

Pennsylvania Association of REALTORS®
Home Buyers/Home Sellers Dispute Resolution System (DRS)

DRS Instructions and Transmittal Form

What is Mediation?

Mediation is less expensive and less time-consuming than litigation. Mediation brings the parties in a real estate transaction together with an impartial third party who is a trained professional. With the mediator's help, parties usually reach a mutually agreeable solution. It is important to understand that the mediator does not have the power or authority to render a binding decision on the parties as does an arbitrator or judge. The mediator assists the parties in reaching an agreeable solution. When a mutually acceptable solution is reached, the parties sign a binding, written agreement which is prepared by the mediator. In the event the parties do not arrive at an agreement they are free to pursue other legal alternatives for resolving the dispute, including arbitration and litigation. You do not forfeit any legal rights whatsoever. In addition to being easier, faster and less expensive than litigation, mediation is non-adversarial. Decisions rendered by an arbitrator or judge usually involve a winning party and a losing party. In mediation, there are no losing parties because the parties have been part of the process and together have agreed on the terms of the settlement.

Agreeing to Mediate

The Dispute Resolution System is available to all parties to a real estate transaction including, but not limited to, sellers, buyers, brokers, builders and home inspectors. It is advisable that parties pre-commit to mediation by signing an Agreement for the Sale of Real Estate which either contains a mediation clause or is accompanied by a mediation addendum. Parties who do not pre-commit to mediation when the sales contract is executed may agree to submit disputes to mediation by signing a written *Agreement to Mediate* after the dispute arises. Mediation can take place only when all parties to the dispute have agreed to submit the matter to the Dispute Resolution System.

Initiating Mediation

Any party can initiate Dispute Resolution System mediation by submitting a completed DRS Mediation Transmittal Form (1A) and filing fee to the local Board of REALTORS® which will serve as the Administrator of the Dispute Resolution System. Upon receipt of the Transmittal Form, the Administrator will send each party a copy of the form and a list of qualified mediators and their fee schedules. Within ten (10) days, each party will review the list, cross off the name of any mediator to which the party objects, and return the list to the DRS Administrator. The Administrator will appoint the first available mediator who is acceptable to all parties to the dispute. The appointed mediator will then contact the parties for the purpose of scheduling the mediation conference. The conference must be held within sixty (60) days of initiation of the process with each party receiving at least twenty (20) days advance notice. The typical mediation conference lasts from one to three hours. Any mediated settlement must be signed by all parties agreeing to its terms as soon as possible following the conference. Generally the agreement can be completed by the close of the mediation conference.

Rules & Procedures

The mediation conference is conducted in accordance with the Home Sellers/Home Buyers Dispute Resolution System Mediation Rules and Procedures (which appear below). You will be provided with a copy of these Rules and Procedures prior to you signing an Agreement to Mediate or any contract that contains a mediation clause. Additional copies may be printed or can be requested in pamphlet format from the mediation Administrator. How, when and by whom mediation is initiated and conducted is fully addressed by the DRS Mediation Rules and Procedures. The Rules & Procedures enable the mediation process to proceed in an orderly fashion and to be completed in the shortest possible period of time without neglecting thoroughness or fairness.

Mediators

DRS Mediators are licensed attorneys in the Commonwealth of Pennsylvania or licensed real estate brokers or agents who have received formal training as DRS mediators and who have agreed to participate in the program. Mediators are selected by the DRS Administrator, though parties have the opportunity to object to the selection of any mediator who has any financial or personal interest in the results of the mediation.

Role of the Attorney

DRS Mediation is designed to promote fair solutions to parties who are not represented by counsel. Any party, however, has the right to be represented by counsel at any stage during the mediation process. Parties should consult an attorney if they have questions or concerns about mediation or the Dispute Resolution System.

Mediation Fees

Mediation fees are divided equally amount the parties to mediation and are payable in advance of the mediation conference. The applicable fee schedule is determined as a result of negotiations between the Administrator and the mediator or mediation service provider. Copies of the fee schedule are provided to parties to the dispute, along with the Mediation Rules and Procedures, when the mediation process is initiated. All parties receiving copies of the fee schedule should be informed that the fee schedule is subject to change, and the fee schedule that is in effect when the request for mediation is made will be the one imposed. Copies of the Mediator Fee Schedule are available from the DRS Administrator upon request.

Seller-Buyer Guidelines for Initiating Mediation

When a Dispute Arises

The decision to initiate mediation under the Home Sellers/Home Buyers Dispute Resolution System should be made only after all attempts to negotiate an acceptable solution have been exhausted.

