

Chapter 36

1989 EDITION

Mediation and Arbitration

MEDIATION

- 36.100 Policy for ORS 36.100 to 36.210
- 36.105 Declaration of purpose of ORS 36.100 to 36.210
- 36.110 Definitions for ORS 36.100 to 36.210
- 36.115 Dispute Resolution Commission; terms; confirmation
- 36.120 Members of commission; reimbursement
- 36.125 Chairperson and vice chairperson; quorum
- 36.130 Director; duties
- 36.135 Review of dispute resolution program; for compliance with ORS 36.175; mediation; hearing; suspension of funding
- 36.140 Advisory and technical committees; reimbursement
- 36.145 Dispute Resolution Account
- 36.150 Funding
- 36.155 Allocation of funding
- 36.160 Participation by counties; notice to commission; contents; effect of failure to give notice
- 36.165 Termination of county participation
- 36.170 Surcharge on appearance fees
- 36.175 Commission to establish standards for dispute resolution programs
- 36.180 Proposed rules
- 36.185 Referral of civil dispute to mediation; objection; information to parties
- 36.190 Stipulation to mediation; selection of mediator; stay of proceedings
- 36.195 Presence of attorney; authority and duties of mediator; notice to court at completion of mediation
- 36.200 Mediation panels; qualification; procedure for selecting mediator
- 36.205 Confidentiality; disclosure of materials and communications
- 36.210 Liability of mediators and programs

MEDIATION OF FORECLOSURE OF AGRICULTURAL PROPERTY

(Temporary provisions relating to mediation of foreclosures of agricultural property are compiled as notes following ORS 36.210)

ARBITRATION AND AWARD

- 36.300 Controversies arbitrable
 - 36.305 Written arbitration agreements valid
 - 36.310 Court order compelling parties to arbitrate as agreed
 - 36.315 Abatement of action or suit involving arbitrable issue
 - 36.320 Appointment of arbitrator; number of arbitrators
 - 36.325 Oath of arbitrators
 - 36.330 Compensation of arbitrators
 - 36.335 Power of arbitrators
 - 36.340 Coercion of witness or party
 - 36.345 Cost of fees
 - 36.350 Filing and service of award; fee; judgment if no exceptions; execution
 - 36.355 Exceptions to award; filing fees
 - 36.360 Vacation or modification of award on exceptions
 - 36.365 Appeal from judgment on award
- ### COURT ARBITRATION PROGRAM
- 36.400 Method of establishing; suspension or termination
 - 36.405 Mandatory arbitration; exemptions
 - 36.410 Stipulation for arbitration; conditions; relief
 - 36.415 Arbitration after waiver of amount of claim exceeding \$25,000
 - 36.420 Notice of arbitration hearing; open proceeding; compensation and expenses
 - 36.425 Filing of decision and award; notice of appeal; trial de novo; fees; effect of arbitration decision and award
- ### CROSS REFERENCES
- 36.300
- Arbitration of disputes as to ownership of property removed by high water, 99.010 to 99.040
 - Indigent defense, arbitration of compensation disagreements, 151.460
 - Mediation of labor disputes, 662.405 to 662.455
 - 36.355 to 36.365
 - Writ of review, availability in proceedings, certain, 34.040
 - 36.365
 - Appeal from judgment in special proceeding, 19.010

SPECIAL ACTIONS AND PROCEEDINGS

MEDIATION

36.100 Policy for ORS 36.100 to 36.210. It is the policy and purpose of ORS 36.100 to 36.210 that, when two or more persons cannot settle a dispute directly between themselves, it is preferable that the disputants be encouraged and assisted to resolve their dispute with the assistance of a trusted and competent third party mediator, whenever possible, rather than the dispute remaining unresolved or resulting in litigation. [1989 c.718 §1]

36.105 Declaration of purpose of ORS 36.100 to 36.210. The Legislative Assembly declares that it is the purpose of ORS 36.100 to 36.210 to:

(1) Foster the development of community based programs that will assist citizens in resolving disputes and developing skills in conflict resolution;

(2) Allow flexible and diverse programs to be developed in this state, to meet specific needs in local areas and to benefit this state as a whole through experiments using a variety of models of peaceful dispute resolution;

(3) Find alternative methods for addressing the needs of crime victims in criminal cases when those cases are either not prosecuted for lack of funds or can be more efficiently handled outside the courts;

(4) Provide a method to evaluate the effect of dispute resolution programs on communities and on the justice system; and

(5) Encourage the development and use of mediation panels for resolution of civil litigation disputes. [1989 c.718 §2]

36.110 Definitions for ORS 36.100 to 36.210. As used in ORS 36.100 to 36.210:

(1) "Arbitration" means any arbitration whether or not administered by a permanent arbitral institution.

(2) "Commission" means the Dispute Resolution Commission created under ORS 36.115.

(3) "Director" means the director appointed by the Dispute Resolution Commission under ORS 36.130.

(4) "Dispute resolution services" include but are not limited to mediation, conciliation and arbitration.

(5) "Dispute resolution program" means an entity that receives state funds to provide dispute resolution services.

(6) "Mediation" means a process in which a mediator assists and facilitates two or more parties to a controversy in reaching a mutually acceptable resolution of the controversy and includes all contacts between the

mediator and any party or parties, until such time as a resolution is agreed to by the parties or the mediation process is terminated.

(7) "Mediation program" means a program through which mediation is made available and includes the director, agents and employees of the program.

(8) "Mediator" means a third party who performs mediation. [1989 c.718 §3]

36.115 Dispute Resolution Commission; terms; confirmation. (1) There is established a Dispute Resolution Commission consisting of seven members appointed by the Governor.

(2) The term of office of each member is four years, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on July 1, next following. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(3) The appointment of the members of the Dispute Resolution Commission is subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565.

(4) Notwithstanding the term of office specified by subsection (2) of this section, of the members first appointed to the Dispute Resolution Commission:

(a) Two shall serve for a term ending June 30, 1990.

