REALTORS® ASSOCIATION
OF YORK & ADAMS COUNTIES, INC.

The REALTORS® Association of York & Adams Counties
Dispute Resolution Guide

The Dispute Resolution System, often known as Mediation, is facilitated by the REALTORS® Association in collaboration with designated members of the York County Bar Association. This program is designed to assist buyers, sellers, and other stakeholders in real estate transactions who encounter disputes. Impartial mediators, who are proficient lawyers, will convene with all involved parties to seek resolution. Participation in this process is a contractual requirement outlined in the Pennsylvania REALTORS® Association's sales contract. Any decisions or outcomes reached must be mutually agreed upon by all parties. The fee for this service is $175 per participant.

In this guide you will find the following:

*Overview of the Mediation Program

*FAQs

*Mediation Transmittal Form

*Mediation Rules and Procedures

BEFORE YOU FILE FOR MEDIATION, PLEASE REVIEW THE CHECKLIST TO ENSURE ALL THE DOCUMENTS LISTED BELOW ARE INCLUDED IN YOUR SUBMISSION

- ✓ **Completed and Signed Mediation Transmittal Form**-the nature and the amount of claim must be completed on this form. The form needs to include the contact information for the defending party. Email is the preferred method of communication.
- ✓ **Completed and Signed Mediation Rules and Procedures**
- ✓ **A copy of the signed Pennsylvania Association of REALTORS® Agreement of Sale**
- ✓ **$175 filing fee.** You can include a check payable to RAYAC or contact the RAYAC office at 717-843-7891 with credit card information to pay the fee. If the filing fee is not received within 10 calendar days of submission, your submission will be considered incomplete and will require re-submission.
- ✓ Any appropriate supporting documentation, including paid receipts or contractor estimates.

Documents can either be emailed to staff@rayac.com or mailed to 901 Smile Way York, PA 17404.

Frequently Asked Questions on RAYAC's Dispute Resolution System

1. How much does it cost to file mediation?
   The cost is $175 per party, $35 which is non-refundable.

2. Is mediation mandatory?
   Mediation is mandatory for buyers and sellers, if the parties used the Pennsylvania Association of REALTORS® Agreement of Sale. Paragraph 27 of the ASR states Buyer and Seller will submit all disputes or claims that arise from this Agreement, including disputes and claims over deposit monies to mediation. For anyone else listed as a defending party who is not the buyer or seller, the mediation process voluntary.

3. Who are the mediators?
   They are licensed attorneys in the Commonwealth of Pennsylvania who have agreed to participate in the program.

4. What if I don't have the defending parties contact information?
   RAYAC cannot process the mediation request without the contact information for the defending parties.

5. Can I request attorneys' fees and the mediation filing fees as part of my monetary claim? No

6. Must I be represented by legal counsel during the mediation process? Although parties to the mediation have the right to be represented by counsel, attorneys do not have to participate in the mediation conference. If you intend to bring legal counsel during the mediation program, you must notify RAYAC in advance of the meeting being scheduled.

7. How long does mediation take?
   Typically 6-8 weeks. Communications for mediation can be faster if parties provide email addresses.

8. What if the defending party does not respond?
   If the defending party does not respond, the initiating party is free to pursue legal action through the court system. It is in the best interest of the defending party to respond promptly as mediation is usually a swifter and more cost-effective alternative to litigation. Moreover, courts might refer the case back to mediation if an attempt at mediation has not been made to resolve the matter.

RAYAC
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OF YORK & ADAMS COUNTIES, INC.
901 SMILE WAY, YORK, PA 17404 • 717.843.7891 / FAX 717.854.0720 / WWW.RAYAC.COM

1/01/09

HOME SELLERS/HOME BUYERS DISPUTE RESOLUTION SYSTEM
MEDIATION TRANSMITTAL FORM - INITIATING PARTY

(To be completed and mailed to the REALTORS® Association of York & Adams Counties Inc. by party initiating the mediation. *It must be accompanied by a copy of the applicable Agreement of Sale or Listing Contract and a check in the amount of $175 made payable to "RAYAC."* The amount of $140 will be returned in the event that case is withdrawn or settled prior to the appointment of a mediator. For Escrow Deposit Disputes, please see Mediation Rules and Procedures, page 4, #12.)

