



901 SMILE WAY, YORK, PA 17404 • 717.843.7891 / FAX 717.854.0720 / WWW.RAYAC.COM

3/1/12

**THE REALTORS ASSOCIATION OF YORK & ADAMS COUNTIES
HOME SELLERS/HOME BUYERS DISPUTE RESOLUTION SYSTEM
MEDIATION RULES AND PROCEDURES**

1. Agreement of Parties

These Dispute Resolution System Mediation Rules and Procedures shall apply when the parties have agreed in writing to mediation under the Home Sellers/Home Buyers Dispute Resolution System. Such obligation may be in the form of an executed Agreement of Sale or may be in a separate written understanding between the parties.

2. Initiation of Mediation

Any party may initiate mediation under these Dispute Resolution System Rules and Procedures by completing, signing and mailing the Mediation Transmittal Form to the REALTORS Association of York & Counties. Such form shall contain or be accompanied by the following information:

- a) A signed copy of the applicable Agreement of Sale which binds the parties to mediate;
- b) A signed copy of these Mediation Rules and Procedures;
- c) 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;
- d) Nature and amount of the claim (brief statement of the facts that give rise to the claim, the damages or relief sought);
- e) Copies of appropriate supporting documents; and
- f) If submitting photos, a copy for the file and a copy for each defendant.

3. Responding Party

Within 20 calendar days after the date of correspondence from REALTORS Association, responding party shall reply by submitting completed Transmittal form, executed Rules & Regulations and mediation fee. Failure to reply may constitute violation of a contractual obligation and may result in litigation.

4. Selection of Mediator

Not later than fourteen calendar days after receipt of a signed copy of the Rules & Procedures and the Mediation Transmittal form from the respondent, the REALTORS Association should, subject to the parties' approval, select a qualified mediator.

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

5. Time and Place of Mediation Conference

Within twenty one calendar days of his/her appointment, the mediator should set the date, time and place of the mediation conference provided, however, such date shall not be more than sixty calendar days from the date of receipt of the Agreement to Mediate, and should allow for not less than fourteen calendar days advance notice of the conference, which notice shall be given by the mediator to all parties.

6. 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 issue presented. Such information will usually include relevant written materials and a description of any witnesses and what each could testify to. For more complex cases, the mediator may ask the parties for written materials or information in advance of the mediation conference.

At the mediation conference, the mediator will conduct an orderly settlement negotiation. The mediator will be impartial and neutral in such proceedings and has no authority to force the parties to agree to a settlement. **Parties at the mediation conference shall have authority to enter into and sign a binding written agreement to settle the dispute.**

Resolution of the dispute through this process is entirely voluntary. Either party may decide to terminate mediation at any time and pursue other methods of resolving the dispute. Neither party can be coerced during the mediation into attaining a resolution of the matter. The mediator may explain the ramifications of the parties' failure to reach an agreement, such as the likelihood that the dispute will remain unresolved or that a solution may be imposed upon the parties, for example, by a court.

There are no rules of evidence or substantive rules for resolving the dispute. Information gathering is informal and voluntary, although the parties may be advised of their right to use formal discovery procedures outside the mediation, if they so desire.

The fact that the parties are involved in a dispute and are trying to resolve it through mediation is not known to those outside the mediation, unless the parties divulge this information, or unless they record their agreement as a stipulation in pending litigation, use formal discovery, or have their ultimate agreement incorporated into a court order. This differs from litigation, in which much of the parties' dispute is public record.

7. Representation by Counsel

Any party may be accompanied by counsel at the conference. Because the mediation conference is not an adversarial proceeding, the mediator shall have the discretion to limit the participation, if any, by counsel during the mediation conference. Any party intending to be accompanied by counsel shall notify the mediator and other parties of such intent not less than ten calendar days prior to the conference. Failure to give such notice shall be grounds for the mediator to refuse to permit counsel to attend the conference.

8. Confidentiality

The mediation conference is not a fact finding proceeding in preparation for litigation or arbitration. On the contrary, 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:

- a) Views expressed or suggestions made by a party with respect to a possible settlement of the dispute;
- b) Admissions made in the course of the mediation;
- c) 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 mediator cannot be compelled.