(b) Two shall serve for a term ending June 30, 1991.

(c) Three shall serve for a term ending June 30, 1992. [1989 c.718 §4]

36.120 Members of commission; reimbursement. (1) The members of the Dispute Resolution Commission shall be citizens of this state who are well informed on the principles of dispute resolution. Specific formal education in any field shall not be a prerequisite to serving on the commission.

(2) A member of the Dispute Resolution Commission is not entitled to compensation but may be reimbursed for actual and necessary travel and other expenses as provided in ORS 292.495. [1989 c.718 §5]

36.125 Chairperson and vice chairperson; quorum. (1) The Dispute Resolution Commission shall select one of its members as chairperson and another as vice chairperson for such terms and with duties and powers necessary for the performance of the function of such offices as the commission determines.

(2) A majority of the members of the commission constitutes a quorum for the transaction of business. [1989 c.718 §6]

36.130 Director; duties. (1) The Dispute Resolution Commission shall:

(a) Appoint a director who shall serve at the pleasure of the commission;

(b) Prescribe the duties of the director; and

(c) Fix the salary of the director.

(2) The designation of the director shall be by written order and filed with the Secretary of State.

(3) Subject to any applicable provisions of the State Personnel Relations Law, the director shall appoint all subordinate officers and employees of the commission, prescribe their duties and fix their compensation. [1989 c.718 §7]

36.135 Review of dispute resolution programs for compliance with ORS 36.175; mediation; hearing; suspension of funding. (1) The Director of the Dispute Resolution Commission shall periodically review dispute resolution programs in this state. If the director determines that there are reasonable grounds to believe that a program is not in substantial compliance with the standards and guidelines adopted under ORS 36.175, the director shall negotiate with the manager of the program to bring the program into compliance with the standards and guidelines.

(2) If the negotiations under subsection (1) of this section fail, the director shall give written notice to the program and the county requiring the program to be revised to comply with the standards and guidelines within 30 days after the notice. If, after 30 days, the director concludes that the program is not in compliance, the director shall serve the manager of the program with a request for mediation. The director and the program manager shall mutually select a mediator. If a mediator is not selected within 15 days, the director shall request the presiding judge of the county in which the program is located to appoint a mediator.

(3) If mediation under subsection (2) of this section fails, the director shall, after giving the program and county not less than 30 days' notice, conduct a hearing to ascertain whether there is substantial compliance or satisfactory progress being made toward compliance. After the hearing, the commission may suspend funding of the program until the required compliance occurs. [1989 c.718 §8]

36.140 Advisory and technical committees; reimbursement. (1) To aid and advise the Dispute Resolution Commission in

the performance of its functions, the commission may establish such advisory and technical committees as it considers necessary. These committees may be continuing or temporary. The commission shall determine the representation, membership, terms and organization of the committee and shall appoint their members.

(2) Members of these committees are not entitled to compensation but, in the discretion of the commission, may be reimbursed from funds available to the commission for actual and necessary travel and other expenses incurred in the performance of official duties, subject to ORS 292.495. [1989 c.718 §9]

36.145 Dispute Resolution Account. The Dispute Resolution Account is established in the State Treasury, separate and distinct from the General Fund. All moneys received by the Dispute Resolution Commission under ORS 36.150, 36.170 and 46.221 shall be deposited to the credit of the account. Moneys in the account are continuously appropriated to the commission to carry out the provisions of ORS 36.100 to 36.210. [1989 c.718 §10]

36.150 Funding. The Dispute Resolution Commission may accept and expend moneys from any public or private source, including the Federal Government, made available for the purpose of encouraging, promoting or establishing dispute resolution programs in Oregon or to facilitate and assist the commission in carrying out the commission's function as provided by law. All moneys received by the commission under this section shall be deposited in the Dispute Resolution Account. Notwithstanding the provisions of ORS 291.238, all such moneys are continuously appropriated to the commission for the purposes for which they were made available and shall be expended in accordance with the terms and conditions upon which they were made available. [1989 c.718 §11]

36.155 Allocation of funding. The Dispute Resolution Commission shall allocate moneys in the Dispute Resolution Account as follows:

(1) Funds received pursuant to ORS 36.170 and 46.221 (3) shall be allocated as follows:

(a) Funds originating from the first \$1.50 of each filing fee surcharge shall be allocated to the Dispute Resolution Commission for the purpose of carrying out the provisions of ORS 36.100 to 36.210.

(b) Except as specified in paragraph (a) of this subsection, funds originating from filing fee surcharges shall be awarded by the commission for dispute resolution services in

the county from which the funds originated. The commission shall determine, before July 1 of each odd numbered year, each county's share of the amount appropriated for the purposes of this subsection. Such determination shall be adopted by rule and shall be based upon each county's respective share of moneys contributed under ORS 46.221. Before allocating these funds in a county, the county must apply for authority or the commission must proceed under ORS 36.150. If a dispute resolution program is not selected for funding under ORS 36.150 within three fiscal years after the fiscal year in which the filing fee surcharge was collected, then the funds from that fiscal year may be spent by the commission for dispute resolution services as if the funds were moneys governed by subsection (2) of this section.

(2) Moneys received by the commission from any other sources shall be used as follows:

(a) For overhead and administrative expenses of the commission.

(b) For dispute resolution services in any county in this state including but not limited to providing special grants for pilot projects, start up costs for dispute resolution programs and training programs and to supplement funds otherwise received by dispute resolution programs. [1989 c.718 §12]

36.160 Participation by counties; notice to commission; contents; effect of failure to give notice. (1) To participate in the expenditure of funds for dispute resolution programs within the county under ORS 36.155 (1), a county shall notify the Dispute Resolution Commission within 180 days of July 1 of each odd numbered year. Such notification shall be by resolution of the appropriate board of county commissioners or, if the programs are to serve more than one county, by joint resolution. A county providing notice may select the dispute resolution programs to receive funds under ORS 36.155 (1) for providing dispute resolution services within the county from among qualified dispute resolution programs.

