

GUIDE TO MEDIATION

Between Sellers and Buyers Mediation Packet A - Request to Initiate Mediation

The decision to initiate mediation under the DRS Rules and Procedures should be made only after all attempts to negotiate an acceptable solution have been exhausted and a genuine effort was made to resolve your claim.

You may wish to discuss the matter with your attorney before filing for mediation. Your attorney may be able to provide you with advice and counsel, which may help you resolve the matter without having to proceed to mediation.

When you have a fully executed Real Estate Sale Agreement published by Oregon Real Estate Forms LLC (“OREF”), RMLS™ Listing Contract or other written agreement that contains a Mediation Clause, and your REALTOR is a member of PMAR, you are entitled to participate in its Dispute Resolution System. Your rights may vary if you have used a non-OREF form. If you have any questions regarding your legal rights, check with your attorney.

(Note: REALTOR vs. REALTOR disputes are not covered in the dispute resolution provisions of your OREF Real Estate Sale Agreement. The Code of Ethics and Standards of Practice of the National Association of REALTORS require that all REALTOR vs. REALTOR disputes be resolved through mandatory arbitration before the local Board or Association.)

Mail this Mediation Packet with any applicable attachments to:

Portland Metropolitan Association of REALTORS
150 SW Harrison, Ste. 200
Portland OR 97201
sschneider@pmar.org
PHONE: 503-459-2156 FAX: 503-228-4170

What is Mediation?

Mediation is a process used to resolve disputes. In mediation, the parties to a dispute are assisted by a neutral third party called a “mediator.” The mediator facilitates discussions and negotiation with a goal toward reaching settlement, but is not empowered to impose a settlement on the parties. The mediator’s role is to enable the parties to work with one another to achieve a common goal - a mutually acceptable agreement. If agreement is reached, the mediator often assists the parties in reducing the agreement to writing.

Mediation Rules & Procedures

1. Agreement of Parties

These NATIONAL ASSOCIATION OF REALTORS DISPUTE RESOLUTION SYSTEM (“DRS”) Mediation Rules and Procedures shall apply when the parties have agreed in writing to mediation under the DRS and the seller’s agent or buyer’s agent (or both) is/are members of the Portland Metropolitan Association of REALTORS (“PMAR”). No portion of these DRS Rules and Procedures may be modified unless PMAR and all parties have consented in writing.

2. Initiation of Mediation

Either the seller or buyer in a transaction involving a Real Estate Sale Agreement published by Oregon Real Estate Forms LLC (“OREF”) may initiate mediation under these DRS Rules and Procedures by completing, signing and mailing to the Portland Metropolitan Association of REALTORS (“PMAR”), the **Request to Initiate Mediation (Mediation Packet A)**.

Mediation Packet A shall contain, or be accompanied by, the following information, to the extent known or readily available:

- a) **A fully executed Real Estate Sale Agreement, Listing Contract or other written agreement containing an agreement to mediate disputes under DRS;**
- b) **The names, addresses and telephone numbers of the parties to the case and their respective REALTORS, including the name of every insurance company known to have received notice of the dispute or claim and the corresponding file or claim number;**
- c) **A simple and concise statement of the basis for your claim, and amount of claim in damages, or other relief sought; and**
- d) **A \$150.00 non-refundable filing fee.**

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 dispute resolution provisions contained in the standard OREF 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.

3. Time and Place of Mediation Conference

Within twenty (20) days of receipt of the written Agreement to Mediate signed by all parties, the Mediator will set the date, time, and place of the Mediation Conference. Provided, however, such date shall not be more than sixty (60) days from the date of PMAR’s receipt of the DRS Mediation Packet, unless all parties agree otherwise. The Mediator will provide at least twenty (20) days advance notice of the Mediation Conference, unless the parties have agreed to a shorter time.

4. Conduct of Mediation Conferences

Prior to the Mediation Conference, the parties will be expected to produce all information reasonably required for the Mediator to understand the issue(s) presented. Such information will usually include relevant documents and written materials together with the identity of any voluntary witnesses and what information they could provide. At the Mediation Conference, the Mediator will conduct orderly settlement negotiations. Parties at the Mediation Conference must have full authority to enter into and sign a binding written agreement to settle the dispute. The Mediator will be impartial in such proceedings and has no authority to force the parties to agree to a settlement.