The mediator shall not be compelled to disclose or to testify in any proceeding as to information disclosed or representations made in the course of mediation or communication to the mediator in confidence.

9. Mediated Settlement

The mediated settlement must be reduced to writing by the mediator, then dated and signed at the mediation conference by all parties agreeing to its terms, but in no event shall the settlement be signed later than fourteen calendar days after the conclusion of the mediation conference.

Any mediation settlement agreement shall be a binding, contractual obligation of the parties. All costs and expenses of any legal action required to enforce the terms of a mediation settlement agreement, including reasonable attorney's fees, shall be reimbursed to the persons prevailing in such action by the non-prevailing party.

10. Judicial Proceedings, Immunity and Release

NEITHER THE MEDIATOR, THE NATIONAL ASSOCIATION OF REALTORS NOR ANY OF ITS MEMBER BOARDS/ASSOCIATIONS, INCLUDING THE REALTORS ASSOCIATION OF YORK & ADAMS COUNTIES, SHALL BE DEEMED "NECESSARY PARTIES" IN ANY JUDICIAL PROCEEDINGS RELATING TO MEDIATION UNDER THESE HOME SELLERS/HOME BUYERS DISPUTE RESOLUTION SYSTEM MEDIATION RULES AND PROCEDURES. NEITHER THE MEDIATOR NOR THE NATIONAL ASSOCIATION OF REALTORS, NOR THE REALTORS ASSOCIATION OF YORK & ADAMS COUNTIES 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 PROGRAM.

11. Matters Excluded from Mediation

The following matters are excluded from mediation:

- a) Any foreclosures or other action or proceeding to enforce a mortgage, land contract, or installment purchase agreement;
- b) Any unlawful detainer action involving possession of real estate or specific performance to enforce the terms of an agreement of sale;
- c) The filing or enforcement of a mechanics lien;
- d) Any matter which is within the jurisdiction of the Probate Court;
- e) Any allegations of criminal misconduct; or
- f) All controversies covered under the Professional Standards Policies and Procedures of the National Association of REALTORS including commission disputes between REALTORS.

The filing of a judicial action to enable the recording of a notice of pending action for order of attachment, receivership, injunction or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate.

12. Escrow Deposit Disputes

Please be aware of the following provision of the Pennsylvania Real Estate Commission Regulations concerning escrow deposits:

Section 35.327. Procedure when entitlement to money held in escrow is disputed.

If a dispute arises between the parties to a real estate transaction over entitlement to money that is being held in escrow by a broker, the broker shall retain the money in escrow until the dispute is resolved. If resolution of the dispute appears remote without legal action, the broker may, following 30 days' notice to the parties, petition the county court having jurisdiction in the matter to interplead the rival claimants.

Therefore, if a real estate agent/broker is named as a defending party, only as to the issue of releasing an escrow deposit, in that event, the following shall apply:

1. The defending agent/broker need not pay any mediation fees.
2. The defending agent/broker shall verify by way of written reply the amount of funds held in the escrow account in dispute.
3. The defending agent/broker need not attend the mediation proceeding unless otherwise required to do so as a witness.

13. Mediation Fees

Fees shall be payable to "RAYAC" (REALTORS Association of York & Adams Counties). Mediation fees shall be \$175 per party, of which \$35 is non-refundable. Once the mediator has been appointed in a case, the remaining \$140 mediation fee shall be non-refundable. Said sum shall include payment for up to two hours of services as rendered by the mediator. Any additional time spent by the mediator must be by mutual agreement of the parties to the mediation and for which the mediator shall receive additional compensation for services at the rate of \$50 per hour per party. In all instances, the mediator shall be entitled to payment in advance of performing *any* services.

14. Acknowledgment of Proceedings

By signing in the place below, you hereby acknowledge that you have received, read, understand and agree to be bound by these Home Sellers/Home Buyers Dispute Resolution System Mediation Rules and Procedures.

PARTICIPANTS TO MEDIATION

(Print Name)

(Signature)

DATE

(Print Name)

(Signature)

DATE