

(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]

Note: See note under 36.250.

36.262 Confidentiality of mediation materials. (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]

Note: See note under 36.250.

36.264 Civil immunity for mediators and mediation services. 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 willful, wanton disregard of the rights, safety or property of another. [1989 c.967 §9]

Note: See note under 36.250.

36.266 Suspension of court proceedings during mediation; dismissal of action. (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 ORS 36.256, 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 ORS 36.250 to 36.270, 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]

Note: See note under 36.250.

36.268 Provision of mediation services contingent on funding. The duty of the State Department of Agriculture and the Director of Agriculture to provide mediation services under ORS 36.250 to 36.270 is contingent upon the existence and the level of funding specifically made available to carry out that duty. Should continuation of mediation services be threatened for lack of funding, the department shall proceed with all diligence to secure additional funds, including but not limited to requesting an additional allocation of funds from the Emergency Board. [1993 c.163 §2]

Note: See note under 36.250.

36.270 Utilization of mediation program for other disputes. (1) In addition to other mediation activities authorized by law, the Director of Agriculture and the State Department of Agriculture may utilize the mediation program to facilitate resolution of other disputes directly related to department activities and agricultural issues under the jurisdiction of the department.

(2) Participation in mediation referred to in subsection (1) of this section by parties to a dispute is voluntary, and a party may withdraw from the proceedings at any time.

(3) Notwithstanding the limitation on fees prescribed by ORS 36.252 (2), the director shall recover from the parties to a medi-

Mediation participation is voluntary, parties may withdraw at any time.

ation referred to in subsection (1) of this section the actual cost of the mediation proceedings. [1995 c.277 §5]

Note: See note under 36.250.

36.300 [Formerly 33.210; repealed by 2003 c.598 §57]

36.305 [Formerly 33.220; repealed by 2003 c.598 §57]

36.310 [Formerly 33.230; repealed by 2003 c.598 §57]

36.315 [Formerly 33.240; repealed by 2003 c.598 §57]

36.320 [Formerly 33.250; repealed by 2003 c.598 §57]

36.325 [Formerly 33.260; repealed by 2003 c.598 §57]

36.330 [Formerly 33.270; repealed by 2003 c.598 §57]

36.335 [Formerly 33.280; repealed by 2003 c.598 §57]

36.340 [Formerly 33.290; repealed by 2003 c.598 §57]

36.345 [Formerly 33.300; repealed by 2003 c.598 §57]

36.350 [Formerly 33.310; 1997 c.801 §53; 1999 c.63 §1; 2003 c.737 §35; repealed by 2003 c.598 §57]

36.355 [Formerly 33.320; 1997 c.801 §54; 2003 c.737 §38; repealed by 2003 c.598 §57]

36.360 [Formerly 33.330; repealed by 2003 c.598 §57]

36.365 [Formerly 33.340; repealed by 2003 c.598 §57]

COURT ARBITRATION PROGRAM

36.400 Mandatory arbitration programs. (1) A mandatory arbitration program is established in each circuit court.

(2) Rules consistent with ORS 36.400 to 36.425 to govern the operation and procedure of an arbitration program established under this section may be made in the same manner as other rules applicable to the court and are subject to the approval of the Chief Justice of the Supreme Court.

(3) Each circuit court shall require arbitration under ORS 36.400 to 36.425 in matters involving \$50,000 or less.

(4) ORS 36.400 to 36.425 do not apply to appeals from a county, justice or municipal court or actions in the small claims department of a circuit court. Actions transferred from the small claims department of a circuit court by reason of a request for a jury trial under ORS 46.455, by reason of the filing of a counterclaim in excess of the jurisdiction of the small claims department under ORS 46.461, or for any other reason, shall be subject to ORS 36.400 to 36.425 to the same extent and subject to the same conditions as a case initially filed in circuit court. The arbitrator shall not allow any party to appear or participate in the arbitration proceeding after the transfer unless the party pays the arbitrator fee established by court rule or the party obtains a waiver or deferral of the fee from the court and provides a copy of the waiver or deferral to the arbitrator. The failure of a party to appear or participate in the arbitration proceeding by reason of failing to pay the arbitrator fee or obtain a waiver or deferral of the fee does not affect the ability of the party to appeal the arbitrator's decision and award in the man-

ner provided by ORS 36.425. [Formerly 33.350; 1993 c.482 §1; 1995 c.618 §10; 1995 c.658 §30a; 1997 c.46 §§3,4; 2005 c.274 §1]

36.405 Referral to mandatory arbitration; exemptions. (1) Except as provided in ORS 30.136, in a civil action in a circuit court where all parties have appeared, the court shall refer the action to arbitration under ORS 36.400 to 36.425 if either of the following applies:

(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 \$50,000, 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 for a judicial district may do either of the following:

(a) Exempt from arbitration under ORS 36.400 to 36.425 a civil action that otherwise would be referred to arbitration under this section.

(b) Remove from further arbitration proceedings a civil action that has been referred to arbitration under this section, when, in the opinion of the judge, good cause exists for that exemption or removal.

(3) If a court has established a mediation program that is available for a civil action that would otherwise be subject to arbitration under ORS 36.400 to 36.425, the court shall not assign the proceeding to arbitration if the proceeding is assigned to mediation pursuant to the agreement of the parties. Notwithstanding any other provision of ORS 36.400 to 36.425, a party who completes a mediation program offered by a court shall not be required to participate in arbitration under ORS 36.400 to 36.425. [Formerly 33.360; 1995 c.455 §2a; 1995 c.618 §11; 1995 c.658 §31a; 1995 c.781 §32; 2005 c.274 §2; 2009 c.83 §3]

36.410 Stipulation for arbitration; conditions; relief. (1) In a civil action in a circuit court 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 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 \$50,000, exclusive of attorney fees, costs and disbursements and interest on judgment.

(2) If a civil action is referred to arbitration under this section, the arbitrator may grant any relief that could have been granted