(2) The county's notification to the commission shall include a statement of agreement by the county to engage in a selection process and to select as the recipient of funding an entity capable of and willing to provide dispute resolution services according to the rules of the commission. Actual funding by the commission shall be contingent upon the selection by the county of a qualified entity. The commission shall provide consultation and technical assistance to a county to identify, develop and implement dispute resolution programs that meet the

standards and guidelines adopted by the commission under ORS 36.210.

(3) If a county does not issue a notification within 180 days of July 1 of each odd numbered year, the Dispute Resolution Commission may notify a county board of commissioners that the commission intends to fund a dispute resolution program in the county with funds earmarked for the county under ORS 36.155 (1). The Dispute Resolution Commission may, after such notification, assume the county's role under subsection (1) of this section unless the county gives the notice required by subsection (1) of this section. If the commission assumes the county's role, the commission may contract with a qualified program for only one year at a time. The county may, 90 days before the expiration of an agreement between a qualified program and the commission, notify the Dispute Resolution Commission under subsection (1) of this section that the county intends to assume its role under subsection (1) of this section.

(4) All dispute resolution programs identified for funding shall comply with the rules adopted under ORS 36.210.

(5) All funded dispute resolution programs shall submit informational reports and statistics as required by the commission. [1989 c.718 §13]

36.165 Termination of county participation. (1) Any county that receives financial aid under ORS 36.155 may terminate its participation at the end of any month by delivering a resolution of its board of commissioners to the director of the Dispute Resolution Commission not less than 180 days before the termination date.

(2) If a county terminates its participation under ORS 36.160, the remaining portion of the financial aid made available to the county under ORS 36.160 shall revert to the Dispute Resolution Account to be used as specified in ORS 36.155. [1989 c.718 §14]

36.170 Surcharge on appearance fees. In addition to the fees charged under ORS 21.110, the clerk of the circuit court shall collect a surcharge of \$5 at the time of filing an appearance by the plaintiff or the defendant in the circuit court of any civil action, suit or proceeding, including appeals cases, but not including any domestic relations, probate, conservatorship, guardianship, adoption, change of name or proceedings under ORS 107.700 to 107.730. The surcharge shall be used by the Dispute Resolution Commission to establish community dispute resolution programs under ORS 36.100 to 36.175 and to carry out the commission's duties under ORS 36.100 to 36.210. The surcharges shall be deposited by the State Court Ad-

ministrator into the State Treasury to the credit of the Dispute Resolution Account. [1989 c.718 §15]

36.175 Commission to establish standards for dispute resolution programs. In accordance with the applicable provisions in ORS 183.310 to 183.550, the Dispute Resolution Commission shall adopt by rule:

(1) Standards and guidelines for dispute resolution programs;

(2) Minimum reporting requirements for dispute resolution programs;

(3) Methods for evaluating dispute resolution programs;

(4) Minimum qualifications and training for persons conducting dispute resolution services in dispute resolution programs;

(5) Minimum qualifications and training qualifications for personnel performing mediation services for the circuit courts under ORS 107.755 to 107.785;

(6) Participating funds requirements, if any, for entities receiving funds under ORS 36.155;

(7) Requirements, if any, for the payment by participants for services provided by a program receiving funds under ORS 36.155; and

(8) Any other provisions or procedures necessary for the administration of the laws that the commission is charged with administering. [1989 c.718 §16]

36.180 Proposed rules. The Dispute Resolution Commission shall develop proposed rules consistent with ORS 36.180 to 36.210 to implement and govern the operation and procedures of court mediation and shall submit the proposed rules to the Oregon Supreme Court for its consideration and approval. [1989 c.718 §18]

36.185 Referral of civil dispute to mediation; objection; information to parties. After 30 days have passed following the appearance by all parties in any civil action, except proceedings under ORS 107.700 to 107.730, a judge of any district or circuit court may refer a civil dispute to mediation under the terms and conditions set forth in ORS 36.180 to 36.210. When a party to a case files a written objection to mediation with the court, the action shall be removed from mediation and proceed in a normal fashion. All civil disputants shall be provided with written information describing the mediation process, as provided by the Dispute Resolution Commission, along with information on established court mediation opportunities. Filing parties shall be provided with this information at the time of filing a civil action. Responding parties shall be provided with this information by the filing party along

with the initial service of filing documents upon the responding party. [1989 c.718 §19]

36.190 Stipulation to mediation; selection of mediator; stay of proceedings.

(1) On written stipulation of all parties at any time prior to trial, the parties may elect to mediate their civil dispute under the terms and conditions of ORS 36.180 to 36.210.

(2) Upon referral or election to mediate, the parties shall select a mediator by written stipulation or shall follow procedures for assignment of a mediator from the court's panel of mediators.

(3) During the period of any referred or elected mediation under ORS 36.180 to 36.210, all trial and discovery time lines and requirements shall be tolled and stayed as to the participants. Such tolling shall commence on the date of the referral or election to mediate and shall end on the date the court is notified in writing of the termination of the mediation by the mediator or one party requests the case be put back on the docket. All time limits and schedules shall be tolled, except that a judge shall have discretion to adhere to preexisting pretrial order dates, trial dates or dates relating to temporary relief. [1989 c.718 §20]

36.195 Presence of attorney; authority and duties of mediator; notice to court at completion of mediation. (1) Unless otherwise agreed to in writing by the parties, the parties' legal counsel shall not be present at any scheduled mediation sessions conducted under the provisions of ORS 36.100 to 36.175.

(2) Attorneys and other persons who are not parties to a mediation may be included in mediation discussions at the mediator's discretion, with the consent of the parties, for mediation held under the provisions of ORS 36.180 to 36.210.

