

Process Overview

Pre-mediation Preparation

- Ten days prior to session, parties receive a letter explaining the mediation process and logistical issues.
- Parties agree to mediate.
- Mediator is selected/appointed by random rotation, mutual request, or objection to a proposed mediator.
- Arrangements are made via letter or telephone.
 - Pre-mediation concerns are addressed.
 - Date and time typically scheduled at the convenience of the parties after a request for arbitration or mediation is received or following the grievance committee's determination of arbitrability.
- Witnesses and/or attorneys may attend, but this is not necessary because the process is non adversarial; there are no "findings of facts."
- Information is exchanged.
 - Parties need not prepare exhibits or extensive documentation. If a document will clarify an issue it may be used, but parties are reminded that mediation is not a fact-finding conference.

Mediation Conference

1. Mediator's opening statement/questions

Explain process and rules/goals, including the mediator's and parties' roles, voluntariness, neutrality, and confidentiality.

2. Parties' initial statements/questions

- Understanding perspectives
- Venting

3. Identification of issues

4. Create agenda

5. Cross-talk

Parties respond to each other and explain/explore information, needs, ideas and feelings.

6. Caucus (private meeting)

Mediator may meet privately with the parties to clarify needs and explore options for resolution and proposals.

7. Building an agreement

With the mediator's assistance, parties explore and refine workable solutions.

8. Conclusion

Agreement is reached/signed before leaving mediation or all agree that no further progress can be made, in which case parties are free to pursue arbitration.



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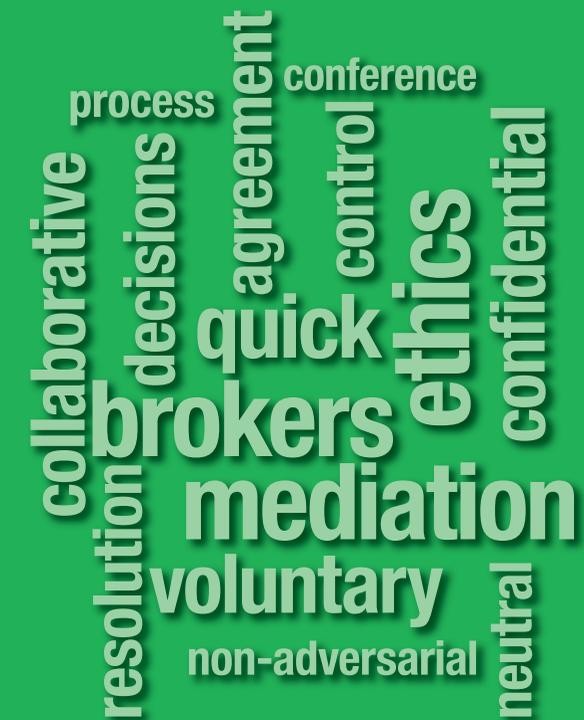
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Code of Ethics

NATIONAL ASSOCIATION OF REALTORS®

Mediation

The Winning Solution
for Brokers



Even REALTORS® who are committed to high standards of conduct occasionally have honest business disputes with other professionals, clients, or customers. There is an ongoing need for efficient and economical mechanisms to resolve such disputes. Arbitration is valuable, but mediation is simpler and easier.

What is Mediation?

“The act or process of mediating; intervention between conflicting parties to promote reconciliation, settlement, or compromise.”

–Webster’s Ninth New Collegiate Dictionary

- Arbitration and mediation are valuable in resolving business disputes.
- Both mediation and arbitration are private and neutral/with expertise.

But . . .

- Mediation is an attractive alternative to arbitration.

Why Use Mediation?

Mediation	Arbitration
Low or no cost	Moderate cost
Quick	More time consuming
Win/win outcome	Win/lose outcome
Collaborative	Adversarial
Maximum range of solutions	Result limited to monetary award
Improves relationships	May damage relationships
Parties control outcome	Arbitrators control outcome

Key Features

Voluntary*/Private Process

- Parties decide to enter the mediation process.
- Parties can leave the mediation process at any time.
- Parties have complete control over the outcome.

