

ARIZONA REALTORS®

# BUYER SELLER

DISPUTE PROGRAM

*Alternative Dispute Resolution*



INFORMATION PACKET

**When a dispute arises** - The Buyer and Seller have agreed to mediate any dispute or claim arising out of or relating to the Arizona Association of REALTORS® (“Arizona REALTORS®”) Residential Resale Real Estate Purchase Contract (“RPC”) in accordance with the REALTORS® Dispute Resolution System (see Section 7c of the RPC), or as otherwise agreed. All mediation costs shall be paid equally by the parties.

- 7c. 325. **Alternative Dispute Resolution (“ADR”):** Buyer and Seller agree to mediate any dispute or claim arising out of or relating to this  
326. Contract in accordance with the REALTORS® Dispute Resolution System, or as otherwise agreed. All mediation costs shall be paid  
327. equally by the parties. In the event that mediation does not resolve all disputes or claims, the unresolved disputes or claims shall  
328. be submitted for binding arbitration. In such event, the parties shall agree upon an arbitrator and cooperate in the scheduling of  
329. an arbitration hearing. If the parties are unable to agree on an arbitrator, the dispute shall be submitted to the American Arbitration  
330. Association (“AAA”) in accordance with the AAA Arbitration Rules for the Real Estate Industry. The decision of the arbitrator shall be  
331. final and nonappealable. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.  
332. Notwithstanding the foregoing, either party may opt out of binding arbitration within thirty (30) days after the conclusion of the  
333. mediation conference by notice to the other and, in such event, either party shall have the right to resort to court action.

**When mediation is not successful** - In the event that mediation does not resolve all disputes or claims, according to the RPC, the unresolved disputes or claims shall be submitted for binding arbitration.

(NOTE: Either party may opt out of binding arbitration within thirty (30) days after the conclusion of the mediation conference by notice to the other. In such event, either party shall have the right to resort to court action).

#### **Benefits of the Buyer-Seller Dispute Resolution Program**

- Faster than litigation
- Less expensive than litigation
- In mediation, parties do not forfeit their legal rights to arbitrate or litigate if mediation is unsuccessful
- Parties actively participate in the process
- In mediation, the parties control the outcome

## **BUYER-SELLER DISPUTE RESOLUTION PROGRAM RULES AND PROCEDURES**

### **1. Agreement of Parties**

These Buyer-Seller Dispute Resolution Rules and Procedures shall apply when the parties have agreed in writing to mediation under this Dispute Resolution Program. By mutual written agreement of all 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 by completing, and mailing or emailing the Request to Initiate Mediation/Arbitration "Form" to the mediator and all other parties. NOTE: The Arizona REALTORS® does not assist with contacting any party to the dispute.

The Form shall contain or be accompanied by the following information, to the extent known or readily available:

- a. A fully executed copy of the agreement containing the mediation clause, or in the absence of a contract clause or other such written agreement, a written request.
- b. The names, addresses and telephone numbers of the parties to the case, including the name of every insurance company known to have received notice of the dispute or claim and the corresponding insurance company file or claim number
- c. Nature and amount of the claim (brief statement of the facts that give rise to the claim, the damages of relief sought)
- d. Preferred place and time mediation.

### **3. Selection of Mediator**

No person shall serve as 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 (10) days of 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 (60) days from the date of receipt of the Buyer-Seller Dispute Resolution Request to Initiate Mediation/Arbitration form, and shall allow for not less than twenty (20) 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.

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 Legal Counsel**

Any party may be accompanied by and represented at the conference by legal counsel. In the interest of fairness, however, a party who intends to be represented by legal counsel shall notify the mediator and other parties of such intent at least ten days in advance of the conference.

**7. 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:

- a. Views expressed or suggestions made by a party with respect to a possible settlement of the dispute
- b. Admissions made in the course of the mediation
- c. Proposals made or views expressed by the mediator or the response of any party thereto

**8. Mediated Settlement**

The mediated settlement must be reduced to writing by the mediator, 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.

**9. Judicial Proceedings and Immunity**

Neither the Arizona REALTORS®, the mediator, 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 these Rules and Procedures or liable to any party for any act, error or omission in connection with any service or the operation of the Buyer-Seller Dispute Resolution System.

**10. Mediation Fees**

Mediation fees shall be in accordance with the published fee schedule.

## STEPS TO INITIATE MEDIATION

**Call your broker or sales agent** - Your broker or sales agent can be instrumental in resolving conflicts and disputes. Talk with your broker or sales agent before you initiate mediation proceedings.

**Consult your attorney** - You may want to inform your attorney of your intent to initiate mediation under the Buyer-Seller Dispute Resolution Program. Your attorney will be able to provide you with advice and counsel — and may be able to help you resolve the dispute without having to proceed to mediation.

**Initiating mediation** - When all attempts to negotiate a settlement have failed, you should proceed as follows:

- **Choose a Mediator**

You may select a mediator from our website: <https://www.aaronline.com/manage-risk/mediators-and-arbitrators/>. For assistance, contact your sales agent or broker. If your dispute is with the sales agent or broker, call the Arizona Association of REALTORS® at 602-248-7787 as the process is different.

