



DISPUTE RESOLUTION MEDIATION PROGRAM

INTRODUCTION

Although a majority of real estate transactions close without incident, there is a possibility that a problem or dispute will occur. When a dispute does arise, it is usually successfully resolved through normal channels of communication and negotiation. Your broker or sales agent can be instrumental in resolving conflicts and disputes. Talk to your broker or sales agent before you initiate mediation proceedings. Talk to your attorney. Your attorney will be able to provide you with advice and counsel – and may be able to help you resolve the dispute without having to proceed to mediation. Occasionally, a dispute arises which cannot be resolved through negotiation. In the past, when negotiations failed, parties took their case to court. Today, they are taking their disputes to mediation.

WHAT IS MEDIATION

Mediation is a process in which disputing parties attempt to resolve their disagreements with the help of an impartial, trained third party -- the mediator. The mediator does not offer opinions, pass judgment, or render legally binding decisions. The mediator's only function is to help parties identify their differences and reach agreement on how to resolve them.

When the disputing parties have reached and agreed on a mutually acceptable solution, they sign a written agreement which outlines the terms of the settlement. Once the agreement is signed, parties are legally bound to abide by its terms. If the parties cannot reach a mutually agreeable settlement, they are free to arbitrate or litigate their dispute as if the mediation never took place.

In addition to being easier, faster, and less expensive than litigation, mediation is non-adversarial. Decisions rendered by an arbitrator or judge usually involve a winning party and a losing party. In mediation, there are no losing parties because the parties have been part of the process and together have agreed on the terms of the settlement.

ACCESS TO SERVICE

DRS mediation can be used by any of the parties to a real estate transaction -- sellers, buyers, brokers, builders, home inspectors, etc. With the exception of controversies that are subject to hearing under REALTOR® Professional Standards procedures.

WRITTEN AGREEMENT TO MEDIATE

Parties who pre-commit to submit potential disputes to mediation sign either a sales or listing contract that contains a mediation clause (usually paragraph 21 in the Exclusive Right to Sell Listing Agreement SC Form #220 or paragraph 23 in SC Form 310 Agreement to Buy and Sell) or an addendum that is attached to the contract. The clause states, in part, that parties agree to submit any dispute or claim that arises from the transaction to mediation under the DRS Procedures. Once the contract or addendum is signed by the parties, parties must submit their disputes to mediation. Parties who do not pre-commit to mediation when the sales contract is executed may also agree to and submit disputes to mediation by signing a written Agreement to Mediate. Parties can sign this agreement either before or after a dispute arises.

INITIATING MEDIATION

Any party can invoke DRS mediation by submitting a written request to the DRS mediation provider by submitting the Request to Mediate form along with your written statement summarizing the claim and any pertinent documentation to the Charleston Trident Association of REALTORS®.

MEDIATORS

DRS mediators are experienced, qualified mediators who have agreed to participate in the program. Parties in a mediation select and agree on a mediator in advance of the mediation conference. The mediation provider arranges, schedules, and conducts the mediation conference. The typical conference lasts between two to four hours.

FEES

Fees for DRS mediation services are established by the mediation provider.

FACTS ABOUT MEDIATION

- Mediation is **FASTER** than litigation. A lawsuit can take anywhere from several months to several years to be decided. As a rule, mediation takes about thirty days from beginning to end.
- Mediation is **LESS EXPENSIVE** than litigation. Mediation fees range from \$50 to \$1,500. In some areas mediation services are free. Because parties typically split fees, no one pays an excessive amount.
- Mediation is **NON-ADVERSARIAL**. Arbitration and litigation focus on disagreements between the parties and result in win-lose decisions imposed by the arbitrator or judge. Mediation, on the other hand, focuses on agreement between the parties and results in a win-win settlement reached and agreed on by the parties themselves.
- Parties who agree to mediate **RETAIN THE RIGHT TO PURSUE OTHER LEGAL REMEDIES**. If parties cannot reach a mutually acceptable settlement during the mediation conference, they are free to arbitrate or litigate their dispute as if mediation never took place.
- In Mediation the **PARTIES ACTIVELY PARTICIPATE** in the process.
- In Mediation, the **PARTIES CONTROL THE OUTCOME**.
- Statistics show that **MEDIATION IS SUCCESSFUL** 80%-90% of the time.

APPROVED DISPUTE RESOLUTION MEDIATORS

Lee J. Bell Attorney at Law \$100/hr. 843 -749-0948 843 -471-1239	Certified mediator and arbitrator, retired lawyer, former REALTOR®, Peer review recognitions with Super Lawyers and Best Lawyers in America; AV pre-eminent rating with Martindale Hubbell	145 Pier View St. Condo 302 Daniel Island, SC 29492 lee@leejbelllaw.com
O. Grady Query Attorney at Law \$200/hr. plus travel 843-795-9500 fax 843-762-1500	Attorney, has been a municipal judge, certified mediator and arbitrator.	147 Wappoo Creek Dr. Charleston, SC 29412 tobrien@qlawsc.com
Judy Wolk Attorney at Law \$ 100 /hr. 843-737-0173 (p) 843-696-8403 (c)	Attorney, certified mediator and arbitrator, affiliate member and former Education Director of the Charleston Trident Association of REALTORS,	21 A Gamecock Ave Charleston, SC 29407 judy@judywolklaw.com

MEDIATION PROCEDURES

1. Agreement of Parties

These procedures shall apply when the parties have agreed in writing to mediation under the

Homesellers/Homebuyers DRS program. By mutual written agreement of all parties to a dispute, any specific provision of these procedures may be modified.

