

## 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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## Code of Ethics

NATIONAL ASSOCIATION OF REALTORS®

# Mediation

The Winning Solution  
for Brokers

collaborative  
resolution  
process  
decisions  
brokers  
quick  
agreement  
control  
ethics  
mediation  
voluntary  
non-adversarial  
neutral  
confidential



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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.