Call your broker or sales agent. Your broker or sales agent can be instrumental in resolving conflicts and disputes. Talk with your broker or sales agent before you initiate mediation proceedings.

Consult your attorney. You should inform your attorney of your intent to initiate mediation under the DRS Rules. Your attorney will be able to provide you with advice and counsel—and may be able to help you resolve the dispute without having to proceed to mediation.

To initiate mediation. When all attempts to negotiate a settlement have failed, you should proceed as follows:

A. *If You and Other Parties Have Pre-committed to Mediation**, i.e., you have signed an Agreement for the Sale of Real Estate or an addendum to the Agreement which contains a mediation clause, or other written agreement:

1. Print, complete and sign the DRS Mediation Transmittal Form (1A).
2. Mail the original form to the DRS Administrator at MCAR. The mailing address can be found on Page 4 of the form. Be sure to include the appropriate number of copies as requested in the Transmittal Form as well as the non-refundable filing fee of \$200.00.
3. Review the Rules and Procedures section below to familiarize yourself with the mediation process.

*If you and the other parties have not pre-committed to Mediation, you may still initiate DRS Mediation. However, since the responding parties are not contractually obligated to participate in Mediation they might not cooperate.

Upon receipt of your Transmittal Form, the DRS Administrator will provide copies of it and a list of DRS mediators and their fees to all named parties. The named parties will have ten (10) days in which to review the list, cross of the names of any mediators not desired, and return the list to the DRS Administrator. The Administrator will choose the first available mediator who is common to all lists, in accordance with the Mediation Rules and Procedures. The mediator will contact the parties to schedule the mediation conference.

Home Seller/Home Buyers Dispute Resolution System Rules and Procedures

1. Agreement of Parties. The Rules and Procedures of the Dispute Resolution System (DRS) apply when the parties have agreed in writing to mediate under DRS. The written agreement can be achieved by a standard clause in an agreement of sale, an addendum to an agreement of sale, or through a separate written agreement.

2. Initiation of Mediation. If a dispute exists, any party may start the mediation process by submitting a completed Request to Initiate Mediation DRS Transmittal Form (Transmittal Form) to the local Association of REALTORS® (hereafter “Administrator”). The Transmittal Form should be available through the Administrator’s office. The initiating party should try to include the following information when sending the completed Transmittal Form to the Administrator:

- a. A copy of the written agreement to mediate if there is one, OR a request by the initiating party to have the Administrator contact the other parties to the dispute to invite them to join the

mediation process.

- b. The names, addresses and telephone numbers of the parties involved in the dispute, 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 brief statement of the facts of the dispute and the damages or relief sought.
- 3. Selection of Mediator.** Within five days of receiving the completed Transmittal Form, the Administrator will send each party to the dispute a copy of the Transmittal Form and a list of qualified mediators and their fee schedules. Each party then has ten days to review the list of mediators, cross off the name of any mediator to whom the party objects, and return the list to the Administrator. The Administrator will appoint the first available mediator who is acceptable to all parties involved. A mediator who has any financial or personal interest in the dispute or the results of the mediation cannot serve as mediator to that dispute, unless all parties are informed and give their written consent.
- 4. Mediation Fees.** Mediation fees will be divided equally among the parties and will be paid *before* the mediation conference. The parties will follow the payment terms contained in the mediator's fee schedule.
- 5. Time and Place of Mediation Conference.** Within ten days of being appointed to the dispute, the mediator will contact the parties and set the date, time and place of the mediation conference. The mediator must give at least twenty days' advance notice to all parties. The mediation conference should not be more than sixty days from the mediator's appointment to the dispute.
- 6. Time and Place of Mediation Conference.** The parties attending the mediation conference will be expected to:
1. Have the authority to enter into and sign a binding settlement to the dispute.
 2. Produce all information required for the mediator to understand the issues of the dispute. The information may include relevant written materials, as well as descriptions of witnesses and the content of theft testimony, whether or not they will be appearing at the mediation conference. The mediator can require the parties to deliver written materials and information before the date of the mediation conference.

The mediator presiding over the conference:

1. Will impartially conduct an orderly settlement negotiation.
2. Will help the parties define the matters in dispute and reach a mutually agreeable solution.
3. Will have no authority to render an opinion, to bind the parties to his or her decision, or to force the parties to reach a settlement.

Formal rules of evidence will not apply to the mediation conference.

7. Representation by Counsel. Any party who intends to be accompanied to the mediation conference by legal counsel will notify the mediator and the other parties of the intent at least ten days before the conference.