(3) The mediator, with the consent of the parties, may adopt appropriate rules to facilitate the resolution of the dispute and shall have discretion, with the consent of the parties, to suspend or continue mediation. The mediator may propose settlement terms either orally or in writing.

(4) All court mediators shall encourage disputing parties to obtain individual legal advice and individual legal review of any mediated agreement prior to signing the agreement.

(5) Within 10 judicial days of the completion of the mediation, the mediator shall notify the court whether an agreement has been reached by the parties. If the parties do not reach agreement, the mediator shall report that fact only to the court, but shall not make a recommendation as to resolution of

the dispute without written consent of all parties or their legal counsel. The action shall then proceed in the normal fashion on either an expedited or regular pretrial list.

(6) The court shall retain jurisdiction over a case selected for mediation and shall issue orders as it deems appropriate. [1989 c.718 §21]

36.200 Mediation panels; qualification; procedure for selecting mediator. (1) A district or circuit court providing mediation referral under ORS 36.180 to 36.210 shall establish mediation panels. The mediators on such panels shall have such qualifications as set by the Dispute Resolution Commission. Formal education in any particular field shall not be a prerequisite to serving as a mediator.

(2) Unless instructed otherwise by the court, upon referral by the court to mediation, the clerk of the court shall select at least three individuals from the court's panel of mediators and shall send their names to legal counsel for the parties, or to a party directly if not represented, with a request that each party state preferences within five judicial days. If timely objection is made to all of the individuals named, the court shall select some other individual from the mediator panel. Otherwise, the clerk, under the direction of the court, shall select as mediator one of the three individuals about whom no timely objection was made.

(3) Upon the court's or the parties' own selection of a mediator, the clerk shall:

(a) Notify the designated person of the assignment as mediator.

(b) Provide the mediator with the names and addresses of the parties and their representatives and, with copies of the order of assignment, the pleadings and any scheduling or pretrial order that has been entered.

(4) The parties to a dispute that is referred by the court to mediation may choose, at their option and expense, mediation services other than those suggested by the court, and entering into such private mediation services shall be subject to the same provisions of ORS 36.180 to 36.210.

(5) Disputing parties in mediation shall be free, at their own expense, to retain jointly or individually, experts, attorneys, factfinders, arbitrators and other persons to assist the mediation, and all such dispute resolution efforts shall be subject to the protection of ORS 36.180 to 36.210. [1989 c.718 §22]

36.205 Confidentiality; disclosure of materials and communications. (1) If there is a written agreement between any parties to a dispute that mediation communications will be confidential, then all mem-

oranda, work products and other materials contained in the case files of a mediator or mediation program are confidential. Any communication made in or in connection with such mediation which relates to the controversy being mediated, whether made to the mediator or a party, or to any other person if made at a mediation session, is confidential. However, a mediated agreement shall not be confidential unless the parties otherwise agree in writing.

(2) Confidential materials and communications are not subject to disclosure in any judicial or administrative proceeding except:

(a) When all parties to the mediation agree, in writing, to waive the confidentiality;

(b) In a subsequent action between the mediator and a party to the mediation for damages arising out of the mediation; or

(c) Statements, memoranda, materials and other tangible evidence, otherwise subject to discovery, that were not prepared specifically for use in and actually used in the mediation.

(3) When there is a written agreement as described in this section, the mediator may not be compelled to testify in any proceeding, unless all parties to the mediation and the mediator agree in writing. [1989 c.718 §23]

36.210 Liability of mediators and programs. Mediators, mediation programs and dispute resolution programs providing services under ORS 36.100 to 36.210 shall be immune from civil liability for or resulting from any act or omission done or made while engaged in efforts to assist or facilitate a mediation, unless the act or omission was made or done in bad faith, with malicious intent or in a manner exhibiting a wilful, wanton disregard of the rights, safety or property of another. [1989 c.718 §24]

MEDIATION OF FORECLOSURE OF AGRICULTURAL PROPERTY

Note: Sections 2 to 10 and 18, chapter 967, Oregon Laws 1989, relating to mediation of foreclosures of agricultural property, provide:

Sec. 2. As used in sections 2 to 10 of this Act:

(1) "Agricultural producer" means a person who owns or is purchasing agricultural property for use in agriculture whose gross sales in agriculture averaged \$20,000 or more for the preceding three years.

(2) "Agricultural property" means real property that is principally used for agriculture.

(3) "Agriculture" means the production of livestock, poultry, field crops, fruit, dairy, fur bearing animals, Christmas trees, food fish or other animal and vegetable matter.

(4) "Coordinator" means the Director of Agriculture or a designee of the Director of Agriculture.

(5) "Creditor" means the holder of a mortgage or trust deed on agricultural property, a vendor of a real

estate contract for agricultural property, a person with a perfected security interest in agricultural property or a judgment creditor with a judgment against an agricultural producer.

(6) "Financial analyst" means a person knowledgeable in agriculture and financial matters that can provide financial analysis to aid the agricultural producer in preparing the financial information required under section 5 of this Act. Financial analyst may include county extension agents or other persons approved by the coordinator.

(7) "Mediation" means the process by which a mediator assists and facilitates an agricultural producer and a creditor in a controversy relating to the mortgage, trust deed, real estate contract, security interest or judgment that the creditor has in the agricultural property of the agricultural producer in reaching a mutually acceptable resolution of the controversy and includes all contacts between the mediator and the agricultural producer or the creditor, until such time as a resolution is agreed to by the agricultural producer and the creditor or until the agricultural producer or the creditor discharges the mediator.

(8) "Mediation service" means a person selected by the coordinator to provide mediation under this Act.

(9) "Mediator" means an impartial third party who performs mediations.

(10) "Person" means the state or a public or private corporation, local government unit, public agency, individual, partnership, association, firm, trust, estate or any other legal entity. [1989 c.967 §2]

Sec. 3. The Director of Agriculture or a designee of the Director of Agriculture shall serve as the agricultural mediation service coordinator. The coordinator shall establish rules necessary to implement sections 2 to 10 of this Act. The rules shall include, but need not be limited to.

