

To Whom It May Concern:

We are providing, at your request, information that you may use to request mediation of a dispute arising from a real estate transaction. It is unfortunate when any transaction results in disagreement, but we are happy to be able to provide you with an effective, affordable alternative to try to resolve your dispute.

Enclosed, you will find an information packet that provides answers to most of the questions you might have regarding mediation. To initiate a mediation request, simply complete the two forms enclosed, and send them to Pamela Thompson, at the address on the form, along with a check for \$200. Be sure to send a copy of your real estate purchase contract with the forms.

They will take over the process from this point.

Sincerely,
Gentry Thiesen
Government Affairs Director & Professional Standards Administrator

Encl: Mediation Brochure, Mediation Information, Mediation Rules & Procedures, Request to Initiate, Agreement

Mediation is...

- * Faster
- * Successful
- * Less Expensive
- * Non-Adversarial

A lawsuit can take anywhere from several months to several years to be decided. As a rule, mediation takes from thirty to sixty days from beginning to end.

Statistics show that mediation is successful 75 percent of the time.

Because parties typically split fees, no one pays an excessive amount.

Litigation focuses on disagreement, and results in win/lose decisions imposed by the judge. Mediation, focuses on agreement, and results in a win/win settlement, reached and agreed upon by the parties themselves.



**Homesellers/Homebuyers
Dispute Resolution System**

MEDIATION PROGRAM

A fast, easy, and inexpensive
alternative to litigation.



Introduction

Thousands of real estate transactions occur in the Wichita area every year without incident. When a dispute does arise, it is often successfully resolved through normal channels of communication and negotiation. In the past, when negotiations failed, parties took their case to court. Today, they are taking their disputes to mediation.

What is Mediation?

Mediation is a process in which disputing parties attempt to resolve their disagreements with the help of an impartial, trained third party, the mediator. The mediator does not offer opinions, pass judgment, or render legally binding decisions. The mediator's only function is to help parties identify their differences and reach agreement on how to resolve them.

When the disputing parties have reached a mutually acceptable solution, they sign a written agreement which outlines the terms of the settlement. Once signed, the parties are legally bound to abide by its terms. Settlement is not imposed on the parties. If the parties cannot reach a mutually agreeable settlement, they are free to arbitrate or litigate their dispute as if the mediation never took place.

Mediation is non-adversarial, there are no losing parties, because the parties have been part of the process, and together have agreed on the terms of the settlement.



Access to Service

DRS mediation can be used by the sellers and buyers in a real estate transaction, as well as brokers, builders, home inspectors, etc. Almost any type of dispute that arises from the transaction can be mediated. Earnest money disputes and complaints against REALTORS® are excluded from mediation.

Written Agreement to Mediate

Parties may pre-commit to mediate by signing either a sales contract that contains a mediation clause, or an addendum that is attached to the sales contract. Parties who do not wish to pre-commit to mediation when the sales contract is executed may later agree to submit a dispute to mediation by signing a written Agreement to Mediate after a dispute arises.

Mediators

Mediators promote communication between the parties, helps the parties identify differences and assists in parties reach an agreement on resolution.

Fees

Fees of **\$200** per party are required to be paid in advance. This fee is due with the request by the complainant, usually the buyer, and five (5) business days before the mediation conference for the responding party, usually the seller.

Initiating Mediation

If a dispute arises, your broker or licensee can be helpful in resolving conflicts and disputes. If reasonable attempts to negotiate an acceptable solution have been exhausted, call RSCK to request a packet. A party can invoke DRS mediation by submitting the written request included in the packet to Pamela Thompson. Pamela arranges, schedules, and conducts the mediation conference. It is usually scheduled within 30 days, but it must be held within 60 days from the date on which a party's request to initiate mediation is received. The typical conference lasts two hours. A second meeting may occur in some cases.

Role of Attorney

Although parties to the mediation have the right to be represented by counsel, attorneys do not have to participate in the mediation conference. You may wish to inform your attorney of your intent to mediate. Your attorney can provide advice and counsel.

