

MEDIATION RULES AND PROCEDURES

- 1) **Agreement of Parties.** These Mediation Rules and Procedures shall apply when the parties have agreed in writing to mediation under the NAR Program. By mutual written agreement of all the parties to the claim, any specific provision of these Rules and Procedures pertaining to mediation may be modified.

- 2) **Initiation of Mediation.** Any party may initiate mediation under these Rules and Procedures by completing, signing and mailing to the mediation vendor and all other parties, a Request to Initiate Mediation Transmittal Form (Transmittal Form found in Appendix E). Such form shall contain or be accompanied by the following information, to the extent known or readily available:
 - a) A fully executed true copy of the agreement containing the mediation clause;
 - b) A copy of such other written agreement invoking these Mediation Rules and Procedures;
 - c) In the absence of a contract clause or other such written agreement, a written request by any party seeking to have the mediation vendor attempt to persuade one or more of the others to submit an existing dispute or claim to mediation under these Rules and Procedures.
 - d) The names, addresses and telephone numbers of the parties to the case, including the name of the parties insurance company;
 - e) Nature and amount of the claim (brief statement of the facts that give rise to the claim, the damages or relief sought);
 - f) Preferred place and time of hearing.

- 3) **Selection of Mediator.** Not later than ten days after receipt of the Transmittal Form, the mediation vendor shall appoint a qualified mediator.
 - a) 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 unless, after full disclosure, the parties have given their written consent.

- 4) **Time and Place of Mediation Conference.** Within ten days of his appointment, the mediator and the parties shall set the date, time, and place of the mediation conference provided, however, such date shall not be more than sixty days from date of receipt of the Transmittal Form, and shall allow for not less than twenty days advance notice of the conference, which notice shall be given by the mediation vendor to all parties.

- 5) **Conduct of Mediation Conferences.** At the mediation conference, the parties will be expected to produce all information reasonably required for the mediator to understand the issue presented. Such information will usually include relevant written materials and a description of any witnesses and what each could testify to. For more complex cases, the mediator may ask the parties for written materials or information in advance of the mediation conference.

- a) At the mediation conference, the mediator will conduct an orderly settlement negotiation. Parties at the mediation conference shall have authority to enter into and sign a binding written agreement to settle the dispute. The mediator will be impartial in such proceedings and has no authority to force the parties to agree to a settlement.
- 6) **Representation by Counsel.** Any party may be accompanied by and represented at the conference by counsel. In the interest of fairness, however, a party who intends to be represented by counsel shall notify the mediation vendor and other parties of such intent at least ten days in advance of the conference.
- 7) **Confidentiality.**
 - a) 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:
 - i) Views expressed or suggestions made by a party with respect to a possible settlement of the dispute;
 - ii) Admissions made in the course of the mediation;
 - iii) Proposals made or views expressed by the mediator or the response of any party thereto.
 - b) No privilege shall be affected by disclosures made in the course of mediation.
 - c) Disclosure of any records, reports, or other documents received or prepared by mediation vendor cannot be compelled.
 - d) The mediation vendor shall not 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.
- 8) **Mediated Settlement.** The mediated settlement must be reduced to writing by the parties or by the mediator (if the mediator is an attorney), then dated and signed at the mediation conference by all parties agreeing to its terms, but in no event shall the settlement be signed later than ten days after the conclusion of the mediation conference (See Appendix F for sample agreement).
- 9) **Judicial Proceedings and Immunity.** Neither the mediation vendor, nor the mediator, nor the NATIONAL ASSOCIATION OF REALTORS® or any of its member associations, shall be deemed "necessary parties" in any judicial proceedings relating to mediation under these Mediation Rules and Procedures. Neither the mediation vendor, nor any mediator nor the NATIONAL ASSOCIATION REALTORS®, 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 NAR Mediation Program.
- 10) **Mediation Fees.** Mediation fees shall be in accordance with the published fee schedule.
- 11) **Timing of Claims.** The time limitation by which parties must bring claims in accordance with these Rules and Procedures are to be governed by state law. Local counsel should be consulted regarding this issue.