1. PARTY REQUESTING MEDIATION

Name:_____

Address:_____
Street City State Zip

Phone:_____Fax:_____E-mail_____

You are: ☐ Buyer ☐ Seller ☐ Broker ☐ Sales Agent
☐ Builder/Contractor ( ) Other_____

The attorney representing you, if any:

Name:_____ Firm:_____

Address:_____
Street City State Zip

Phone:_____Fax:_____E-mail_____

* *

2. Defending Party The party against whom you have a monetary claim (not simply witnesses):

Name:_____

Address:_____
Street City State Zip

Phone:_____Fax:_____E-mail_____

They are: ☐ Buyer ☐ Seller ☐ Broker ☐ Sales Agent
☐ Builder/Contractor ☐ Inspector* ( ) Other_____
* Only parties to the contract are ***required*** to mediate.

If the real estate broker or agent is being named as a supportive witness, please include that information in paragraph #4.

If the real estate broker or agent is being named as an additional defending party, please include an explanation of the nature of your dispute with the real estate broker or agent in paragraph #3.

Additional Defending Parties (if any):

Name:_____

Address:_____
Street City State Zip

Phone:_____Fax:_____E-mail_____

They are: ☐ Buyer ☐ Seller ☐ Broker ☐ Sales Agent
☐ Builder/Contractor ☐ Inspector ( ) Other_____
* Only parties to the contract are ***required*** to mediate.

* *

Name:_____

Address:_____
Street City State Zip

Phone:_____Fax:_____E-mail_____

They are: ☐ Buyer ☐ Seller ☐ Broker ☐ Sales Agent
☐ Builder/Contractor ☐ Inspector ( ) Other_____
* Only parties to the contract are ***required*** to mediate.

* *

3. BRIEF DESCRIPTION OF CLAIM:

Please explain the nature of your dispute. Use additional paper if necessary.

(Please attach copies of relevant written documents including but not limited to Listing Agreements, Agreements of Sale, Construction Contracts, Memorandums of Understanding, Sellers Disclosure Statement, Disclosure Inspection Addendum, Bills and Invoices). **Failure to include the supporting documentation may result in delay.)**

4. **<u>Witnesses</u>** **(A witness is someone who can help support your claim)**
Please identify the names and addresses of any and all witnesses you intend to invite to the mediation conference**:**

_____

_____

_____

5. **<u>AMOUNT OF MONEY INVOLVED</u>:** (This is the monetary claim you are seeking. As stated on the previous page, you should include copies of estimates, bills, etc., to explain or justify the figure below.)

$_____

6. **Have there been any formal court pleadings filed in this case?**
☐ yes ☐ no

If yes, are there any trial dates or time limitations involved?
☐ yes ☐ no
Provide details:

Date:_____ Court:_____

County:_____Judge:_____

Court Case Number: #_____

7. **Do you have authority to enter into and sign a binding written agreement to settle this dispute on behalf of the party you represent?** ☐ yes ☐ no

Comment:_____

8. **Do you need additional information from another party?**
☐ yes ☐ no

Explain:_____

9. **Settlement Date:_____if settlement has occurred.**

<u>SIGNATURES</u>:

_____	_____	_____
print name	signature	date
_____	_____	_____
print name	signature	date

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4/7/14

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 Buyers and Sellers have agreed in writing to mediation under the Home Sellers/Home Buyers Dispute Resolution System. Such obligation shall be in the form of an executed Agreement of Sale. Real estate brokers and real estate agents are not obligated to participate in the mediation process, nor are contractors.

2. Initiation of Mediation

Either the Buyer or Seller 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, emails, and telephone numbers of the parties to the case;

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 documentation (including but not limited to paid receipts and/or contractor estimates to justify the amount requested for claims relating to non-disclosure);

f) If submitting photos, a copy for the file and a copy for each defendant;

Please note: when submitting mediation paperwork, all documents must be signed by the Buyer/Seller (the parties who signed the Agreement of Sale). Further, you must provide a written request if you would like RAYAC to communicate with any parties other than yourselves (the Buyer/Seller). This is for your protection and privacy, and extends to real estate agents, brokers, and legal counsel.

3. Responding Party

Within 20 calendar days after the respondent receives the correspondence from REALTORS Association, responding party shall reply by submitting completed Transmittal Form, executed Rules & Regulations and Mediation Fee, along with any supporting documents that the respondent wishes to include. 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 21 calendar days after receiving the complete case file, the mediator should set the date, time and place of the mediation provided, however, such date shall not be more than 60 calendar days from the date of receipt of the Agreement to Mediate and should allow for not less than 14 calendar days advance notice of the conference.

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 PA 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.

The Pennsylvania Association of Realtors Agreement of Sale sets forth the procedure, method and manner by which escrow deposits must be retained or released by a real estate broker.

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