

Dear REALTOR® member:

Thank you for your interest in the mediation process. Although a majority of real estate transactions close without incident, occasionally there is a problem or dispute over the commission. When a commission dispute does arise, it is usually successfully resolved through the normal channels of communication and negotiation. However, when the issue is not resolved, you may take your commission dispute to mediation.

Mediation is a process in which disputing parties attempt to resolve their disagreements with the help of an impartial, trained party – the mediator. The mediator does not offer opinions, pass judgment or render legally binding decisions. The mediator's only function is to help the parties identify their differences and reach an agreement on how to resolve those differences.

When the disputing parties have reached and agreed upon a mutually acceptable solution, they sign a written agreement which outlines the terms of the settlement. Once the agreement is signed, the parties are legally bound to abide by its terms. If the parties cannot reach a mutually agreeable settlement, they are free to arbitrate their dispute as if the mediation never took place.

In addition to being easier, faster and less expensive than arbitration, mediation is non-adversarial. Decisions rendered by an arbitration hearing panel usually involve a winning party and a losing party. In mediation, there are no losing parties because the parties have been part of the process and together have agreed on the terms of the settlement.

You may file for mediation prior to filing for arbitration. Attached you will find the paperwork to file for mediation.

North Shore - Barrington Association of REALTORS®

450 Skokie Blvd, Bldg 1200
Northbrook, IL 60062-7920
847-480-7177 ♦ Fax 847-480-7362

1250 Grove Avenue, Suite 200
Barrington, IL 60010
847-381-7827 ♦ Fax 847-842-2040

MEDIATION PROCEDURES

The North Shore-Barrington Association of REALTORS® has adopted a policy that mediation is mandatory. A Request for Mediation can be filed without first filing a Request for Arbitration. If the dispute is not resolved through mediation, the complainant may then file a Request for Arbitration.

When a Request for Mediation is received, the Professional Standards Administrator will notify the other party that the request has been filed. Both parties will be required to sign the Agreement to Mediate Form.

A list of potential mediators will be sent to both parties and each party has the right to accept or decline any potential mediator within a specified amount of time.

Both parties will be notified which mediator was assigned to their dispute. The Mediator will then contact both parties to set up the date, time and location for the mediation conference.

If the dispute is resolved through mediation, both parties will sign a Mediation Resolution Agreement that will describe the agreement reached.

If the parties are unable to resolve their dispute, either party can file a Request for Arbitration, if the request has not already been filed.

Any Request for Arbitration will be sent to the Grievance Committee for review.

HOW IS MEDIATION DIFFERENT FROM ARBITRATION?

Arbitration and mediation are both methods of resolving disputes outside the courtroom. With arbitration, however, a hearing panel renders the decision.

If there is an arbitration hearing, every party has the right to present evidence and witnesses and to cross-examine the other parties and their witnesses. The hearing panel renders a decision, called an award, based on the evidence and testimony presented. After the hearing, the parties have no control over the hearing panel's award and are bound by that decision.

Mediation is simply a form of negotiation. The parties to mediation cannot be forced to accept a settlement.

- Mediation is less adversarial than arbitration
- Mediation is more likely to allow the parties to maintain their former relationship
- Mediation is quicker and less expensive than arbitration
- Mediation is more flexible than arbitration

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REQUEST FOR MEDIATION

In the matter of: _____, Complainant(s)

VS

_____, Respondent(s)

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 and incorporated by reference into this application. I have not, as of this date, requested arbitration of this dispute before this or any other Association of REALTORS®.

Signature of REALTOR® principal

Date

Type/Print Name

Telephone #

Agent: Type/Print Name

Telephone #

Firm Name

Address

City

State

Zip

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Agreement to Mediate

The undersigned agree that they are involved in a contractual dispute defined by Article 17 of the Code or in a specific noncontractual dispute as outlined in Standard of Practice 17-4.

The undersigned agree to submit this dispute to mediation in accordance with the mediation guidelines, as set forth in the *Code of Ethics and Arbitration Manual*.

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

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 arbitration of the dispute in accordance with the guidelines set forth in the *Code of Ethics and Arbitration Manual* of the NATIONAL ASSOCIATION OF REALTORS®. 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 Association'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 ethics, 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 Association or Mediation Officer shall not be compelled. Neither the Association nor 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 North Shore-Barrington Association of REALTORS®, Illinois REALTORS® nor the NATIONAL ASSOCIATION OF REALTORS® or any of its Member Boards shall be deemed "necessary parties" in any judicial

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proceedings relating to mediation under this Agreement. The parties acknowledge that the mediation proceedings will not be 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:

Respondent:

Print Name

Print Name

Signature _____ Date

Signature _____ Date

Firm Name

Firm Name

Firm Address

Firm Address

Telephone Number

Telephone Number

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