

CHAPTER 12:20:03
WATER DRAINAGE MEDIATION

Section

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12:20:03:01. Definitions. Terms defined in SDCL 54-13-1 have the same meaning in this chapter.

In addition, terms used in this chapter mean:

(1) "Director," the director of mediation services or their designee;

(2) "Requesting Party," the individual, group, or entity requesting mediation;

(3) "Non-requesting Party," the individual, group, or entity with whom mediation is requested.

(4) "Intervener," an individual, group, or entity who is not a requesting party or non-requesting party to the mediation and may be impacted by the dispute.

Source:

General Authority: SDCL

Law Implemented: SDCL

12:20:03:02. Mediator training. The director, in conjunction with the Department of Agriculture, may provide initial training in mediation techniques to the mediators. This training shall include at least 32 hours of initial training on the mediation process, mediation skills, water drainage issues, and shall include instruction that a mediator may not advise or assist a party in reserving or establishing legal rights. If a mediator has previous training exceeding these 32 hours, the mediator may provide proof of other qualifications. Subsequent and supplemental training of mediators may be conducted by the South Dakota Department of Agriculture. Successful completion of the initial training session constitutes the minimum qualification to serve as a mediator.

Source:

General Authority: SDCL

Law Implemented: SDCL

12:20:03:03. Mediation fees. Requests for mediation must be filed with the director on a form which may be obtained from the director. A nonrefundable initial fee of \$200 for the requesting party's share of the filing request must accompany the mediation form. If the non-requesting party replies in the affirmative to use mediation, that response shall be accompanied by a nonrefundable initial fee of \$200 for the non-requesting party's share of the filing request. No mediation services may be provided unless each party has paid the required initial fee. If a request to intervene is made, such request shall include a nonrefundable initial fee of \$200. If intervener status is accepted, interveners become a party to the mediation. If mediation occurs, all parties shall each pay an equal amount of the mediators expenses based on the mediator's time report, not to exceed \$200 per hour per party. Additionally, all parties will share equally in any mailing or legal notice expenses incurred by the department.

Source:

General Authority: SDCL

Law Implemented: SDCL

12:20:03:04. Contents of request for mediation. The request for mediation must contain the following information:

- (1) The name, address, and telephone number of the requesting party;
- (2) The nature of the drainage dispute;
- (3) The name, address, and telephone number of the non-requesting parties;
- (4) The stated location of the real estate, including legal description and county. If any interest in the described property is held by a third party or directly affects a third party, list the name, address, and telephone number for each third party; and
- (5) If needed, the names of property owners, counties, municipalities, townships or agencies of the state or federal government reasonably determined by the requesting party to be affected by the drainage activity.

Source:
General Authority: SDCL
Law Implemented: SDCL

12:20:03:05. Procedure for requested mediation. The following procedure applies upon receipt of a request for mediation:

- (1) The director shall evaluate the request and determine if mediation is allowable under SDCL 54-13;
- (2) If not allowable, the director shall mail a notice to the requesting party explaining why the mediation request is not allowable through the Department of Agriculture. A requesting party may in writing, request the determination of the director be reviewed by the secretary and reconsidered;
- (3) Mailing the notice of request for mediation by certified mail to the non-requesting party begins the mediation period;

(4) A non-requesting party receiving notice of a request for mediation must answer in writing to the director within 20 days after the notice was postmarked. A non-requesting party who fails to respond to the director within 20 days is considered to have waived mediation.

(5) Upon receipt of the non-requesting party's written intent to mediate, the director shall schedule a mediation session.

Source:

General Authority: SDCL

Law Implemented: SDCL

12:20:03:06. Form for notice of request for mediation. The form for notice of request for mediation shall include the following:

(1) The name of the requesting party;

(2) A brief description of the mediation process, the nature of the conflict, the description of the real property, and all other parties;

(3) A statement informing all parties that the party or representative attending the mediation session must have the authority to negotiate agreements with other parties;

(4) The information required to be brought to the initial mediation session;

(5) A statement that all parties must attend the mediation session.

Source:

General Authority: SDCL

Law Implemented: SDCL

12:20:03:07. Mediation meeting notice form. A public notice of mediation including intervener instructions shall be published once each week for two consecutive weeks in one (1) official newspapers designated by the county or counties where the real property is located. In addition, the form for notice of the mediation session to the mediator and identified parties shall include the following:

(1) The time and place of the initial mediation session;

(2) The name of the parties involved in mediation;

_____ (3) The name of the mediator assigned;

_____ (4) A brief description of the mediation process, the nature of the conflict, the description of the real property, and all other parties;

(5) A statement informing all parties that the party or representative attending the mediation session must have the authority to negotiate agreements with other parties;

_____ (6) The information required to be brought to the initial mediation session and the number of copies which should be available for the parties to the mediation.

_____ Source:

_____ General Authority: SDCL

_____ Law Implemented: SDCL

12:20:03:08. Procedures for Interveners. The following procedure applies when a third party wants to intervene:

(1) A public notice is published in the newspaper in the county with intervener instructions;

(2) An intervener must fill out the intervener form provided by the director. The intervener form, fee, and any supporting documentation that might assist the mediator in making an intervention determination shall be returned to the director by the intervener applicant ;

(3) Upon receipt of the intervener form, fee, and any supporting documentation, the director shall provide the form to the assigned mediator. The mediator shall determine whether an applicant may intervene;

(4) If intervener status is allowed, the mediator shall provide instructions to the party regarding the mediation session.

(5) If the mediator determines that intervener status is not allowed, the mediator will notify the director. The director will then notify the intervener applicant.

Source:

General Authority: SDCL

Law Implemented: SDCL

12:20:03:09. Conduct at mediation sessions. Mediation sessions shall be conducted as follows:

(1) Mediation sessions are under the control of the mediator;

(2) The mediator must hold in strict confidence all information provided by the parties to the mediation, except as otherwise agreed to by the parties or provided by state law;

(3) All parties must have the opportunity to speak and state their positions. The Mediator may allow parties to offer evidence and present testimony from third parties;

(4) Legal counsel may be present and advise clients regarding legal rights and the implication of proposed solutions;

(5) All parties to the proceedings must make a good faith effort to resolve the dispute.

Source:

General Authority: SDCL

Law Implemented: SDCL

12:20:03:10. Mediation agreement. If the parties involved in mediation reach an agreement, the mediator shall document the terms and all parties shall sign the agreement.

Those parties who do not reach agreement may request another mediation session in writing.

The request may be declined by either party. If the parties agree that a mediated solution is not

possible, the parties involved may indicate in writing that they were unable to reach an agreement. The

mediation period shall be 90 days or less; parties may agree in writing to extend the mediation by 30

days.

Source:

General Authority:

Law Implemented: