

# **PENNSYLVANIA ASSOCIATION OF REALTORS® HOME SELLERS/HOME BUYERS DISPUTE RESOLUTION SYSTEM (DRS)**

## **Introduction**

Although the vast majority of real estate transactions close without incident, the possibility that a problem or dispute will occur cannot be eliminated. Generally, these difficulties are successfully resolved through normal channels of communication and negotiation. Your real estate broker or agent can provide valuable assistance in this regard. Occasionally, a dispute arises which cannot be resolved through negotiation. In the past, when negotiations failed, parties took their cases to court.

Court costs, attorney's fees and long delays have made traditional litigation an unattractive method of resolving disputes. These problems can be avoided through the Home Buyers/Home Sellers Dispute Resolution System mediation program.

## **What Is Mediation?**

Mediation is less expensive and less time-consuming than litigation. Mediation brings the parties together with an impartial third party who is a trained professional. With the mediators' help, parties usually reach a mutually agreeable solution. It is important to understand that the mediator does not have the power or authority to render a binding decision on the parties as does an arbitrator or judge. The mediator assists the parties in reaching an agreeable solution. When a mutually acceptable solution is reached, the parties sign a binding, written agreement which is prepared by the mediator. In the event the parties do not arrive at an agreement, they are free to pursue other legal alternatives for resolving the dispute, including arbitration and litigation. ***You do not forfeit any legal rights whatsoever.***

In addition to being easier, faster and less expensive than litigation, mediation is non-adversarial. Decisions rendered by an arbitrator or judge 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.

## **Agreeing to Mediate**

The Dispute Resolution System is available to all parties to a real estate transaction including, but not limited to, sellers, buyers, brokers, builders and home inspectors. It is advisable that parties pre-commit to mediation by signing an Agreement for the Sale of Real Estate which either contains a mediation clause or is accompanied by a mediation addendum. Parties who do not pre-commit to mediation when the sales contract is executed may agree to submit disputes to mediation by signing a written Agreement to

Mediate after the dispute arises. Mediation can take place only when all parties to the dispute have agreed to submit the matter to the Dispute Resolution System.

### **Initiating Mediation**

Any party can initiate Dispute Resolution System mediation by submitting a written request (Transmittal Form) to the local Association of REALTORS® which will serve as the Administrator of the Dispute Resolution System. Upon receipt of the Transmittal Form, the Administrator will send each party a copy of the form and a list of qualified mediators and their fee schedules. Within ten (10) days, each party will review the list, cross off the name of any mediator to which the party objects, and return the list to the DRS Administrator. The Administrator will appoint the first available mediator who is acceptable to all parties to the dispute. The appointed mediator will then contact the parties to the dispute for the purpose of scheduling the mediation conference. The conference must be held within sixty (60) days of initiation of the process with each party receiving at least twenty (20) days advance notice. The typical mediation conference lasts from one to three hours. Any mediated settlement must be signed by all parties agreeing to its terms, as soon as possible, following the conference. Generally the agreement can be completed by the close of the mediation conference.

### **Rules and Procedures**

The mediation conference is conducted in accordance with the Home Sellers/Home Buyers Dispute Resolution System Mediation Rules and Procedures. You will be provided with a copy of these Rules and Procedures prior to your signing an Agreement to Mediate or any contract which contains a mediation clause. Additional copies are available from the mediation Administrator.

How, when and by whom mediation is initiated and conducted is fully addressed by the DRS Mediation Rules and Procedures. The Rules and Procedures enable the mediation process to proceed in an orderly fashion and to be completed in the shortest possible period of time without neglecting thoroughness or fairness.

### **Mediators**

DRS mediators are licensed attorneys in the Commonwealth of Pennsylvania or licensed real estate brokers or agents who have received formal training as DRS mediators and who have agreed to participate in the program. Mediators are selected by the DRS Administrator, though parties have the opportunity to object to the selection of any mediator who has any financial or personal interest in the results of the mediation.

