

## 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. 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, the 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.

## HOME SELLERS/HOME BUYERS DISPUTE RESOLUTION SYSTEM MEDIATION

## 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 REALTORV Professional Standards procedures, including disputes between REALTORS, almost any type of dispute that arises from the transaction can be mediated under the DRS Rules and Procedures.

## Rules and Procedures

How, when and by whom mediation is initiated and conducted is covered under the DRS Rules and Procedures. The Rules and Procedures ensure fairness, uniformity and expediency.

## Written Agreement to Mediate

Parties who decide to submit potential disputes to mediation sign either a sales contract that contains a mediation clause or an addendum that is attached to the sales 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 Rules and 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 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. The mediation Provider arranges, schedules and conducts the mediation conference. The mediation conference must be held within 60 days from the date on which the mediation provider receives a

party's request to initiate mediation. Usually the conference is scheduled within 30 days. The typical conference lasts between two and four hours.

## Mediators

DRS mediators are experience 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.

## Role of Attorney

Although parties to the mediation have the right to be represented by counsel, attorneys do not have to participate in the mediation conference. Parties should consult an attorney if they have questions or concerns about mediation or the DRS mediation service.

## FEES

The buyer and seller involved in a dispute shall pay a fee for mediation services according to the dollar value of the issues in controversy. For controversies of \$6500 or less, the parties will be provided with a small claims mediator and pay the fee of \$85.00 each upon entering the mediation session. Claims that exceed \$6500 will be mediated by a lawyer-mediator for a fee of \$185/party. This retains the mediator for two and one-half hours. A additional \$50.00/party fee will apply for each additional hour beyond the initial two and one-half. The fee will be paid upon entering the session. If a particular case is not settled in a reasonable about of time, either party or the mediator may disband the session, and may do so without prejudice to either party. All monies will be paid directly to the mediator or the Program Administrator.

IN COOPERATION WITH THE DISTRICT COURT  
MEDIATION PROGRAM

A service of the Polk County Bar Association

District Court Mediation Program

Polk County Justice Center

222 5<sup>th</sup> Ave.

Des Moines, Iowa 50309

[districtcourtmediation@pcbaonline.org](mailto:districtcourtmediation@pcbaonline.org)

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 \$85 to \$300 per side. 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.

Statistics show that MEDIATION IS SUCCESSFUL 80% of the time.

HOME SELLERS/HOME BUYERS DISPUTE  
RESOLUTION SYSTEM

HOME SELLERS/HOME BUYERS DISPUTE  
RESOLUTION SYSTEM