

Mediation for the Consumer

What is Mediation?

Mediation is a process used to help persons settle a dispute. A neutral third party, called a mediator, facilitates a negotiation to let the parties reach their own agreement. The mediator does not have authority to decide the dispute, like a judge or an arbitrator, but instead uses persuasive techniques to enable the disputants to understand the strengths and weaknesses of their own case as well as the other side and to see the value in resolving the dispute rather than continuing to fight.

Mediation is Required, with Few Exceptions, Before Litigation or Arbitration

The C.A.R. purchase agreements require that buyers and seller try mediation before suing in court or going through arbitration. They are not required to settle but are required to try the process. If no agreement is reached, they may pursue other legal avenues. However, if one of the parties tries to litigate first, then even if that party wins, the winner must pay their own attorney fees. Since attorney fees are often very high, the threat of the loss of the right to prevailing party fees provides an incentive to try mediation. Some disputes do not have to be mediated and there is no penalty in those cases. For example, parties can go to small claims court for disputes not exceeding \$10,000 without mediating first.

Where Can One Find a Mediator and How Much Does It Cost?

The C.A.R. Residential Purchase Agreement provides that the parties, unless they mutually agree otherwise, will mediate their disputes by selecting a mediator from the C.A.R. Mediation Center for Consumers (www.consumermediation.org). At C.A.R., as with most other mediation services, the mediators charge for their time by the hour. The C.A.R. mediators agree to a modest and reduced rate for the first two hours. After that, they charge their posted rates. There is a non-refundable filing fee, to cover administrative costs. Other mediators may be found by asking your attorney, going online to check out mediator websites, or contacting government offices like the California Department of Consumer Affairs or a local District Attorney office. Some local Associations of REALTORS® offer consumer mediation services as well.

Are REALTORS® obligated to mediate disputes with buyers and sellers?

If a seller has a dispute concerning compensation with a listing broker, the listing agreement requires them to attempt mediation. The purchase agreement is a binding agreement between the buyer and seller. However, the two of them agree to mediate disputes with the brokers involved in the sale but only if the broker(s) voluntarily agree to participate.