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REAL ESTATE MEDIATION CENTER

A GUIDE TO REAL ESTATE MEDIATION

Real Estate Mediation Center
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A Department of the San Diego Association of REALTORS®
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MISSION STATEMENT

The mission of the Real Estate Mediation Center is to successfully resolve disputes between REALTOR® members and/or members of the general public.

Our goal in resolving these disputes is to accomplish...

- Professionalism and the spirit of cooperation among REALTOR® colleagues.
- Goodwill and fairness in the REALTOR® community and with members of the general public.
- Resolution through simplicity rather than complexity, thereby minimizing cost and additional fees, insurance claims, damages and litigation.

Mediation: The Guide to Resolving Real Estate Disputes

In day-to-day real estate transactions, as simple as some may seem, disputes do arise. Parties can disagree on issues such as deposits, undisclosed defects, specific performance, and others. These types of problems can lead to delays in your transaction or possibly to future litigation. There are ways, however, to resolve these matters in a swift and low cost manner. Alternative dispute resolution can save time and money. It can help resolve the dispute and put it behind you, while preserving your relationships with those involved in the transaction.

The Real Estate Mediation Center handles only real estate disputes, which can involve buyers, sellers, brokers, agents and any other parties who participate in the transaction, such as inspectors, contractors or developers.

Real Estate Mediation

Mediation is a process in which a neutral person—the mediator—helps parties reach a settlement to their dispute by opening lines of communication, objectively evaluating the case, identifying parties' real needs and finding a solution to address those needs.

The mediator does not have the authority to make a binding decision, unlike the arbitration process, in which the arbitrator renders a decision that is final and binding.

Who are the Mediators?

To better serve those involved in real estate disputes, the Real Estate Mediation Center uses the services of mediators who practice specifically in the real estate field, such as brokers and real estate attorneys. All mediators must have five to ten years of real estate experience prior to being considered for the roster. Some of the qualities the Real Estate Mediation Center requires are:

- Commitment to impartiality
- Objectivity
- Dispute resolution skills and training
- Respect, integrity, patience and courtesy
- Strong academic background and professional or business credentials

The Real Estate Mediation Center constantly reviews the quality of its mediators through monthly meetings and training, as well as through evaluations by mediation participants that assist in improving their skills.

Mediation Terms

Case Administrators – the Real Estate Mediation Center staff persons who administer the cases. The case administrator is responsible for the general management of the case, including accepting the request for mediation, forwarding it as a neutral third party, contacting the responding party, scheduling and exchanging information among the parties, and selecting the mediator, as well as all the other details involved in processing the mediation request.

Caucuses — meetings in which a mediator talks with the parties individually to discuss the issues.

Documentation – including, but not limited to transaction files, inspection reports, contractor evaluations and repair estimates.

Mediation – a proceeding in which a neutral party assists the parties in reaching their own settlement, but does not have the authority to make binding decisions.

Negotiation – a process in which disputants communicate their differences to one another and use this knowledge attempt to resolve them.

Participant – is any individual taking part in the mediation.

Party – an individual, entity or group taking part in a mediation as a disputant and all the disputant's attorneys, advocates, representatives and consultants. Which includes:

Requesting Party – the party who files the mediation request.

Responding Party – any party who files a response to the mediation request.

How Does Mediation Differ From Other Dispute Resolution Processes?

To understand how mediation differs from other dispute resolution processes, it helps to know the characteristics of the three most common processes used today: litigation, arbitration and mediation.

Litigation is an adversarial process in which parties submit evidence to a judge or jury and then rely on the judge or jury to make and impose a binding decision on their dispute. Litigation is governed by formal rules and procedures of court and is generally time-consuming and expensive. Because it is adversarial, litigation is in effect to a contest where a winner and a loser are selected.

Arbitration is similar to litigation in that it is an adversarial process where the parties submit evidence to a neutral third person (the arbitrator) whom then renders a decision on their dispute. However, arbitration usually occurs in private, rather than in a public court, and is not conducted under a court's formal rules and procedures. In order to submit to arbitration, in most cases the parties must have already signed an arbitration agreement.

