



Do you have a dispute you would like to try and resolve before filing a written complaint? Mediation is a dispute resolution process whereby a mediator works with you and the other parties to facilitate a mutually acceptable resolution of your dispute. Mediation is usually less adversarial, less formal, and the parties are directly involved in the decision-making process to resolve their dispute. As a general policy, the Association promotes mediation and strongly encourages you to consider using mediation.

While the Association promotes mediation, please be advised of the following: mediation is a voluntary process and a mediation conference can only be scheduled for those parties that agree to mediation. If any party to your dispute does not agree to mediation or you are unable to reach a mutually acceptable resolution of the dispute, you may need to file an ethics complaint.

Enclosed you will find information on the mediation process as well as the *Request for Ethics Mediation* form that you will submit to start the mediation process.

Please do not hesitate to contact our Professional Standards Administrator at lharank@sacrealtor.org should you have any questions regarding this process.



SACRAMENTO ASSOCIATION OF REALTORS® ETHICS MEDIATION

IF YOU ARE CONTEMPLATING ETHICS MEDIATION

The following information regarding the ethics mediation process should be helpful if you are contemplating mediation as a means of resolving a dispute or conflict.

SAR ETHICS DISPUTE RESOLUTION SERVICE

This service has been formed essentially for the use of our members and their clients to provide a forum for efficient resolution of ethics disputes. Our Mediators are SAR REALTOR® Members who have received C.A.R./Pepperdine University Mediation Training and are familiar with all aspects of the NAR Code of Ethics.

WHAT IS MEDIATION?

Mediation is a means of resolving disputes through peaceful communication. It is an alternative to adversarial, expensive, and time-consuming litigation through the courts. It is non-adversarial, confidential, informal, inexpensive, and is now widely recognized as the forum of choice for the resolution of conflicts and misunderstandings.

THE ROLE OF MEDIATORS

Mediators are impartial third parties who provide their services with the dedicated belief in the power of mediation and collaborative negotiation. Mediators do not serve as judge or jury, do not seek to determine who is in the right, or place blame. *Mediators do not impose a decision* on either party – their only interest is in helping you to resolve differences and reach a *mutually agreeable solution*. *Mediators do not give legal or professional advice*. Rather they facilitate communications by helping disputants describe their feelings, clarify issues, determine their true interests, identify underlying concerns and where possible, reach agreement.

THE MEDIATION PROCESS

The mediation process begins by welcoming and introducing all participants followed by an opening statement from the mediator. Initially, each disputant will be given an uninterrupted opportunity to define the conflict/problem as they see it and express their feelings about it to the Mediator. Each person will be given time to describe the conflict from their perspective while the Mediator and the other party listens. The Mediator may ask clarifying questions from time to time.

The process demands a high degree of mutual respect and honesty - and no foul or threatening language, gestures, or actions will be permitted. Flexibility and respectful communication is key to the mediation process and parties must honestly express their needs and truly listen to what others have to say. If parties focus on blaming or revenge it merely promotes similar responses, lessening the chances of resolution.

Once the Mediator has a clear understanding of the problem, the Mediator will ask questions designed to ensure that each party fully comprehends the conflict from the perspective of the other disputant, and the issues and interests involved. In this way, a great deal of important information comes to light which may not have been known or understood by the other party.

At this point in the process, the Mediator will help the parties understand that to solve a conflict each must be willing to acknowledge any new understanding they have about the dispute and the other person's situation. From time to time, the Mediator may ask for a private meeting with one party at a time in order to get a clear idea of their refined interests, goals, and proposals as to the final outcome of the mediation.

In the final stages of the mediation, potential resolutions are explored.

AGREEMENTS

A settlement or resolution reached between the parties as a result of the mediation may be oral or written at the discretion of the parties to the dispute.

A written agreement may be considered binding in the same way as a *written contract* is binding in the courts. This requires that the agreement must be in writing and signed by the parties. It must also contain a clear statement that: 1) each party wants the agreement to be binding, 2) each party understands the agreement is admissible in court should enforcement be necessary. Binding agreements in civil matters do not imply other means of enforcement such as intervention by police or sheriff's officers.

At the request of the parties, the Mediator will assist in writing the agreement, using the parties' own words, and their mutually agreed upon terms. *The Mediator has no intent or role in influencing the content of any agreement arrived at by the parties. The Mediator's only interest is to facilitate communication that is satisfactory to each side of the dispute.*

SAR DOES NOT MONITOR OR ENFORCE AGREEMENTS RESULTING FROM MEDIATION.

CONFIDENTIALITY

Except as otherwise provided by the C.A.R. *California Code of Ethics and Arbitration Manual*, California Evidence Code, or California law, all communications, negotiations, or settlement discussions in the course of a mediation or mediation consultation are confidential and are not admissible or subject to discovery. For mediation to be successful, the parties must feel free to discuss the issues openly with the assurance that their presentations will be held confidential by law. Accordingly, the parties will be required to sign a confidentiality agreement, *before the mediation session can proceed*, to signify intent to comply with the rules of confidentiality.

It is important to note that if a written agreement is reached, both parties should recognize that the resolution itself is not confidential and may be enforceable by law in the courts.

