

DISPUTE RESOLUTION OPTIONS FOR SELLERS AND BUYERS¹

SMALL CLAIMS

NOTE: The OREF Residential Real Estate Sale Agreement provides that in the event of a dispute all claims within the \$10,000 jurisdictional limit of the Small Claims Court shall be brought and decided there, in lieu of mediation, arbitration or litigation in any court of law. Here is a summary of the Small Claims Court process:

Plaintiff files a Complaint for money damages not exceeding \$10,000. Plaintiff pays filing and service fees.

If Defendant does not respond within the time provided in the Summons, Plaintiff may obtain default judgment for the amount sought, plus filing and service fees.

Defendant may respond by either paying the claim and court costs or demanding a hearing. Defendant may file a Counterclaim. Defendant pays filing fees.

Prior to the Small Claims Court hearing, there is an opportunity for Plaintiff and Defendant to attend a court-sponsored mediation session. Participation is encouraged. If mediation is unsuccessful a Judge will hear and decide the case. Attorneys are generally not permitted to represent parties in Small Claims Court.

Judge's decision: Judgement is entered for Plaintiff or Defendant together with that party's filing and service fees.

For information regarding Small Claims Court contact your local County Circuit Court Administrative Office.

Clackamas Co.	503-655-8447
Multnomah Co.	503-988-3022
Washington Co.	503-846-8888
Press 11, Ext. 2354	
Columbia Co.	503-397-2327

MEDIATION

Party initiating Mediation ("Claimant") files paperwork with the Portland Metropolitan Association of REALTORS® ("PMAR").

PMAR provides the other party(ies) ("Respondent(s)") with copy of the claim. Filing fees are payable by each party.

PMAR provides a list of mediators and a calendar to all parties. Parties return mediator and calendar preference sheets.

PMAR selects the mediator based upon preference sheets and schedules the Mediation based upon calendar responses.

Prior to commencement of the Mediation, the parties must sign an agreement to keep confidential the matters discussed during the Mediation. Therefore, offers made in an unsuccessful Mediation cannot be later brought up in Arbitration.

Mediation Conference: Scheduled within approximately 60 days of filing. Lasts approximately 4 hours, on average. The mediator's fee is shared equally between the parties and must be paid in advance.

A successful Mediation should result in a binding agreement, resolving the dispute between the parties. If the Mediation is unsuccessful, the parties are free to pursue Arbitration.

Warning: It is important for both parties to participate in the Mediation process. If the case proceeds to Arbitration and the arbitrator finds that the prevailing party failed to timely offer or agree to mediate, that party will be denied prevailing attorney fees.²

ARBITRATION

The Arbitration process takes the place of formal court litigation. What follows is a summary of the Arbitration process. Some of the initial procedures prior to the Arbitration hearing may vary, depending upon the Arbitration company selected.

Arbitration company provides Respondent(s) with copy of the claim. All parties are provided with the company's rules of Arbitration.

The Arbitration company also provides the parties with a list of arbitrators and a calendar. Parties return arbitrator and calendar preference sheets.

The company selects one or more arbitrators (a 3-person panel may be used depending upon the size of the claim) based upon the preference sheets and schedules the Arbitration based upon calendar responses. The cost of the arbitrator(s) is shared equally and must be paid in advance.

Arbitration Hearing: Generally proceeds as a trial, although somewhat less formal. Hearing is usually held at the arbitrator's office or a mutually agreed-upon site. All parties may use an attorney. Evidence is offered and sworn testimony is received. The rules of evidence generally apply.

Arbitrator renders a written decision. The award is final and generally may not be appealed. If not paid or otherwise complied with, the award may be filed as a judgment in the same manner as if was rendered by a Judge or jury.

¹ This is a summary of the various dispute resolution alternatives available to sellers and buyers using a Real Estate Sale Agreement published by Oregon Real Estate Forms LLC. ("OREF") If you used an OREF Residential Real Estate Sale Agreement form in your transaction, all of the above dispute resolution procedures are available to you. If a different form of OREF sale agreement was used, or a non-OREF form, your rights to alternative dispute resolution may vary. If you have any questions, you should consult an attorney.

² While the PMAR dispute resolution program contemplates that the parties will only file for arbitration if the completed mediation process has actually failed to resolve the dispute, there are limited circumstances – usually due to time constraints and/or the nature of the claim – that a claimant will first file for arbitration and then promptly file, or offer to file, for mediation at approximately the same time. This is permissible under the standard OREF statewide sale agreement form. While the timing of this filing decision should usually be left to the parties' attorneys, it is important to know that in arbitration disputes between sellers and buyers, the winning party may be denied prevailing attorney fees if the arbitrator(s) conclude(s) that the winner did not either offer or agree to mediate at the time of filing for arbitration or promptly thereafter. The primary purpose of this provision is to encourage both sellers and buyers to make a good faith initial effort to resolve their dispute through the faster, less formal, and less expensive, mediation process, before going into a formal arbitration hearing.