Mediation differs from litigation and arbitration in many ways. Perhaps the most significant difference is that mediation is a non-adversarial process—that is, the parties do not formally argue their positions and give decision-making power to a third party. Instead, the mediator's role is to help the parties achieve a mutually agreeable resolution of their dispute.

What Are Some of the Advantages of Mediation?

Mediation is a flexible dispute resolution system that can be used to resolve virtually any type of dispute. It allows the parties to work together and control the decision making process. Because mediation is non-adversarial, it also allows parties to achieve a “win-win” situation, as opposed to the winner and loser scenarios associated with litigation and arbitration. Another advantage of mediation is that it is a private and confidential process; the discussions that occur and agreements that result from mediation are not part of a public record, as they are in litigation.

When Does Mediation Occur?

Mediation can be initiated at different times in a transaction and for different reasons. First, mediation might be necessary when a dispute arises during a real estate transaction that could threaten the closing of the deal, which could affect a pending purchase for the seller, the buyer's locked loan rate, or other scenarios specific to that transaction. Second, mediation can occur after the transaction for deposit issues, undisclosed defects, commissions, easements, or other such matters. All these issues can be mediated per the Purchase Agreement.

How Does the Mediation Clause in the Purchase Agreement Apply?

When the parties execute a Purchase Agreement, they agree to mediate any issues that may arise from the transaction. If a party refuses to submit to mediation, he can be denied attorney's fees to which he might otherwise be entitled in subsequent litigation or arbitration. The purpose of the mediation clause is to get the parties to the table where, under a mediator's expert guidance, they can resolve the dispute on their own terms, inexpensively and expeditiously.

Do I Need a Lawyer at Mediation?

Although the presence of an attorney is not required, you may bring one if you are unsure how to proceed with mediation or feel more comfortable with representation. This will increase your costs. You have the option of seeking a lawyer's advice prior to mediation, or using a lawyer's services to help you prepare to represent yourself. One key to successful mediation is to identify what you need in order to feel comfortable during the process.

Am I Entitled to Use Witnesses?

Ordinarily witnesses are not necessary, since parties are not attempting to “prove” a case. Sometimes a witness can be helpful and might be invited to participate at the discretion of the mediator.

What if Mediation Does Not Resolve My Dispute?

While statistics show that mediation is highly successful, the parties are free to pursue any other available system of dispute resolution in the event the mediation does not resolve the dispute. Even if this is the case, mediation can still prove valuable by narrowing areas of dispute and allowing the parties to express their grievances, thus allowing future proceedings to be more efficient and focused.

Stages Of Mediation

I. Agreement of Parties

Parties can initiate mediation if they have agreed to use it under a clause in a real estate contract or other written agreement that calls for mediation, such as the Residential Purchase Agreement.

II. Initiation of Mediation

Any party to the mediation clause can initiate the process by completing, signing and mailing to the Real Estate Mediation Center a “Request for Mediation” form, which should contain or be accompanied by all the following information that is known and readily available:

- A copy of the executed contract for the sale of real estate containing the mediation clause, or a copy of any other written agreement that invokes mediation.
- In the absence of such a contract clause or other agreement, a written request by any party seeking to have the Real Estate Mediation Center attempt to persuade others to submit an existing dispute or claim to mediation.
- The names, addresses and telephone numbers of the parties you want invited to the mediation (do not include witnesses).
- The nature and amount of the claim; that is, a brief statement of the facts that give rise to the claim and the monetary damages or other relief sought.
- Dates during the four-week period following submission of the request when the party will be available for a mediation conference. The case administrator will contact all parties to find a mutually agreeable date for mediation.
- Payment for the filing fee.

III. Solicitation of Response

The Real Estate Mediation Center will then solicit from the named parties a “Response to Request for Mediation” form, as well as dates when they are not available and payment of a filing fee.

IV. Selection of Mediator

Within ten days after receipt of the “Response to Request for Mediation” form, the Real Estate Mediation Center appoints a qualified mediator. No one can serve as a 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 all given written consent.

Mediation is a process in which an independent, neutral third party (known as a Mediator) facilitates communication between disputants and assists them in reaching a mutually acceptable resolution of all or part of their dispute. Mediation is a unique process in that the mediator is not the decision maker, the parties are.

