



Written by Martha Machnik
The Center for Mediation and Collaboration Rhode Island
Training Working Group
2023

Guide to Mediation

What is Mediation?

Mediation is a process that can be used to resolve problems between individuals or groups. In this process, an impartial person referred to as a mediator helps facilitate communication between people. During the session, the mediator helps those involved discuss the problem, identify the real issues, and explore options to create a voluntary, mutually acceptable solution.

Mediation is a form of dispute resolution that encourages the individuals involved in the dispute to talk with each other and resolve their differences. The mediator helps the parties communicate but has no independent decision-making authority.

Why Should You Consider Mediation?

In mediation the parties can:

- Informally communicate their thoughts and concerns.
- Identify and clarify miscommunication and misunderstandings.
- Acknowledge that there may be differences of perspective or opinion.
- Better understand the origins of the dispute.
- Share their respective interests.
- Examine ways to address dissatisfaction and unmet expectations that may have occurred.
- Develop improved communication and restore relationships.
- Collaborate on ways to manage future conflicts and prevent additional disputes from arising.
- Retain the right to pursue the matter through another process such as the Equal Employment Opportunity (EEO) complaint process, negotiated or administrative grievance procedure, or litigation (resolving through court), if an agreement cannot be reached.



Mediation IS

an opportunity to be heard and to understand. Mediation is a conversation where parties in a dispute can discuss their differences, with the help of a mediator who will help with communication and understanding.

Mediation is NOT

a determination of who is right and wrong, and the mediator is not a judge, factfinder, or decision-maker. Mediators do not give legal advice. Choosing to mediate does not keep you from your right to try other options such as litigation or arbitration.

Mediation is recommended when:

- There is interest in resolving the dispute quickly.
- There is a need for a private setting to discuss the issues.
- People want someone not involved in the dispute to facilitate their communication.
- People want to either preserve their relationship or end the relationship in the least adversarial way.
- The parties are interested in retaining control of the outcome.

Mediation is NOT recommended when:

- People want someone to determine who is right and who is wrong.
- The dispute involves restraining orders, fraud, abuse, criminal activity, or allegations of sexual harassment.

Agricultural Mediation

The United States Department of Agriculture (USDA) has a Certified Agricultural Mediation Program that is specifically intended to provide mediation to agricultural producers. The programs vary from state to state but services are most often either low or no cost, and many types of agricultural workers can access these programs - you don't necessarily have to be a farmer or rancher.

When Can Mediation be Requested?

For USDA matters, when an agency issues an "adverse determination" it often offers the option of mediation, and USDA entities must participate in mediation where requested. Borrowers or their creditors may also request mediation for agricultural credit issues where a borrower is delinquent or at risk of becoming so. In addition to government related issues, mediation may also be requested for many other disputes related to agriculture.



With the passage of the 2018 Farm Bill, state programs are now able to mediate issues related to:

Land lease
Equipment lease
Family farm transition
Farmer-neighbor disputes
National Organic Program



What does it cost?

- **There is no charge for most mediation.**
- Any additional legal, financial, or technical advisors – if needed – are paid by the requesting party.

What to Expect

Expect to meet with the other party and a mediator, expect to talk, and expect to listen. Expect agricultural mediation to be free or low cost. Expect confidentiality. Expect to consider an array of options.

Mediation is an alternative process to trying to resolve a conflict in court and incurring burdensome legal expenses, or appealing directly to the USDA. Participants in the mediation process create their own solutions. The mediator does not arbitrate the settlement. Flexibility in considering a full range of realistic options is encouraged in the solution process. The fact that disputing parties are meeting together in the same room for the purpose of working out a solution to the particular matter(s) enables everyone to deal openly and knowledgeably with the full array of issues. All steps are taken to ensure confidentiality.



Agricultural Mediation FAQ

Who is covered?

Producers are covered, as are other types of workers in the agricultural industry such as farm creditors, and those directly affected by the actions of the USDA. Non-farmers may also request mediation for issues with a farmer neighbor, etc.

What is covered?

Disputes between the stakeholders involving at least one of the following issues:

- Compliance with farm programs, including conservation programs
- Wetlands determinations
- Agricultural loans, either guaranteed by the USDA or a third party (such as lines of credit as suppliers)
- Rural Water loan programs, rural housing loans, rural housing business loans
- Grazing on national forest system lands
- Pesticides
- Land Lease
- Equipment Lease
- Family Farm Transition
- Farm-Neighbor Disputes
- USDA crop insurance programs
- National Organic Program
- Other issues considered appropriate by the Secretary of the USDA



What is NOT covered?

