



The Greater Albuquerque Association of REALTORS® offers mediation services as a confidential, timely, and relatively inexpensive means of facilitating communications between conflicting parties to promote reconciliation, settlement, and/or agreement. Mediation is offered at no cost to REALTOR® members, and at \$150 per party for disputes involving members of the public and/or a member of the public and a REALTOR® member. The check should be made payable to the Greater Albuquerque Association of REALTORS®.

The RANM Purchase Agreement forms state:

***Mediation.** If a dispute arises between the parties relating to this Agreement, the parties agree to submit the dispute to mediation. The parties will jointly appoint a mediator and will share equally the costs of the mediation. If a mediator cannot be agreed on or mediation is unsuccessful, the parties may enforce their rights and obligations under this Agreement in any manner provided by New Mexico law.*

If the parties agree to submit this dispute to mediation, they should complete the Request for Mediation (Form M-1) and the Agreement to Mediate (Form M-3), and return same to the Professional Standards Office, with any supporting documents they wish to file. We have two options available for mediating buyer-seller disputes:

1. A mediator or an Ombudsman will contact the parties by phone, and will go back and forth between the parties to facilitate conversations and to develop possible resolutions, similar to a shuttle diplomacy exercise. With this type of facilitated process, no filing fee is required by the parties.
2. A formal mediation conference can be arranged at the offices of the Greater Albuquerque Association of REALTORS®.

In earnest money disputes, if the parties do not agree to submit the dispute to some form of mediation, the title company may be forced to pursue the interpleader process with the courts to get a determination on the distribution of the earnest funds. Different title companies engage the interpleader process in different ways; however, the title company typically engages an attorney and files a lawsuit naming the buyer and seller as the defendants. If one of the parties is out of the area, the case gets submitted to District Court and may be sent to mandatory arbitration. In their lawsuit, the title company typically requests reimbursement of filing fees, serving costs, and attorney and other legal expenses required to resolve the matter. After a determination by the court, the prevailing party could request similar reimbursement of costs that were incurred in resolving the dispute. The non-prevailing party would likely be determined by the judge to be responsible for all court and legal expenses.

The parties are encouraged to mediate these disputes so that they can be involved in determining a fair resolution of the matter. Mediation is easy to schedule, and mediation resolution agreements are binding and enforceable through the Courts, if necessary. The parties are encouraged to engage their REALTORS® and/or to call the Professional Standards Office at the Association to discuss the process and/or options for resolving a dispute.

The National Association of REALTORS® *Code of Ethics and Arbitration Manual* is the source material and governing document for GAAR's mediation policies and procedures. The manual can be accessed on GAAR's web site:

http://www.gaar.com/about/professional_standards.

To obtain additional information regarding mediation, please contact the professional standards and conflict resolution services for the Greater Albuquerque Association of REALTORS® at 505-724-3466.

1635 University Blvd. NE, Albuquerque, NM 87102 - Phone: 505-842-1433 Fax: 505-842-0448 - www.gaar.com

REALTOR® is a registered mark which identifies a professional in real estate who subscribes to a Strict Code of Ethics as a member of the NATIONAL ASSOCIATION OF REALTORS®

Greater Albuquerque Association of REALTORS®
1635 University Boulevard NE, Albuquerque, NM 87102
Phone: (505) 724-3466 Fax: (505) 724-3493

Form #M-1

Request for Mediation

Requestor(s):

(Type/Print Name)

(Mailing Address)

(Phone/E-mail Address)

(Type/Print Name)

(Mailing Address)

(Phone/E-mail Address)

Respondent(s):

(Type/Print Name)

(Mailing Address)

(Phone/E-mail Address)

(Type/Print Name)

(Mailing Address)

(Phone/E-mail Address)

I am requesting mediation with the above-named party (Respondent) to be conducted by a Mediator(s) of the Greater Albuquerque Association of REALTORS®. There is due, unpaid, and owing to me (or I retain) from the above-named person(s) the sum of \$ _____ related to _____.