Although the mediator will not decide the outcome of the case, it is essential that the parties have complete confidence in the mediator’s ability to conduct the mediation in a fair, impartial and even-handed manner without favoring any party.

The REMC has adopted the following Policy:

“A mediator shall not mediate a matter in which he or she cannot do so without impartiality. A mediator shall identify and disclose all potential grounds upon which a mediator’s impartiality might reasonably be questioned. Such disclosure should be made at the earliest opportunity, prior to the start of a mediation and in time to allow the parties to select an alternate mediator.

Such disclosure should include the identification of any previous selection(s) as a neutral by any party during the prior two years, and any known current or past personal or professional relationship or affiliation with any participant which might reasonably raise a question as to the mediator’s impartiality.”

The purpose of a mediator’s disclosure is to acknowledge any relationships that could raise a question as to the mediator’s impartiality. When a mediator makes a disclosure, it should not be assumed that the mediator cannot conduct the mediation impartially. Many disclosures are made by mediators to avoid the appearance of bias or partiality—not because any actual bias exists.

For each case, the REMC provides the mediator with the case name and the names of all counsel or persons appearing without counsel. They are not given the names of additional parties, company representatives or other consultants. They are only required to make disclosures based on the information they are given. However, in order to avoid any delay or cancellation, please assist the mediator by providing the REMC with the names of others who will be attending the mediation. The duty to disclose is a continuing duty and any doubts about disclosure should be resolved in favor of making the disclosure. It will then be up to the parties to decide if they feel the mediator can or cannot be impartial and if they are willing to waive any potential conflict.

To facilitate the disclosure process, the REMC has developed the attached Mediator Disclosure form. If you have any questions about these requirements, please contact the REMC at 858-715-8020. If you have any questions about the actual disclosures, please contact the mediator directly.

V. Time and Place of Mediation Conference

Within ten days after receipt of the “Response to Request for Mediation” form, the Real Estate Mediation Center sets the date, time and place of the mediation conference. The conference date cannot be more than six weeks after the date the “Request for Mediation” form is received, and must allow for at least ten days advance notice, unless the parties request otherwise. The Real Estate Mediation Center notifies all parties who have agreed to participate in the mediation.

VI. Preparation for the Mediation Conference

To prepare for a mediation, the parties should:

1. Define and analyze the issues involved in the dispute.
2. Recognize the parameters of the given situation, such as realistic expectations, time constraints, available resources, legal ramifications, business or trade practices, costs, etc. Identify your needs and interest in settling the dispute.
3. Prioritize the issues in light of your needs.
4. Determine course of actions, positions, and tradeoffs.

5. Explore a variety of possible solutions—an initial proposal (your ideal desires, stated with enough room to negotiate); a fallback proposal (acceptable alternatives); a bottom-line proposal (a final option which you absolutely must have).
6. Seek to make your proposals reasonable and legitimate and be willing to accommodate needs of the other party.
7. Ascertain the strengths and weaknesses of your cases.
8. Prepare facts, documents and sound reasoning to support your claims. Bring documentation and back-up materials to mediation to add to the credibility of your issue, or in case the mediator needs additional information.
9. Anticipate the other party’s needs, demands, strengths and weaknesses, positions, and version of facts.
10. Focus on the interests of each party, rather than on current positions.
11. Develop your strategies and tactics through discussion of issues, presentation of proposals and testing of the other party’s positions.

VII. Conduct of Mediation Conferences

At the mediation conference, the parties will be expected to produce all information reasonably required for the mediator to understand the issues presented. This information usually includes relevant written materials, as well as a description of any witnesses and what each could testify to. For more complex cases, the mediator may ask the parties for written materials or information in advance of the conference. Parties who wish to submit information before the mediation conference should provide it to the case administrator at least 48 hours prior to the conference.

At the mediation conference, the mediator will conduct an orderly settlement negotiation. Parties or their representative must have authority to settle the case at that time. The mediator will be impartial and has no authority to force the parties to agree to a settlement.

