

Kansas Agricultural Mediation Services

1988-2011

**Over 20 Years of Service
To Kansas Agriculture**

1-800-321-FARM

Since 1988 Kansas Agricultural Mediation Services (KAMS) has served the Kansas agricultural community as the official USDA certified state agricultural mediation program. A toll-free hotline provides access to trained professionals, confidential assistance, and information.

Administered by K-State Research and Extension, KAMS helps resolve conflicts between borrowers and creditors using mediation. When a call is made, a staff attorney is available to answer questions and assist with finding resources. Affordable farm financial counseling through the K-State Research and Extension (KSRE) Farm Analyst Program, and low cost legal assistance through the Kansas Legal Service, Inc., (KLS) Farm Mediation Legal Counseling Program is available to producers who request services.

The program's goal is to help resolve difficult situations using mediation. Mediation is a voluntary and confidential process, which allows for a neutral third party to help those in conflict identify issues, options and possible solutions. Situations are sometimes resolved through initial financial and legal assistance received through KAMS.

KAMS toll-free number is 1-800-321-FARM (3276) and the website is www.ksre.ksu.edu/kams/. All calls are free and confidential. See inside this newsletter for more detailed information about KAMS services.

Examples of Agricultural Law Issues Addressed By KAMS

Composite Case of an Ag Loan Restructure Mediation

A farmer requested mediation through KAMS with respect to the decision of his USDA Farm Service Agency (FSA) Farm Loan Manager denying his application for restructure of his FSA direct farm ownership and disaster loans that were delinquent. FSA made the decision after considering several restructure options available under FSA Farm Loan Program regulations, and finding that the borrower did not have a feasible plan to repay not only his FSA loans if they were restructured but also the debts with his other creditors. The producer's other creditors were invited to participate in the mediation.

KAMS assigned a KSRE Farm Analyst to work with the producer. The analyst traveled to the producer's farm and used the FinPack computer program, specifically designed for financial analysis of agricultural operations, to examine the numbers used by FSA as the basis for denying his loan restructure application.

The Analyst also looked at: ways to improve income or reduce expenses, options to restructure the debt of other creditors, and the feasibility of obtaining other loans to refinance the farm debt. After spending a day with the producer, the Analyst came up with three options that would be proposed in mediation or further negotiations. Farm Analyst services

are provided to KAMS clients at a low cost.

KAMS also assigned a KLS attorney with the Farm Mediation Legal Counseling Program to advise the producer on his rights and obligations under FSA rules and regulations. The attorney and the Farm Analyst worked together to help the producer develop negotiating strategies and options to be used at mediation when negotiating with FSA and his other creditors. The producer paid \$20 per hour for the services of the attorney with KAMS funding picking up the remainder of the fee based on KAMS contract with KLS.

After determining the key creditors that would need to be invited to mediation, KAMS set up and convened a mediation that included: the FSA Farm Loan Manager; the president of the bank where client had machinery and crop operating loan; the manager of an implement dealer where client had a repair bill on machinery; an attorney representing an elevator/co-op on a delinquent account for seed and fertilizer; the producer and his wife; the KSRE Farm Analyst and KLS attorney; and the KAMS mediator, who was paid by KAMS so that there was no cost to the parties.

At the mediation the KAMS mediator kept the negotiations on track and helped the parties clarify issues. The producer's proposals and several counter-proposals from creditors

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during the course of the mediation were considered. The preparation work of the KSRE Farm Analyst and the ability to use the FinPack computer program to analyze new proposals at the mediation helped the parties eventually reach an agreement. Restructure of the non-FSA debt and the improvements in the producer's own operation were sufficient enough to allow FSA to reconsider the application for loan restructure.

Adversary Proceeding in a Farm Bankruptcy

A creditor requested mediation with a farmer-customer through KAMS. The mediation concerned whether or not the producer could formulate a feasible plan to repay the creditor. The original mediation ended in an impasse and the borrower then filed a Chapter 7 bankruptcy. The creditor then filed an adversary proceeding against the producer alleging conversion of loan security and asking for a determination of dischargeability with respect to the creditor's loan. The attorneys for the creditor and the producer, knowing that the bankruptcy judge in the case encouraged the use of alternative dispute resolution rather than tying up the court's time, agreed to have KAMS do another mediation. The mediation provided a confidential forum to explore the respective legal basis for each party's position, clarify issues to be resolved, and use it as an exploratory discovery tool—a dry run for what may occur if a trial was needed. A substantive agreement was reached on a few issues and a procedural

agreement was reached to exchange evidence to aid further negotiations.

