



## Greater Harrisburg Association Of REALTORS®

### FACTS ABOUT MEDIATION

- Mediation is *faster* than litigation. A lawsuit can take anywhere from several months to several years to be decided. As a rule, mediation takes about 60 days from beginning to end.
- Mediation is *less expensive* than litigation. Mediation fees typically are about \$ 200 per party.
- Mediation is *non-adversarial*. Arbitration and litigation focus on disagreements between the parties and result in win-lose decisions imposed by the arbitrator or judge. Mediation, on the other hand, focuses on agreement between the parties and results in a win-win settlement reached and agreed to by the parties themselves.
- Parties who agree to mediate *retain the right to pursue other legal remedies*. If parties cannot reach a mutually acceptable settlement during the mediation conference, they are free to arbitrate or litigate their dispute as if the mediation never took place.
- Statistics show that *mediation is successful* 70% to 80% of the time.

### Real Estate Dispute Resolution System

Although the vast majority of real estate transactions close without incident, the possibility that a problem or dispute will occur cannot be eliminated. Generally, these difficulties are successfully resolved through normal channels of communication and negotiation and your REALTOR® can provide valuable assistance in this regard. Occasionally, a dispute arises which cannot be resolved and in the past when this happened, the only recourse was to litigate. This meant court costs, attorney fees, and often long delays. Now, an alternative is available – Mediation – through the Greater Harrisburg Association of REALTORS® Real Estate Dispute Resolution System.

### What is Mediation?

Mediation is a method of resolving disputes by which the disputing parties try to reach a mutual agreement with the aid of an impartial, trained, professional mediator. The mediator has no authority to render an opinion or bind the parties to his/her decision, but rather assists the parties in defining the matters in dispute and in reaching an ultimate, mutually agreeable solution. Historically, a large number of disputes submitted to mediation have been successfully resolved.

If the parties involved in mediation do not arrive at a mutually agreeable settlement, they may pursue any other recourse legally available to them, including binding arbitration and litigation. In other words, parties who submit their dispute to mediation do not waive any rights to go to court in the event mediation fails. If the mediation succeeds, the parties enter into a written agreement which is enforceable as a legally binding contract.

A significant advantage to mediation over litigation is that mediation, unlike litigation, is non-adversarial and the parties, after reaching an agreement, usually remain on good terms and can continue their business relationship.

### **Agreeing to Mediation Disputes**

Mediation is available to all parties to a real estate transaction; however, it is advisable that the parties agree in advance to the mediation process at the time of signing the Agreement for the Sale of Real Estate. This can be done through the actual Agreement of Sale.

Parties who do not agree in advance to mediation may agree to submit a dispute to mediation by signing a written Agreement to Mediate after the dispute arises. Mediation will only take place if all parties to the dispute agree to submit the matter to the Real Estate Dispute Resolution System.

### **Initiating Mediation**

Any party may request Mediation through the Real Estate Dispute Resolution System by submitting the "Request To Initiate Mediation" form and a \$50 administrative fee to the Greater Harrisburg Association of REALTORS<sup>®</sup>, which serves as the local administrator of the Real Estate Dispute Resolution System. The "Request to Initiate Mediation" form is available from your REALTOR<sup>®</sup> or directly from the Greater Harrisburg Association of REALTORS<sup>®</sup>. Within five (5) days of receipt of the request, the Association office will mail out the "Notice of Mediation Request" along with the list of mediators to all other named parties. The other parties will then have ten (10) days to review, challenge, if applicable, and return the "List of Approved Mediators" and the nonrefundable administrative fee of \$50.

An impartial mediator will be appointed, who will then contact the parties to schedule a mediation conference. The conference must be held within sixty (60) days from the appointment of the mediator barring unforeseen circumstances. A typical mediation conference lasts from one to three hours. Any mediated settlement must be signed by all parties agreeing to its terms preferably by the close of the mediation conference.

### **Rules and Procedures for Mediation**

(Additional information is included in this section. For the exact wording of the Rules and Procedures, please refer to the mediation clause of your contract. This is usually found on the front and back of page 7 of the Agreement of Sale.)