VIII. Representation by Counsel

Although most disputes are successfully mediated without the assistance of counsel, any party can choose to be accompanied by and represented at the mediation conference by counsel. In the interest of fairness, however, a party who intends to be represented by counsel should notify the Real Estate Mediation Center and the other parties of such intent in its “Request” or “Response” at least five days prior to the conference.

IX. Confidentiality

In accordance with Evidence Code and Code of Civil Procedure (refer to code sections on pages 17–19 and confidentiality agreement on page 20), no aspect of the mediation shall be subject to discovery nor relied upon or introduced as evidence in any arbitration, or in any judicial or other proceeding, including but not limited to:

- Views expressed or suggestions made by a party;
- Admissions made in the course of the mediation;
- Proposals made or views expressed by the mediator or the response of any party thereto;
- Any writing prepared for, in the course of, or pursuant to the mediation.

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 Real Estate Mediation Center cannot be compelled.

X. Mediated Settlement

The mediator will put the mediated settlement in writing, and all parties who agree to its terms will date and sign it at the mediation conference. If a party requests and all parties agree, the agreement may be drafted or reviewed by private counsel prior to signing. The settlement must be signed within ten days of the conclusion of the mediation conference.

XI. Judicial Proceedings and Immunity

The Real Estate Mediation Center maintains, for statistical purposes, a record of all mediations conducted as a result of the Dispute Resolution System. The records are only available to the San Diego Association of REALTORS®.

Neither the Real Estate Mediation Center nor the mediator may be deemed “necessary parties” in any judicial proceedings relating to the mediation. Under Evidence Code section 703.5, the mediator may not testify in any subsequent civil proceeding as to any communication that occurred in the mediation. Neither the Real Estate Mediation Center nor any mediator serving within it is liable to any party for any act, error or omission in connection with the mediation.

FEE SCHEDULE

	Filing Fee	Hourly Fee*
For Claims up to \$10,000	\$100 (per party)	\$200 (shared fee between parties)
For Claims \$10,000 or more	\$150 (per party)	\$300 (shared fee between parties)

** 25% discount on the hourly fee to SDAR REALTORS® and their clients.*

Filing fees shall be paid with initiating and responding documents.

Hourly fees shall be paid by all responsible parties at the conclusion of the mediation.

Please refer to the payment voucher for further details regarding payment.

FORMS

The following section contains filing forms for Requesting and Responding to mediation. As well as sample forms that each participating party will be using during the mediation process.

To use the Request and Response forms, please cut along the dotted lines to remove the forms, fill out completely and mail the forms to:

The Real Estate Mediation Center
4849 Ronson Court, Suite 211
San Diego, Ca 92111

If you have any questions regarding these forms, you may contact the Real Estate Mediation Center at 858-715-8020.

REQUEST TO MEDIATE

Case #: _____
(for office use only)

1. AMOUNT OF MONEY INVOLVED: _____

2. PARTY REQUESTING MEDIATION:

Name: _____

Buyer Seller Broker Listing Agent Other: _____

Telephone #: _____ Fax #: _____

Address: _____

Name Legal Counsel or other Representative: _____

Telephone #: _____ Fax #: _____

Address: _____

3. BRIEF DESCRIPTION OF CLAIM: (Attach a separate sheet if necessary, be as concise as possible)

4. Have there been any formal court pleadings filed in this case? Yes No

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

Hearing Date _____ Court Case # _____ Court County _____ Judge _____

5. Do you have authority to enter into and sign a binding written agreement to settle this on behalf of the party you represent? Yes No

Comment: _____

6. During the four-week period following the date you submit this request, list the dates you would be available for a mediation conference. _____



7. OTHER PARTIES TO THE DISPUTE:

Name: _____
 Buyer Seller Broker Listing Agent Other: _____
Telephone #: _____ Fax #: _____
Address: _____
Name Legal Counsel or other Representative: _____
Telephone #: _____ Fax #: _____
Address: _____

Name: _____
 Buyer Seller Broker Listing Agent Other: _____
Telephone #: _____ Fax #: _____
Address: _____
Name Legal Counsel or other Representative: _____
Telephone #: _____ Fax #: _____
Address: _____

I understand and agree that I am responsible for my portion of the fees incurred in this mediation and have signed the enclosed Payment Voucher. Yes No

**There is a continuance fee charged to any party requesting a continuance once a mediation conference has been scheduled.