(1) Reasonable mediator training guidelines for persons providing mediation service under sections 2 to 10 of this Act

(2) Fees to be charged for mediation services. The fee schedule should be sufficient to cover the costs of providing the mediation service but shall not exceed \$30 per hour per participant.

(3) Methods for advertising the availability of mediation services. [1989 c 967 §3]

Sec. 4. The coordinator shall contract with a person to provide agricultural producer creditor mediation services. The coordinator may contract with, or use the services of, a private mediation organization, community based program, state agency or a combination of organizations and agencies. The contract may be terminated by the coordinator upon 30 days' written notice and for good cause. The organization awarded the contract is designated as the agricultural mediation service for the duration of the contract. The agricultural mediation service shall be an independent contractor and shall not be considered a state agency for any purpose. [1989 c.967 §4]

Sec. 5. (1) An agricultural producer who is in danger of foreclosure on agricultural property under ORS 86.010 to 86.990, 87.001 to 87.920 or 88.710 to 88.740 or a creditor, before or after beginning foreclosure proceedings, may request mediation of the agricultural producer's indebtedness by filing a request with the mediation service on a form provided by the service. However, an agricultural producer or creditor may not request mediation under this section unless, at the time the request is made, the agricultural producer owes more than \$100,000 to one or more creditors, and the debt is either:

(a) Secured by one or more mortgages or trust deeds on the agricultural producer's agricultural property;

(b) Evidenced by a real estate contract covering the agricultural producer's agricultural property; or

(c) The subject of one or more statutory liens that have attached to the agricultural producer's agricultural property.

(2) In filing a mediation request, the agricultural producer shall provide:

(a) The name and address of each creditor;

(b) The amount claimed by each creditor;

(c) The amount of the periodic instalment payments made to each creditor;

(d) Any financial statements and projected cash flow statements, including those related to any non-agricultural activities;

(e) The name of the person authorized to enter into a binding mediation agreement; and

(f) Any additional information the mediation service may require.

(3) In filing a mediation request, a creditor shall provide.

(a) Statements regarding the status of the agricultural producer's loan performance;

(b) The name and title of the representative of the creditor authorized to enter into a binding mediation agreement; and

(c) Any additional information the mediation service may require.

(4) Nothing in sections 2 to 10 of this Act shall be construed to require an agricultural producer or creditor to engage or continue in the mediation of any dispute or controversy. Mediation under sections 2 to 10 of this Act shall be entirely voluntary for all persons who are parties to the dispute or controversy, and if such persons agree to engage in mediation, any one of the persons may at any time withdraw from mediation.

(5) If an agricultural producer or a creditor files a mediation request with the mediation service, the service shall within 10 days after receipt of the request give written notice of the request to any other person who is identified in the request for mediation as parties to the dispute or controversy. The notice shall

(a) Be accompanied by a copy of the request for mediation;

(b) Generally describe the mediation program created by sections 2 to 10 of this Act;

(c) Explain that participation in mediation is voluntary and that the recipient of the notice is not required to engage in mediation or to continue to mediate if mediation is initiated;

(d) Request that the recipient of the notice advise the mediation service in writing and by certified mail within 10 days as to whether the recipient wishes to engage in mediation; and

(e) Explain that if the written advice required under paragraph (d) of this subsection is not received by the mediation service within the 10 day period, the mediation request will be considered denied.

(6) If the person who receives the notice of request for mediation under subsection (5) of this section wishes to engage in mediation, the person shall advise the mediation service in writing within the 10 day period specified in subsection (5) of this section. The response shall include the appropriate information that the responding person would have been required to include in a request for mediation under subsection (2) or (3) of this section.

(7) If the person who receives notice of request for mediation under subsection (5) of this section does not wish to engage in mediation, the person may but shall not be required to so advise the mediation service.

(8) If the person who receives the notice of request for mediation under subsection (5) of this section does not advise the mediation service in writing within the 10 day period specified in the notice described in subsection (5) of this section that the person desires to mediate, the request for mediation shall be considered denied.

(9) The submission of a request for mediation by an agricultural producer or a creditor shall not operate to stay, impede or delay in any manner whatsoever the commencement, prosecution or defense of any action or proceeding by any person.

(10) If requested by the agricultural producer, the coordinator shall provide the services of a financial analyst to assist the agricultural producer in preparation of financial data for the first mediation session [1989 c.967 §5]

Sec. 6. (1) A mediator must be an impartial person knowledgeable in agriculture and financial matters

(2) In carrying out mediation under sections 2 to 10 of this Act, a mediator shall.

(a) Listen to the agricultural producer and any creditor desiring to be heard.

(b) Attempt to facilitate a negotiated agreement that provides for mutual satisfaction. Such an agreement may include mutually agreed upon forbearance from litigation, rescheduled or renegotiated debt, voluntary sale or other liquidation of agricultural property, authorization for the agricultural producer to continue agriculture while providing reasonable security to the creditor or any other mutually agreed upon outcome.

(c) Seek assistance from any public or private agency to effect the goals of this Act.

(d) Permit any person who is a party to the mediation to be represented in all mediation proceedings by any person selected by the party.

(3) In carrying out a mediation under sections 2 to 10 of this Act, a mediator may invite additional creditors of the agricultural producer to participate in the mediation. A creditor may be invited to participate in a mediation regardless of whether the agricultural producer is in arrears with the creditor. [1989 c.967 §6]

Sec. 7. (1) If an agreement is reached between the agricultural producer and a creditor, the mediator shall draft a written mediation agreement to be signed by the agricultural producer and the creditor.

(2) An agricultural producer and any creditor who are parties to a mediation agreement:

(a) Are bound by the terms of the agreement;

(b) May enforce the mediation agreement as a legal contract; and

(c) May use the mediation agreement as a defense against an action contrary to the mediation agreement.