Services provided by

Pamela Thompson

510 N Topeka, Ste. 150 Wichita,
Kansas 67214

P: 316-993-7177

E: ksphoenixresearch@gmail.com

Information provided by:

REALTORS® of South Central Kansas

170 W. Dewey
Wichita, Kansas 67202

P: 316.263.3167

www.sckrealtors.com



Homesellers/Homebuyers Dispute Resolution System Mediation

Thousands of real estate transactions occur every year without incident. Occasionally, however, a disagreement can arise between the buyer and the seller, or between one of those parties and a real estate licensee. The Homebuyers/Homesellers Dispute Resolution System (DRS) was developed as a way of resolving those disputes without resorting to lengthy, costly litigation.

When signing a contract or addendum containing a mediation clause, the parties to the transaction commit to submit any dispute that arises from the transaction to mediation.

In mediation, a neutral third party assists the disputants in negotiating a mutually acceptable settlement. Mediators do not make decisions but instead help the parties make their own agreement by clarifying issues, utilizing persuasion, and employing other conflict resolution strategies and techniques. Although there is no guarantee that every dispute will be resolved, surveys show that settlements are reached over 75% of the time. Mediation conferences are private and confidential by Kansas statute.

Once parties have signed a written mediation settlement agreement, they are legally bound by its terms and cannot subsequently arbitrate or litigate the now-resolved dispute. If the parties do not reach an agreement, they are free to take further action, as if the mediation never took place.

Benefits of DRS

- Faster than litigation.
- Less expensive than litigation.
- Discourages litigation of frivolous claims.
- Parties actively participate in the process.
- Provides a service brokers and salespeople can offer to clients and customers.
- Enhances the image of REALTORS® by providing consumers viable alternatives to litigation.
- Potential for lowering cost of Errors and Omissions insurance.

In addition to the above benefits, in mediation:

- Parties retain their legal rights to arbitrate or litigate if mediation is unsuccessful.
- Parties control the outcome.
- Process helps restore goodwill between disputants.
- True interests of the parties (not just their positions) are discovered/addressed.
- Process and agreement are flexible, allowing parties to move beyond different views of law or fact to creative durable solutions beyond “win/lose”.
- Solutions are just as finding and enforceable as arbitration awards.
- Parties are less likely to have to go into court to enforce their agreement than in arbitration because the parties have entered into the agreement as opposed to having a third party render an award.

How the Process Works

The typical steps in mediation follow:

1. Both parties agree to mediate and have paid the applicable fees.
2. The conference will be scheduled within 60 days.
3. The parties meet with the mediator, who guides their negotiations, and helps them reach a settlement.
4. If mediation results in settlement, the parties sign an agreement, which is binding.

Initiation of Mediation

Any party to a dispute may initiate mediation by submitting the Request to Initiate Mediation Form, a copy of the real estate purchase contract and the **\$200** fee. If the mediation does not occur, **\$75** shall be refunded.

The request shall contain a brief statement of the nature of the dispute, and the names, addresses, and telephone numbers of all parties to the dispute.

The mediator will send consent forms to all parties, notifying the parties of the scheduled mediation conference.

Payment of the mediation fees shall be made with the submission of the consent form, along with a brief memorandum which sets forth the party's position with regard to the issues that need to be resolved. At the discretion of the mediator, the memoranda may be mutually exchanged by the parties.

Any principal party to the mediation may be accompanied by persons of the party's choice. It is up to the principal party to notify them of the scheduled conference, and submit their signed agreement to mediate. The names and addresses of such persons shall be communicated in writing to all parties and to the mediator. The mediator reserves the right to limit attendance to a group of workable size.

Preparing for the Conference

To prepare for the mediation conference, a party should:

1. Define and analyze the issues involved in the dispute.
2. Identify your needs and interests in settling the dispute.
3. Prioritize the issues in light of your needs.
4. Determine possible options for settlement and explore a variety of possible solutions, including an initial proposal. Your proposals should be reasonable, and you should be willing to satisfy needs of the other party, as well as your own.
5. If a witness is necessary to substantiate your claim, you are responsible for providing their name, and for returning their agreement to mediate form.
6. Ascertain the strengths and weaknesses of your case. Gather and be ready with facts, documents, and sound reasoning to support your claim.
7. Be prepared to think flexibly and consider new solutions.

