



Dear Sir or Madam:

You have indicated that you would like to pursue Mediation through the Dispute Resolution Services (DRS) provided by the Sierra Nevada REALTORS®. Please be aware that, when filing a Mediation request, the issue being decided upon is a monetary dispute. The purpose of filing a Mediation request is to bring the Complainant and the Respondent to the Association of REALTORS® as opposed to litigation, which is costly whereas Mediation is a service offered to members of the Sierra Nevada REALTORS® and/or their clients.

The following is a checklist of items that need to be included in your Request for Mediation:

1. A copy of the DRS or Mediation clause in the contract for the sale of real estate and a fully executed, signed by all parties, copy of the agreement signed by all parties, if available.
2. A copy of such written agreement invoking these DRS Rules and Procedures, if available.
3. In the absence of a contract clause or other such written agreement, a written request by any party seeking to have the Sierra Nevada REALTORS® attempt to persuade one or more parties to submit an existing dispute or claim to Mediation under these DRS Rules and Procedures.
4. The enclosed Mediation Request form detailing the amount of the claim and a brief statement of the facts that gave rise to the claim, the damages, or relief sought.
5. The enclosed "Agreement to Waiver 20 - Day Notice", completed and signed.
6. The enclosed "Mediation Officer Selection Form" completed, signed, and dated.
7. One (1) original copy of the entire mediation packet on 8½ x 11" paper.
8. Documentation must be legible.

Failure to adhere to the above checklist may result in the Mediation Request package being returned to you. If you have any questions, please do not hesitate to contact me. Your efforts in bringing this matter to the attention of the Association are appreciated. The information you send me will be forwarded to the Respondent. If the Respondent agrees to the Mediation, a mediation conference will be scheduled.

Sincerely,

A handwritten signature in blue ink that reads "Cheryl Smith".

Cheryl Smith

Chief Executive Officer



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**Request for Mediation
(Mediation Between the Public)**

In the matter of

Complainant

vs.

Respondent

I am requesting mediation with the above-named disputant. There is due, unpaid, and owing to me (or I retain) from the above-named person the sum of \$ _____. My claim is predicated upon the statement attached, marked Exhibit "1" and incorporated by reference into this application. I have not, as of this date, requested arbitration of this dispute before this or any other Board/Association of REALTORS®.

Enclosed is my check in the amount of \$100.00 made payable to the Sierra Nevada REALTORS® to cover the cost of mediation. I understand that should the mediation fail and that either party requests arbitration of the matter, the \$100.00 shall be applied toward the deposit required for arbitration.

Name _____
(Type or Print)

Name _____
(Type or Print)

Signature _____

Signature _____

Address _____

Contact Phone Number _____

Agreement to Waive 20-Day Notice

In order to expedite the mediation, you have the option to waive the 20-day notification of the mediation conference. Please note that all parties' names in the mediation request must also agree in writing to waive the 20-day notification.

Do you wish to waive the 20-day notice period for mediation conference as stated in paragraph 4 of the Rules and Procedures? Yes No

(Note: all parties must agree to waive this notice period, or 20-day notice will be given.)

I agree to waive the 20-day notice period and request that the mediation conference be held as soon as possible.

Name (Type/Print)

Signature

Name (Type/Print)

Signature

Public Agreement to Mediate

The undersigned agree that they are involved in a dispute arising out of their relationship as participants in a real estate transaction in which a REALTOR® member represented one of the parties.

The undersigned agree to voluntarily submit this dispute to mediation in accordance with the mediation guidelines, as set forth in the *Code of Ethics and Arbitration Manual* of the Sierra Nevada REALTORS®. Any Agreement signed by the parties, pursuant to the mediation conference, shall be binding.