Please attach copy of the signed MEDIATION clause of your purchase contract.

PLEASE MAIL THIS FORM TO THE REAL ESTATE MEDIATION CENTER.

Date _____

Signature of Requesting Party

While the Association promotes mediation, please be advised of the following. If you are the complainant in the dispute against a REALTOR®/member, and are unsure if Mediation will be successful, be assured your Request to Mediate may be transferred to Arbitration. Also, mediation is a voluntary process and a mediation conference can only be scheduled for those parties that agree to mediation or have agreed via their contract. If any parties to your dispute do not agree to mediation, arbitration will be necessary to resolve the dispute as it pertains to you and those parties.

RESPONSE TO REQUEST TO MEDIATE

Case #: _____

Responding Party:

Name: _____	
<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Broker <input type="checkbox"/> Listing Agent <input type="checkbox"/> Other: _____	
Telephone #: _____	Fax #: _____
Address: _____	
Name Legal Counsel or other Representative: _____	
Telephone #: _____	Fax #: _____
Address: _____	

Do you have authority to enter into and sign a binding written agreement to settle this on behalf of the party you represent? Yes No

Comment: _____

Brief Response to claim: (Attach a separate sheet if necessary, be as concise as possible)

I/We agree to mediate with the requesting party to resolve this issue and that I will be responsible for my portion of the fees incurred in this mediation and have enclosed a signed payment voucher. Yes No

If you agree to mediate, during the next four weeks, please list the dates you would be available:

Date: _____

(Signature)

(Print Name)



PAYMENT AUTHORIZATION FORM

NOTE: All credit card information must be completed to reserve your mediation date.

I hereby agree that any and all charges incurred or guaranteed for the mediation conducted through the Real Estate Mediation Center will be charged as specified below. (All items marked below will apply.)

Credit Card Type: _____

Credit Card Number: _____

Expiration Date: _____

Name as it appears on card: _____

(Please Print)

Billing address of cardholder: _____

All items marked below will apply:

Enclosed is my check in the amount of _____.

OR

Charge my card for the filing fee (immediately). Amount to be charged: _____

Please note: Credit card information is required to guarantee your mediation date. Any hourly fees accumulated on the day of mediation must be paid upon its conclusion by either check or credit card. Any fees not paid within 24 hours of the conclusion will be charged to the above card.

***** All charges will have receipts and supporting documentation and will be mailed to the address provided on your Request/Response. *****

Signature of Cardholder

Date

FOR OFFICE USE ONLY

Case Number: _____

Mediation Date: _____

Total Amount Charged: _____

EVIDENCE CODE 1115-1128

Section 1115

For purposes of this chapter:

- (a) “Mediation” means a process in which a neutral person or persons facilitate communication between the disputants to assist them in reaching a mutually acceptable agreement.
- (b) “Mediator” means a neutral person who conducts a mediation. “Mediator” includes any person designated by a mediator either to assist in the mediation or to communicate with the participants in preparation for a mediation.
- (c) “Mediation consultation” means a communication between a person and a mediator for the purpose of initiating, considering, or reconvening a mediation or retaining the mediator.

Section 1116

- (a) Nothing in this chapter expands or limits a court’s authority to order participation in a dispute resolution proceeding. Nothing in this chapter authorizes or affects the enforceability of a contract clause in which parties agree to the use of mediation.
- (b) Nothing in this chapter makes admissible evidence that is inadmissible under Section 1152 or any other statute.

Section 1117

- (a) Except as provided in subdivision (b), this chapter applies to a mediation as defined in Section 1115.
- (b) This chapter does not apply to either of the following:
 - (1) A proceeding under Part 1 (commencing with Section 1800) of Division 5 of the Family Code or Chapter 11 (commencing with Section 3160) of Part 2 of Division 8 of the Family Code.
 - (2) A settlement conference pursuant to Rule 222 of the California Rules of Court.