8. Confidentiality. No aspect of the mediation can be relied upon or introduced as evidence in any arbitration, judicial or other proceeding. This includes, but is not limited to, any opinions or suggestions made by any party regarding a possible settlement; any admissions made during the course of the mediation; any proposals or opinions expressed by the mediator; and any responses given by any party to opinions, suggestions, or proposals.

No privilege will be affected by disclosures made in the course of the mediation.

Transcripts or recordings of the mediation will not be allowed without the prior, written consent of all parties and the mediator.

Records, reports, and other documents received or prepared by the mediator or Administrator cannot be compelled by an arbitration, judicial, or other proceeding, with the exception of an agreement that was reached in the course of mediation and signed by all the parties.

Neither the mediator nor the Administrator can be compelled to testify in any proceeding regarding information given or representations made either in the course of the mediation or in any confidential communication.

9. Mediated Settlement. When a dispute is resolved through mediation, the mediator will put the complete agreement in writing and all parties will sign the written agreement within ten days of the conclusion of the mediation conference. Every reasonable effort will be made to sign the written agreement at the end of the conference.

10. Judicial Proceedings and Immunity. Neither the administrator, the mediator, the National Association of REALTORS[®], the Pennsylvania Association of REALTORS[®], nor any of its member boards, shall be deemed necessary or indispensable parties in any judicial proceedings relating to mediation under these rules and procedures, nor shall any of them serving under these procedures be liable to any party for any act, error or omission in connection with any service or the operation of the Home Buyers/Home Sellers Dispute Resolution System.

**Pennsylvania Association of REALTORS®
Home Buyers / Home Sellers Dispute Resolution System
Request to Initiate Mediation**

DATE _____

1. PARTIES TO THE MEDIATION

(This most frequently refers to the “buyer” and the “seller.”)

A. Person requesting the mediation

Are you the: Buyer Seller

Name: _____ Phone: _____

Address: _____

Did you use a REALTOR®? If so, please identify below.

The REALTOR® will be notified that mediation has been requested. Mediation is between buyer and seller. The REALTOR® is not a party to mediation and they are not required to attend. However, they may be present at the conference to offer support and information. If you wish your REALTOR® to attend, please contact them.

REALTOR® Name: _____ Phone: _____

REALTOR® Firm: _____

Address: _____

Do you have legal counsel? If so, please identify below.

It is not necessary to have legal representation for mediation. However, if you have legal representation, the other party and the mediator should be notified in advance. All parties should consult an attorney if they have questions or concerns about mediation or the Dispute Resolution System.

Counsel Name: _____ Phone: _____

Firm Name: _____

Address: _____

Do you wish your legal counsel to be the point of contact for this mediation?

YES NO

If you indicate “YES”, all correspondence will be addressed to your attorney. It is expected that your attorney will contact you. However, **your participation is required at the mediation conference** when scheduled.

B. Person with whom you are requesting mediation.

This will be the buyer or seller with whom you entered an Agreement of Sale. The mediation option in the agreement of sale obligates the buyer and seller only. If you wish to request mediation with another party (not the buyer or seller) please call 610-260-9931 for assistance. You must provide a name and address for the person with whom you are requesting mediation.

Is this the: Buyer Seller

Name: _____ Phone: _____

Address: _____

Did this party use a REALTOR®? If so, please identify:

REALTOR® Name: _____ Phone: _____

REALTOR® Firm: _____

Address: _____

Does this person have legal counsel? If so, please identify:

Counsel Name: _____ Phone: _____

Firm Name: _____

Address: _____

2. ADDRESS OF PROPERTY: _____

3. BRIEF DESCRIPTION OF CLAIM: (attach a separate sheet if necessary)

4. AMOUNT OF MONEY INVOLVED: \$ _____

5. HAVE THERE BEEN ANY FORMAL COURT PLEADINGS FILED IN THIS CASE?

YES **NO**

If yes, please provide the following information: Court Docket #: _____

Date: _____ Court: _____

County: _____ Judge: _____

Has this case been postponed pending a mediation conference? **YES** **NO**

To begin the mediation process, please:

- Submit 5 copies of this form (Please do not attach supporting documents, pictures or other materials to this request. Those materials, if appropriate, should be provided at the mediation conference.)
- Submit one copy of the signed Agreement of Sale
- Submit a check for \$200.00 payable to MCAR (this fee covers the administrative costs associated with the program and is **not refundable.**)
 - You will be provided the Mediator List upon notification to the other party to the dispute.

Mail to:

Mediation Administrator: **Edie Szczypiorski, Professional Development Specialist**
Montgomery County Association of REALTORS®
Blue Bell Executive Campus
470 Norristown Road, Suite 300
Blue Bell, PA 19422