### **Role of the Attorney**

DRS Mediation is designed to promote fair solutions to parties who are not represented by counsel. Any party, however, has the right to be represented by counsel at any stage

during the mediation process. Parties should consult an attorney if they have questions or concerns about mediation or the Dispute Resolution System.

### **Mediation Fees**

Mediation fees are divided equally among the parties to mediation and are payable in advance of the mediation conference. The applicable fee schedule is determined as a result of negotiations between the Administrator and the mediator or mediation service provider. Copies of the fee schedule are provided to parties to the dispute, along with the Mediation Rules and Procedures, when the mediation process is initiated. All parties receiving copies of the fee schedule should be informed that the fee schedule is subject to change, and the fee schedule that is in effect when the request for mediation is made will be the one imposed. Copies of the Mediator Fee Schedule are available from the DRS Administrator upon request.

### **Additional Questions?**

Your additional questions may be directed to the Dispute Resolution System Administrator at the local Association of REALTORS®.

# SELLER-BUYER GUIDE FOR INITIATING MEDIATION

**When a Dispute Arises.** The decision to initiate mediation under the Home Sellers/Home Buyers Dispute Resolution System should be made only after all attempts to negotiate an acceptable solution have been exhausted.

**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 should inform your attorney of your intent to initiate mediation under the DRS Rules. 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.

**To Initiate Mediation.** When all attempts to negotiate a settlement have failed, you should proceed as follows:

- A. If You and Other Parties Have Pre-committed to Mediation, i.e., you have signed an Agreement which contains a mediation clause, or other written agreement:
  1. Contact your broker or sales agent or the local Board of REALTORS® to request the information and forms you will need to initiate mediation.
  2. Upon receipt, review the descriptive brochure to familiarize yourself with the mediation process. You will also receive a copy of the Mediation Rules and Procedures, a Mediator Fee Schedule and a Request to Initiate Transmittal Form which you will file to initiate the mediation process.
  3. Complete and sign the Request to Initiate Mediation Transmittal Form. Mail the original form of the DRS Administrator to the local Association of REALTORS®. Be sure to include the appropriate number of copies as requested in the Transmittal Form.

Upon receipt of your Transmittal Form, the DRS Administrator will provide copies of it and a list of DRS mediators and their fees to all named parties. The named parties will have ten days in which to review the list, cross off the names of any mediator not desired, and return the list to the DRS Administrator. The Administrator will choose the first available mediator who is common to all lists, in accordance with the Mediation Rules and Procedures. The mediator will contact the parties to schedule the mediation conference.

- B. If you or Other Parties Have Not Pre-committed to Mediation, i.e., you have not signed an Agreement of the Sale of Real Estate, or addendum, which contains a mediation clause.
1. Contact your broker or sales agent or the local Association of REALTORS® to request a brochure describing the Dispute Resolution System and the information and forms you will need to initiate mediation.
  2. Carefully review the Mediation Rules and Procedures and the Mediation Fee Schedule so that you understand what is involved in the mediation process.
  3. Complete and sign both the Agreement to Mediate and the Request to Initiate Mediation Transmittal Form. Mail both forms and any required attachments to the mediation Administrator at the address identified at the end of the Mediation Transmittal Form. Be sure to include a copy of the Transmittal Form for each of the other parties in the dispute. You should also provide a cover letter requesting the Administrator's help in obtaining the agreement of the other parties to mediate the dispute.
  4. If all other parties agree to mediate under the DRS Mediation Rules and Procedures, the Administrator will provide all parties with a list of possible mediators. Each party will, within ten days, review the list, cross out the name of any mediators who may have a personal or financial interest in the dispute or to whom the party objects, and return the list to the DRS Administrator. The Administrator will appoint the first available, commonly acceptable mediator to the dispute, who will contact you and the other parties to schedule the mediation conference. (Note: Your broker or sales agent and attorney may be able to assist you in obtaining the agreement of other parties to mediate the dispute).

Should you have any questions, consult with your broker or sales agent or contact the local Association of REALTORS®.