(A statement may be attached and marked as Exhibit I, and will be incorporated by reference into this request.)

As of this date, I have ☐ have not ☐ requested arbitration of this dispute before this or any other Association of REALTORS®. If you have requested arbitration, please name Association: _____.

[Signature of Requesting Party(ies)]

(Date)

[Signature of Requesting Party(ies)]

(Date)

(Revised 11/12)

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Form #M-3

Agreement to Mediate

The undersigned agree that they are involved in a contracted dispute defined by Article 17 of the Code or in a specific noncontractual dispute as outlined in Standard of Practice 17-4.

The undersigned agree to submit this dispute to mediation in accordance with the mediation guidelines, as set forth in the Code of Ethics and Arbitration Manual of the National Association of REALTORS® and the policies of the Greater Albuquerque Association of REALTORS®.

Any agreement signed by the parties, pursuant to the mediation conference, shall be binding.

As a party to the mediation process, I understand and agree as follows:

Parties to mediation may withdraw from the process at any point prior to reaching an agreement. Parties to mediation that do not reach an agreement shall be free to pursue arbitration of the dispute in accordance with the guidelines set forth in the *Code of Ethics and Arbitration Manual* of the National Association of REALTORS®. The parties acknowledge that the mediator is not providing legal representation, legal advice, or legal services, and that the parties are advised of their right to be represented by counsel at the mediation and also of their right to obtain independent legal advice (if counsel are not at the mediation) before signing any final settlement agreement.

The entire mediation process and all statements, communications, discussions and documents exchanged or generated in connection with any mediation shall be confidential. Evidence or information generated, submitted or exchanged in the course of a mediation conference may be used in an arbitration hearing only to the extent that it was obtained independent of the mediation process. Any offers of settlement that were not accepted or any suggested resolution proposed by the Mediator that was not accepted will not be introduced as evidence nor considered in any manner should the matter require arbitration by the Board's Professional Standards Committee. However, if the parties agree to a settlement of the dispute, and the settlement is reduced to writing and has been signed by all of the parties, the matter shall be considered resolved, and shall not be the subject of a subsequent arbitration hearing. In the event that either of the parties 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.

No aspect of this mediation conference shall be relied upon or introduced as evidence in any ethics, 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 or prepared by the Board or Mediator shall not be compelled. Neither the Board nor the Mediator shall be compelled to disclose or to testify in any proceeding as to information disclosed or representations made in the course of the mediation or communication to the Mediator in confidence. Neither the Mediators, the Greater Albuquerque Association of REALTORS®, the REALTORS® Association of New Mexico, nor the National Association of REALTORS® or any of its Member Boards shall be deemed "necessary parties" in any judicial proceedings relating to mediation under this Agreement. The parties acknowledge that the mediation proceedings will not be recorded and that weapons of any type are prohibited.

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Are the circumstances giving rise to this request for Mediation the subject of civil or criminal litigation or in any proceeding before the state real estate licensing authority or any other state or federal regulatory or administrative agency? ☐ Yes ☐ No

If any party to this mediation wishes to be represented by an attorney and/or to have witnesses or others present at the mediation conference, they should notify the Association three (3) business days prior to the mediation, so that appropriate notice to the mediators and other participants can be provided. If adequate notice is not given, the non-party participants may not be included in the mediation conference. _____ (Initial)

By my signature on this Agreement to Mediate, I acknowledge my rights and agree to the terms of the mediation procedures as stated above. I hereby affirm that I have the authority to enter into and sign a binding written agreement to settle this dispute.

Mediation Participant:

(Type/Print Name)

(Signature) (Date)

Mediation Participant:

(Type/Print Name)

(Signature) (Date)

Mediation Participant:

(Type/Print Name)

(Signature) (Date)

Mediation Participant:

(Type/Print Name)

(Signature) (Date)

(Revised 11/12)

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Form #M-7

Confidentiality Statement

Confidentiality is an important feature of mediation. Commitment to maintain confidentiality promotes an environment in which the parties can honestly, openly, and fully discuss the issues of the dispute.

