

SACRAMENTO ASSOCIATION OF REALTORS®

DISPUTE RESOLUTION SERVICE

SAR DISPUTE RESOLUTION SERVICE

This service has been formed essentially for the use of our members and their clients to provide a forum for efficient, low cost, and fast resolution of disputes. Our mediators are trained in mediation and communication techniques, and have a wide variety of professional backgrounds and interests as relating to real estate matters: THEY SHARE A COMMITMENT TO SERVING THE SACRAMENTO ASSOCIATION OF REALTORS® THROUGH THE MEDIATION PROCESS.

WHAT IS MEDIATION?

Mediation is a means of resolving disputes through peaceful communication. It is an alternative to adversarial, expensive, and time-consuming litigation through the courts. It is non-adversarial, confidential, informal, inexpensive, and is now widely recognized as the forum of choice for the resolution of conflicts and misunderstandings.

WHEN IS MEDIATION APPROPRIATE?

Mediation may be initiated at any time by agreement between the parties. Sometimes mediation is required and other times it simply may be a useful tool used by the parties to efficiently, swiftly and affordably resolve a dispute. Section 22A of the C.A.R. Residential Purchase Agreement requires "The Parties agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action..." In addition, mandatory mediation clauses are frequently contained in other real estate related agreements.

THE ROLE OF MEDIATORS

Mediators are professionally trained and are impartial third parties who provide their services with the dedicated belief in the power of mediation and collaborative negotiation. Mediators do not serve as judge or jury, do not seek to determine who is in the right, or place blame. *Mediators do not impose a decision* on either party like a judge or an arbitrator: Their only interest is in helping you to resolve differences and reach a *mutually agreeable solution*.

Mediators do not give legal or professional advice. Rather they facilitate communications by helping disputants describe their feelings, clarify issues, determine their true interests, identify underlying concerns and where possible, reach agreement.

THE MEDIATION PROCESS

The mediation process begins by welcoming and introducing all participants followed by an opening statement from the mediator. Initially, each disputant will be given an uninterrupted opportunity to define the conflict/problem as they see it and express their feelings about it to the mediator. Each person will be given time to describe the conflict from their perspective while the mediator and the other party listens. The mediator may ask clarifying questions from time to time.

The process demands a high degree of mutual respect and honesty - and no foul or threatening language, gestures, or actions will be permitted. Flexibility and respectful communication is key to the mediation process and parties must honestly express their needs and truly listen to what others have to say. If parties focus on blaming or revenge it merely promotes similar responses, lessening the chances of resolution.

Once the mediator has a clear understanding of the problem, the mediator will ask questions designed to ensure that each party fully comprehends the conflict from the perspective of the other disputant, and the issues and interests involved. In this way, a great deal of important information invariably comes to light which may not have been known or understood by the other party: *OFTEN THE FIRST MAJOR STEP TOWARD RESOLVING THE CONFLICT!*

At this point in the process, the mediator will help the parties understand that to solve a conflict each must be willing to acknowledge any new understanding they have about the dispute and the other person's situation. From time to time, the mediator may ask for a private meeting with one party at a time in order to get a clear idea of their refined interests, goals, and proposals as to the final outcome of the mediation.

In the final stages of the mediation, potential resolutions are explored.

AGREEMENTS

A settlement or resolution reached between the parties as a result of the mediation may be oral or written at the discretion of the disputants.

A written agreement may be considered binding in the same way as a *written contract* is binding in the courts. This requires that the agreement must be in writing and signed by the parties. It must also contain a clear statement that: 1) each party wants the agreement to be binding, 2) each party understands the agreement is admissible in court should enforcement be necessary. Binding agreements in civil matters do not imply other means of enforcement such as intervention by police or sheriff's officers.

At the request of the parties, the mediator will assist in writing the agreement, using the parties' own words, and their mutually agreed upon terms. *The mediator has no intent or role in influencing the content of any agreement arrived at by the parties. The mediator's only interest is to facilitate communication that is satisfactory to each side of the dispute.*

SAR DOES NOT MONITOR OR ENFORCE AGREEMENTS RESULTING FROM MEDIATION.

