

Interested in saving time and money?

MEDIATION – the winning solution

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.

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

WHY USE MEDIATION?

Mediation		Arbitration
Low or no cost		Moderate cost
Little delay		Moderate delay
Win/Win outcome		Win/lose/split
Collaborative		Adversarial
Maximum range of solutions		Result limited to monetary award
Improves relationships		May damage relationships

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.

*Mediation is the **ONLY** win/win solution in dispute resolution* – Mike Wasmann

- 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

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 arbitrations.
- A mediator cannot be a witness in arbitration or court (cannot be subpoenaed).
- Information gathered and exchanged may be used in arbitration only to the extent that it was obtained independently from the mediation process.

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

WHY MEDIATION WORKS

- Most disputes are successfully resolved
- High speed
- Low or no cost
- Flexible
- Maintains/improves relationships

- Improves poor communication/clarifies misunderstanding because parties come together and talk
- Discovers/addresses the true interest of parties
- Moves beyond different views of law/fact
- Allows creative solutions beyond win/lose
- Respect and civility are the ground rules
- Solution is just as binding and enforceable as arbitration

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 purely voluntary. No one has to use it but it can save time and money and can be quicker, easier, and more amicable for resolving business disputes than arbitration.

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. – Pat Reilly

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 within 30 days of the request for mediation or 30 days 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; does not invoke findings of fact.

- 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/rules/goals, including 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, 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.

Akron Area Board of REALTORS®
405 S. High Street/P.O. Box 1663, Akron, OH 44309

REQUEST FOR MEDIATION

In the case of: _____

I am requesting mediation with the above-named disputant. There is due, unpaid, and owing to me (or I retain) from the above-named person the sum of \$_____. My claim is predicated upon the statement attached, marked Exhibit I and incorporated by reference into this application. I have not, as of this date, requested arbitration of this dispute before this or any other Board/Association of REALTORS®.

Signature of REALTOR Principal/Authorized Designee

Date

Type/Print Name

Phone

Address

City

State

Zip

Akron Area Board of REALTORS®
405 S. High Street/P.O. Box 1663, Akron, OH 44309

AGREEMENT TO MEDIATE

The undersigned members of the Board agree that they are involved in a dispute arising out of their relationship as REALTORS®. The undersigned agrees to voluntarily submit this dispute to mediation in accordance with the mediation guidelines, as set forth in the *Code of Ethics and Arbitration Manual* of the Akron Area 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:

Participation in mediation procedures is voluntary. 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®. Parties to mediation may be accompanied by and represented at the conference by legal counsel.

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 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 Akron Area Board of REALTORS®, the Ohio 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 medication under this Agreement.

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.

I enclosed my check in the sum of \$100 for the mediation filing fee.

Complainants:

Type/Print Name

Signature

Date

Address

Type/Print Name

Signature

Date

Address

Respondents:

Type/Print Name

Signature

Date

Address

Type/Print Name

Signature

Date

Address