Pre-mediation and mediation conferences are held in strict confidence by the mediators. Private meetings with the mediators (caucus) are also treated as confidential, and only information that the party wishes to be shared will be provided to the other party(ies).

Parties to the mediation are asked to respect the confidentiality and privacy of the mediation sessions. Parties agree not to disclose any information from the mediation conference without the explicit approval of the other party(ies). At the end of each mediation conference, the mediators and the parties will discuss which topics discussed are to remain confidential and which are to be shared, including to whom and in what format. Notes taken during the mediation conference by mediators and parties or other participants are destroyed at the end of the session. Experts whose advice is sought with respect to any issues in the mediation or additional parties in attendance at the mediation conference will be bound by the same rules of confidentiality.

All parties must give approval to a request for any non-party participant to be present during the mediation conference. If a person is approved to attend the session, that person must agree to the standards of confidentiality by signing this statement as well.

There are several exceptions to strict confidentiality:

- Mediators must report issues that are required by law to be revealed, e.g., suspected child abuse or threats of physical harm to self or others.
- At the request of the parties, statements of progress in mediation conferences may be reported to individuals specifically designated and agreed to by the parties.
- Mediators may consult with other mediators and professionals who adhere to the same code of confidentiality for purposes of promoting the mediation process.
- Copies of any mediation resolution agreement will be provided to the parties. With the consent of the parties, a copy of the mediation resolution agreement will be provided to other agreed-upon named persons.
- The Greater Albuquerque Association of REALTORS® will retain only the Agreement to Mediate, the Confidentiality Statement and the Resolution Agreement (if resolution is reached) for one year following the mediation conference. All other documents are destroyed following the mediation.

Mediators may not be called as witnesses in the event of any subsequent judicial or administrative proceedings. Documents produced in the mediation conference cannot be subpoenaed or used in any legal or administrative proceedings.

By their signature on this Confidentiality Statement, the parties, the mediators, and any non-party participants acknowledge their agreement to the terms of this Confidentiality Statement.

Party(ies):

(Type/Print Name)

(Signature)

(Date)

(Type/Print Name)

(Signature)

(Date)

Mediator:

(Type/Print Name)

(Signature)

(Date)

Non-Party Participant(s):

(Type/Print Name)

(Signature)

(Date)

(Type/Print Name)

(Signature)

(Date)

Mediator:

(Type/Print Name)

(Signature)

(Date)

Process Overview

Pre-mediation Preparation

- Ten days prior to session, parties receive a letter explaining the mediation process and logistical issues.
- Parties agree to mediate.
- Mediator is selected/appointed by random rotation, mutual request, or objection to a proposed mediator.
- Arrangements are made via letter or telephone.
 - Pre-mediation concerns are addressed.
 - Date and time typically scheduled at the convenience of the parties after a request for arbitration or mediation is received or following the grievance committee's determination of arbitrability.
- Witnesses and/or attorneys may attend, but this is not necessary because the process is non adversarial; there are no "findings of facts."
- Information is exchanged.
 - Parties need not prepare exhibits or extensive documentation. If a document will clarify an issue it may be used, but parties are reminded that mediation is not a fact-finding conference.

Mediation Conference

1. Mediator's opening statement/questions

Explain process and rules/goals, including the mediator's and parties' roles, voluntariness, neutrality, and confidentiality.

2. Parties' initial statements/questions

- Understanding perspectives
- Venting

3. Identification of issues

4. Create agenda

5. Cross-talk

Parties respond to each other and explain/explore information, needs, ideas and feelings.

6. Caucus (private meeting)

Mediator may meet privately with the parties to clarify needs and explore options for resolution and proposals.

7. Building an agreement

With the mediator's assistance, parties explore and refine workable solutions.