1. **Agreement of the Parties.** The Rules and Procedures of the Dispute Resolution System (DRS) apply when the parties have agreed in writing to mediate under DRS. The written agreement can be achieved by a standard clause in an Agreement of Sale, an addendum to an Agreement of Sale, or through a separate written agreement.
2. **Initiation of Mediation.** Any party may initiate Mediation by completing, signing, and submitting, along with all required materials, the "Request to Initiate Mediation" form and the nonrefundable administrative fee of \$50 to the DRS administrator, the Greater Harrisburg Association of REALTORS<sup>®</sup>. Copies of this request are available by contacting the Association at (717) 364-3200.
3. **Selection of Mediator.** The Greater Harrisburg Association of REALTORS<sup>®</sup> office will appoint an available Mediator from the "List of Approved Mediators," excluding those challenged by any parties, and mail out the "Notice of Appointment of Mediator". No person shall serve as a mediator in any dispute if that person has any financial or personal interest in the results of the mediation.
4. **Mediation Fees.** The non-refundable mediation fees will be divided equally among the parties and will be paid BEFORE the mediation conference is scheduled. (\$400 divided equally between the two parties and paid directly to the assigned mediator)
5. **Mediation Conference.** Within ten (10) days of being appointed to the dispute, the mediator will contact the parties and set the date, time and place of the mediation conference. The mediator must give at least twenty (20) days advance notice to all parties (unless all parties agree otherwise). The mediation conference should not be more than sixty (60) days from the mediator's appointment to the dispute.
6. **Conduct of Mediation Conference.** Prior to the mediation conference, all parties must submit a list of any witnesses they will bring to the mediator. At the conference, the parties will be expected to produce all information reasonably required for the mediator to understand the issues presented **and have copies for all parties**. The mediator will be responsible for conducting an orderly and impartial settlement negotiation and has no authority to force any party to agree to a settlement. The mediator has no authority to render an

opinion or bind the parties to his/her decision, but rather may assist the parties in defining the matters in dispute and reaching an ultimate, mutually agreeable solution. Parties at the mediation are expected to have authority to enter into and sign a binding written agreement to settle the dispute. Formal rules of evidence will not apply to the mediation conference.

7. **Representation by Counsel.** Any party may be accompanied by and represented at the mediation conference by counsel. A party who intends to be represented by counsel shall notify the mediator and other parties of such intent at least ten (10) days in advance of the conference.
8. **Confidentiality.** No aspect of the mediation shall be relied upon or introduced as evidence in any arbitration, judicial or other proceeding, including but not limited to views expressed or suggestions made by a party with respect to a possible settlement of the dispute; admissions made in the course of the mediation; proposals made or views expressed by the mediator or the response of any party thereto. No privilege shall be affected by disclosures made in the course of mediation. No transcription or recording shall be made of the mediation without the prior written consent of all parties and the mediator. Records, reports, and other documents received or prepared by the mediator or the administrator cannot be compelled by an arbitration, judicial, or other proceeding, with the exception of an agreement that was reached in the course of mediation and signed by all the parties. Neither the mediator nor administrator shall be compelled to testify in any proceeding as to information divulged or representation made in the course of the mediation or in any communication made to the mediator or administrator in confidence, nor shall the mediator or administrator be compelled to produce any document of whatever nature, made by either, pursuant to and in the course of mediation.
9. **Mediated Settlement.** The mediated settlement shall be reduced to a written agreement and every reasonable effort shall be made to have the written agreement prepared for signing at the conclusion of the mediation conference, however, it must be signed within ten (10) days from the conclusion of the mediation.
10. **Judicial Proceedings and Immunity.** Neither the administrator, the mediator, the National Association of REALTORS<sup>®</sup>, the Pennsylvania Association of REALTORS<sup>®</sup>, nor the Greater Harrisburg Association of REALTORS<sup>®</sup> shall be deemed necessary or indispensable parties in any judicial proceedings relating to mediation under these Dispute Resolution System rules and procedures. Neither the administrator, the mediator, the National Association of REALTORS<sup>®</sup>, the Pennsylvania Association of REALTORS<sup>®</sup>, nor the Greater Harrisburg Association of REALTORS<sup>®</sup> serving under these procedures shall be liable to any party for any act, error, or omission in connection with any service or the operation of the Real Estate Dispute Resolution System.