- **Initiate Mediation**

1. Complete the Request to Initiate Mediation/Arbitration form on page 8.
2. Mail or email the Form and required attachments to the mediation provider.
3. Mail or email a copy of the Form and its attachments to:
  - a. Your attorney (if any); and
  - b. The other parties.

**Upon receipt of your request, the mediator will contact all parties named and will schedule the mediation conference in accordance with these Rules and Procedures.**

## STEPS TO INITIATE ARBITRATION

- **Choose an Arbitrator**

Should mediation of your dispute not be successful, you have the option to continue to arbitration unless one of the parties opts out. There may be an arbitrator in your area. Contact the arbitrator from the list on our website, and ask if they provide arbitration services. You may also contact the American Arbitration Association through their website at [www.adr.org](http://www.adr.org) or call the local office at 602-734-9333. For assistance, contact your sales agent or broker. If your dispute is with the sales agent or broker, call the Arizona Association of REALTORS® at 602-248-7787.

- **Initiate Arbitration**

1. Complete the Request to Initiate Mediation/Arbitration form on page 8.
2. Mail or email the Form and required attachments to the arbitrator.
3. Mail or email the Form and its attachments to:
  - a. Your attorney (if any); and
  - b. The other parties.

**Upon receipt of your request, the arbitrator will contact all parties named and will schedule the arbitration hearing.** If arbitration is going to be initiated with the American Arbitration Association, please contact the local office at 602-734-9333 or visit their website at [www.adr.org](http://www.adr.org).

### **SPECIAL NOTE:**

Many of the mediation providers listed in this packet also provide arbitration services. If the parties have attempted a mediation and failed and are proceeding to arbitration, the mediation provider may choose not to provide arbitration services to parties with whom they have attempted to mediate. If your mediation conference is not successful, please be sure to ask your mediation provider if they will arbitrate the matter for you or if you should select another arbitrator.

## FREQUENTLY ASKED QUESTIONS

**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: 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:** Mediators in the Buyer-Seller Dispute Resolution Program are licensed attorneys who have absolutely no personal interest in the outcome of the mediation.

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

**A:** Yes.

**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 the Buyer-Seller Dispute Resolution Program?**

**A:** Yes. Disputes that cannot or should not be mediated under the Buyer-Seller Dispute Resolution Program 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: 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 \$200 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 Rules of the Buyer-Seller Dispute Resolution Program, the mediation conference must be held within sixty (60) days from the date on which the mediator receives the “Request to Initiate Mediation/Arbitration 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 legal counsel?**

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

**Q: Can commission disputes between REALTORS® be mediated under the Buyer-Seller Dispute Resolution Program?**

**A:** No. Disputes that are normally arbitrated under Article 14 of the REALTOR® Code of Ethics are specifically excluded from mediation under the Rules. However, these disputes may be mediated through the REALTOR® Mediation program (see: <http://www.aaronline.com/Disputes/Mediation.aspx> )

**Q: Can the Buyer-Seller Dispute Resolution Program be used to resolve disputes for commercial real estate transactions?**

**A:** Yes, provided that all parties in the dispute agree to mediate the dispute under the Rules and Procedures of the Buyer-Seller Dispute Resolution Program.

**BUYER-SELLER DISPUTE RESOLUTION  
REQUEST TO INITIATE MEDIATION/ARBITRATION**

Date: \_\_\_\_\_ ☐ Mediation ☐ Arbitration

**Mediator/Arbitrator Information:**

Name: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

**Participant #1 (Party requesting mediation/arbitration):**

Name: \_\_\_\_\_ ☐ Buyer ☐ Seller

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Legal counsel (if any): Name/address/contact phone number/email address  
\_\_\_\_\_

**Participant #2 (Other party to be included in mediation/arbitration):**

Name: \_\_\_\_\_ ☐ Buyer ☐ Seller

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Legal Counsel (if any): Name/address/contact phone number/email address  
\_\_\_\_\_

**Participant #3 (Other party to be included in mediation/arbitration):**

Name: \_\_\_\_\_ ☐ Buyer ☐ Seller

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Legal counsel (if any): Name/address/contact phone number/email address  
\_\_\_\_\_

Briefly describe your claim: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Amount of money involved: \$** \_\_\_\_\_

**Court Proceedings:** The standard Arizona Association of REALTORS® Residential Resale Real Estate Purchase Contract, at Section 7c, requires mediation before resorting to arbitration and most court proceedings. However, if any formal court proceedings have been filed in this matter, provide:

**Name of party who commenced court proceedings:** \_\_\_\_\_

**Court case #:** \_\_\_\_\_

***Name/address/contact phone number/email address of legal counsel, if any:***  
\_\_\_\_\_

**\*\*\* Please mail or email copies of this form to:**

- a. Your chosen Mediator/Arbitrator
- b. Your attorney (if any); and
- c. The other parties.