Conduct of the Conference

When the parties agree to mediate a dispute, these rules, as amended and in effect on the date of submission of the dispute, are part of their agreement.

The mediator will describe the procedures and ground rules, covering each party's opportunity to talk, order of presentation, decorum, discussion of unresolved issues, use of caucuses, and confidentiality of proceedings.

The initiating party discusses the facts surrounding the dispute and its understanding of the issues. The other party then makes similar presentations to the mediator.

The mediator will gather as many facts as possible, attempt to clarify discrepancies, and understand the perceptions of each party, including their interests and positions. The mediator may meet with each party in caucuses to will help each party think through its demands, priorities, and views.

At the mediation conference, the parties will be expected to produce all information which might be reasonably required for the mediator to understand the issues presented. The mediator may require any party to supplement such information. This could include copies of contracts, estimates or bills for repairs, etc.

The mediator narrows the differences between the parties and obtains agreement on as many issues as possible. The mediator acts as a facilitator to keep discussions focused and avoid new outbreaks of disagreement.

Settlement

The mediator also records the final terms of a settlement, if reached. If no settlement is reached, the parties are free to arbitrate or litigate.

Exclusions

The following matters are excluded from mediation: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court; (e) violation of a state's real estate license law, (f) earnest money disputes, and (g) ethics complaints against REALTORS®.

Qualifications of the Mediator

The mediator represents a broad spectrum of expertise, has received specialized training in mediation and is approved by the State of Kansas to handle cases referred by the state courts under K.S.A. 5-501et seq.

No person shall serve as mediator in any dispute if that person has any financial or personal interest in the results of the mediation unless, after full disclosure, the parties have given their written consent. Prior to accepting appointment, the mediator shall disclose any circumstance likely to create a presumption of bias or prevent a prompt meeting. Another mediator shall be made available, if the appointed mediator is unable to serve promptly or discloses potential bias or becomes unwilling or unable to serve.

Authority of the Mediator

The mediator does not have the authority to impose a settlement on the parties, but will attempt to help them reach a satisfactory resolution of their dispute. The mediator is authorized to conduct joint and separate meetings with the parties, and to make oral and written recommendations for settlement.

The mediator is authorized to end the mediation whenever, in the judgment of the mediator, further efforts at mediation would not contribute to a resolution of the dispute.

Confidentiality

Mediation sessions are privileged under K.S.A. 5-501. The parties and their representatives may attend mediation sessions. Confidential information disclosed to a mediator during the course of mediation by the parties or witnesses shall not be divulged by the mediator. All records, reports, or other documents received by a mediator while serving in that capacity shall be privileged. The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum.

The parties shall maintain the confidentiality of the mediation, and shall not rely on, or introduce as evidence in any arbitral, judicial, or other proceeding:

- a) views expressed or suggestions made by another party with respect to a possible settlement of the dispute;
- b) admissions made by another party in the course of the mediation proceedings;
- c) proposals made or views expressed by the mediator; or
- d) the fact that another party had or had not indicated a willingness to accept a proposal for settlement made by the mediator.

There shall be no stenographic record of the mediation process.

Termination of Mediation

The mediation shall be terminated:

- a) by the execution of a settlement agreement by the parties; any agreement signed by the parties pursuant to the mediation conference shall be binding;
- b) by a written declaration of the mediator to the effect that further efforts at mediation are no longer worthwhile;
- c) by a written declaration of a party or parties to the effect that the mediation proceedings are terminated.
- d) When a party refuses to attend at the scheduled time.

Exclusion of Liability

Neither Pamela Thompson, nor any mediator is a necessary party in judicial proceedings relating to the mediation. Neither Pamela Thompson, nor any mediator, shall be liable to any party for any act or omission in connection with any mediation conducted under these rules.