REQUEST FOR ETHICS MEDIATION
Sacramento Association of REALTORS®

Please provide the information requested below:

1. Party Requesting Mediation:

Name

Address (City, State, and Zip)

Email

Preferred Contact Phone Number

2. REALTOR(S)® with whom you want to mediate with:

Name of REALTOR® and DRE License Number

3. Brief Narrative of Dispute (or attach a narrative with this request):

4. Acknowledgement and Signature:

I agree to mediation in accordance with the Sacramento Association of REALTORS® Ethics Mediation Rules and Procedures.

Signature

Date

Sacramento Association of REALTORS® Ethics Mediation Rules and Procedures

1. Purpose. The Sacramento Association of REALTORS® Directors have adopted use of the C.A.R. and NAR Ethics Mediation procedures for members of the public and other REALTORS® as an alternative to a formal written ethics complaint or formal ethics hearing.

2. Cases Eligible for Ethics Mediation. Complaints brought by the public or by other REALTORS® may be mediated under these rules and procedures. Complaints brought by the SAR Grievance Committee and complaints alleging a violation of the public trust may not be mediated.

Public trust is defined as a demonstrated misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm.

3. Participation in Ethics Mediation is Voluntary. Parties are advised that ethics mediation is voluntary and that all parties must agree to participate in writing. It is also advised that parties may decline or withdraw from mediation and file a formal written ethics complaint to be processed under the procedures of the California Association of REALTORS® (C.A.R.) *California Code of Ethics and Arbitration Manual*.

4. SAR Contacts. All correspondence will be directed in writing to:

Email: lharrank@sacrealtor.org

OR

Mail to: Sacramento Association of REALTORS®
Attn: Professional Standards Administrator
2003 Howe Ave
Sacramento, CA 95825

5. Fees and Costs. SAR does not charge a fee for ethics mediation.

6. Mediators. SAR Mediators (“Mediators”) are assigned by the SAR Professional Standards Administrator (“Administrator”). Mediators are required to perform a conflict of interest check in connection with all mediation participants to determine matters potentially affecting their impartiality. Mediators do not give legal or professional advice.

Mediators cannot refer concerns they have regarding the conduct of any party to mediation to the SAR Grievance Committee, to the state real estate licensing authority (Department of Real Estate), or to any other regulatory body. This prohibition is intended to ensure impartiality and avoid the possible appearance of bias. Mediators are, however, authorized to refer concerns that the public trust may have been violated to the Grievance Committee.

7. Scheduling Process and Timeframes. The Administrator will immediately send a copy of the *Request for Ethics Mediation* to all named parties with a request to respond within fifteen (15) days. If no response is received after fifteen (15) days, the Administrator will notify the requesting party and the ethics mediation request will be closed. The requesting party may then file a formal written ethics complaint with the Association, if a formal written ethics complaint has not already been filed.

The time the matter was originally brought to the Association's attention shall be considered the filing date for purposes of determining whether an ethics complaint is timely filed. Associations will continue to process filed ethics complaints until withdrawn by the complainant.

If a response is received and named parties agree in writing to participate in a mediation conference, the Administrator will coordinate with all parties and the assigned Mediator for a date and time of the mediation conference.

8. Notice to the Parties. Once the mediation has been scheduled, the Administrator will provide written notice to the parties of the details of the mediation, the mediation process, and a copy of the *Agreement to Mediate*.

9. Confidentiality. The allegations, discussions, and decisions rendered in ethics mediation proceedings are confidential and shall not be reported or published by the Association, any member of a tribunal, or any party under any circumstances except those established in the *California Code of Ethics and Arbitration Manual*.

10. Representation by Counsel. Any party may be represented by counsel. Attorneys and/or other witnesses involved in the dispute may be present at the mediation if the named parties request their attendance and the witnesses agree to attend. It is the parties' responsibility to make any witnesses aware of the mediation. SAR has no jurisdiction to compel witnesses to attend.

11. Agreements. The Mediator and the parties have considerable latitude in fashioning a mutually acceptable resolution. Resolutions can include, but are not limited to, payment of disputed funds, repairs or restoration of property, written or oral apology, or acknowledgement of a violation of the Code of Ethics. In cases where a REALTOR® acknowledges that the Code has been violated, that admission may be sufficient to resolve the matter or, alternatively, the parties may agree that discipline should be imposed. The discipline may, at the agreement of all parties, include any of the forms of discipline established in the C.A.R. *California Code of Ethics and Arbitration Manual* and may also include payment of monies to the complainant or to a third party. Also, the parties may agree that the complainant will withdraw a complaint or agree not to file a formal, written ethics complaint in return for the respondent's action or acknowledgement. Again, any discipline imposed must be agreed to by all of the parties.

12. Refusal to comply with agreed upon discipline. Failure or refusal of a respondent to comply with the terms of any mutually agreed on resolution shall entitle the complaining party to resubmit the original complaint or, where a formal complaint in the appropriate form had not been filed, to file an ethics complaint. The time the matter was originally brought to the Association's attention shall be considered the filing date for purposes of determining whether an ethics complaint is timely filed. Associations will continue to process filed ethics complaints until withdrawn by the complainant.