

## Regulations concerning trial programme of legal mediation for land consolidation courts.

Laid down by the Norwegian Ministry of Agriculture and Food on 22 January 2007 pursuant to § 89b of the Norwegian Law no. 77 of 21 December 1971 regarding land consolidation, etc. (the Land Consolidation Act), cf. delegation resolution no. 530 of 12 May 2006.

### § 1. Scope

The trial programme concerning legal mediation pursuant to § 89b of the Norwegian Land Consolidation Act (jskl.) applies to all land consolidation courts.

The trial programme covers cases pursuant to § 88 and § 88a of the Land Consolidation Act, filed after 1 April 2007. If the parties agree to same, legal mediation on the basis of these provisions can also be applied to similar cases filed with the land consolidation courts prior to this date.

### § 2. *Decision to apply legal mediation*

As soon as all parties have been informed of the claim, or as soon as possible thereafter, the land consolidation judge preparing the case shall decide whether legal mediation is to be applied. Before any decision regarding legal mediation is made, the parties are to be given the opportunity to state their opinions. Wherever the land consolidation judge considers such appropriate, legal mediation may be applied without the parties having stated their opinions on the issue.

In making the decision as to whether to apply legal mediation in specific cases, emphasis is to be placed on factors including whether the parties agree to legal mediation, the likelihood of legal mediation leading to settlement, the extent to which legal mediation may simplify the matter – whether or not it leads to settlement – and whether the relative strengths of the parties and/or the costs involved make legal mediation a viable option.

The decision of the land consolidation court concerning legal mediation cannot be appealed.

### § 3. *Legal mediators*

Legal mediation is to be performed by the land consolidation judge preparing the case, one of the other judges at the land consolidation courts or another person with insight into legal mediation and/or the issues raised by the case. Only exceptionally can a legal mediator whom the parties do not accept be appointed. The decisions of the court pursuant to this provision cannot be appealed.

With the agreement of the parties, an assistant to the legal mediator may be appointed. This assistant is to have insight into legal mediation and/or the issues raised by the case.

The president of the land consolidation court can prepare lists of people outside the purvey of the court who may be qualified to serve as legal mediators.

### § 4. *Performance of legal mediation*

Legal mediation is performed outside court sessions. The legal mediator and/or the assistant decide the process of the legal mediation themselves, for example, they decide whether to hold mediation meetings with the parties separately or together.

The legal mediator takes minutes of the mediation meetings, and these are to state the name of the land consolidation court, the time and place of the mediation meeting, the case number, the names of the mediator/the assistant and of the parties

and the lawyers, whether the parties attended the proceedings in person and, if not, who is deputising for them. If witnesses or experts are heard, this shall also be noted in the minutes. The minutes shall briefly summarise the result of the mediation proceedings. The minutes are then to be stored as part of the case documents.

The legal mediator decides whether, and to what extent, evidence is to be presented during the proceedings. Evidence cannot be presented without the agreement of the parties, and of the person who is to present the evidence or provide an explanation.

The legal mediator, the parties and the lawyers are bound by a confidentiality obligation corresponding to § 284 of the Norwegian Dispute Act.

#### **§ 5. *The tasks of the legal mediator***

Through mediation, the legal mediator is to attempt to reconcile the parties. The legal mediator may make suggestions for solutions to the issue or parts of same. The legal mediator is to inform the land consolidation court of the results of the mediation process.

#### **§ 6. *Settlement***

If the parties reach agreement, the settlement can be agreed as a court settlement. A session of the court – led by the land consolidation judge – must be scheduled for the entry of the parties into the court settlement.

If the parties reach agreement, the settlement can be entered into as a legally binding resolution. The land consolidation court will take care of the further processing of legally binding resolutions pursuant to § 17a, sections 4 and 5 of the Land Consolidation Act (jskl.). If the parties agree, the settlement can also include a statement to the effect that the land consolidation court shall not mark, measure or map the boundaries laid down in the settlement.

Settlements reached through legal mediation are public. The land consolidation court shall make sure to report to the responsible cartographical authority with regard to boundaries, etc.

#### **§ 7. *Procedure should agreement not be reached***

If agreement is not reached during the legal mediation process, the land consolidation judge who acted as mediator can only participate in the future processing of the case, if said land consolidation judge consider it inappropriate to – and the parties do not wish to – change land consolidation judges.

#### **§ 8. *Remuneration of legal mediators, experts, witnesses, etc.***

A legal mediator or assistant, who is not a judge or civil servant at the land consolidation court, is to receive remuneration defined by the land consolidation court. Unless the land consolidation court, the legal mediator and the parties have agreed on a different remuneration, the remuneration shall be set according to the rates for free pleading of legal cases, cf. Regulations no. 1441 of 3 December 1997 regarding public sector salaries for attorneys, etc.

Remuneration for experts, if any, is to be set according to the rates for free pleading of legal cases, cf. Regulations no. 1441 of 3 December 1997 regarding public sector salaries for attorneys, etc. and remuneration for witnesses, etc. is to be set according to Act no. 2 of 21 July 1916 concerning remuneration of witnesses.

**§ 9. *Advance on and division of expenses for legal mediation***

Each party is to pay an equal share of any expenses incurred in connection with the legal mediation proceedings. If the parties reach agreement during the legal mediation proceedings, a different division may be agreed. The parties may agree that the court can decide the division of expenses on the basis of the result of the mediation process. The decision of the court in this regard cannot be appealed.

If the parties reach agreement, each of the parties shall pay its own case costs in the absence of any arrangement to the contrary. The parties can agree to allow the court to decide the division of costs, cf. § 175, Article 4 of the Norwegian Dispute Act.

If settlement is not achieved during the legal mediation proceedings, the case costs linked to the legal mediation proceedings are to be added to the total costs of the case and divided pursuant to the provisions of Chapter 8 of the Norwegian Land Consolidation Act.

Once legal mediation has been decided upon, the party who filed the case is to pay an advance on the costs for the legal mediation proceedings. If this advance is not paid within a deadline set by the court, the claim can be dismissed, cf. § 170 of the Norwegian Dispute Act.

**§ 10. *Reporting***

The Norwegian Ministry of Agriculture and Food defines how the land consolidation courts are to report.

**§ 11. *Entry into effect, etc.***

The present regulations shall come into effect on 1 April 2007 and remain in force until 31 March 2012.