

Farm Debt Mediation

Mediation Agreements under the *Farm Debt Mediation Act 1994 (NSW)*

Under the Farm Debt Mediation Act 1994 (NSW) (FDM Act) the Rural Assistance Authority's (RAA's) accredited farm debt mediator is responsible for preparing the Mediation Agreement if the parties have reached agreement.

The parties (with or without advice from their representatives) dictate the terms of their agreement that the mediator will write up.

If the parties are satisfied that the document sets out the main points agreed by them, they may sign it at the mediation and it can be formalised within the next 24 hours.

If the agreement is to be signed by a person representing one of the parties, the FDM Act requires that the representative have written authority to enter into the agreement.

Common types of clauses in Mediation Agreements negotiated under the FDM Act include:

Preliminaries

Parties to a mediation under the *Farm Debt Mediation Act 1994 (NSW)* must have at least one person participate in the preliminary conference / intake meeting who will participate in the actual mediation.

- the date of the agreement
- the names and roles of the parties and possibly the guarantor(s)
- that the mediation has been conducted under the FDM Act
- that the agreement is governed by the FDM Act and other NSW law
- that the agreement is intended to be binding and is enforceable
- that default of the agreement constitutes a default for the purposes of the FDM Act
- the statutory cooling off period of 10 business days, within which time the farmer may rescind the agreement in writing to the creditor (unless that period has been varied by agreement in writing)
- the mediator or either of the parties must provide a copy of the agreement to the RAA so that the RAA can be satisfied that the agreement includes the cooling off period statement
- interpretation (e.g. words in the singular includes plurals); agreement can be comprised of several documents etc.

Acknowledgement

- details of the farm debt, including securities, property over which security is held, the facilities in default and the parties' acknowledgements of any default
- acknowledgment that the rights and obligations of the parties to the primary security documents continue except as varied by the Mediation Agreement.

Options/specific agreements about future actions by the parties

- amount and frequency of debt repayment
- relinquishment, listing for sale, or sale of all or part of the secured property or other assets and the manner of sale (auction, listing with real estate agent etc) and the timeframes applicable
- actions in relation to any tenancy, agreement or other agreement affecting the mortgaged property
- a life tenancy if the farmer is terminally ill or in very poor health and has no descendants or family wishing to work the farm
- actions in relation to property registered on the Personal Property Securities Register
- details of any preconditions to future actions by any of the parties e.g. to obtain legal advice in relation to the agreement; to sell or refinance the secured property
- agreement to draw up later contract, deed, specific security instrument over crops, mortgage or other instrument
- who should execute the subsequent contract, deed, mortgage or other instrument
- confidentiality (subject to the FDM Act and other law, any consent to communication about the agreement)
- consequences of default (vacating property at the request of the creditor, creditor to take vacant possession of the property etc)
- that the creditor may apply for an Exemption Certificate after the mediation (provided for under the FDM Act so not strictly necessary)
- obligation to give the creditor a copy of the listing agreement with the real estate agent
- reporting obligations (e.g. fortnightly updates to the creditor about efforts to sell property)
- effect of a failure to sell all or part of the secured property such as a reversion to penalty interest rates
- variation of the interest rates payable on the debt.

Releases

- if the farmer performs all of their obligations under the agreement the creditor will release and discharge the farmer from current and future actions, suits, causes of action, proceedings, claims, costs and expenses both at law and in equity arising from their relationship up to the date of the agreement
- release in the event of the bankruptcy of any party to the agreement
- agreement to compensation, adjustment or accounting as is just and equitable amongst the parties if the agreement is breached.

Costs

- that each party will meet its own costs in terms of the mediation, unless the parties have agreed that the creditor will meet the farmer's costs.

Signatures of the parties

- the mediator may witness the parties' signatures.