



Mediation Services Instructions

The New Mexico Association of REALTORS® (NMAR) offers mediation services as a confidential, timely, and relatively inexpensive means of facilitating communications between disputing parties to promote reconciliation, settlement, and/or agreement. For disputes between REALTOR® members and for disputes related to unethical conduct, mediation is offered at no cost. For disputes involving members of the public or a member of the public and a REALTOR® member, mediation is offered at \$250 per party. Checks should be made payable to the New Mexico Association of REALTORS®.

The NMAR Purchase Agreement forms state:

Mediation. If a dispute arises between the parties relating to this Agreement, the parties shall submit the dispute to mediation, jointly appoint a mediator and share equally the costs of the mediation. If a mediator cannot be agreed upon or mediation is unsuccessful, the parties may enforce their rights and obligations under this Agreement in any manner provided by New Mexico law.

In earnest money disputes, if the parties do not agree to submit the dispute to some form of mediation, the title company may be forced to pursue an interpleader process with the courts to get a determination on the distribution of the earnest funds. Different title companies engage the interpleader process in different ways; however, the title company typically engages an attorney and files a lawsuit naming the buyer and seller as the defendants. If one of the parties is out of the area, the case gets submitted to District Court and may be sent to mandatory arbitration. In their lawsuit, the title company typically requests reimbursement of filing fees, serving costs, and attorney and other legal expenses required to resolve the matter. After a determination by the court, the prevailing party could request similar reimbursement of costs that were incurred in resolving the dispute. The non-prevailing party would likely be determined by the judge to be responsible for all court and legal expenses.

The parties are encouraged to mediate these disputes so that they can be involved in determining a fair resolution of these matters. Mediation is easy to schedule, and mediation resolution agreements are binding and enforceable through the Courts, if necessary. The parties are encouraged to engage their REALTORS® and/or to call the Professional Standard Administrator at 505.724.3466 or ombuds@nmrealtor.com to discuss the process and/or other options for resolving a dispute.

If the parties agree to submit a dispute to mediation, they can complete the Request for Mediation (Form M-1) and the Agreement to Mediate (Form M-2) and return the forms with any supporting documentation that they wish to file. These forms can be accessed on the NMAR website: <https://www.nmrealtor.com/professional-standards/>. They may also contact the Professional Standards Administrator to request mediation by phone.

The National Association of REALTORS's *Code of Ethics and Arbitration Manual* is the source material and governing documents for NMAR's mediation policies and procedures. The manual can be accessed at the NAR website: <https://www.nar.realtor/code-of-ethics-and-arbitration-manual>.