2. Initiation of Mediation

Any party may initiate mediation by completing, signing and sending a Request to Initiate Mediation DRS Transmittal Form to the Association of REALTORS® and to all other parties. A request for Mediation must include the following information, to the extent known or readily available:

- a. A fully executed true copy of the agreement containing the mediation clause or a copy of such other written agreement invoking mediation under the program or a written request by any party seeking to have the mediation vendor attempt to persuade one or more of the others to submit an existing dispute or claim to mediation under the program.
- b. The names, addresses, email addresses and telephone numbers of all
- c. Nature of the claim and amount in dispute (brief statement of the facts that give rise to the claim, the damages or relief sought);

3. Selection of Mediator

Select a Mediator from the list provided. The Association will contact the Mediator. No person shall serve as a mediator in any dispute if that person has any financial or personal interest in the results of the mediation unless, after full disclosure, the parties have given their written consent.

4. Notice of Mediation Conferences

Within ten days of his appointment, the mediator and the parties shall set the date, time and place of the mediation conference. The mediator will use reasonable efforts to set a date, time and location acceptable to all parties.

5. Conduct of Mediation Conferences

At the mediation conference, the parties will be expected to produce all information reasonably necessary for the mediator to understand the issue presented. Such information will usually include relevant written materials and a description of any witnesses and what each could testify to. For more complex cases, the mediator may ask the parties for written materials or information in advance of the mediation conference. At the mediation conference, the mediator will conduct an orderly settlement negotiation. Parties at the mediation conference must have authority to enter into and sign a binding written agreement settling the dispute. The mediator will be impartial in such proceedings and has no authority to compel the parties to agree to a proposed settlement.

6. Representation by Counsel

Participation by legal counsel is generally discouraged. However, parties may be represented at the conference by counsel. Any party who intends to be represented by counsel must notify the mediator and all other parties that they will be represented by counsel at least ten days in advance of the conference.

7. Confidentiality

No aspect of the mediation shall be relied upon or introduced as evidence in any arbitration, judicial or other proceeding, including but not limited to:

- a. Views expressed or suggestions made by a party with respect to a possible settlement of the dispute;
- b. Admissions made in the course of the mediation;
- c. Proposals made or views expressed by the mediator or the response of any party thereto. No privilege shall be affected by disclosures made in the course of mediation.

Disclosure of any records, reports, or other documents received or prepared by the mediator cannot be compelled. The mediator cannot be compelled to disclose or to testify in any proceeding as to information disclosed or representations made in the course of the mediation or communication to the mediator in confidence.

8. Mediated Settlement

The mediated settlement must be reduced to writing by the parties or the mediator, then dated and signed at the mediation conference by all parties agreeing to its terms, either at the mediation conference or no later than ten days after the conclusion of the mediation conference.

9. Judicial Proceedings and Immunity

Neither the mediator nor the Association shall be deemed “necessary parties” in any judicial proceedings relating to mediation under this program. Neither the mediator nor the Association shall be liable to any party for any act, error or omission in connection with any service rendered under this program.

10. Mediation Fees

Mediation fees shall be in accordance with the published fee schedule. In most cases, parties split mediation fees equally. However, parties may negotiate different arrangements.

11. Timing of Claims

The time limitation by which the parties must bring claims pursuant to this program may be governed by state law. Legal counsel should be consulted regarding applicable filing deadlines.

12. NAR’s Model of Mediation

Except for any conflict with any requirement of this program, mediation proceedings should be guided by NAR’s Model of Mediation (available on the Law and Policy site on Realtor.org.)

13. NAR Mediator/Mediation Resources

The materials in this Guide are supplemented by the information, materials and resources available on the Law and Policy site on Realtor.org.

TO INITIATE DISPUTE RESOLUTION MEDIATION

Submit the request form provided along with your written statement and any pertinent documentation to the Charleston Trident Association of Realtors®.



Request to Initiate Mediation

To be completed and sent by party requesting mediation to the Association

Names of All Parties to the Dispute

Party Requesting Mediation

Name(s) _____

Address _____

Phone _____ Email _____

Buyer () Seller () Other ()

Other Party

Name(s) _____

Address _____

Phone _____ Email _____

Buyer () Seller () Other ()

Brief Summary of Claim (attach detailed written statement and any pertinent documentation):

AMOUNT OF MONEY INVOLVED _____

Have there been any formal COURT PLEADINGS filed in this case? () Yes () No

Do you have AUTHORITY to enter into and sign a binding agreement to settle this dispute () Yes () No

Has a PRIOR AGREEMENT TO MEDIATE been signed by the parties? () Yes-attach copy () No

NAME OF MEDIATOR you wish to use (from list provided) _____

Signature of person(s) requesting mediation _____ Date _____