**PENNSYLVANIA ASSOCIATION OF REALTORS®  
HOME SELLERS/HOME BUYERS  
DISPUTE RESOLUTION SYSTEM**

**MEDIATION RULES AND PROCEDURES**

**Agreement of Parties**

These Dispute Resolution System (hereafter “DRS”) Mediation Rules and Procedures shall apply when the parties have agreed in writing to mediation under the Home Sellers/Home Buyers DRS. By mutual written agreement of all the parties to the claim, any specific provision of these DRS Rules and Procedures pertaining to mediation may be modified.

**Initiation of Mediation**

Any party may initiate mediation under these DRS Rules and Procedures by completing, signing and mailing to the local Association of REALTORS® (hereafter “Administrator”) a Request to Initiate Mediation DRS Transmittal Form (hereafter “Transmittal Form”). Such form shall contain or be accompanied by the following information, to the extent known or readily available:

- A. A copy of the fully executed agreement containing the mediation clause;
- B. A copy of such other written agreement invoking these DRS Rules and Procedure.
- 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 DRS Rules and Procedures.
- D. 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.
- E. A brief statement of the facts that give rise to the claim and the damages or relief sought.

**Selection of Mediator**

Within five (5) days of receiving the Transmittal Form, the Administrator shall supply a list of qualified mediators and their fee schedules, along with a copy of the Transmittal Form, to each party to the dispute. Within ten (10) days, each party will review the list,

cross off the name of any mediator who might have a financial or personal interest in the dispute or to whom the party objects, and return the list to the DRS Administrator. The Administrator will appoint the first available, commonly acceptable, mediator to the dispute. The Administrator will then place the name of the selected mediator at the bottom of the list of qualified mediators.

No person shall serve as a mediator in any dispute if that person have any financial or personal interest in the results of the mediation unless, after full disclosure, the parties have given their written consent.

### **Time and Place of Mediation Conference**

Within ten (10) days of his or her 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 date of receipt of the DRS Transmittal Form, and shall allow for not less than twenty (20) days advance notice of the conference, which notice shall be given by the mediator to all parties.

### **Conduct of Mediation Conference**

At the mediation conference, the parties will be expected to produce all information reasonably required for the mediator to understand the issues presented. Such information will usually include relevant written materials and a description of any witnesses and the content of their testimony. At the election of the mediator, the parties shall provide 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 shall have the 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.

The mediator has no authority to render an opinion or bind the parties to his or her decision, but rather may assist the parties in defining the matter in dispute and reaching an ultimate, mutually agreeable solution.

Formal rules of evidence shall not apply to the mediation conference.

### **Representation of Counsel**

Any party may be accompanied by and represented at the conference by counsel. A party who intends to be represented by counsel shall notify the mediator and the other parties of such intent at least ten (10) days in advance of the conference.

## **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 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/

No transcription or recording shall be made of the mediation without the prior written consent of all parties and the mediator.

Disclosure of any records, reports, or other documents received or prepared by the mediator or Administrator cannot be compelled.

Neither the mediator nor Administrator shall be compelled to testify in any proceeding as to information divulged or representations made in the course of the mediation or in any communication made to the mediator or Administrator be compelled to produce any document of whatever nature made by any party pursuant to and in the course of mediation, with the exception of any Agreement which was reached in the course of mediation and signed by all the parties.

## **Mediated Settlement**

The mediated settlement shall be reduced to a written agreement by the mediator which shall be signed by all parties within ten (10) days of the conclusion of the mediation conference. Every reasonable effort should be made to reduce the settlement to a written agreement for signing at the conclusion of the mediation conference.

## **Judicial Proceedings and Immunity**

Neither the Administrator, the Mediator, the National Association of REALTORS® the Pennsylvania Association of REALTORS® nor any of its member boards, shall be deemed necessary or indispensable parties in any judicial proceedings relating to mediation under these DRS Rules and Procedures. Neither the Administrator, Mediator, National Association of REALTORS®, Pennsylvania Association of REALTORS® nor any local board 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 Home Sellers/Home Buyers Dispute Resolution System.

## **Mediation Fees**

Mediation fees are divided equally among the parties to mediation and are payable in advance of the mediation conference. All mediation fees will be charged and payable pursuant to the terms set forth in the fee schedule.