Section 1118

An oral agreement “in accordance with Section 1118” means an oral agreement that satisfies all of the following conditions:

- (a) The oral agreement is recorded by a court reporter, tape recorder, or other reliable means of sound recording.
- (b) The terms of the oral agreement are recited on the record in the presence of the parties and the mediator, and the parties express on the record that they agree to the terms recited.
- (c) The parties to the oral agreement expressly state on the record that the agreement is enforceable or binding or words to that effect.
- (d) The recording is reduced to writing and the writing is signed by the parties within 72 hours after it is recorded.

Section 1119

Except as otherwise provided in this chapter:

- (a) No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation is admissible or subject to discovery, and disclosure of the evidence shall not be compelled, in any arbitration, administrative adjudication, civil action, or other non-

criminal proceeding in which, pursuant to law, testimony can be compelled to be given.

(b) No writing, as defined in Section 250, that is prepared for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation, is admissible or subject to discovery, and disclosure of the writing shall not be compelled, in any arbitration, administrative adjudication, civil action, or other non-criminal proceeding in which, pursuant to law, testimony can be compelled to be given.

(c) All communications, negotiations, or settlement discussions by and between participants in the course of a mediation or a mediation consultation shall remain confidential.

Section 1120

- (a) Evidence otherwise admissible or subject to discovery outside of a mediation or a mediation consultation shall not be or become inadmissible or protected from disclosure solely by reason of its introduction or use in a mediation or a mediation consultation.
- (b) This chapter does not limit any of the following:
 - (1) The admissibility of an agreement to mediate a dispute.
 - (2) The effect of an agreement not to take a default or an agreement to extend the time within which to act or refrain from acting in a pending civil action.
 - (3) Disclosure of the mere fact that a mediator has served, is serving, will serve, or was contacted about serving as a mediator in a dispute.

Section 1121

Neither a mediator nor anyone else may submit to a court or other adjudicative body, and a court or other adjudicative body may not consider, any report, assessment, evaluation, recommendation, or finding of any kind by the mediator concerning a mediation conducted by the mediator, other than a report that is mandated by court rule or other law and that states only whether an agreement was reached, unless all parties to the mediation expressly agree otherwise in writing, or orally in accordance with Section 1118.

Section 1122

- (a) A communication or a writing, as defined in Section 250, that is made or prepared for the purpose of, or in the course of, or pursuant to, a mediation or a mediation consultation, is not made inadmissible, or protected from disclosure, by provisions of this chapter if either of the following conditions is satisfied:
 - (1) All persons who conduct or otherwise participate in the mediation expressly agree in writing, or orally in accordance with Section 1118, to disclosure of the communication, document, or writing.
 - (2) The communication, document, or writing was prepared by or on behalf of fewer than all the mediation participants, those participants expressly agree in writing, or orally in accordance with Section 1118, to its disclosure, and the communication, document, or writing does not disclose anything said or done or any admission made in the course of the mediation.
- (b) For purposes of subdivision (a), if the neutral person who conducts a mediation expressly agrees to disclosure, that agreement also binds any other person described in subdivision (b) of Section 1115.

Section 1123

A written settlement agreement prepared in the course of, or pursuant to, a mediation, is not made inadmissible, or protected from disclosure, by provisions of this chapter if the agreement is signed by the settling parties and any of the following conditions are satisfied:

- (a) The agreement provides that it is admissible or subject to disclosure, or words to that effect.
- (b) The agreement provides that it is enforceable or binding or words to that effect.
- (c) All parties to the agreement expressly agree in writing, or orally in accordance with Section 1118, to its disclosure.
- (d) The agreement is used to show fraud, duress, or illegality that is relevant to an issue in dispute.

Section 1124

An oral agreement made in the course of, or pursuant to, a mediation is not made inadmissible, or protected from disclosure, by the provisions of this chapter if any of the following conditions are satisfied:

- (a) The agreement is in accordance with Section 1118.
- (b) The agreement is in accordance with subdivisions (a), (b), and (d) of Section 1118, and all parties to the agreement expressly agree, in writing or orally in accordance with Section 1118, to disclosure of the agreement.
- (c) The agreement is in accordance with subdivisions (a), (b), and (d) of Section 1118, and the agreement is used to show fraud, duress, or illegality that is relevant to an issue in dispute.