In this case the use of an experienced KAMS mediator trained to deal with agricultural credit disputes was an advantage to the process. KAMS provides mediation services to parties in an "ag credit" dispute at no cost to the parties.

USDA/NRCS Adverse Decision under the Wildlife Habitat Incentive Program (WHIP)

A private attorney requested mediation through KAMS on behalf of a farmer client who had received an adverse decision from the USDA Natural Resources Conservation Service (NRCS). NRCS had issued a decision requiring repayment of certain financial assistance funds that had been dispersed to the farmer under the Wildlife Habitat Incentives Program. An agreement was reached reducing the amount required to be repaid under the program avoiding further costly and time consuming administrative appeals within USDA. In this case the attorney represented the client at the face-to-face mediation without the producer being present.

Federal law (7 U.S.C. 5101 *et seq.*) requires mediation to be offered as an alternative to the USDA informal administrative appeal process whenever a program participant receives formal notice of an adverse decision by various USDA agencies. KAMS is the official USDA Certified State Agricultural Mediation Program for Kansas that handles all requests for mediation with respect to USDA adverse decisions. KAMS charges a minimal fee (\$60 administrative fee and \$25/hour for the mediator) for mediations involving non-credit adverse decisions of USDA agencies. The USDA agencies that KAMS works with to provide mediation services are the FSA, NRCS, the Risk Management Agency, and Rural Development.

Who Are KAMS Mediators?

KAMS contracts with a small pool of mediators to facilitate the face-to-face mediation sessions. KAMS mediators have a wide variety of professional backgrounds and experience including: professional mediators, licensed clinic social workers, counselors, farmers, retired bankers, and attorneys. KAMS is an approved mediation program under Kansas law through the Kansas Office of Dispute Resolution under the auspices of the Office of Judicial Administration of the Kansas Supreme Court. KAMS selects who will mediate a case based on several considerations including professional expertise, experience, geographic location, and availability. KAMS mediators attend annual KAMS trainings and keep current with required continuing mediator education hours. Several KAMS mediators have been working agricultural cases since the program began in 1988.

Agricultural Lease Dispute

Private attorneys representing each side of dispute regarding termination of a farm lease between a landlord and a tenant agreed to try mediation to resolve the conflict. At issue was whether or not the landlord was liable for reimbursing the tenant for certain input costs and tillage services furnished by the tenant (K.S.A. 58-2506a). One of the attorneys had used KAMS before and felt confident in the services and process. Parties at the table included the landlord, the tenant and their respective attorneys. The mediation resulted in resolutions to all but one issue on the table. The matter was considered an "ag credit" case and was provided at no cost to the parties.

Family Farm Transition Mediations

Mediation of family farm transition issues is a growing area of need which KAMS is addressing through its services. Transition disputes that KAMS has dealt with include dissolutions and mergers of family farm businesses, how to pass the family farm on to the next generation(s), how to deal with division or liquidation of farm assets, and resolving conflicts between family members that affect the continuing viability of the family farm operation.

Relationship issues are often at the core of these disputes and can't be dealt with effectively in an adversarial setting. KAMS model for handling these disputes through mediation involves utilizing our support services, the KLS Farm Mediation Legal Counseling Program attorneys and the KSRE Farm Analysts, as neutral resource persons to bring experienced, objective and realistic guidance to the discussions. A KAMS mediator is carefully chosen with the appropriate experience, background and expertise to help families manage conflict and guide the discussions in a productive manner.

Case example of KAMS services in a farm family partnership dissolution: Two siblings and their families who were involved in a joint farm

and livestock operation, requested mediation to see if conflicts over management of the enterprises could be resolved, and if not then to help with dissolution of the partnership and division of assets. A KSRE Farm Analyst used the FinPack computer program and his extensive farm and ranch experience to analyze the enterprises that each sibling managed in the partnership. Many hours were spent with each family reviewing numbers to look at current profitability and the feasibility of restructuring options, including separating the operations into individual enterprises.

Multiple mediations were held over a course of several weeks that eventually resulted in an agreement providing for termination of the partnership and dividing the business and assets into separate viable enterprises. Each sibling was represented by private attorneys who drafted all documents and finalized all details to implement the agreement reached.

KAMS considered this an "ag credit" case since the restructuring of the operation would affect the ability of each party to service debt; thus, the mediation services were offered at no cost to the producers.

K-State Research and Extension Farm Analyst Program

An Educational Service to Facilitate Business Planning for Families Who Farm

The K-State Research and Extension Farm Analyst Program's intensive one-on-one consultation has provided assistance to more than 1,000 Kansas farm families. Analysts are active farmers and ranchers with extensive training in business analysis. Their farming experience provides a strong element of empathy to the families they assist. The role of a farm analyst is centered on the use of a computer software program called FinPack. The analyst travels to the farm home to work with them privately and confidentially.