(3) The mediator shall encourage the parties to have the agreement reviewed by independent legal counsel before signing the agreement. [1989 c.967 §7]

Sec. 8. (1) All memoranda, work products and other materials contained in the case files of a mediator or mediation service are confidential. Any communication made in, or in connection with, the mediation which relates to the controversy being mediated, whether made to the mediator or a party, or to any other person if made at a mediation session, is confidential. However, a mediated agreement shall not be confidential unless the parties otherwise agree in writing.

(2) Confidential materials and communications are not subject to disclosure in any judicial or administrative proceeding except:

(a) When all parties to the mediation agree, in writing, to waive the confidentiality;

(b) In a subsequent action between the mediator and a party to the mediation for damages arising out of the mediation; or

(c) Statements, memoranda, materials and other tangible evidence, otherwise subject to discovery, that were not prepared specifically for use in and actually used in the mediation.

(3) Notwithstanding subsection (2) of this section, a mediator may not be compelled to testify in any proceeding, unless all parties to the mediation and the mediator agree, in writing, to waive the confidentiality. [1989 c.967 §8]

Sec. 9. Mediators and mediation services shall be immune from civil liability for, or resulting from, any act or omission done or made while engaged in efforts to assist or facilitate a mediation, unless the act or omission was made or done in bad faith, with malicious intent or in a manner exhibiting a wilful, wanton disregard of the rights, safety or property of another. [1989 c.967 §9]

Sec. 10. (1) During the pendency of any action between a creditor and an agricultural producer, the court may, upon stipulation by all parties requesting mediation under section 5 of this Act, enter an order suspending the action.

(2) A suspension order under subsection (1) of this section suspends all orders and proceedings in the action for the time period specified in the suspension order. In specifying the time period, the court shall exercise its discretion for the purpose of permitting the parties to engage in mediation without prejudice to the rights of any person. The suspension order may include other terms and conditions as the court may consider appropriate. The suspension order may be revoked upon motion of any party or upon motion of the court

(3) If all parties to the action agree, by written stipulation, that all issues before the court are resolved by mediation under sections 2 to 10 of this Act, the court shall dismiss the action. If the parties do not agree that the issues are resolved or if the court revokes the suspension order under subsection (2) of this section, the action shall proceed as if mediation had not been attempted. [1989 c.967 §10]

Sec. 18. Sections 2 to 10 of this Act are repealed June 30, 1995. [1989 c.967 §18]

ARBITRATION AND AWARD

36.300 Controversies arbitrable. All persons desiring to settle by arbitration any controversy or quarrel, except such as respect the terms or conditions of employment under collective contracts between employers and employees or between employers and associations of employees, may submit their differences to the award or umpirage of any person or persons mutually selected. [Formerly 33 210]

36.305 Written arbitration agreements valid. A provision in any written contract to settle by arbitration a controversy thereafter arising out of such contract, or out of the refusal to perform the whole or any part thereof, or an agreement in writing between persons to submit to arbitration any controversy then existing between them, shall, provided the arbitration is held within the State of Oregon, be valid, irrevocable and enforceable, save upon such grounds as exist at law

or in equity for the revocation of any contract. [Formerly 33.220]

36.310 Court order compelling parties to arbitrate as agreed. A party aggrieved by the failure, neglect or refusal of another to perform under a contract or submission providing for arbitration, described in ORS 36.305, shall petition the circuit court, or a judge thereof, for an order directing that the arbitration proceed in the manner provided for in the contract or submission. Ten days' notice in writing of the application shall be served upon the party in default, in the manner provided for personal service of a summons. The court or judge shall hear the parties, and if satisfied that the making of the contract or submission or the failure to comply therewith is not an issue, shall make an order directing the parties to proceed to arbitration in accordance with the terms of the contract or submission. If the making of the contract or submission or the default is an issue, the court or the judge shall proceed summarily to the trial thereof. If no jury trial is demanded by either party, the court or judge shall hear and determine such issue. Where such an issue is raised, any party may, on or before the return day of the notice of application, demand a jury trial of the issue, and if such demand is made, the court or judge shall make an order referring the issue to a jury in the manner provided by ORCP 51 D. If the jury finds that no written contract providing for arbitration was made or submission entered into, as the case may be, or that there is no default, the proceeding shall be dismissed. If the jury finds that a written contract providing for arbitration was made or submission was entered into and there is a default in the performance thereof, the court or judge shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof. [Formerly 33.230]

36.315 Abatement of action or suit involving arbitrable issue. If any action, suit or proceeding is brought upon any issue arising out of an agreement which contains a provision for arbitration of the matter in controversy in such action, suit or proceeding, then, upon application, any judge of a circuit court, upon being satisfied that the issue is referable to arbitration, shall abate the action, suit or proceeding so that arbitration may be had in accordance with the terms of the agreement. The application shall be heard similarly to hearings on motions. [Formerly 33.240]

36.320 Appointment of arbitrator; number of arbitrators. If, in the arbitration agreement, no provision is made for the manner of selecting the arbitrators, or if, for any reason, there is a failure to act or a

vacancy, and no provision in the agreement for the filling thereof, then, upon application of any party to the agreement, any court of record shall appoint an arbitrator or arbitrators to fill the vacancy, who shall act with the same force and effect as if specifically named in the arbitration agreement. Unless otherwise provided, the arbitration shall be by a single arbitrator. [Formerly 33.250]

36.325 Oath of arbitrators. The arbitrators shall be sworn to try and determine the cause referred to them and to make an award under the hands and seals of a majority of them, agreeable to the terms of the submission. [Formerly 33.260]

36.330 Compensation of arbitrators. The compensation of arbitrators shall be determined by agreement between the parties to the arbitration, or, in case of their inability to agree, then by any judge of the circuit court. [Formerly 33.270]

36.335 Power of arbitrators. Arbitrators or a majority of them, shall have power to:

(1) Compel the attendance of witnesses duly notified by either party, and to enforce from either party the production of all books, papers and documents the arbitrators deem material to the cause.