Neutral/Impartial Mediator

- Understands issues quickly because typically, the facilitator is familiar with real estate practices and customs.
- Mediates only matters in which he/she remains neutral and impartial.
- Discloses conflicts of interest (parties may agree to continue following disclosure or terminate session).
- Facilitates and assists with negotiations – controls the process, not the substance.
- Honors the concepts of self-determination, respect, and civility.
- Enhances the parties’ abilities to understand their own and each other’s needs.
- Helps parties understand the alternatives to settling.
- Should possess these qualities, according to William Simkin in *Settling Disputes*:
 - wisdom of Solomon
 - the hide of a rhinoceros
 - the patience of Job
 - abilities of a half-back
 - wit of the Irish

*Voluntary unless mandated by the association

Confidential Process

- Mediation is a confidential settlement process.
- Neither the mediator nor the parties disclose the communications or conduct of the mediation, unless all parties agree (with limited exceptions, such as risk of harm).
- Ethical violations discovered as a result of participation in the mediation are not reported.
- Settlements discussed in mediation are not admissible in arbitration.
- Generally a mediator is not a witness in arbitration or court.
- Information gathered and exchanged may be used in arbitration only to the extent that it was obtained independently from the mediation process.

Why Mediation Works

- Most disputes are successfully resolved
- High speed
- Low or no cost
- Flexible
- Maintains/improves relationships
- Improves poor communication/clarifies misunderstandings because parties come together and talk
- Discovers/addresses the true interests of parties
- Moves beyond different views of law/fact
- Allows creative solutions beyond win/lose
- Mediated resolution is just as binding and enforceable as an arbitration award

When It Will Not Work

- When a precedent is necessary
- When there is no relationship and it is cheaper to contest the claim
- When vindication/punishment remains the main objective
- When the “jackpot syndrome” is involved (maximize/minimize recovery)

“Mediation is user friendly. It takes a potential conflict, turns it around and saves relationships.” –Larry Apple

“Mediation is the ONLY win/win solution in dispute resolution.” –Mike Wasmann

“Mediation lets participants accept responsibility for the outcome of their disputes, as opposed to relinquishing that authority to a third party.” –C. Hilea Walker

“Mediation is the best alternative because you have more control over the results, a better chance to communicate your story, and it strengthens REALTOR® relationships through mutual gain and satisfaction.” –Patrick Reilly

Mediation can save time and money and can be quicker, easier, and more amicable for resolving business disputes than arbitration.

Agreement to Mediate

The undersigned agree that they are involved in a contractual dispute defined by Article 17 of the Code or in a specific non-contractual dispute as outlined in Standard of Practice 17-4.

The undersigned agree to submit this dispute to mediation in accordance with the mediation guidelines, as set forth in the *Code of Ethics and Arbitration Manual* of the Incline Village Board of REALTORS®.

Any Agreement signed by the parties, pursuant to the mediation conference, shall be binding.

As a party to the mediation process I understand and agree as follows:

Parties to mediation may withdraw from the process at any point prior to reaching an agreement. Parties to mediation that do not reach an agreement shall be free to pursue arbitration of the dispute in accordance with the guidelines set forth in the *Code of Ethics and Arbitration Manual* of the National Association of REALTORS®. The parties acknowledge that the mediator is not providing legal representation, legal advice, or legal services, and that the parties are advised of their right to be represented by counsel at the mediation and also of their right to obtain independent legal advice (if counsel are not at the mediation) before signing any final settlement agreement.

Any offers of settlement that were not accepted or any suggested resolution proposed by the Mediation Officer that was not accepted will not be introduced as evidence nor considered in any manner should the matter require arbitration by the Board's Professional Standards Committee. However, if the parties agree to a settlement of the dispute, and the settlement is reduced to writing and has been signed by all of the parties, the matter shall be considered resolved, and shall not be the subject of a subsequent arbitration hearing. In the event that either of the parties fails to abide by the terms of the settlement, the matter may not be arbitrated; instead, the other party should be encouraged to have the settlement agreement judicially enforced by a court of competent jurisdiction.