#### Exclusions

The following matters are excluded from mediation:

- 1) Judicial or nonjudicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract
- 2) An unlawful detainer action
- 3) The filing or enforcement of a mechanic's lien
- 4) Any matter which is within the jurisdiction of a probate court
- 5) Violation of a state's real estate license laws.

The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate.

#### Role of the Attorney

Mediation is designed to promote fair solutions to parties who are not represented by counsel. Any party, however, has the right to be represented by counsel at any stage during the mediation process. Parties should consult an attorney if they have questions or concerns about mediation.

#### Mediators

The mediators for the Greater Harrisburg Association of REALTORS<sup>®</sup> Real Estate Dispute Resolution System are licensed attorneys, real estate brokers, or real estate sales agents in the Commonwealth of Pennsylvania, who have agreed to participate in the program and have received formal training as mediators. A specific

mediator will be assigned to the dispute by the DRS administrator; however, all parties may object to the selection of any mediator who has financial or personal interest in the results of mediation.

### **Mediation Fees**

Mediation fees are divided equally among the parties to mediation and are paid in advance of the mediation conference. There is a nonrefundable administrative fee of \$50 per party involved in addition to the mediator fee. **The minimum fee for a Mediator is \$400 for up to 3 hours.** Beyond this time, the mediator may charge \$100/hour at his/her discretion.

Ordinarily, fees for mediation will be divided among the actual parties to the dispute. If REALTORS® are involved in the mediation solely as witnesses or escrow deposit holders, they will not be required to share the cost of mediation services. Fees will be shared by REALTOR® participants if the Request to Initiate Mediation alleges that the REALTOR®(s) is directly involved in the dispute or if the REALTOR®(s) is claiming a right to commission or other economic interest in the outcome of mediation.

### **Frequently Asked Questions**

#### **Q: What types of disputes can be mediated?**

A: Almost any type of dispute between or among buyers, sellers, brokers and other parties to a real estate transaction can and should be mediated. These include: disputes over earnest money deposits, e.g., who gets the deposit if the sale falls through; cost of repairs to property when there is a question of possible negligence of failure to disclose a known defect, e.g., a defective roof or termite infestation; claims for damages when there is a charge of possible misrepresentation concerning the condition of the property, e.g., central air conditioning was never connected to the new addition on the house.

#### **Q: Are there any types of disputes that can't be mediated under DRS?**

A: Yes. Disputes that cannot be mediated under the DRS Mediation Rules include: disputes that involve extremely complex legal issues or allegations of criminal misconduct, violations of a state's real estate license laws, disputes and controversies including disputes between REALTORS® that are subject to arbitration or hearing before a Professional Standards panel, and disputes that are not directly connected to a real estate transaction.

#### **Q: How long does the whole process take?**

A: Under the DRS Rules, the mediation conference must be held within sixty (60) days from the date on which the mediator receives the "Request to Initiate Mediation Form" from the party initiating mediation. Most mediation conferences, however, are scheduled and conducted within thirty (30) days. The typical mediation conference lasts from between 1-4 hours, and a second conference is rarely needed.

### **Are You Working with a Real Estate Licensee or a REALTOR®?**

Not every person engaged in real estate business is a REALTOR®. The term REALTOR® is a federally registered trademark that refers only to real estate professionals who are members of the National Association of REALTORS® and subscribe to the National Association's strict Code of Ethics. In addition, members of the National Association of REALTORS® can earn designations as specialists in appraising, property management, real estate counseling, real estate securities and syndication, and residential, commercial and farm brokerage. So remember, whether you are buying or selling a home, office, farm, vacation hideaway, or investment property, choose a REALTOR®. They are more than just real estate brokers. They are committed to their profession and to America's property owners.

## **Greater Harrisburg Association of REALTORS®**

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