Section 1125

(a) For purposes of confidentiality under this chapter, a mediation ends when any one of the following conditions is satisfied:

- (1) The parties execute a written settlement agreement that fully resolves the dispute.
- (2) An oral agreement that fully resolves the dispute is reached in accordance with Section 1118.
- (3) The mediator provides the mediation participants with a writing signed by the mediator that states that the mediation is terminated, or words to that effect, which shall be consistent with Section 1121.
- (4) A party provides the mediator and the other mediation participants with a writing stating that the mediation is terminated, or words to that effect, which shall be consistent with Section 1121. In a mediation involving more than two parties, the mediation may continue as to the remaining parties or be terminated in accordance with this section.
- (5) For 10 calendar days, there is no communication between the mediator and any of the parties to the mediation relating to the dispute. The mediator and the parties may shorten or extend this time by agreement.

(b) For purposes of confidentiality under this chapter, if a mediation partially resolves a dispute, mediation ends when either of the following conditions is satisfied:

- (1) The parties execute a written settlement agreement that partially resolves the dispute.
- (2) An oral agreement that partially resolves the dispute is reached in accordance with Section 1118.

(c) This section does not preclude a party from ending a mediation without reaching an agreement. This section does not otherwise affect the extent to which a party may terminate a mediation.

Section 1126

Anything said, any admission made, or any writing that is inadmissible, protected from disclosure, and confidential under this chapter before a mediation ends, shall remain inadmissible, protected from disclosure, and confidential to the same extent after the mediation ends.

Section 1127

If a person subpoenas or otherwise seeks to compel a mediator to testify or produce a writing, as defined in Section 250, and the court or other adjudicative body determines that the testimony or writing is inadmissible under this chapter, or protected from disclosure under this chapter, the court or adjudicative body making the determination shall award reasonable attorney's fees and costs to the mediator against the person seeking the testimony or writing.

Section 1128

Any reference to a mediation during any subsequent trial is an irregularity in the proceedings of the trial for the purposes of Section 657 of the Code of Civil Procedure. Any reference to a mediation during any other subsequent non-criminal proceeding is grounds for vacating or modifying the decision in that proceeding, in whole or in part, and granting a new or further hearing on all or part of the issues, if the reference materially affected the substantial rights of the party requesting relief.

Section 1152

(a) Evidence that a person has, in compromise or from humanitarian motives, furnished or offered or promised to furnish money or any other thing, act, or service to another who has sustained or will sustain or claims that he or she has sustained or will sustain loss or damage, as well as any conduct or statements made in negotiation thereof, is inadmissible to prove his or her liability for the loss or damage or any part of it.

(b) In the event that evidence of an offer to compromise is admitted in an action for breach of the covenant of good faith and fair dealing or violation of subdivision (h) of Section 790.03 of the Insurance Code, then at the request of the party against whom the evidence is admitted, or at the request of the party who made the offer to compromise that was admitted, evidence relating to any other offer or counteroffer to compromise the same or substantially the same claimed loss or damage shall also be admissible for the same purpose as the initial evidence regarding settlement. Other than as may be admitted in an action for breach of the covenant of good faith and fair dealing or violation of subdivision (h) of Section 790.03 of the Insurance Code, evidence of settlement offers shall not be admitted in a motion for a new trial, in any proceeding involving an additur or remittitur, or on appeal.

(c) This section does not affect the admissibility of evidence of any of the following:

Civil Code of Procedure §664.6

Section 664.6

If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.

(1) Partial satisfaction of an asserted claim or demand without questioning its validity when such evidence is offered to prove the validity of the claim.

(2) A debtor's payment or promise to pay all or a part of his or her preexisting debt when such evidence is offered to prove the creation of a new duty on his or her part or a revival of his or her preexisting duty.

Section 1153

Evidence of a plea of guilty, later withdrawn, or of an offer to plead guilty to the crime charged or to any other crime, made by the defendant in a criminal action is inadmissible in any action or in any proceeding of any nature, including proceedings before agencies, commissions, boards, and tribunals.