(2) Administer oaths or affirmations to witnesses.

(3) Adjourn their meetings from day to day, or for a longer time, and also from place to place.

(4) Decide both the law and the facts involved in the cause submitted to them. [Formerly 33.280]

36.340 Coercion of witness or party. Whenever, on motion of any arbitrator or party in interest, it appears to the circuit court of the county in which the arbitration proceedings are pending that any witness or party has refused to answer a subpoena or obey any lawful order of the arbitrator, the court may require the witness or party to show cause why the witness or party should not be punished for contempt of court, to the same extent and purpose as if the proceedings were pending before the court. [Formerly 33.290]

36.345 Cost of fees. Unless otherwise agreed upon, the costs of witness fees and other fees in the case shall be taxed against the losing party, and such fees shall be indorsed upon the award. When the award is confirmed as the judgment of a circuit court, execution shall issue therefor as for costs and disbursements in civil actions. [Formerly 33.300]

36.350 Filing and service of award; fee; judgment if no exceptions; execution. The

award of the arbitrators, together with the written agreement to submit, shall be delivered to the clerk of the circuit court selected to render judgment on the award. After charging and collecting a fee of \$25 therefor, the clerk shall enter the same of record in the office of the clerk. A copy of the award, signed by the arbitrators, or a majority of them, shall also be served upon or delivered to each of the parties interested in the award, and proof of such service or delivery shall be filed with the clerk. If no exceptions are filed against the same within 20 days after such service, judgment shall be entered as upon the verdict of a jury, and execution may issue thereon, and the same proceedings may be had upon the award with like effect as upon a verdict in a civil action. [Formerly 33.310]

36.355 Exceptions to award; filing fees.

(1) Within the period specified in ORS 36.350, the party against whom an award was made may file with the circuit court exceptions in writing to the award for any of the following causes:

(a) The award was procured by corruption, fraud or undue means.

(b) There was evident partiality or corruption on the part of the arbitrators, or any of them.

(c) The arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party were prejudiced.

(d) The arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made.

(e) There was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the award.

(f) The arbitrators awarded upon a matter not submitted to them, unless it was a matter not affecting the merits of the decision upon the matters submitted.

(g) The award was imperfect in matter of form not affecting the merits of the controversy.

(2) The clerk of the court shall collect from the party filing exceptions under subsection (1) of this section a filing fee of \$25, and from a party filing an appearance in opposition to the exceptions a filing fee of \$15. However, if the exceptions relate to an arbitration award made following abatement under ORS 36.315 of an action, suit or proceeding in respect to which the parties

have paid filing fees under ORS 21.110, no filing fees shall be collected under this subsection. No exceptions or appearance in opposition thereto shall be deemed filed unless the fee required by this subsection is paid by the filing party. [Formerly 33.320]

36.360 Vacation or modification of award on exceptions. If, upon exceptions filed, it appears to the court that the award should be vacated or modified, the court may refer the cause back to the arbitrators with proper instructions for correction or rehearing and, upon failure of the arbitrators to follow said instructions, the court shall have jurisdiction over the case and proceed to its determination. [Formerly 33.330]

36.365 Appeal from judgment on award. Whenever no objection is made to the entering of judgment after award, judgment shall be entered according to the award and shall have the force and effect of a judgment obtained in the circuit court after default. Whenever any judgment is entered after objection on the part of any party by the order of such court, such judgment shall be subject to appeal to the higher courts in the manner provided by law for taking appeals to such courts. The right to except to or review an award or to appeal from a judgment thereon shall not be circumscribed or abridged by any contractual provisions; nor shall any burden or penalty, other than such as are provided by law, be imposed by anyone against any party who excepts or appeals. [Formerly 33.340]

COURT ARBITRATION PROGRAM

36.400 Method of establishing; suspension or termination. (1) An arbitration program under ORS 36.400 to 36.425 for civil actions may be established for:

(a) The circuit court in a judicial district by an affirmative vote of a majority of the judges of the court, subject to the approval of the Chief Justice of the Supreme Court, or by an order of the Chief Justice.

(b) The district court for a county or counties by an affirmative vote of a majority of the judges of the court, subject to the approval of the Chief Justice of the Supreme Court, or by an order of the Chief Justice.

(2) Rules consistent with ORS 36.400 to 36.425 to govern the operation and procedure of an arbitration program established under subsection (1) of this section for a court may be made in the same manner as other rules applicable to the court pursuant to ORS 1.002 (1), 3.065 (3), 3.220, 46.280 or 46.665 (3). Rules to govern the operation and procedure of a program made pursuant to ORS 3.065 (3), 3.220, 46.280 or 46.665 (3) are subject to the

approval of the Chief Justice of the Supreme Court.

(3) An arbitration program established under subsection (1) of this section may be suspended or terminated by an order of the Chief Justice of the Supreme Court. A civil action may not be referred to arbitration under a program while the program is suspended or after the program is terminated, but an action referred to arbitration under a program before the program is suspended or terminated and pending on the effective date of the suspension or termination shall continue to be governed by the applicable provisions of ORS 36.400 to 36.425 and rules made under subsection (2) of this section.

(4) ORS 36.400 to 36.425 do not apply to appeals from a county, justice's or municipal court or actions in the small claims department of a district court. [Formerly 33.350]

36.405 Mandatory arbitration; exemptions. (1) In a civil action in a circuit or district court having an arbitration program established under ORS 36.400, where all parties have appeared, the court shall refer the action to arbitration under ORS 36.400 to 36.425 if:

(a) The only relief claimed is recovery of money or damages, and no party asserts a claim for money or general and special damages in an amount exceeding \$25,000 in the circuit court, or in an amount exceeding \$10,000 in the district court, exclusive of attorney fees, costs and disbursements and interest on judgment.