No aspect of this mediation conference shall be relied upon or introduced as evidence in any ethics, arbitration, judicial, or other proceeding, including, but not limited to: views expressed or suggestions made by a party with respect to a possible settlement of the dispute; admissions made in the course of the mediation; 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 Board or Mediation Officer shall not be compelled. Neither the Board nor the Mediation Officer shall 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. Neither the Mediation Officer, the Incline Village Board of REALTORS®, the Nevada Association of REALTORS® nor the National Association of REALTORS® or any of its Member Boards shall be deemed "necessary parties" in any judicial proceedings relating to mediation under this Agreement. The parties acknowledge that the mediation proceedings will not be recorded and that weapons of any type are prohibited.

Are the circumstances giving rise to this request for Mediation the subject of civil or criminal litigation or in any proceeding before the state real estate licensing authority or any other state or federal regulatory or administrative agency? _____ Yes _____ No

By my signature on this Agreement to Mediate, I acknowledge my rights and agree to the terms of the mediation procedures as stated above. I hereby affirm that I have the authority to enter into and sign a binding written agreement to settle this dispute.

Complainants:

Respondents:

Type/Print Name	

Signature	Date

Address	

Type/Print Name	

Signature	Date

Address	

Type/Print Name	

Signature	Date

Address	

Type/Print Name	

Signature	Date

Address	



Mediation Procedures

(1) Arbitration request received by the Board*

(2) Association Executive will advise parties of their mediation obligations and options to participate in mediation prior to review of the arbitration request by the Grievance Committee.

Send to complainant:

Request for Mediation form — *Boards may prefer to complete this step by telephone rather than mail*

Agreement to Mediate form

(Set time frame for completed and signed forms to be returned to the Board)

(3) Upon receipt of completed forms from complainant, **send to respondent:**

Notice of Request for Mediation form with attached copy of complainant's completed Request for

Mediation form — *Boards may prefer to complete this step by telephone rather than mail*

Agreement to Mediate form

Mediation Officer Selection form (should be sent to both complainant and respondent)

(Set time frame for completed and signed forms to be returned to the Board)

(4) Upon receipt of all completed forms, the Board may assign any Mediator not challenged to serve as the Mediation Officer.

Send to both complainant and respondent:

Notice of Selection of Mediation Officer form

(5) The Mediation Officer should contact the complainant and respondent directly to set an acceptable time and location for the mediation conference.

Send to both complainant and respondent:

Mediation Officer form letter confirming date, time, and location of conference.

(Adequate prior notice should be given parties for scheduling mediation conference—ten [10] days suggested)

a. If the mediation conference successfully resolves the dispute:

Original signed Mediation Resolution Agreement (Form #A-17) should be forwarded to the Board by the Mediation Officer.

The Resolution Agreement should be kept in the file with all pertinent records pertaining to that case.

Both the complainant and respondent should receive a copy of the Resolution Agreement.

b. If the mediation conference does not successfully resolve the dispute:

If the parties are unable to resolve their dispute, the Mediation Officer may make the determination that the parties have reached an impasse, and may recommend an equitable solution. The recommendation for resolution can be oral or in writing, and may be provided to both parties at the conclusion of the mediation procedure. (Set time frame for response from parties not to exceed forty-eight [48] hours)

C. Any party who does not respond to the Mediation Officer within seventy-two (72) hours will be considered to have rejected the suggested solution.

Mediation Officer should advise the Board that the mediation conference has been terminated without resolution of the dispute.

Mediation Officer will send Termination of Mediation Conference form to Board.

Request for Arbitration will be forwarded to the Board's Grievance Committee for review.

**Boards may also offer disputing parties an opportunity to mediate prior to an arbitration request being filed.*

(Amended 11/12)