



National Center for Dispute Settlement

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Mediation Rules for Residential Construction Program

Introduction

The National Center for Dispute Settlement (“NCDS”) is a private, independent, impartial organization which administers dispute resolution procedures.

Mediation procedures, administered by NCDS, can be provided pursuant to an applicable provision of an agreement or by a standard NCDS Submission Agreement on an ad-hoc basis.

The following Rules (hereinafter referred to as the “Rules”) govern the initiation, conduct, and administration of the NCDS mediation procedure.

1. Initiation of the Mediation Procedure

- a.** The parties shall submit a request for mediation on a NCDS Request for Mediation or NCDS Submission Agreement form.
- b.** The proper Administration Fee [as determined under Section Seven (7) of these Rules] shall accompany the request.

2. Mediator Assignment

- a.** NCDS shall assign a Mediator within five (5) business days of receiving the Request for Mediation. Alternatively, the parties may request a list of mediators, with brief biographical statements included, and rank the list according to preference.
- b.** NCDS shall provide the Mediator with the names, addresses, and telephone numbers of the parties and the parties with the name and telephone numbers of the Mediator assigned.
- c.** Within five (5) work days of the receipt of the notification of the assignment, NCDS shall communicate with the parties to establish a mediation conference date and location.

- d. The mediation conference shall be held within fifteen (15) business days from the acknowledgement by NCDS, of a Request for Mediation, to the parties.
- e. Should the Mediator assigned be unable to execute his or her responsibilities within the time specified by these Rules, another Mediator shall be assigned unless the parties mutually agree to retain the Mediator, and hold the mediation conference at a later date.

3. **The Mediation Conference: Time and Site**

- a. The mediation conference shall be held at a site, and at such a time, as are mutually agreed to by the parties.
- b. Should the parties fail to agree on a site and/or time, the Mediator shall select the site and/or establish the time of the mediation conference.
- c. The parties shall notify NCDS of any postponement or cancellation of the conference prior to forty-eight (48) hours of the scheduled conference. The parties shall also notify NCDS, as soon as practicable, of any delay, postponement or cancellation of a mediation conference by a Mediator.
- d. Should a party delay, postpone or cancel a mediation conference less than forty-eight (48) hours prior to its scheduled date, that party shall be solely liable for any expenses and fees occasioned by such action, including those incurred by the Mediator, and for the NCDS administrative fees. NCDS shall have the sole and exclusive right to make such an assessment.

4. **Conduct of the Mediation Conference**

- a. **Authority of the Mediator.** The Mediator shall have the authority to conduct the mediation conference in such manner as the Mediator shall judge will best facilitate the most expeditious disposition of the dispute, consistent with commonly accepted mediation practices and procedures and these Rules. The Mediator shall decide questions of interpretation and application of these Rules, and give due consideration to rule changes mutually agreeable to the parties.
- b. **The Mediation Conference.** The mediation conference shall be conducted as an informal procedure in such manner as the Mediator determines to be consistent with informal practices, with securing the most expeditious disposition of the dispute and with the following Rules of Conduct:
 - (1) Attendance shall be required of each party to the dispute. There shall be no ex-parte proceedings.
 - (2) Only those other persons who may have a bearing on the resolution of the dispute shall attend the conference. Such attendance shall be in such manner, and at such time, as the Mediator may determine.

- (3) Each party shall designate a representative who shall act as spokesperson; provided, however, that nothing shall preclude a complainant from making a presentation in order to have fullest opportunity to be heard.
- (4) Either party may present such proof, written or oral, as each shall deem necessary to the presentation of their respective position without the challenge of materiality or conformance with any rules of evidence.
- (5) The Mediator shall utilize commonly accepted mediation practices including, but not limited to, joint and separate meetings with any person or persons participating and the proffering of dispute resolution proposals.
- (6) The Mediator shall have no authority to compel resolution of the dispute.
- (7) There shall be no permanent record kept of the substance of the mediation conference by the parties.
- (8) Either party shall have the right to withdraw the dispute from mediation, in which event the mediation shall terminate.
- (9) Should the parties not be able to resolve their dispute to their mutual satisfaction after a reasonable period of conference time, the Mediator shall, upon the request of both parties or whenever the Mediator shall deem it appropriate, terminate the mediation.

5. Actions on the Conclusion of the Mediation Conference

- a. Should the dispute be resolved as result of the mediation process:
 - (1) The parties shall sign a statement, on a NCDS Mediation Settlement form, that the matter has been resolved and that no party or individual represented by a party shall appeal to or attempt to move in any other forum for the purpose of further proceeding on the issue(s) resolved, or any issue(s) derived there from. The Form shall contain a brief statement of the settlement.
 - (2) The final resolution of the dispute shall not constitute a precedent unless the other parties agree otherwise.
- b. If the dispute is not resolved as a result of the mediation process:
 - (1) The Mediator may not be the arbitrator in any subsequent arbitration proceeding of the dispute which was the subject of the mediation conference, unless specifically requested by both parties after the conclusion of the mediation conference.
 - (2) No utterance, action or inaction by any person involved in the mediation process shall be referred to by expression or implication at any arbitration, or other proceeding, and such subsequent proceedings shall be, in all respects, *de novo*.

6. Other

- a. All discussions between and among the complainant, disputing parties and/or the Mediator shall be privileged and treated as confidential.
- b. Expenses for attendance of participants, other than those of the Mediator, shall be borne by the party incurring such expenses unless otherwise agreed.
- c. When the parties choose NCDS and this Mediation Procedure, they have agreed to abide by these Rules as established by NCDS, that the Rules are binding on the parties, and that they hold NCDS, and the Mediator appointed by NCDS to conduct the mediation conference, harmless from any claim for damages arising from the mediation process.

7. Fees and Expenses

- a. Mediation case filing fee (including Mediator's fee):

	Home Builder	Home Buyer
(1) Case filing fee (HBA Affiliated Home Builder registered with NCDS)	\$750.00	\$0
(2) Case filing fee (HBA Affiliated Home Builder)	\$850.00	\$0
(3) Case filing fee (Non-affiliated Home Builder)	\$950.00	\$0

- b. **Additional meeting day:**

- (1) Additional day fee - \$500.00

Home Builder	Home Buyer
\$250.00	\$250.00

- c. **Expenses:**

- (1) Reasonable and customary travel expenses for the Mediator shall be paid to NCDS.
- (2) If an overnight stay is required, the parties shall pay to NCDS the ordinary and reasonable expenses incurred by the Mediator.