5. Representation by Legal Counsel

Any party may be accompanied by and represented at the Mediation Conference by their legal counsel. However, a party who intends to be represented at the Mediation Conference shall notify all parties including the assigned Mediator of such intent, in writing, at least ten (10) days in advance of the Mediation Conference. Listing an Attorney in either Mediation Packet A or B satisfies the notification requirement. If a party brings their attorney to the Mediation Conference without first having provided advance written notice as required

herein, and the other party is not represented, the unrepresented party shall have the right to continue the Mediation conference for a reasonable period of time in order to secure legal representation.

6. Confidentiality

Mediation communications are confidential to the fullest extent allowed by ORS Chapter 36. So long as the mediation process is still open (i.e. settlement discussions are continuing, even though the Mediation Conference was adjourned), all communications with the Mediator, the attorneys, or the parties, their views expressed, suggestions or proposals made, including offers/counteroffers of settlement, or other efforts to resolve the dispute, whether written or oral (collectively, "Negotiations"), are protected from disclosure. Similarly, production or disclosure of any records, reports, or other documents received by or prepared by, or at the direction of, the Mediator, expressly for or during the mediation process (collectively "Documents"), cannot be compelled by the parties, witnesses, attorneys, or other participants to the mediation. Subject to the following sentence, this means that the Negotiations and Documents may not be used, relied upon, or offered into evidence, in any arbitration, litigation, or other subsequent adversary proceeding. Notwithstanding the preceding, for purposes of supporting an award of prevailing attorney fees, the parties are encouraged to discuss, in advance of the mediation, or immediately following its termination (if no settlement is reached) whether mediation offers/counteroffers of settlement will be permissible in a subsequent ORCP 68 attorney fee hearing. Post-mediation offers and counteroffers of settlement will be admissible when offered solely in support of a Petition for Attorney Fees under ORCP 68.

Caution: If there is any question or confusion as to whether the mediation process is continuing, or has been concluded, the matter should be jointly addressed to the Mediator by the participants and/or their attorneys.

7. Mediated Settlement

All mediated settlements that occur between the parties during, or as a result of the Mediation Conference should, if possible, be reduced to a written and signed summary at that time. It is common for this summary to address the essential terms of settlement, with the understanding that a more formal written agreement will be produced shortly thereafter. It is also common for parties to designate the Mediator as the final arbiter, if there are disputes over the remaining terms. The final settlement agreement should be completed and ready for execution no later than ten (10) days following the conclusion of the Mediation Conference.

8. Judicial Proceedings; Immunity; and Liability

Neither the Mediator, PMAR, the National Association of REALTORS nor any of its member boards, or their respective licensees, employees, representatives, contractors or attorneys shall be joined in any judicial proceeding or arbitrations relating to any of the claims raised in a mediation occurring under these DRS Rules and Procedures. ORS 36.210 provides that mediators, mediation programs, and their personnel, including officers, directors, employees and agents (collectively "Providers") may not be held civilly liable for: (a) Any act or omission occurring while engaged in facilitation efforts, mediation, or other dispute resolution services, unless performed in bad faith or with intentional disregard of others; or (b) The disclosure of confidential mediation communications, unless made in bad faith or with intentional disregard of others.

9. Mediation Fees

Each party will pay to PMAR a \$150.00 non-refundable filing fee in order to implement the DRS. The hourly rate for all Mediators will be \$325.00 per hour, and shall be shared equally between all parties unless agreed otherwise. The required advance deposit shall be paid by each party directly to the Mediator not less than ten (10) business days prior to the date of the Mediation Conference. Some or all of any unused deposit may be refunded to the parties subject to current PMAR policy guidelines with its Mediators. Mediator fees may also include charges to the appropriate party(ies) for reasonable documented expenses and time incurred by the Mediator before, during or after the Mediation Conference, e.g., review of written submissions from the parties or their attorneys, preparation for the meeting, and settlement discussions during, or after, the conclusion of the Mediation Conference. Any additional fees or costs exceeding the advance deposit will be payable at the conclusion of the mediation upon submission of a statement by the Mediator itemizing such fees and/or costs.

10. Termination of Mediation

The failure or refusal to participate in mediation, to complete and file the necessary forms, pay the required filing or Mediator's fees, or attend the scheduled Mediation Conference, may result in a termination of the mediation process by PMAR. Such event may adversely affect your entitlement to prevailing attorney fees should arbitration be subsequently instituted.