CONFIDENTIALITY

Except as otherwise provided by the California Evidence Code or California law, all communications, negotiations, or settlement discussions in the course of a mediation or mediation consultation are confidential and are not admissible or subject to discovery. For mediation to be successful, the parties must feel free to discuss the issues openly with the assurance that their presentations will be held confidential by law. Accordingly, the parties will be required to sign a confidentiality agreement, *before the mediation session can proceed*, to signify intent to comply with the rules of confidentiality.

It is important to note that if a written agreement is reached, both parties should recognize that the resolution itself is not confidential and may be enforceable by law in the courts.

For SAR Use Only

Case No: _____

Received: _____

REQUEST TO INITIATE MEDIATION

Sacramento Association of REALTORS® Dispute Resolution Service

Date of Request: _____

Please include a check or credit card authorization payable to SAR for \$600 with your request to initiate mediation.

Minimum Mediation Fee: \$600 per party (includes \$65 non-refundable administrative fee).

Administrative fee will only be refunded if the mediation request is withdrawn in writing prior to scheduling mediation conference.

Fee Explanation: Fees are \$300 per hour for the mediator's services, with a \$600 minimum per party for two hours of mediation. Time exceeding the two-hour minimum, will be billed at \$300 per hour, per party. All costs/fees, as assigned by the mediator, are due and payable at the conclusion of the mediation conference.

1. PARTY REQUESTING MEDIATION:

Name: _____

Address: _____
(including City and Zip Code)

Phone: _____ Email: _____

Buyer Seller Name of requesting party's REALTOR®: _____

Preferred Contact: Phone Email Other _____

2. NAMES OF ADDITIONAL PARTIES TO THE DISPUTE:

(We must have an address to process the request.)

Name: _____

Address: _____
(including City and Zip Code)

Phone: _____ Fax: _____

Buyer Seller Broker

Name of party's REALTOR®: _____

Names of Additional Parties to Dispute continued:

Name: _____

Address: _____
(including City and Zip Code)

Phone: _____ Fax: _____

Buyer Seller Broker Salesperson Builder/Contractor Other _____

Name: _____

Address: _____
(including City and Zip Code)

Phone: _____ Fax: _____

Buyer Seller Broker Salesperson Builder/Contractor Other _____

Name: _____

Address: _____
(including City and Zip Code)

Phone: _____ Fax: _____

Buyer Seller Broker Salesperson Builder/Contractor Other _____

Name: _____

Address: _____
(including City and Zip Code)

Phone: _____ Fax: _____

Buyer Seller Broker Salesperson Builder/Contractor Other _____

3. BRIEF DESCRIPTION OF CLAIM:

(Please be aware that a copy of this request will be forwarded to the other party.)

4. AMOUNT OF MONEY INVOLVED: _____

5. DATE and TIME OF MEDIATION CONFERENCE:

Please list ANY dates and times within sixty (60) days of your filing this request that you ARE NOT available for a mediation conference. (Please remember that the object of mediation is to resolve the conflict as soon as possible, thus the reason for a short time frame of date selections.)

6. ATTACH COPY OF THE FOLLOWING:

- a. A fully executed copy of the Residential Purchase Agreement (C.A.R. RPA), Residential Listing Agreement (C.A.R. RLA), or any other agreement that indicates mediation as required in the agreement or contract.

Signature

Signature

Date

Date

Please mail this form with \$600 to:
Sacramento Association of REALTORS®
Attn: Lyndsey Harank, Professional Standards Manager
2003 Howe Avenue
Sacramento, CA. 95825

Sacramento Association of REALTORS®

Credit Card Payment Authorization

Name on card _____

Credit Card No. _____

Exp. Date _____ Billing Zip Code _____ 3-or-4 digit
Security Code _____

Amount to charge \$ _____

Authorized signature _____

This document will be destroyed after processing