As a party to the mediation process I understand and agree as follows :

Participation in mediation procedures is voluntary. Parties to mediation may withdraw from the process at any point prior to reaching an agreement. Parties to mediation that do not reach an agreement shall be free to pursue resolution of the dispute through other avenues. The parties acknowledge that the mediator is not providing legal representation, legal advice, or legal services, and that the parties are advised of their right to be represented by counsel at the mediation and also of their right to obtain independent legal advice (if counsel are not at the mediation) before signing any final settlement 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's Professional Standards Committee. However, if the parties agree to a settlement of the dispute, and the settlement is reduced to writing and has been signed by all of the parties, the matter shall be considered resolved, and shall not be the subject of a subsequent arbitration hearing. In the event that either of the parties fails to abide by the terms of the settlement, the matter may not be arbitrated; instead, the other party should be encouraged to have the settlement agreement judicially enforced by a court of competent jurisdiction.

No aspect of this mediation conference 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. Disclosure of any records, reports, or other documents received or prepared by the Board or Mediation Officer shall not be compelled. Neither the Board or the Mediation Officer shall be compelled to disclose or to testify in any proceeding as to information disclosed or representations made in the course of the mediation or communication to the Mediator in confidence. Neither the Mediation Officer, the Sierra Nevada REALTORS®, the Nevada Association of REALTORS®, nor the NATIONAL ASSOCIATION OF REALTORS® or any of its Member Boards shall be deemed "necessary parties" in any judicial proceedings relating to mediation under this Agreement. The parties acknowledge that the mediation proceedings will not be tape recorded and that weapons of any type are prohibited.

Are the circumstances giving rise to this request for Mediation the subject of civil or criminal litigation or in any proceeding before the state real estate licensing authority or any other state or federal regulatory or administrative agency?

Yes No

By my signature on this Agreement to Mediate, I acknowledge my rights and agree to the terms of the mediation procedures as stated above. I hereby affirm that I have the authority to enter into and sign a binding written agreement to settle this dispute.

Complainant(s):

_____ **Print Name** **Date**

_____ **Signature** **Date**

_____ **Print Name** **Date**

_____ **Signature** **Date**

_____ **Address**

_____ **Contact Phone Number**

RESPONSES TO FREQUENTLY ASKED QUESTIONS ABOUT MEDIATION

Q: What is mediation?

A: Mediation is a non-adversarial process that brings disputing parties together with a neutral, unbiased third party (mediator) who assists the parties in reaching a mutually agreeable settlement of the dispute. The mediator does not render decisions or impose sanctions. Settlement terms reached and agreed to by the parties during the mediation become binding when parties sign a written settlement agreement.

Q: How does mediation differ from arbitration?

A: An arbitrator has the authority to render a binding decision, similar to a judge in a court of law. The parties, therefore, forfeit their right to have their dispute tried in a court of law. Mediators, on the other hand, have no authority to render a decision but merely assist the parties to arrive at a mutually agreeable solution. If the parties fail to reach a settlement, they are free to pursue other forms of dispute resolution including arbitration and litigation. In successful mediations all parties have a part in working out the terms of the eventual settlement and must agree to the final outcome for it to be enforceable.

Q: When the DRS mediation clause is presented to a buyer or seller, isn't the real estate salesperson raising a "red flag" by bringing up the issue of a potential dispute at the outset of the transaction?

A: Not if the salesperson presents mediation in a positive, non-threatening way. The salesperson should point out that the mediation clause is similar to other clauses in the contract that are designed to protect interests of the parties. The mediation clause in no way suggests that a dispute will arise, any more than the option to have a home inspection means that there will be defects in the property. The mediation clause provides parties with an efficient, less expensive alternative to litigation in the event a dispute should arise. The salesperson should emphasize that mediation does not involve high risks. Parties are not bound to agreements reached in mediation unless they sign a written settlement agreement, and if a settlement isn't reached, parties are free to submit their dispute to arbitration or go to court. Salespeople should stress that mediation is successful 80%-90% of the time.

Q: If a party signs a contract or an addendum that contains a mediation clause, is the party required to mediate if a dispute arises?

