

After 30 Years, Farmer-Lender Mediation Act Finally Reviewed

Minnesota's Farmer-Lender Mediation Act (FLMA) is being reviewed for the first time since Ronald Reagan was President in 1986.

Language included in the 2016 Omnibus Ag Bill created a 14-member task force to review the law and make recommendations to the Minnesota State Legislature. The task force includes appointees representing ag lenders, farmers, equipment dealers, and the Minnesota Extension Service, which administers the program. To view the legislation, [click here](#) and then scroll down to Section 12.

ICBM's task force representative is Scott Wakefield, President of First Minnesota Bank, Mayer and Mound, and ICBM Chairman Elect.

The task force met for the first time on September 16. With Commissioner David Frederickson as chair, it wasn't long before a short list of issues arose that task force members want to further investigate. Some of these, perhaps all, may become recommendations for changes the task force will include in their report. The 2016 law states that the task force must issue a report to the State Legislature no later than February 1, 2017.

Here are issues that task force members want to investigate:

Raising the \$5,000 Trigger

ICBM has argued for years that the debt of \$5,000 (which triggers mediation) is out of date, too low, and should be raised. Many task force members agree.

However, Hmong immigrants are creating a new type of farm model and their representative on the task force hopes to preserve the \$5,000 threshold so that they have access to mediation. Raising it would likely eliminate the eligibility of many of their farmers in that situation. The Minnesota Farmers Union has argued this in recent years as well, which makes perfect political sense. You certainly cannot argue there hasn't been any inflation and the prices of goods have stayed the same since 1986. Arguing that a new type of farmer exists, a smaller farmer who benefits from a \$5,000 trigger is logical, even though it's drastically changing the core purpose and spirit of the 1986 legislation.

Bad Actors

David Skilbred
VP of Government Relations
ICBM

dskilbred@icbm.org
(651) 789-3983

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The vast majority of farmers seeking mediation are honest and cooperative. However, on occasion, a debtor will attempt to convert security or hide assets. Doing so can be a crime under Minnesota's criminal laws. If done while in mediation, the only consequence is that a person may lose eligibility for mediation, and the creditor may petition a court for an order allowing the creditor to use collection actions, without offering mediation. Task force members are asking if these debtors should be held to a higher standard when in mediation.

Second Mediation Defined

One lender said it's unclear when or if a creditor must offer mediation to a debtor who has already participated in mediation. Is a restructured debt the same debt as the first, thereby making the debtor not eligible for a second mediation? Is a restructured debt a new debt and therefore the debtor is eligible for mediation? Lenders on the task force are asking if language can be clarified.

Large Farms

Minnesota law allows three types of family farm structures and prohibits corporate farms. One question that arose was whether very large farms that have access to many services, such as accountants and legal counsel, should be eligible for mediation. The FLMA has a low threshold which determines eligibility and triggers mediation--namely \$5,000. Should there be a high-dollar amount designating a farm is so large and the debt in default is so large, that owners should not have access to mediation because they are big enough to obtain the professional help they need. Smaller farms may need the help of a financial advisor, advocate, and mediator, but farms that "look corporate" have the resources necessary to obtain the support they need. Perhaps they should not be eligible for mediation.

Definition of Outstanding Debt in Notice to Farmer

When a creditor sends a notice to an ag debtor stating the creditor plans to pursue a collection action, the creditor is required by law to include in the notice the amount of outstanding debt. This notice is also copied to the director of the Farmer-Lender Mediation Program.

According to those who administer the mediation program, creditors are not defining "outstanding debt" uniformly. Some creditors are adding up all the missed payments and placing that amount in the notice. Others are placing the total amount of the loan still owed. A notice should include the total amount of outstanding debt in default.

During the 2009 Legislative Session, ICBM proposed and successfully passed an amendment requiring creditors to provide the amount of the loan in default on a notice. The goal was to collect more information on the size of the loans in default to make it easier to determine what dollar amount should replace the \$5,000 threshold which triggers mediation.

Next Steps - The date for the next meeting has yet to be set. Commissioner Frederickson stated he would like the agenda for the next meeting to include time for task force members to list those items they believe should be changed in the law. He did not share what the process

might be after a list is compiled. One thing is for sure--the commissioner is moving at a very fast pace.

Will the Sunset Sunset? - One issue that will not be addressed by task force members is the sunset provision of the Farmer-Lender Mediation Act and the case history behind it.

Near the end of the meeting, David Skilbred, ICBM Vice President of Government Relations, pointed out that although he saw the meeting as very thoughtful, collaborative, and productive, the day's discussion left out the most significant provision of law contained in Minnesota's Farmer-Lender Mediation Act--the sunset provision--and the case law preceding it that influenced lawmakers to make the program temporary.

Case Law: Home Building & Loan Association (HB&LA) v. Blaisdell - The outcome of this case is a major reason why Minnesota's law is temporary. In 1933, Minnesota passed a law in the midst of the Great Depression, prohibiting mortgage creditors from foreclosing on residential and farm properties in default for two years. That same year, the Home Building and Loan Association (HB&LA) attempted to foreclose on the Blaisdell family which was in default. The Blaisdells went to district court in Ramsey County and requested an extension of their mortgage under the new 1933 law and won. The decision was upheld by the Minnesota Supreme Court.

The lender appealed to the U.S. Supreme Court arguing the 1933 Minnesota law violated the Contract Clause of Article I of the U.S. Constitution which states, "No state shall enter into any...Law impairing the "Obligation of Contracts."

The U.S. Supreme Court upheld Minnesota's law on a 5-4 decision, released in January 1934. The court's ruling was based on two factors. One factor was that the Minnesota law was temporary. It was intended to protect property owners "during the continuance of the emergency and in no event (exist) beyond May 1935."

The 1933 law and the 1986 law are both reactions to crisis situations. When those crisis situations expire, so too should the laws reacting to these extraordinary times. The condition of being temporary was a provision the courts focused on that justified the laws.

In response to Skilbred's comment that the task force omitted discussing the sunset and the legal issues behind it, Commissioner Frederickson responded by saying, "The task force can't determine if it's constitutional. A group like yours will need to challenge the law."

Skilbred added, "We have no current plans to do so, but sooner or later, the law will be challenged."

Save The Date

ICBM's 2017 [Day at the Capitol](#) is set for Thursday, January 19. The day's activities will begin and end at the Saint Paul Hotel.

The 2016 Tax Bill contained several provisions that benefit community banks and their small business customers. These issues will be at the top of our 2017 legislative agenda.

If you...

...favor increasing the exclusion amount when determining the Minnesota Estate Tax

...support a reduction in the State General Property Tax Levy that all businesses pay (which amounts to approximately one-third of a bank's total property tax bill)

...believe customers you have served for years should be able to maintain accounts at your bank even when they move out of state, without the accounts being used by the Minnesota Department of Revenue as an indication those same people may owe Minnesota income taxes

...make sure you attend ICBM's Day at the Capitol and help lobby for these pro-bank, pro-business, and pro-family positions.

Legislative questions? Contact David Skilbred, ICBM Vice President of Government Relations, at dskilbred@icbm.org or 651-789-3983.

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