Interpretation and Application of Rules

The mediator shall interpret and apply these rules as they relate to the mediator's duties and responsibilities. All other rules shall be interpreted and applied by Pamela Thompson.

Expenses

Any expenses of the mediation, including required travel and other expenses of the mediator and representatives of Pamela Thompson, and the costs of any proofs or expert advice produced at the direct request of the mediator shall be borne equally by the parties unless they agree otherwise.

Mediator's Fee

Each party shall be required to pay \$200 in advance. This payment covers two hours of mediation. If more time is required, Pamela Thompson will charge additional fees to be split evenly between the parties.

Parties with proof of household income less than \$30,000 will have his or her fee reduced to \$100.

Postponement Fee

A fee of \$100 shall be payable by any party causing a postponement of any scheduled mediation conference.

To Initiate Mediation

Return the enclosed consent form, copy of your real estate contract and fee to:

Pamela Thompson
510 N Topeka, Ste. 105
Wichita, KS 67214
P: 316-993-7177
E: ksphoenixresearch@gmail.com

Mediation Rules & Procedures

Agreement of Parties

These procedures shall apply when the parties have agreed in writing to mediation under the RSCK program. By mutual written agreement of all parties to a dispute, any specific provision of these procedures may be modified.

Initiation of Mediation

Any party to a dispute may initiate mediation by completing, signing, and mailing a Request to Initiate Mediation form, Agreement to Mediate form and filing fee to:

Pam Thompson
510 N Topeka, Ste. 105
Wichita, KS 67214

The request **must include** the following information, to the extent known or readily available.

- A fully executed copy of the real estate purchase contract, plus any other documents, containing the mediation clause or copy of such other written agreement invoking mediation under the program.
- In the absence of a contract clause or other written agreement to mediate, a written request by any party seeking to have the association attempt to persuade one or more parties to submit an existing dispute or claim to mediation under the program.
- The names, mailing addresses, e-mail addresses, and telephone numbers of all parties.
- The nature of the claim and amount in dispute (i.e., brief statement of the facts that give rise to the claim, the damages, or relief sought).

Date, Time and Place of Mediation Conference

The mediator shall fix the date and the time of each mediation session. Such date shall not be more than sixty days from date of receipt of the Request to Initiate Mediation Form, and shall allow for not less than ten (10) days advance notice of the conference, which notice shall be given by the mediation vendor to all parties.

Conduct of Mediation Conferences

At the mediation conference, the parties will be expected to produce all information reasonably necessary to understand the issue(s) presented. Such information will usually include relevant written materials and a description of any witness(es) and what each could testify to. The mediator may ask the parties for written materials or information in advance of the mediation conference.

At the mediation conference, the mediator will conduct an orderly settlement negotiation. Parties at the mediation conference must have authority to enter into a binding written agreement settling the dispute. The mediator will be impartial in such proceedings and has no authority to compel the parties to agree to a settlement.

Representation by Counsel and/or Real Estate Agents

Any party may be represented at the conference by counsel or their agent. However, attorneys and agents do not participate in the mediation conference, they can provide advice and counsel. Any party who intends to be represented by counsel must notify the mediator and all other parties that they will be represented by counsel at least five (5) days in advance of the conference.

Confidentiality

No aspect of the mediation shall be relied upon or introduced as evidence in any arbitration, judicial or other proceeding, including but not limited to:

- Views expressed or suggestions made by a party with respect to a possible settlement of the dispute
- Admissions made in the course of the mediation
- Proposals made or views expressed by the mediator or the response of any party thereto.

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

Disclosure of any records, reports, or other documents received by or prepared by the mediator cannot be compelled.

The mediator cannot be compelled to disclose information or testify in any proceeding about information disclosed or representations made in the course of the mediation or communication to the mediator in confidence.

Mediated Settlement

The mediated settlement must be reduced to writing by the parties, dated, and signed by all parties either at the mediation conference or no later than ten (10) days after the conclusion of the mediation conference.