Any case type not listed above. However, many mediation centers can provide services for non-covered cases, so please don't hesitate to contact them.

How much does it cost?

Most agricultural mediation programs are low or no cost to participate. However, if you include your attorney or personal financial advisor, you would need to pay for their time, as per their pay schedule.

Is the mediator on my side?

No. The mediator is a neutral, third-party participant and does not take sides.

Agricultural Mediation FAQ (continued)

When does a mediation request become a case?

A case needs two conflicting parties, voluntarily seeking facilitative mediation to solve a dispute. Mediators assist disputing parties in reaching mutually agreeable settlements of issues within the laws, regulations and the agency's generally applicable program policies and procedures.

How long does the process take?

The mediation session for some disputes can last as few as 1-2 hours, however, some mediations can take 4-5 hours or more. Depending on the topic of the dispute and the program capacity, mediations may be broken down into multiple sessions.

What should I prepare for the meeting?

Plan to bring any supporting documentation that will help you describe your understanding of the situation. While this is not a formal legal proceeding, sometimes it can help to look at things for perspective. For example, in a land dispute, it may help to bring a map of the property. Lastly, for in-person mediation, you may want to bring a drink or snack, especially if it's a long meeting!

What happens if an agreement is not reached?

If a final agreement cannot be reached, the parties will not be worse off than if they had not tried mediation. Everyone involved will have a better understanding of the various perspectives, will have explored several options, and will have a fuller grasp of the situation. All parties will retain their full set of options to seek a solution through legal or other means. At no time should the mediation process be considered a delaying tactic.

Should I bring my attorney?

That's up to you. If you have already hired an attorney relating to the dispute in question, you should inform your attorney about your interest in the mediation program. For most state programs, attorneys are welcome to attend, but they usually do not. Mediations are meant to be informal and to save money for the participants. Paying an attorney to participate may increase your personal costs for the dispute, but if you feel more comfortable with your attorney present, you should include them.

Coalition of Agricultural Mediation Programs

The Coalition of Agricultural Mediation Programs is a network of all USDA Certified State Programs offering mediation services to the agricultural community for 30 years. Currently 42 certified state programs are in operation. From farm credit issues to disputes over participation in USDA programs, the state mediation programs demonstrate that regardless of the nature of the dispute, mediation can improve communication and repair the relationship between the parties, enable the parties to tailor solutions that work for them and is generally faster and cheaper than traditional litigation

[Check out the CAMP website](#) for more information on mediation and to locate your state mediation program.

Interested in Becoming a Mediator?

There are many colleges and universities along with private and not-for-profit mediation programs throughout the country that offer training, certification, and support for mediation practice. Occasionally, mediation programs hold specialized agricultural mediation training for folks who are already certified mediators. If you are a certified mediator interested in agricultural mediation training, contact [your state's ag mediation program](#) to learn about any available opportunities.

Below are some organizations that offer mediation trainings as well as general information on mediation training.

National Organizations:

- National Association for Community Mediators www.nafcm.org
- American Arbitration Association www.adr.org
- American Association of Mediators www.americanassociationofmediators.org

Course Description for Basic Mediation Training

This course combines essential life and professional skills by teaching effective means of communication and conflict resolution.

In this course, students will be introduced to mediation principles, phases of mediation, mediator's role, impasse, and standards of the profession. The theoretical practice of mediation will be woven into practical application via role-plays.

A certificate of completion will be issued to participants who successfully complete a minimum of 30/40 hours of mediation training. Check your state requirement for minimum hours of training.

Course Objectives:

- Gain factual knowledge about the principles, phases, and standards of the profession of facilitative mediation.
- Demonstrate the ability to conduct a complete mock mediation, employing the skills, strategies, and processes learned.
- Appropriately use inquiry techniques to explore and analyze the issues of the conflict in order to summarize parties' positions, related feelings, and underlying interests.
- Understand negotiation theory, exploring best- and worst-case alternatives to reaching agreement, and the role of the third-party neutral in assisting in a negotiation.
- Understand and apply the essential elements of a lasting agreement.