FinPack is a comprehensive financial planning and analysis system designed to help farmers and ranchers understand their financial situation and make informed decisions. It is

not a record keeping system. Instead, FinPack provides tools to effectively use farm records to make business analysis, long-range planning, and cash-flow planning as complete, easy and meaningful as possible.

If a debtor/creditor dispute arises, the typical farm manager's goal is to restructure and keep operating. The work of these analysts can analyze what went wrong, what will change; what restructure alternatives are feasible; and review annual results.

Proven to be a valuable tool in working with banks and other lending institutions the FinPack program is designed to analyze the profitability and feasibility of the operation. Income, expenses and debt service

information can be plugged into the program to analyze options and alternatives that the producer may be considering.

K-State farm analysts can encourage families to realistically assess the current operation and enter in to discussions about goal setting, discovering options and possible alternatives. The producers can find solutions based on facts.

KAMS funding supports the KSRE Farm Analysts Program so that the services of the Farm Analysts are provided to KAMS' clients at a low cost. For a referral to an analyst call 1-800-321-FARM (3276). All information provided by producers is strictly confidential.

KLS, Inc. Farm Mediation Legal Counseling Program

KAMS has an agreement with Kansas Legal Services, Inc. (KLS) to provide direct legal representation to Kansas farmers and ranchers who request mediation services through KAMS.

The focus of the KLS Farm Mediation Legal Counseling Program is to provide legal advice and assistance to help KAMS clients prepare for mediation. Limitations on KAMS funding prohibit KLS from formally representing KAMS clients in court or administrative proceedings. The Farm Mediation Legal Counseling Program enhances and supports the mediation process by helping clients

understand their legal rights and options, develop realistic and objective proposals, and communicate those to the other parties.

They understand the farm situation and are experienced at helping farmers restructure troubled debt with agricultural creditors such as banks, suppliers, Farm Credit Services and especially the Farm Service Agency Farm Loan Program Division, including both direct and guaranteed loans.

The attorneys are well versed in a wide range of agricultural law issues, including the regulations involved with “adverse decisions” of various

USDA agencies.

Fees for these legal services are paid partially by the KAMS program, so that there is a reduced cost to the farmer or rancher. The client will be responsible for a portion of the fee based on a “co-pay” system.

“Co-pay” fees are one of four hourly rates, \$20, \$30, \$50 or \$80 per hour. The hourly rate the client may be required to pay will depend on the family income level. There is no charge for the first half hour of legal assistance.

How do producers access this service? Just call the KAMS toll-free hotline, 1-800-321-FARM (3276).



Kansas State University Agricultural Experiment Station and Cooperative Extension Service
K-State Research and Extension is an equal opportunity provider and employer. Issued in furtherance of Cooperative Extension Work, Acts of May 8 and June 30, 1914, as amended. Kansas State University, County Extension Councils, Extension Districts, and United States Department of Agriculture Cooperating, Gary Pierzynski, Interim Director

Each year hundreds of Kansas farmers and ranchers experience lost-work-time injuries and illnesses. Limitations caused by injury, disability, and illness can have devastating consequences for farmers, ranchers, and their businesses. Kansas AgrAbility helps people with disabilities continue to farm and live independently. The AgrAbility Project offers confidential, on-farm consultations, practical education, and assistance that promotes independence in agriculture and rural living. AgrAbility empowers farmers to remain in agriculture by providing options for safe, affordable solutions that will allow them to maintain their farm businesses and rural lifestyles.

Kansas AgrAbility works with all producers, regardless of size or type of farming/ranching operation. AgrAbility customers can be owner/operators, farm employees, or immediate family members. AgrAbility services are available for any type of disability (physical, cognitive, or sensory) or chronic health condition.

Kansas has a strong AgrAbility partnership between K-State Research and Extension, Southeast Kansas In-



dependent Living, and the Assistive Technology for Kansans Project assisted by a group of local, regional, and state organizations and agencies – all dedicated to helping farmers succeed. By working together,

AgrAbility partners provide services such as:

- On-site assessments of agricultural operations
- Suggestions for accommodating disabilities
- Secondary injury prevention
- Helping farmers access existing services within public agencies, including vocational rehabilitation, independent living centers, and assistive technology centers, to take full advantage of available benefits.

Kansas AgrAbility is part of a national network of AgrAbility projects administered by the United States Department of Agriculture’s National Institute of Food and Agriculture (USDA-NIFA).

Kansas AgrAbility – 1-800-526-3648

785-532-5813

www.agrability.bae.ksu.edu