REQUEST TO INITIATE MEDIATION - FORM A

When a mediation is initiated through the dispute resolution provisions of the OREF Sale Agreement form, PMAR is required to notify the principal brokers of the companies identified below. Either the Seller's Realtor® or Buyer's REALTOR must be a PMAR member in order for DRS to proceed. Please identify the name of your REALTOR and his/her company.

SELLER'S REALTOR: _____
Name Company

BUYER'S REALTOR: _____
Name Company

PLEASE PRINT**1. Party Requesting Mediation:**

<u>CLAIMANT:</u>	<u>ATTORNEY (if any):</u>
Name: _____	_____
Address: _____	_____
City-State-Zip: _____	_____
Phone: _____	_____
Email: _____	_____

Indicate One: Buyer Seller Broker Builder/Contractor Other _____
(Describe)

2. Do you have full authority to enter into and sign a binding written agreement to settle this matter?

YES NO

3. Has or will an insurance company been/be notified about this dispute?

YES NO

If yes, please identify the name, address and phone number of the company and/or agent:

4. Responding Party:

RESPONDENT:

ATTORNEY (if any):

Name: _____

Address: _____

City-State-Zip: _____

Phone: _____

Email: _____

Indicate One: Buyer Seller Other _____
(Describe)

For additional Responding Parties, please attach a sheet providing the same information as sought for RESPONDENT identified above.

5. Simple and concise statement of the basis for your claim against the Responding Party listed above (attach additional pages if necessary):

6. Amount of Claim \$ _____ and/or other relief sought: _____
If seeking monetary damage an amount must be inserted. If additional or other relief is sought, please describe.

7. Has either party initiated a lawsuit or arbitration in this case? YES NO

If yes, please complete:

Trial/Hearing Date: _____ Court/Arb Case #: _____

Court: _____ County: _____ Judge/Arbitrator: _____

8. **Voluntary Information Source(s):**

Do you anticipate bringing one or more individuals to the Mediation Conference as an information source for the mediation? Yes No

If yes, please complete the following:

Name: _____

Company (if applicable): _____

Address: _____

Phone: _____

Email: _____

Purpose of Attendance: _____

For each additional Voluntary Information Source, please attach a sheet providing the same information as sought above.

PMAR shall not be responsible for notifying or scheduling the individual(s) identified as Voluntary Information Sources. This is your sole responsibility. If the other party objects to the presence of the Voluntary Information Source(s), the final decision shall be made by the Mediator. Provided however, a Voluntary Information Source is not required to attend the Mediation Conference, and the Mediator cannot compel his/her attendance. If the Voluntary Information Source is a REALTOR, you must first notify their managing principal broker to obtain consent. You must notify the Mediator and other parties no later than five (5) days before the scheduled Mediation Conference to confirm the attendance of your Voluntary Information Source(s). The Mediator may decline to permit the attendance of any Voluntary Information Source not timely identified in accordance with these rules.

Signature(s)_____

Date_____

Print Name(s)_____

In order for PMAR to commence a mediation under DRS, it must have timely received the following from Claimant(s):

1. Claimant(s)' non-refundable filing fee (payable to PMAR) of \$150.00 each;
2. Claimant(s)' Request to Initiate Mediation (Form A);
3. Mediator Selection (Form C) from the Claimant(s);
4. Potential Mediator Conference Dates (Form D) from the Claimant(s);
5. Fully executed copy of the OREF Real Estate Sale Agreement, RMLS™ Listing Contract, or other written agreement containing the mediation clause under DRS; and
6. Any other documentation Claimant(s) believes will be useful to the Mediator and parties in achieving a successful resolution of the Claim.

MEDIATOR SELECTION - FORM C

Please review the Mediator list provided below. All Mediators are experienced and trained in alternate dispute resolution. You may, but are not required to, strike one Mediator. Select a minimum of three (3) acceptable Mediators to facilitate your conference by checking the boxes provided. Do not send a copy of this form to the other side or their attorney, if any. After Form C has been received from all parties, PMAR will appoint a Mediator that both the parties have selected. Please note that a Mediator facilitates discussions and negotiation with a goal toward reaching settlement, but is not empowered to impose a settlement on the parties. **Check a minimum of three acceptable Mediators:**

MARSHALL AMITON, J.D.

