



**Greater Albuquerque
Association of REALTORS®
Professional Standards Office
1635 University Blvd. NE
Albuquerque, NM 87102
505-724-3466**

Mediation and Conflict Resolution Services (Public)

The Greater Albuquerque Association of REALTORS® (GAAR) offers mediation services as a confidential, timely and relatively inexpensive means of facilitating communication between conflicting parties to promote reconciliation, settlement and/or agreement. Mediation is offered at \$250 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®.

We also offer a complimentary low-level, informal Ombuds conflict resolution program. The Ombuds are REALTORS® in good standing with the Association, who have been trained to be neutral facilitators. An Ombuds assists people in the midst of a dispute come up with options/solutions that all parties can agree to, honor and live with. It's an informal conflict resolution process and similar to mediation. The parties to the issue don't need to meet in person, the Ombuds communicates to the parties by phone. To get the Ombuds process started, all you have to do is contact the Professional Standards office and request an Ombuds.

We have found the informal Ombuds program to be very effective for buyers and sellers experiencing an earnest money dispute. In earnest money disputes, it's helpful if the buyer and seller involved understand that there are only a few options available that enable the title company to release the earnest money; if the parties to the contract authorize distribution or if the title company is court-ordered (judicial enforcement) to distribute the funds. A last possibility may be that the title company could escheat the money to the State of New Mexico as unclaimed property.

However, if you would prefer to sit across the room from the other party and would like neutral mediators to help you and the other party try and work out an acceptable resolution, then voluntary formal mediation is the best process.

To initiate voluntary formal mediation, you should complete the Request for Mediation (Form M-1 Public to Public) and the Agreement to Mediate (Form M-3), and return same to the Professional Standards Office, with any supporting documents you wish to file. Your request and documents would then be sent to the other party, asking them to participate in mediation. This process is voluntary and if the other party doesn't want to participate, the matter would be closed and you would then be able to consider any other available options that you believe would be helpful.

We encourage members of the public to mediate or avail themselves of the Ombuds program in order to be involved in determining a fair resolution of their issues. Mediation is easy to schedule and mediation resolution agreements are binding and enforceable through the Courts, if necessary. Call the Professional Standards Office to discuss the processes and/or options available.

The National Association of REALTORS® *Code of Ethics and Arbitration Manual* is the source material and governing document for GAAR's mediation policies and Ombuds procedures. The manual can be accessed on GAAR's website: <https://www.gaar.com/the-code>.

To obtain additional information regarding conflict resolution, please contact the Professional Standards Office at 505/724-3466 or 505/724-3465.



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Form #M-1

**Request for Mediation
(Public to Public Issues)**

Requestor(s):

Respondent(s):

(Type/Print Name)

(Type/Print Name)

(Mailing Address)

(Mailing Address)

(Phone/E-mail Address)

(Phone/E-mail Address)

(Type/Print Name)

(Type/Print Name)

(Mailing Address)

(Mailing Address)

(Phone/E-mail 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 _____.

OR I am seeking a resolution of a non-monetary issue related to _____.

My claim is predicated upon the statement attached and marked as Exhibit 1 and incorporated by reference into this request.

[Signature of Requesting Party(ies)]

(Date)

[Signature of Requesting Party(ies)]

(Date)

(Revised 11/16)



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Form #M-3

Agreement to Mediate

The undersigned agree that they are involved in a dispute.

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 the filing of an ethics complaint or for 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 subject to any further Professional Standards process or litigation. In the event that either of the parties fails to abide by the terms of the settlement, 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.

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 no later than 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)

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.

Code of Ethics

NATIONAL ASSOCIATION OF REALTORS®

Mediation

The Winning Solution
for Buyers and Sellers

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

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Item 166-292P
(01/17)



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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 REALTORS® 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.