

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, 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.

HOMESELLERS/HOMEBUYERS DISPUTE RESOLUTION SYSTEM MEDIATION

- **Access to Service**

DRS mediation can be used by any of the parties to a real estate transaction—sellers, buyers, builders, home inspectors, etc. With the exception of controversies that are subject to hearing under REALTOR® 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 report 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 to four hours.

- **Mediators**

DRS mediators are experienced, qualified mediators, who have agreed to participate in the program.

- **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 any questions or concerns about mediation or the DRS mediation service.

- **Fees**

Fees for DRS mediation services are established by the mediation provider and are published in accordance with the DRS Rules and Procedures. The average range of fees for mediation is between \$200-\$400 per party.

The Kansas City Regional Association of REALTORS® endorses the Mediation Service of Missouri for the Homesellers/Homebuyers Dispute.

Mediation Services of Missouri
13910 Noland Ct., Suite B-1
Independence, MO 64055
Phone: 816-836-4141
Or Toll Free: 1-800-637-7511
E-Mail: elgene@aol.com

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.

Statistics show that **MEDIATION IS SUCCESSFUL** 80% - 90% of the time.

**HOMESELLERS/HOMEBUYERS
DISPUTE RESOLUTION SYSTEM**



Kansas City Regional
Association of REALTORS®

**Homesellers/Homebuyers
DISPUTE RESOLUTION
SYSTEM**

MEDIATION PROGRAM

A fast, easy, and
Inexpensive Alternative
to LITIGATION