(b) The action is a domestic relations suit, as defined in ORS 107.510, in which the only contested issue is the division or other disposition of property between the parties.

(2) The presiding judge of the court may exempt from arbitration under ORS 36.400 to 36.425 a civil action that otherwise would be referred to arbitration under subsection (1) of this section, or may remove from further arbitration proceedings a civil action that has been referred to arbitration under subsection (1) of this section, when, in the opinion of the judge, good cause exists for that exemption or removal. [Formerly 33.360]

Note: Section 4, chapter 116, Oregon Laws 1987, provides

Sec. 4. The amendments of statute sections by sections 1 to 3 of this Act [36.405, 36.410 and 36.415] are applicable only in respect to civil actions commenced on or after the effective date of this Act [September 27, 1987] [1987 c 116 §4]

36.410 Stipulation for arbitration; conditions; relief. (1) In a civil action in a circuit or district court having an arbitration program established under ORS 36.400, where all parties have appeared and agreed to arbitration by stipulation, the court shall

refer the action to arbitration under ORS 36.400 to 36.425 if:

(a) The relief claimed is more than or other than recovery of money or damages.

(b) The action is in the circuit court, the only relief claimed is recovery of money or damages and a party asserts a claim for money or general and special damages in an amount exceeding \$25,000, exclusive of attorney fees, costs and disbursements and interest on judgment.

(2) If a civil action is referred to arbitration under subsection (1) of this section, the arbitrator may grant any relief that could have been granted if the action were determined by a judge of the court. [Formerly 33.370]

Note: See note under 36.405.

36.415 Arbitration after waiver of amount of claim exceeding \$25,000. In a civil action in a circuit court having an arbitration program established under ORS 36.400, where all parties have appeared, where the only relief claimed is recovery of money or damages, where a party asserts a claim for money or general and special damages in an amount exceeding \$25,000, exclusive of attorney fees, costs and disbursements and interest on judgment, and where all parties asserting those claims waive the amounts of those claims that exceed \$25,000, the court shall refer the action to arbitration under ORS 36.400 to 36.425. A waiver of an amount of a claim under this section shall be for the purpose of arbitration under ORS 36.400 to 36.425 only and shall not restrict assertion of a larger claim in a trial de novo under ORS 36.425. [Formerly 33.380]

Note: See note under 36.405.

36.420 Notice of arbitration hearing; open proceeding; compensation and expenses. (1) At least five days before the date set for an arbitration hearing, the arbitrator shall notify the clerk of the court of the time and place of the hearing. The clerk shall post a notice of the time and place of the hearing in a conspicuous place for trial notices at the principal location for the sitting of the court in the county in which the action was commenced.

(2) The arbitration proceeding and the records thereof shall be open to the public to the same extent as would a trial of the action in the court and the records thereof.

(3) The compensation of the arbitrator and other expenses of the arbitration proceeding shall be the obligation of the parties or any of them as provided by rules made under ORS 36.400 (2). However, if those rules require the parties or any of them to pay any of those expenses in advance, in the form of fees or otherwise, as a condition of

arbitration, the rules shall also provide for the waiver in whole or in part, deferral in whole or in part, or both, of that payment by a party whom the court finds is then unable to pay all or any part of those advance expenses. Expenses so waived shall be paid by the state from funds available for the purpose. Expenses so deferred shall be paid, if necessary, by the state from funds available for the purpose, and the state shall be reimbursed according to the terms of the deferral. [Formerly 33 390]

36.425 Filing of decision and award; notice of appeal; trial de novo; fees; effect of arbitration decision and award. (1) At the conclusion of arbitration under ORS 36.400 to 36.425 of a civil action, the arbitrator shall file the decision and award with the clerk of the court that referred the action to arbitration, together with proof of service of a copy of the decision and award upon each party.

(2)(a). Within 20 days after the filing of a decision and award with the clerk of the court under subsection (1) of this section, a party against whom relief is granted by the decision and award or a party whose claim for relief was greater than the relief granted to the party by the decision and award, but no other party, may file with the clerk a written notice of appeal and request for a trial de novo of the action in the court on all issues of law and fact. After the filing of the written notice a trial de novo of the action shall be held. If the action is triable by right to a jury and a jury is demanded by a party having the right of trial by jury, the trial de novo shall include a jury.

(b) If a party files a written notice under paragraph (a) of this subsection, a trial fee or jury trial fee, as applicable, shall be collected as provided in ORS 21.270 or 46.221.

(c) A party filing a written notice under paragraph (a) of this subsection shall deposit with the clerk of the court the sum of \$150.

If the position under the arbitration decision and award of the party filing the written notice is not improved as a result of a judgment in the action on the trial de novo, the clerk shall dispose of the sum deposited in the same manner as a fee collected by the clerk. If the position of the party is improved as a result of a judgment, the clerk shall return the sum deposited to the party. If the court finds that the party filing the written notice is then unable to pay all or any part of the sum to be deposited, the court may waive in whole or in part, defer in whole or in part, or both, the sum. If the sum or any part thereof is so deferred and the position of the party is not improved as a result of a judgment, the deferred amount shall be paid by the party according to the terms of the deferral.

(d) Notwithstanding any other provision of law or the Oregon Rules of Civil Procedure, a party filing a written notice under paragraph (a) of this subsection whose position under the arbitration decision and award is not improved as a result of a judgment in the action on the trial de novo shall not be entitled to attorney fees or costs and disbursements, and shall be taxed the costs and disbursements of the other parties to the action on the trial de novo.

(3) If a written notice is not filed under paragraph (a) of subsection (2) of this section within the 20 days prescribed, the clerk of the court shall enter the arbitration decision and award as a final judgment of the court, which shall have the same force and effect as a final judgment of the court in the civil action and may not be appealed. [Formerly 33 400]

CHAPTERS 37 TO 39

[Reserved for expansion]

SPECIAL ACTIONS AND PROCEEDINGS