Section 1153.5

Evidence of an offer for civil resolution of a criminal matter pursuant to the provisions of Section 33 of the Code of Civil Procedure, or admissions made in the course of or negotiations for the offer shall not be admissible in any action.

Section 1154

Evidence that a person has accepted or offered or promised to accept a sum of money or any other thing, act, or service in satisfaction of a claim, as well as any conduct or statements made in negotiation thereof, is inadmissible to prove the invalidity of the claim or any part of it.

Section 1155

Evidence that a person was, at the time a harm was suffered by another, insured wholly or partially against loss arising from liability for that harm is inadmissible to prove negligence or other wrongdoing.

Evidence Code §703.5

Section 703.5

No person presiding at any judicial or quasi-judicial proceeding, and no arbitrator or mediator, shall be competent to testify, in any subsequent civil proceeding, as to any statement, conduct, decision, or ruling, occurring at or in conjunction with the prior proceeding, except as to a statement or conduct that could (a) give rise to civil or criminal contempt, (b) constitute a crime, (c) be the subject of investigation by the State Bar or Commission on Judicial Performance, or (d) give rise to disqualification proceedings under paragraph (1) or (6) of subdivision (a) of Section 170.1 of the Code of Civil Procedure. However, this section does not apply to a mediator with regard to any mediation under Chapter 11 (commencing with Section 3160) of Part 2 of Division 8 of the Family Code.

CONFIDENTIALITY AGREEMENT

(This document is signed at the time of mediation)

In order to promote communication among the mediation participants, and the mediator, and to facilitate settlement of the dispute, the mediation participants agree as follows:

1. This mediation is subject to sections 703.5 (the mediator cannot testify about this mediation in a subsequent legal proceeding), 1115-1128, 1152, 1154 and 1155 (provisions dealing with the confidentiality of mediations and the inadmissibility of settlement discussions and offers) of the California Evidence Code.
2. Notwithstanding Sections 1119 and 1123 (providing that what occurs in a mediation, including the fact that a settlement agreement was reached at the end of the mediation, is inadmissible in a subsequent legal proceeding unless certain criteria are met), this Mediation Agreement and any written settlement agreement arising out of or otherwise resulting from the mediation will be admissible into evidence for the limited purpose of enforcing the terms of the settlement under Section 664.6 of the California Code of Civil Procedure (a section that authorizes a party in a lawsuit to request the Court to enforce a settlement agreement if the settlement was reduced to writing and signed by the parties) or otherwise.
3. The mediator is a neutral intermediary and settlement facilitator, and may not act as an advocate for any party. Most of the members of the San Diego Association of REALTORS® Mediation Committee are not attorneys. Whether they are or are not attorneys, their statements do not constitute legal advice to any party. Accordingly, the parties are strongly encouraged to seek legal advice from their own counsel. If the mediator assists in preparing a written settlement agreement, the parties understand the mediator is not acting on behalf of any party.

Executed on _____, at _____.

Mediator

MEDIATOR DISCLOSURES

(To be completed by Mediators)

Case #: _____

Case Name: _____

Do you have any current personal or professional relationship or affiliation with any party in the case (including party attorney, representative and/or consultant) that may reasonably raise a question as to your impartiality? Yes No

Do you have any past personal or professional relationship or affiliation with any party in the case (including party attorney, representative or consultant) that may reasonably raise a question as to your impartiality? Yes No

Within the past two years, have you been selected as a neutral by any party, attorney, representative or consultant in the case? Yes No

Please provide an explanation of any questions answered in the affirmative. For past cases, you should only disclose the name of the party, entity, advocate, attorney, representative and/or consultant and the type of Alternative Dispute Resolution process used; not the case name, names of other parties, or any other confidential information.

Date

Signed

Mediator

Rules, forms, procedures and guides, as well as information about the fee schedule are subject to periodic change and updating. To ensure that you have the most current information, see our World Wide Web home page at *www.realestatemediationcenter.com*.

If you need to contact the Real Estate Mediation Center directly, please call 858-715-8020.