

Mediation – A “Winning” Alternative

Despite the best efforts of well-intentioned REALTORS[®], disagreements still occur. While less formal, faster, and less expensive than litigation, arbitration is not 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 a 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.

Boards/associations generally have one or more mediation officers who act as facilitators/intermediaries. These are typically REALTORS[®] who are experienced and adept in dispute resolution techniques. While mediators often have personal "styles", their primary objective is to help each party appreciate the position of the other party, then to move them forward toward an amicable resolution.

Detailed information about mediation is in the National Association's *Code of Ethics and Arbitration Manual*. Specific information about the procedures for initiating mediation can be obtained from local boards/associations of REALTORS[®].

Mediation can be initiated in a number of ways. While there is no reason why two REALTORS[®] with a disagreement cannot simply ask the local board/association to provide a mediator, in many instances mediation begins with the filing of a formal arbitration request. In some areas, requests for arbitration are automatically reviewed by the grievance committee and, after a determination is made that an arbitrable dispute exists, the disputing parties are invited to participate in mediation.

In other areas, filing a formal arbitration request automatically triggers a request to the parties asking whether they would like to attempt mediation. If the parties agree to mediate their dispute, the grievance committee is not called on to consider whether an arbitrable dispute exists unless a party

subsequently withdraws from the mediation process, or mediation proves unsuccessful. And, where mediation is offered prior to initial review of an arbitration request by the grievance committee (to determine whether an arbitrable dispute actually exists), if any of the parties initially refused to participate in mediation, mediation will be offered to the parties again following the grievance committee's review if an arbitrable dispute actually exists. This "second chance" approach is based on the premise that mediation is preferable to arbitration, not only from the parties' standpoint but from that of the board/association, and acknowledges that some parties may not choose to mediate unless it is clear that an arbitration hearing is the undeniable alternative. Offering a second chance to participate in mediation ultimately benefits the parties and the board/association.

A mediation session is fundamentally simple. The mediation officer uses various techniques to encourage the parties to explore, understand, and appreciate each other's position. The most desirable solution is one crafted by the parties themselves through cooperative effort. When the parties reach agreement, they are encouraged to put it in writing and sign it. If the parties are unable to reach a mutually acceptable solution, the mediator can recommend a solution. The mediator's recommendation can be made orally or in writing, though a written proposal that the parties can subsequently consider is preferred. The parties then have up to forty-eight hours to consider the mediator's recommendation and decide whether they will agree to it. If either party does not agree with the mediator's recommendation, the mediation process is over and the arbitration process proceeds (assuming arbitration has been requested).

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.