

Benefits of Mediation during Arbitration:

Although no party to an arbitrable matter can be required to submit to mediation and mediation cannot and is not intended to be a substitute for the arbitration procedures described in the *NAR Code of Ethics and Arbitration Manual*, mediation can be a useful tool in resolving the conflicts that arise involving Association members and their clients and customers. Mediation can resolve disputes, promote amicable resolutions, and reduce the number of cases requiring the more formal and complex arbitration procedures of the Association.

MEDIATION PROCEDURES:

The **South Metro Denver REALTOR® Association** offers mediation to the parties of an arbitrable dispute, after review by the Grievance Committee, in which the arbitration request has been forwarded to a formal hearing. **Prior** to a hearing date being scheduled, the Professional Standards Administrator or Mediation Officer will contact the parties to inquire if the respondent and complainant wish to mediate the dispute. If both parties wish to attempt mediation of the dispute, forms are sent to all parties to review the mediation procedures and process, in addition to setting a mutually accepted date for the mediation conference. If the mediation conference successfully resolves the dispute, the Mediation Resolution Agreement is only binding when signed by all parties. If the mediation conference does not successfully resolve the dispute, the Request for Arbitration will be forwarded to the Association's Professional Standards Committee for a hearing.

WHAT IS MEDIATION?

“The act of 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

Low or no cost
Little Delay
Win/win outcome
Collaborative
Maximum range of solutions
Improves Relationships

Arbitration

Moderate cost
Moderate delay
Win/lose/split
Adversarial
Results limited to monetary award
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.
- 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 alternatives to settling.

CONFIDENTIAL PROCESS

- Mediation is a confidential settlement process.
- Neither the mediator nor the parties disclose the communications or conduct or 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.
- A mediator cannot be a witness in an 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.

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 the 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 signed by the parties.

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).

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 and parties are given the opportunity to object to the proposed mediator.
- Arrangements are made via letter or telephone.
 - Pre-mediation concerns are addressed.
 - Date and time typically scheduled at 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 that 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 statements/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 then forwarded through the arbitration process.