

## Mediation FAQs

### **What is Mediation?**

Mediation is a voluntary, informal dispute resolution process in which a trained, neutral third party (mediator) helps the disputing parties find and reach a mutually acceptable settlement of their dispute.

### **How Does Mediation Differ from Arbitration?**

*In Arbitration, the Arbitration Hearing Panel controls proceedings and outcomes; in mediation, Mediation, the disputing parties control proceedings and outcomes.* Arbitration is a formal process, governed by strict and complex procedural rules and legalities. In arbitration, the Arbitration Hearing Panel controls the proceedings and renders a determination that is binding on the parties (Award of Arbitrators). Under Massachusetts law, the arbitration panel must award the total amount in dispute to one party or the other, thus one party wins and one party loses. By contrast, mediation is a voluntary process that brings disputing parties together in an informal setting to resolve their differences with the help of a trained mediator, who serves as a facilitator, not an adjudicator. The parties are free to fashion any resolution to which they can agree. Because the terms of settlement are decided by the parties themselves, mediation typically results in win-win outcomes.

*Mediation is faster and less expensive than arbitration.* Mediation is faster and less expensive than arbitration because proceedings are unencumbered by the complex procedural rules and legalities of arbitration. This minimizes the need for paperwork, documentation and administrative processing, which saves Members and the Association time and money. The fact that fewer people are involved in the process, i.e., no hearing panel, no attorneys, no recording secretary, also expedites proceedings. Furthermore, there is no filing fee associated with mediation as there is in arbitration.

*Arbitration is an adversarial process; mediation is a conciliatory process.* Arbitration is an adversarial process -- there is always a winner and loser. In mediation, there is more opportunity for negotiating win-win solutions because the process encourages constructive dialogue and actively enrolls parties in resolving issues and finding mutually acceptable solutions for settling their dispute.

### **When is mediation initiated?**

The association encourages REALTORS® who have a dispute to attempt mediation *before* a formal request for arbitration is filed. If the parties agree to mediate, and the mediation is successful, the dispute is considered settled and the case is closed. If the parties fail to resolve their dispute during mediation, they may still invoke arbitration through the Association's arbitration procedures. Should an arbitration hearing ensue following a failed mediation attempt, nothing that is said or documented during mediation may be used as evidence at the hearing, and the mediator may not appear as a witness for either party.

When a REALTOR® submits a request for arbitration in which mediation has not been previously offered or attempted, the Board automatically offers the parties the opportunity to mediate before the request is referred to the Grievance Committee for review. If both parties agree to mediate, and mediation is successful, the case is closed and any filing fees paid by the parties are refunded in full. If the parties fail to resolve their dispute through mediation, the case is referred to the Grievance Committee in accordance with the Association's arbitration procedures.

**Who conducts mediation for the Association?**

All of the Board's mediators are REALTORS® who have completed formal mediation training as well as professional standards training. They are successful, experienced real estate professionals, well-versed in real estate brokerage and business practices. Board mediators are volunteers and serve without compensation.

**Are settlements reached through mediation binding?**

Yes. Once the parties have reached a mutually acceptable resolution, the terms of the settlement are documented in a written *Mediation Resolution Agreement*, which is signed by the parties and the mediator. In signing the agreement, parties agree to be bound by the terms of settlement. Failure by either party to abide by the terms of the settlement is rare because the resolution was fashioned by the parties themselves. In the unlikely event that either of the parties fails to abide by the terms of the settlement, the other party may have the settlement agreement judicially enforced through the courts.

**Are settlements reached through mediation final?**

Yes. Once the parties have signed the *Mediation Resolution Agreement*, the dispute is considered settled and may not be arbitrated or litigated at a later date.