Multnomah County Judge (1985-2009). While on the bench, presided over trials involving real estate issues. Since 2009, have acted as a mediator and neutral arbitrator in numerous disputes involving real estate issues. At the request of legal counsel, I have acted as a court appointed referee in several construction defect cases. Graduated from Grant High School (1963) in Portland, Oregon. Bachelor of Science, Portland State University (1967); J.D. Willamette University (1970).

LARRY COADY, J.D.

A native Oregonian, Larry Coady is a full-time mediator and arbitrator. He is listed as one of the Best Lawyers in America in the specialty of ADR for the years 2008-2016. He was awarded the Oregon Mediation Association (OMA) 2008 Sid Lezak Award for Excellence for outstanding service to the profession of mediation in Oregon and has served on the OMA Board and chaired their Ethics Committee. His background includes the general practice of law, with extensive litigation experience, and serving as a corporate counsel and executive. He is a 1975 graduate of Willamette University's College of Law.

SAM IMPERATI, J.D.

Executive Director of the Institute *for* Conflict Management Inc., a North-West based, national provider of mediation and arbitration services. Longest sitting PMAR panelist. 38-year attorney. Appears in 2006 through 2017 editions of Best Lawyers in America. OSB and OMA Lezak awards for mediation excellence. Enjoys Martindale-Hubbell's AV Preeminent rating. Served as a Judge Pro Tem, Chair of the OSB ADR Section, and member of the OSB Ethics Committee. Plaintiff and defense, trial and appellate experience. BA, magna cum laude, University of Santa Clara; JD, UC Davis. Law Review. Judicial Intern - Ninth Circuit. Mediation, Negotiation, and Decision-making trainer and author.

CHRISTOPHER H. KENT, J.D.

In 30 years of private practice, including Kent Mediation & Arbitration, I have conducted hundreds of mediations, arbitrations, settlement conferences and trials. Matters have included real property, purchase and sales agreements, construction and design disputes. I have represented Plaintiffs and Defendants. Panel Memberships: American Arbitration Association-Commercial, Arbitration Service of Portland, FINRA and Multnomah County Arbitration. Awards/Recognition: Fellow-American College of Trial Lawyers, Martindale-Hubbell "AV" rating, SuperLawyers-top list and Best Lawyers. Education: University of Oregon, Juris Doctor (1985), State University of New York & Syracuse University, AAS Forest Technology –honors (1979) and Virginia Commonwealth University, BA History-high honors (1977).

FEES: Each party will submit a non-refundable \$150.00 filing fee to implement the Dispute Resolution System. The cost of mediation is \$325.00 per hour, to be paid equally by all parties. The required advance deposit shall be paid directly to the Mediator no later than ten (10) days prior to the Mediation Conference. Some or all of any unused deposit may be refunded to the parties subject to current PMAR policy guidelines with its mediators. Mediator fees may also include charges to the appropriate party(ies) for reasonable documented expenses and time incurred by the Mediator before, during or after the Mediation Conference e.g., preparation and settlement negotiation. Any additional fees or costs exceeding the advance deposit will be payable at the conclusion of the mediation upon submission of a statement by the mediator itemizing such fees and/or costs. You will be notified of the selection of the Mediator, the date, time and place of the Mediation Conference as the information becomes available. Parties will be given at least twenty (20) days advance notice of the Mediation Conference.

Signature _____ Print Name _____

National Association of REALTORS - Dispute Resolution System (DRS)

Case # _____

National Association of REALTORS - Dispute Resolution System (DRS)

Case # _____
office use only

POTENTIAL MEDIATION CONFERENCE DATES – FORM D

March 2019

Mediation conferences are scheduled from:

8:30 am - 5:00 pm,

Monday through Friday

Please place an "X" in the box for those days which you are **NOT AVAILABLE**

If you are unavailable for only part of the day:

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
				1
4	5	6	7	8
11	12	13	14	15
18	19	20	21	22
25	26	27	28	29

April 2019

Please indicate which part of the day you are not available

Reply to:

Portland Metropolitan Assn.
of REALTORS®
150 SW Harrison
Suite 200
Portland, OR 97201

Fax 503-228-4170
sschneider@pmar.org.

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
1	2	3	4	5
8	9	10	11	12
15	16	17	18	19
22	23	24	25	26
29	30			

May 2019

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
		1	2	3
6	7	8	9	10
13	14	15	16	17
20	21	22	23	24
27	28	29	30	31

Print Name _____