

**MEDIATION AS A SERVICE OF THE
NEW ORLEANS METROPOLITAN ASSOCIATION OF REALTORS® (NOMAR)**

Although no party to an arbitrable matter can be required to submit to Mediation and Mediation cannot and is not intended to be a substitute for Arbitration, Mediation can be a useful tool in resolving the conflicts that arise involving Board Members and their clients and customers. Mediation is a viable option in instances where Arbitration would be provided. Mediation can resolve disputes, promote amicable resolutions, and avoid the more formal and complex Arbitration procedures of the Board.

Selection of Board Mediation Officer: Conducting a successful Mediation requires tact, diplomacy, and a sense of equity. Careful consideration is given in selecting the Board's Mediation Officers. NOMAR maintains a committee of up to ten (10) members from which the Mediation Officer is chosen.

Individuals serving as a Mediation Officer have extensive prior experience on the Grievance Committee, Professional Standards Committee, and/or Board of Directors, and special training in the Mediation process. The Mediation Officer is thoroughly conversant with the Board's Arbitration procedures as well as with the real estate rules and regulations of Louisiana. If Mediation Officers are members of the Professional Standards committee, they shall not serve on an Arbitration Hearing Panel in cases where they had initially attempted to resolve the dispute prior to an Arbitration Hearing, or on an Ethics Hearing Panel in cases where an Ethics Complaint arises out of the same facts and circumstances giving rise to a matter they attempted to mediate. The Mediation Officer is someone widely respected for fairness, experience, and impartiality. Only to the degree that all parties to the Mediation can be confident of an impartial determination will Mediation procedures be successful. By having more than one Mediation Officer, assignments are made to utilize individuals whose experience, abilities, and relationship renders him/her most appropriate for that particular assignment.

Mediation Not Mandatory: It must be understood by all parties that participation in Mediation is entirely voluntary. The parties should be offered the opportunity and encouraged to participate in the Mediation process in good faith, and, further encouraged to abide by the determination. The parties to Mediation should be aware that they may withdraw from the process at any point prior to reaching an agreement. Any offers of settlement that were not accepted or any suggested resolution proposed by the Mediation Officer that was not accepted will not be introduced as evidence nor considered in any manner should the matter require Arbitration by the Professional Standards Committee. However, if the parties agree to a settlement of the dispute, and the settlement has been reduced to writing and has been signed by all of the parties, the matter is deemed resolved and cannot be the subject of a subsequent Arbitration Hearing. In the event either of the parties later fails to abide by the terms of the settlement, the matter may not be arbitrated; instead, the other party should be encouraged to have the settlement agreement judicially enforced by a court of competent jurisdiction.

Need for Due Process: Although Mediation is not binding upon the parties, the need for due process remains. Generally, there is no need for the parties to be represented by legal counsel nor will the Board have legal counsel present at a Mediation proceeding. However, since Mediation is an attempt to bring the disputing parties together in an informal setting to resolve their differences, every effort will be made to ensure that the parties are provided with adequate prior notice (at least ten [10] days) and that the time and location of the proceeding is mutually

convenient to all involved. However, this requirement shall not preclude parties to a dispute waiving such notice and agreeing to Mediate at any time agreed by all parties.

Initiation of Mediation Proceedings:

Each request for Arbitration will be referred to the Grievance Committee for consideration as to whether the matter is appropriate for Arbitration. In the event the Grievance Committee determines that a matter is properly Arbitrable, that information will be provided to the Professional Standards Administrator who will then notify both the Complainant and Respondent that the matter has been deemed Arbitrable and that Mediation is available. The Administrator will inquire of each party as to whether they will participate in Mediation. If both parties respond affirmatively, they will be given a choice of three Mediation Officers and will be contacted to establish a mutually convenient time and location for the Mediation.

Conduct of Mediation Proceedings: If, for any reason, any of the parties (or the Mediation Officer) is unable to participate on the date agreed, the procedure should be rescheduled to the earliest mutually acceptable date. Mediation cannot be successfully conducted without all of the parties present. Witnesses, if any, should be kept to a minimum.

Realizing that a dispute already exists between the parties, the Mediation Officer will make every effort to encourage a conciliatory atmosphere while ensuring a full discussion of all pertinent facts. The Complainant and Respondent will be encouraged to appreciate each other's position in the matter and to effect a solution that will eliminate the need for Arbitration by the Professional Standards Committee. The parties can agree to a mutual resolution of the matter at any time during the Mediation procedure. If, following a thorough discussion of all the pertinent facts, the parties are still unable to resolve the matter, the Mediation Officer may, at the Mediation Officer's discretion, then make a recommendation. Any recommendation for resolution can be oral or in writing and will be provided to both parties at the conclusion of the Mediation procedure. The parties can agree to the Mediation Officer's proposed resolution at that time. If neither of the parties desire to give additional consideration to the Mediation Officer's resolution, both parties will be given a specified period of time, not to exceed forty-eight (48) hours, to consider the resolution and to advise the Mediation Officer of their acceptance or rejection of it. If either of the parties rejects the proposed resolution, the Mediation procedure will be deemed concluded and the matter will proceed to Arbitration. Any party who does not respond to the Mediation Officer within seventy-two (72) hours will be deemed to have rejected the suggested solution and Arbitration will proceed.

Mediation may be terminated for any reason at any time during the process. The case will then be forwarded on to a Professional Standards Hearing Panel.