

INTRODUCTION

Although a majority of real estate transactions close without incident, there is a possibility that a problem or dispute will occur. When a dispute does arise, it is usually successfully resolved through normal channels of communication and negotiation. Occasionally, a dispute arises which cannot be resolved through negotiation. In the past, when negotiations failed, parties took their case to court. Today, they are taking their disputes to a professional mediator for Dispute Resolution.

WHAT IS DISPUTE RESOLUTION

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

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

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.

HOMESELLERS/HOMEBUYERS DISPUTE RESOLUTION SYSTEM (DRS)

- **Access to Service**

DRS mediation can be used by any of the parties to a real estate transaction—sellers, buyers, builders, home inspectors, etc. With the exception of controversies that are subject to hearing under REALTOR® Professional Standards procedures, including disputes between REALTORS®, almost any type of dispute that arises from the transaction can be mediated under the DRS Rules and Procedures.

- **Rules and Procedures**

How, when, and by whom Dispute Resolution is initiated and conducted is covered under the DRS Rules and Procedures. The Rules and Procedures ensure fairness, uniformity, and expediency.

- **Written Agreement**

Parties who decide to submit potential disputes to mediation sign either a sales contract that contains a Dispute Resolution clause or an addendum that is attached to the sales contract. The clause states, in part, that parties agree to submit any dispute or claim that arises from the transaction to mediation under the DRS Rules and Procedures. Once the contract or addendum is signed by the parties, parties must submit their disputes to mediation. Parties who do not pre-commit to Dispute Resolution when the sales contract is executed may agree to and submit disputes to mediation by signing a written Agreement to Mediate. Parties can sign this agreement either before or after a dispute arises.

- **Initiating Mediation**

Any party can invoke Dispute Resolution by submitting a written report to the DRS provider. The mediation provider arranges, schedules, and conducts the Dispute Resolution conference.

The Dispute Resolution conference must be held within 60 days from the date on which the mediation provider receives a party's request to initiate Dispute Resolution. Usually the conference is scheduled within 30 days. The typical conference lasts between two to four hours.

- **Mediators**

DRS mediators are experienced, qualified mediators, who have agreed to participate in the program.

- **Role of Attorney**

Although parties to the Dispute Resolution have the right to be represented by counsel, attorneys do not have to participate in the Dispute Resolution conference. Parties should consult an attorney if they have any questions or concerns about mediation or the Dispute Resolution service.

- **Fees**

Fees for Dispute Resolution services are established by the mediation provider and are published in accordance with the DRS Rules and Procedures. The average range of fees for mediation is between \$200-\$400 per party.

The Kansas City Regional Association of REALTORS® endorses the Mediation Service of Missouri for the Homesellers/Homebuyers Dispute.

American Arbitration Association

www.adr.org/FindMediator

Association of Missouri Mediators

www.momediators.org

FACTS ABOUT DISPUTE RESOLUTION

Dispute Resolution is **FASTER** than litigation. A lawsuit can take anywhere from several months to several years to be decided. As a rule, mediation takes about thirty days from beginning to end.

Dispute Resolution is **LESS EXPENSIVE** than litigation. Parties typically split the mediator fees, and costs are significantly less than litigation.

Dispute Resolution is **NOT ADVERSARIAL**. Litigation focuses on disagreements between the parties and result in win-lose decisions imposed by the judge. Dispute Resolution, on the other hand, focuses on agreement between the parties and generally results in a win-win settlement reached and agreed on by the parties themselves.

Parties who agree to Dispute Resolution **RETAIN THE RIGHT TO PURSUE OTHER LEGAL REMEDIES**. If parties cannot reach a mutually acceptable settlement during the Dispute Resolution conference, they are free to arbitrate or litigate their dispute as if mediation never took place.

Statistics show that **Dispute Resolution is successful** 80% to 90% of the time.

**HOMESELLERS/HOMEBUYERS
DISPUTE RESOLUTION SYSTEM**



Kansas City Regional
Association of REALTORS®

**Homesellers/Homebuyers
DISPUTE RESOLUTION SYSTEM**

A fast, easy, and
Inexpensive Alternative
to LITIGATION
