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## A Short Primer on Farmer-Lender Mediation and Chapter 12 Farm Bankruptcies

**Legal Update**

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The national and local publications have been full of articles recently on the emerging agricultural crisis confronting producers. By some measures, sectors of the ag economy are in the third year of declining net farm incomes, and some dairy producers in particular appear to be in dire straits. In light of these events, now might be a good time for lenders to brush up on the most significant laws affecting their loan remedies in the event it becomes necessary to seek enforcement of their loans. Below are short summaries of two important laws affecting loan enforcement:

### Farmer-Lender Mediation

One of the first protections for a producer facing a possible foreclosure is mandatory mediation. Most states with a significant agricultural sector have some version of mandatory mediation. For example, in Minnesota, mediation is governed by the Farmer-Lender Mediation Act. Typically, participation in mediation is required before the foreclosure may proceed against agricultural assets pledged to secure a loan.

Under Minnesota's mediation law, before commencing enforcement, the lender must serve a mediation notice on the producer and deliver a copy of the notice to the director of the Minnesota Extension Service, which is part of the University of Minnesota. After receiving the mediation notice, the producer may elect mediation or waive their rights to mediation. If the producer elects not to proceed with the mediation, the lender may initiate a foreclosure proceeding. However, if the producer elects mediation, all proceedings to enforce or collect a debt against the producer or the producer's agricultural assets are stayed for 90 days, including proceedings initiated by other creditors.

During that time, the producer will be provided a financial analyst by the director of the Minnesota Extension Service, and an appointed mediator will call mediation meetings. Other creditors of the producer may be invited to participate in the same mediation. While required to participate and mediate in good faith, the parties are not otherwise required to reach an agreement. If an agreement is reached, it is usually written and is binding on the parties. After the 90-day period, if no agreement has been reached, the mediation will be terminated, and the lender may then proceed to enforce its rights, including foreclosing on pledged assets.

The Mediation Act is an important tool because it prevents the lender or other creditors from immediately foreclosing, provides a breathing spell to the producer, introduces an independent financial analyst to the producer to prepare needed (and possibly more accurate) financial statements and projections, and forces all parties to consider a workout solution before proceeding with other remedies.

## Bankruptcy

If the mediation is not successful and the lender intends to move forward with its foreclosure proceeding, the producer may still file a bankruptcy case. Usually a producer will file a bankruptcy case under Chapter 11 or Chapter 12 of the Bankruptcy Code. A Chapter 12 bankruptcy case is specifically designed as an expedited process for family farmers to reorganize their operations under court supervision.

Chapter 12 can only be used by family farmers who have debts of not more than \$4,153,150, the majority of which arise from a farming operation. After filing a Chapter 12 case, the producer remains in possession of all assets and continues to operate the farm. Also upon filing, an automatic stay prevents all creditors from moving forward with any proceeding or otherwise taking any action to collect on obligations owed by the producer. If a creditor wants to take action, it must seek relief from the bankruptcy stay by filing a motion with the bankruptcy court.

Under Chapter 12, the producer is required to file a reorganization plan that satisfies requirements, such as promising future payments to secured creditors equal to the value of their collateral. The process has an accelerated timeline – the producer is required to file a plan within 90 days after the filing of the bankruptcy petition, and a hearing regarding the confirmation of the plan must be held within 45 days after the plan is filed (total of 135 days). Payments under the plan are made to a Chapter 12 trustee who supervises distribution of the payments to creditors and obtains financial reporting from the producer. The plan payments must be concluded by no later than five years after confirmation. There are additional provisions that restrict certain rights of creditors to object to the producer's plan, and there is no voting on the plan by creditors.

Due to this accelerated timeline, while a Chapter 12 bankruptcy filing can provide a producer with needed relief and the ability to reorganize, the producer must quickly develop a plan to reorganize its business and pay its creditors. Thus, a bankruptcy filing is not a solution to a producer's financial problems, but is instead another tool that a producer can use to reorganize the business.

## Conclusion

Knowing the basics of how farmer-lender mediation and bankruptcy work is essential in assessing how to approach enforcement of a defaulted agricultural loan. At the very least, these important laws affect the timing on actions to enforce loan terms

and additionally may result in modifications of loan terms, thereby averting a foreclosure.