

# **REALTOR®-SPONSORED MEDIATION PROGRAM**

## **Mediation: A Better Method for Resolving Disputes**

**Prepared by the**

**REALTORS® Association of New Mexico**

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### **WHAT IS MEDIATION?**

Mediation is a voluntary process in which one or more mediators who are skilled in negotiating assist disputing parties to reach an agreement. Mediators do not render a win/lose decision as a judge or an arbitrator. Rather, mediators help the disputants to arrive at a solution that all parties can accept.

In mediation, you retain control over the outcome of the dispute. You decide your own priorities, and on which items you may be willing to compromise in order to achieve your most important goals. The other disputants can do the same prioritizing; all parties can come out ahead. In arbitration or litigation, a third party will make the decision for you. Someone will win and someone will lose.

When the disputing parties have agreed on a solution, they sign a written agreement; then the parties are legally bound to abide by its terms.

#### **Do I Have to Mediate?**

If you have signed an agreement to mediate, you have agreed to make a good faith effort to resolve your dispute. If you and the other disputants cannot reach a mutually satisfactory agreement, however, you and they are free to use the other methods available to you, such as arbitration or litigation.

#### **What Disputes Can Be Mediated?**

Only matters determined arbitrable by the Grievance Committee or staff Professional Standards Secretary will be handled by the REALTOR®-Sponsored Mediation Program ("RSMP"). However, any dispute between buyers, sellers, inspectors, brokers, and other participants in a real estate or other transaction can be mediated by an independent mediator. Complaints under New Mexico Real Estate Commission regulations cannot be mediated, because it involves enforcement of rules by a third party (the Real Estate Commission).

#### **Who Pays?**

Under the RSMP, REALTOR® principals are eligible for free mediation services if the matter is determined arbitrable. For parties not eligible for the RSMP (see previous paragraph), the parties will normally split the cost of mediation, which includes an hourly rate set by the mediator, plus any agreed-upon out of pocket expenses. Generally, the cost is less than the cost of arbitration or litigation.

### **Who Are the Mediators?**

The RSMP mediators are REALTORS® who have completed various training programs which **provide instruction and hands-on practice.**

### **Do I Need An Attorney?**

Mediation does not require the assistance of an attorney, but mediators welcome the assistance of the parties' lawyers when needed to explain to the parties their legal rights and obligations, and the effect of any proposed agreement.

### **Is Mediation Confidential?**

Mediation sessions are private. Because successful mediation requires open communications, all written and oral communications will be treated as privileged. The parties will agree not to admit evidence of settlement discussions in court proceedings or to call the mediator as a witness. The mediator will not disclose anything discussed in mediation to anyone except the parties without their consent unless required to do so by law.

### **Where Can I Find Out More?**

You can call the REALTORS® Association of New Mexico at 800/224-2282 or your local board or association.

## **FACTS ABOUT MEDIATION**

Mediation is **faster** than litigation. A lawsuit can take anywhere from several months to several years to be decided. Mediation can be completed in a matter of days or weeks.

Mediation is **less expensive** than litigation. The REALTOR®-Sponsored Mediation Program is free to REALTOR® Principals. Other mediation fees range from \$35 to \$125 per hour.

Mediation is **non-adversarial**. Arbitration and litigation focus on disagreements and result in win-lose situations imposed by the arbitrator, judge or jury. Mediation focuses on the areas of agreement between the parties and results in a win-win settlement agreed on by the parties themselves. Mediation is ideal for parties who will have a continuing relationship, because it focuses on how to get along in the future, not the mistakes of the past.

Parties who agree to mediate **retain the right to pursue other legal remedies**. If the parties cannot reach an agreement, they are free to arbitrate or litigate their dispute as if their mediation never took place.

**Mediation can work!** Because mediators have special training in resolving conflicts, breaking impasses, and developing alternatives the parties might not have been able to create, a mediator can help parties to come to a creative resolution of a problem.

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