Judicial Proceedings and Immunity

Neither the mediation vendor, nor the mediator, nor the NATIONAL ASSOCIATION OF REALTORS® or any of its member associations, shall be deemed "necessary parties" in any judicial proceedings relating to mediation under these Mediation Rules and Procedures. Neither the mediation vendor, nor any mediator, nor the NATIONAL ASSOCIATION REALTORS®, serving under these procedures shall be liable to any party for any act, error or omission in connection with any service or the operation of the program.

Mediation Fees

Both the buyer and the seller will remit \$200 for two (2) hours of mediation. Should additional time be required, there may be an additional fee to be split evenly between the parties. If the mediation does not occur, \$75 shall be refunded.

Timing of Claims

The time limitation by which parties must bring claims in accordance with these Rules and Procedures are to be governed by state law. Local counsel should be consulted regarding this issue.

REQUEST TO INITIATE MEDIATION

(TO BE COMPLETED AND MAILED BY PARTY REQUESTING MEDIATION)

Date Filed: _____

Participant #1 – PARTY REQUESTING MEDIATION

Name: _____

Buyer

Seller

Address: _____

Phone: _____ Email: _____

Were you represented by a real estate agent? If so, please provide:

Name: _____ Email: _____

Real Estate Firm: _____

Address: _____

Are you planning on having legal counsel attend the mediation? If so, please provide:

Name: _____ Email: _____

Address: _____

*Please Note that you, not your attorney will be the primary participant in the mediation.
You will be able to consult privately with your attorney, if necessary.*

Participant #2 – Other Party to be included in mediation

Name: _____

Buyer

Seller

Address: _____

Phone: _____ Email: _____

Did this party utilize a real estate agent? If so, please provide:

Name: _____ Real Estate Firm: _____

Participant #3 – Other Party to be included in mediation.

Name: _____

Buyer

Seller

Address: _____

Phone: _____ Email: _____

Did this party utilize a real estate agent? If so, please provide:

Name: _____ Real Estate Firm: _____

Participant #4 – Other Party to be included in mediation.

Name: _____

Buyer

Seller

Address: _____

Phone: _____ Email: _____

Did this party utilize a real estate agent? If so, please provide:

Name: _____ Real Estate Firm: _____

Address of Property Involved:

Amount or estimate of money involved: \$ _____

Brief description of your claim:

Court Proceedings:

Has there been any formal court proceedings filed in this case? Yes No

If yes, are any trial dates or time limitations involved? Yes No

Date: _____ Case #: _____ County: _____

Court: _____ Judge: _____

Has a prior agreement to mediate been signed by the parties? Yes No

(i.e. – the sales contract. The standard REALTORS® of South Central Kansas Purchase Contract, Paragraph 31 for residential and Paragraph 31 for land, requires mediation prior to filing a lawsuit.)

Submit completed Request to Mediate and Agree to Mediate forms, along with applicable fees (\$200 payable to Pamela Thompson) to:

Pamela Thompson
510 N Topeka, Ste. 105
Wichita, KS 67214

Please be sure to include **all relevant paperwork**, such as copies of:

- **Contract for Purchase,**
- **Seller's Property Disclosure,**
- **any estimates, etc.**

Pamela Thompson
510 N Topeka, Ste. 105 Wichita, KS
67214
P: 316-993-7177
E: ksphoenixresearch@gmail.com

AGREEMENT TO MEDIATE

I agree that I am involved in a dispute concerning the purchase of real estate at _____ (address). A copy of the executed contract is attached and made part of this agreement by addendum.

_____ (initial) I agree to participate in confidential mediation as governed by KSA 5-512. All information is confidential including all materials and statements therein, with exceptions as listed in the statute.

The undersigned further agrees to submit the dispute to mediation in accordance with the mediation rules and procedures of the Realtors of South Central Kansas (RSCK). Any agreement signed by the parties pursuant to the mediation conference shall be binding.

I accept the rules of the process, and agree to be present at the mediation as scheduled by Pamela Thompson, and pay the associated fees promptly as directed. I have submitted/am submitting my payment.

___ buyer ___ seller ___ Realtor _____ other (describe)

Signed _____ date _____

Signed _____ date _____

Signed _____ date _____