8. Conclusion

Agreement is reached/signed before leaving mediation or all agree that no further progress can be made, in which case parties are free to pursue arbitration.



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Code of Ethics

NATIONAL ASSOCIATION OF REALTORS®

Mediation

The Winning Solution
for Buyers and Sellers

collaborative
ethics
agreement
voluntary
buyers & sellers
resolution
confidential
process
quick
non-adversarial
decisions
control
neutral
conference

Even the best-intentioned buyers and sellers occasionally have honest disputes with other parties. There is an ongoing need for an efficient, economical mechanism to resolve such disputes. Arbitration is valuable, but mediation is simpler and easier.

What is Mediation?

"The act or process of mediating: intervention between conflicting parties to promote reconciliation, settlement, or compromise."

—Webster's Ninth New Collegiate Dictionary

- Arbitration and mediation are valuable in resolving business disputes.
- Both mediation and arbitration are private and neutral/with expertise.
- But . . .**
- Mediation is an attractive alternative to arbitration.

Why Use Mediation?

Mediation	Arbitration
Low or no cost	Moderate cost
Little delay	Moderate delay
Win/win outcome	Win/lose/split
Collaborative	Adversarial
Maximum range of solutions	Result limited to monetary award
Improves relationships	May damage relationships

Key Features

Voluntary*/Private Process

- Parties decide to enter the mediation process.
- Parties can leave the mediation process at any time.
- Parties have complete control over the outcome.

Neutral/Impartial Mediator

- Understands issues quickly because typically, the facilitator is familiar with real estate practices and customs.
- Mediates only matters in which he/she remains neutral and impartial.
- Discloses conflicts of interest (parties may agree to continue following disclosure or terminate session).

- Facilitates and assists with negotiations – controls the process, not the substance.

- Honors the concepts of self-determination, respect, and civility.

- Enhances the parties' abilities to understand their own and each other's needs.

- Helps parties understand the alternatives to settling.

- Should possess these qualities, according to William Simkin in *Settling Disputes*:

- wisdom of Solomon
- the hide of a rhinoceros
- the patience of Job
- abilities of a half-back
- wit of the Irish

*Voluntary unless REALTOR® are required to mediate by their association

Confidential Process

- Mediation is a confidential settlement process.
- Neither the mediator nor the parties disclose the communications or conduct of the mediation, unless all parties agree (with limited exceptions, such as risk of harm).
- Ethical violations discovered as a result of participation in the mediation are not reported.
- Settlements discussed in mediation are not admissible in arbitration.
- Generally a mediator is not a witness in arbitration or court.

- Information gathered and exchanged may be used in arbitration only to the extent that it was obtained independently from the mediation process.

Why Mediation Works

- Most disputes are successfully resolved

- High speed

- Low or no cost

- Flexible

- Maintains/improves relationships

- Improves poor communication/clarifies misunderstandings because parties come together and talk

- Discovers/addresses the true interests of parties

- Moves beyond different views of law/fact

- Allows creative solutions beyond win/lose

- Mediated resolution is just as binding and enforceable as an arbitration award

When It Will Not Work

- When a precedent is necessary
- When there is no relationship and it is cheaper to contest the claim
- When vindication/punishment remains the main objective
- When the "jackpot syndrome" is involved (maximize/minimize recovery)

"Mediation is user friendly. It takes a potential conflict, turns it around and saves relationships." –Larry Apple

"Mediation is the ONLY win/win solution in dispute resolution." –Mike Wasmann

"Mediation lets participants accept responsibility for the outcome of their disputes, as opposed to relinquishing that authority to a third party." –C. Hilea Walker

"Mediation is the best alternative because you have more control over the results, a better chance to communicate your story, and it strengthens REALTOR® relationships through mutual gain and satisfaction." –Patrick Reilly

Mediation can save time and money and can be quicker, easier, and more amicable for resolving business disputes than arbitration.