A: Yes. The signed agreement to mediate is binding and parties must submit the dispute to mediation. The agreement to mediate does not bind the parties to results that might be achieved during mediation, and parties retain the right to go to court in the event that mediation is unsuccessful. If a settlement is reached during mediation it becomes binding only when it is put into writing and signed by all the parties. Once the parties have signed a written settlement agreement, they are legally bound to abide by its terms and cannot subsequently litigate the dispute.

Q: Who are the mediators?

A: DRS mediators are trained professionals who have absolutely no personal interest in the outcome of the mediation. Under the NAR DRS program, Association's do not handle the mediations but refer the mediations to either one mediation provider or to a list of mediation providers who are acting in their own individual capacity.

Q: Do the parties involved in a dispute have the option of choosing the mediator who will mediate their dispute?

A: Yes, however, if the local association has entered into an exclusive DRS Service Agreement with a single mediation group, the parties mediating under the DRS Rules and Procedures must select a mediator affiliated with that group.

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 or 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 or should not be mediated under the DRS Mediation Rules include: disputes that involve extremely complex legal issues or allegations of criminal misconduct, violations of a states 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: Who pays for the mediation?

A: Parties are free to negotiate their own arrangements. In most cases, parties split mediation fees equally.

Q: How much does mediation cost?

A: The cost of mediation varies depending on the size of the claim, the complexity of the issues, and the mediator. Fees are established by the mediator and can range anywhere from \$50 to \$1,500. It is important to note that because the fee is usually split among the parties, no party pays an excessive amount.

Q: How long does the whole process take?

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

Q: Can parties be represented by counsel?

A: Yes. DRS Rules and Procedures state that any party may be represented by counsel. If a dispute involves a small sum and does not raise complex issues, parties may choose not to be represented by counsel which means that a party does not have to pay the attorney to attend the mediation conference. The Rules also state that all parties must be notified, in advance of the mediation conference, of another party's intention to be represented by counsel.

Q: Can commission disputes between REALTORS® be mediated under DRS?

A: No. Disputes that are normally arbitrated under Article 14 of the REALTOR® Code of Ethics are specifically excluded from mediation under the DRS Rules.

Q: Why should the Association adopt DRS when we already offer mediation services through our Professional Standards Committee.

A: The DRS Mediation Program is not intended to replace or to be used in connection with arbitration or mediation activities conducted by an association's Professional Standards Committee. The program is designed to accommodate and provide for disputes that are not covered under Professional Standards Policies and Procedures.

Q: Can DRS be used to resolve disputes for commercial real estate transactions?

A: Yes. Provided all parties in the dispute agree to mediate the dispute under the DRS Rules and Procedures.

Mediation Officer Selection Form

In the matter of _____ vs. _____
Complainant Respondent

The following individuals have agreed to serve as Mediation Officers for disputes between REALTOR® members of the _____ Board of REALTORS®. As a party to this mediation, you have the right to challenge any Mediator that you believe would not be acceptable to serve as the Mediation Officer for your mediation conference. This form must be returned to the Board office by _____.

Name: Mary Cioffi

I (will _____) (will not _____ reason _____) accept this person as a Mediator for this dispute.

Name: Sandra Mullet

I (will _____) (will not _____ reason _____) accept this person as a Mediator for this dispute.

Name: _____

I (will _____) (will not _____ reason _____) accept this person as a Mediator for this dispute.

Name: _____

I (will _____) (will not _____ reason _____) accept this person as a Mediator for this dispute.

Name: _____

I (will _____) (will not _____ reason _____) accept this person as a Mediator for this dispute.

Name: _____

I (will _____) (will not _____ reason _____) accept this person as a Mediator for this dispute.

Name of REALTOR® Principal/Authorized Designee (Type/Print)

Signature of REALTOR® Principal/Authorized Designee Date

(Adopted 11/11)