

Mediation - A Winning Alternative

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Despite the best efforts of well-intentioned REALTORS®, disagreements still occur. While less formal, faster, and less expensive than litigation, arbitration is now without cost in both time and money on the part of the parties. Substantial Board/Association human and financial resources are also consumed in providing this service to members. There is an alternative to arbitration, albeit one that is available only where all parties to dispute voluntarily agree to use it - mediation.

Mediation is a service provided by every Board/Association of REALTORS®. Unlike arbitration, in which the parties present their cases to a panel of arbitrators whose decision is final and binding, mediation brings the disputing parties together in an atmosphere conducive to dialogue and conciliation, encouraging them to work together to reach a mutually acceptable resolution. Experience has shown that 80% or more of the disputes that otherwise would be arbitrated can be resolved faster and more efficiently through mediation. This is a significant savings in time and expense for both the parties and for Boards and Associations. Mediation can also be a positive experience for those who participate because, rather than a "winner" and a "loser" being determined by a panel of arbitrators, in mediation the parties work together, guided by a mediator, to fashion their own solution. Mediation is frequently a "win-win" situation for everyone.

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, mediation can be a useful tool in resolving the conflicts that arise. Mediation can resolve disputes, promote amicable resolutions and reduce the number of cases requiring the more formal and complex arbitration procedures.

It must be understood by all parties that participation in mediation procedures is entirely voluntary. The parties are offered the opportunity and encouraged to participate in the mediation process in good faith and, further, encouraged to abide by the determination. The parties to mediation should be aware that they may withdraw from the process at any point prior to reaching an 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/Association Professional Standards Committee. However, if the parties agree to a settlement of the dispute and the settlement has been reduced to writing and has been signed by all of the parties, the matter is deemed resolved and cannot be the subject of a subsequent arbitration hearing. In the event either of the parties later fails to abide by the terms of the settlement, the matter may not be arbitrated; instead, the other party will be encouraged to have the settlement agreement judicially enforced by a court of competent jurisdiction.

If either of the parties rejects the proposed resolution, the mediation procedure will be deemed concluded and the matter will proceed to arbitration.

The fact that at times mediation does not produce the desired result does not diminish its value to REALTORS® and to Boards/Associations. There will be instances when REALTORS® mediate in good faith but, for one reason or another, are simply unable to reach a joint agreement or accept the solution proposed by the mediator. In such cases, the alternative is a decision imposed on the parties by a panel of arbitrators after an arbitration hearing. While this may be the only answer, a mutually-fashioned, mutually agreed upon solution to disagreements between REALTORS® is the preferred outcome.