Determinations), a mediation may be used to resolve the dispute. Additionally, producers may also use mediation to resolve disputes with the Risk Management Agency.

WHAT IS MEDIATION?

Mediation is a process in which a trained impartial person, a mediator, helps people in a dispute to communicate with one another, understand each other, and if possible, reach agreements that meet the needs of everyone. Mediators facilitate discussion and support the communication process. They do not give legal advice and have no authority to make decisions. If an agreement is reached in the mediation process, the participants develop their own agreed upon solution. The terms are written down and signed by both parties. The terms of agreement are considered a binding contract and can be enforced.

ADVANTAGES TO USING MEDIATION

There are many advantages to using mediation. Mediation can quickly resolve issues and streamline government involvement. Mediators are neutral and help the parties find their solutions. It is confidential. Participants are offered the opportunity find an acceptable solutions to their disputes. Good communication is established and relationships are preserved. Most importantly, voluntary participation builds mutual respect and goodwill between the agent, the insurer and the producer.

WHO PROVIDES MEDIATION

Certified State Mediation Program

Mediation is available through the USDA's Certified State Agricultural Mediation Program which is administered by the Farm Service Agency (FSA). This program is supported by federal funding. There are 36 states with approved programs. To find the contact for your state, visit this Coalition of Agricultural Mediation Program website: <http://aces.nmsu.edu/ces/nmamp/certified-states.html> for a listing of contacts.

For requesting mediation within states without certified mediation programs, please call 202-720-2730.

HOW TO REQUEST FOR MEDIATION

Who can request mediation?

- A producer
- An organization representing producers
- An Agent
- An AIP

Steps in requesting mediation:

1. One of the parties (the producer, producer representative or the insurance agent or the AIP) must contact the Mediation Program Manager in a certified agricultural mediation state to request mediation. For requests related to RMA decisions, the letter advising of the appeal options are provided to a producer from RMA will include the contact information.
2. Request for mediation must occur within 30 days of the action upon which the dispute will be based.
3. Both parties must agree to participate in the mediation process.
4. Both parties must agree to be present or provide a designated representative who has the authority to settle the dispute, at the mediation.

MEDIATION PROCESS

Steps in Agricultural Mediation

1. Upon receipt of the request for mediation from one of the parties, the Mediation Program Manager will contact the parties to the dispute and request their participation in the mediation.
2. The Mediation Program Manager will confirm that the other party is willing to participate in mediation. A brief description of the situation is gathered by the Mediation Coordinator from both parties to prepare a briefing report for the mediator.
3. A mediator is assigned by the Mediation Program Manager.
4. All the parties are notified as to the date, time and neutral location of the mediation session. Some AIPs elect to participate by teleconference.
5. Most mediation sessions will be concluded in two to three hours unless everyone agrees that more time is needed.

What Happens In A Mediation Session?

1. The mediator is in charge of the session and arranges the room and participant seating to promote effective communication.
2. The mediator welcomes all parties and introductions take place.
3. The mediator establishes ground rules for the conduct of the session.
4. Each participant is given the opportunity to make a brief opening statement concerning the problem or his/her involvement in the particular relationship.
5. Following this, time is allowed for each participant to briefly express his/her feelings associated with the dispute.
6. Next, the issues are clarified, relevant data is considered, and desirable actions begin to be examined.
7. An exploration of the options leads toward problem solving.
8. The mediator records agreements reached based on input from the parties.

What Happens If An Agreement is Reached?

If an agreement is developed, the terms will be written and signed by both parties. The terms of the agreement are legally binding and enforceable.

What Happens If An Agreement Is Not Reached?

If a final agreement cannot be reached, the outcome will simply be an "as was" situation before mediation began with one difference... everyone involved will have a better understanding of their own and others' perspectives, will have explored several options and have a fuller grasp of the situation and why a solution was not achievable. All parties will retain their full set of options to seek solutions through arbitration. If the mediation involves and RMA issue, the party can seek a solution through the USDA Appeals process.

What Does Mediation Cost?

Mediation is a no-cost to low-cost means of resolving disputes, especially when compared with traditional legal processes. Charges, if any, vary from state to state. Any additional legal, financial or technical advisors, if needed, are paid by the participants.