

WHAT IS MEDIATION?

It is a process in which parties submit their dispute to a third-party neutral mediator who works with them to reach a settlement satisfactory to both parties. Mediators receive a fee from the parties for their services and are rewarded in knowing that their efforts have resulted in an amicable settlement and diverted time and money required by arbitration and litigation.

MEDIATION BENEFITS:

Rather than having a jury or judge decide the dispute, the parties, with help of the mediator, are directly engaged in the negotiation of the settlement. And, they work to come to a settlement agreeable to all parties. The neutral mediator can view the dispute objectively and can assist the parties to explore alternatives. The cost of settlement will never be less expensive than mediation since resolving the dispute at this earlier stage will avoid expensive legal fees and time.

HOW DOES IT DIFFER FROM LITIGATION?

It is less formal and the decision is determined by the parties themselves, to reach their own settlement rather than a judge or jury making the decision. Through caucuses each party is able to better understand the opposing party's view. It enables the parties to explore alternatives and possible compromises.

STAGES OF MEDIATION:

The purchase contract requires disputes to be mediated prior to taking legal action but the parties must still agree in writing that their dispute will be conducted through mediation. The filing party requests mediation describing the dispute and the amount of money being sought. A \$100 Administrative Fee must be submitted with the request. The responding party is contacted and may submit a written response and/or counterclaim in addition to their \$100.00 Administrative Fee. A roster of potential mediators is mailed to each party. The parties have the right to challenge any mediator. The SANTA CLARA COUNTY ASSOCIATION OF REALTORS® (SCCAOR) will appoint a mediator. The filing papers are delivered to the mediator who sets the time, date and place for the mediation conference with each party. Mediator fees are payable in advance of the mediation conference.

APPOINTMENT OF A MEDIATOR:

(SCCAOR) will appoint a qualified mediator from those persons not disqualified by either of the parties. Should the appointed mediator be unable or unwilling to serve, SCCAOR reserves the right to substitute another mediator.

QUALIFICATION OF A MEDIATOR:

All mediators in the SCCAOR Mediation program have been trained in mediation techniques and have substantial experience. Prior to accepting an assignment, each mediator must agree that they have no financial interest or a personal relationship with anyone related to the case and agree to withdraw if they feel any circumstances are likely to lead to a presumption of bias or prevent their ability to remain neutral during the mediation.

AUTHORITY OF THE MEDIATOR:

The mediator does not have the authority to impose a settlement on the parties but will attempt to help them reach a satisfactory resolution of their dispute agreeable to all parties. Whenever necessary, the mediator may obtain expert advice for technical aspects of the dispute provided the parties agree in advance and assume the expense of obtaining such advice.

REPRESENTATION:

Any party has the right to be represented by any person (or attorney) at the mediation provided the name and addresses are communicated in writing to the mediator at least fifteen (15) days in advance of the mediation. They will not be allowed in the mediation unless the mediator has been notified in advance.

DATE, TIME AND PLACE OF MEDIATION:

The mediator will set the date, time and place of each mediation session and communicate that information to each of the parties.

PREPARING FOR THE MEDIATION CONFERENCE:

Understand that you will be presenting your case, documents and other evidence to support your argument. Be prepared to define the problem, explain your solution and how you arrived at your conclusion. Ascertain the strengths and weakness of your case. Have your facts and documents ready to support your claims. Seek to make your proposals reasonable and be willing to be open to the other party's understanding of the case. Determine, in advance, what you might be willing to accept to settle the case. Remember, that your presentation should be about the facts and not a personal attack against the other party.

THE MEDIATION ITSELF

The parties should come to the conference prepared and have all documentation with them. If you intend to present documents into evidence, be sure to bring copies for the other party and the mediator. The mediator will describe the procedures and ground rules covering each party's opportunity to talk, the order of presentation, decorum, discussion of unresolved issues, use of breakout caucuses and the confidentiality of the proceedings. The filing party presents their view of the dispute then the other party responds. If joint discussions reach a stage where there is no progress, the mediator will break into private caucuses with each party. The mediator will not advocate for either party but act as "an agent of reality." The mediator will attempt to assist each party to understand the other parties' demands and work toward reducing a disagreement into a workable solution. The mediator will help the parties to remain focused and help prevent escalation of the disagreement. If both parties approach the mediation fairly and honestly, there is an excellent chance that there will be a satisfactory settlement. If parties cannot reach an agreement, the mediation will be terminated.

PRIVACY:

Mediation conferences are private. Only the parties and their preapproved representatives may attend. Other persons may only attend with the permission of the other parties and the mediator.

NO TAPE RECORDING/STENOGRAPHIC RECORD:

There will be no tape recording/stenographic record of the mediation session.

CAUCUSES:

Caucuses are meetings in which a mediator talks with the parties individually to discuss the issues. Anything disclosed during private caucuses will not be disclosed to the other party without permission of the disclosing party.

CONFIDENTIALITY:

The mediator will not divulge information disclosed to the mediator by the parties or witnesses in the course of the mediation. All documents received by the mediator while serving in that capacity are

confidential. The mediator will not be compelled to produce such records or to testify in regard to the mediation in any adversarial proceeding or court.

COUNTERCLAIMS:

Counterclaims are counter demands made by a respondent in his or her favor against a claimant. They are not mere answers or denials of the claimant's allegation and will be resolved during the mediation.

DOCUMENTS:

Should either party intend to present documents during the mediation, that party should provide enough copies for the mediator and the other party.

END OF MEDIATION:

The mediation will end when: (a) settlement agreement is signed by the parties; (b) the mediator determines that further efforts at mediation are no longer productive; or (c) the party or parties declare(s) in writing that the mediation has ended.

EXPENSES:

All witness other fees and the party requiring such services will pay expenses. Costs of any proofs or expert advice produced at the request of the mediator will be borne equally by the parties unless they agree otherwise.

EXCLUSION OF LIABILITY:

Neither the SANTA CLARA COUNTY ASSOCIATION OF REALTORS® nor the mediator will be a necessary party in judicial proceedings relating to the mediation. Neither the SANTA CLARA COUNTY ASSOCIATION OF REALTORS® nor the mediator(s) will be liable to any party for any act or omission in connection with any mediation conducted under these rules.

NEGOTIATION:

This is a process in which disputants communicate their differences to one another and with this knowledge, try to resolve them.

PARTIES:

Parties are the disputants.

RESPONDENTS:

Respondents are responding parties, also known as the defendants.

SETTLEMENT:

When the parties reach an agreement, they should reduce the terms in writing. If any or all of the issues remain unresolved, the parties may take legal action against the other party.