

**PACIFIC WEST ASSOCIATION OF REALTORS®**  
**MEDIATION RULES AND CONFIDENTIALITY AGREEMENT**

The undersigned parties have agreed to attempt to settle their dispute through mediation, using the service of the **PACIFIC WEST ASSOCIATION OF REALTORS® (“Association”)** and hereby agree to the terms provided in this Mediation Rules and Confidentiality Agreement (“Agreement”).

1. The parties understand that mediation is a cooperative process based on factual information and does not assess blame or fault, but serves as an avenue for mutual resolution of their conflict. Most disputes can be successfully mediated if all parties are willing to make a good faith effort to resolve the dispute. It is important to have the critical facts and necessary documents presented at the mediation and that all persons necessary to reach a binding agreement be present at the mediation, including real estate agents, insurance representatives, witnesses, experts, personal representatives, attorneys, etc.
2. Mediation is a non-binding process for resolving disputes in which a formally trained mediator facilitates communication between the parties, assists the parties in clarifying issues and explores settlement options. Once an agreement has been reached in mediation, the details of all agreements will be listed in a settlement agreement, which can become binding and enforceable in a court of law.
3. Mediation is private and confidential. California Evidence Code section 1119 specifically limits the admissibility of evidence and disclosure in any future civil case. Anything said or any admission made for the purpose of a mediation is not admissible or subject to discovery. Evid. C. § 1119 (a). Disclosure of the evidence cannot be compelled. Evid. C. § 1119 (a). Further, no writing prepared for the purpose of a mediation is admissible or subject to discovery, and disclosure of the writing cannot be compelled. Evid. C. § 1119 (b). All communications, negotiations, or settlement discussions by and between participants in the course of a mediation or a mediation consultation is confidential. Evid. C. § 1119 (c).
4. The Association’s only exceptions to the nondisclosure policy is as follows:
  - a. If all parties to the mediation, including the mediator, agree in writing to allow disclosure;
  - b. If the mediator reasonably believes that a participant will cause physical harm to another person.
  - c. Notwithstanding Section 1119, this Agreement and any written settlement agreement 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.

5. The mediation is subject to California Evidence Code Section 703.5, which prohibits the parties from calling either the mediator or the Association or any officer, employee volunteer, independent contractor an agent thereof, as a witness in any subsequent civil proceeding of any description in which they are called upon to testify as to any matter regarding the mediation proceeding. The parties will also be prohibited from requiring the production in court of any records or documents presented to or made by the mediator.
6. The mediator cannot and will not offer any legal advice to any party and the mediator's statements do not constitute legal advice. The mediator is a neutral intermediary who may not, and will not, act as an advocate for or give legal advice to any party.
7. In this regard, if the mediator is an attorney, no attorney-client relationship is created between any party and the mediator. If the mediator is involved in the preparation of a settlement agreement, each party should have his or her attorney review the agreement before signing.
8. A trained mediator uses various techniques to assist in the resolution of the dispute. The mediator may, at times, meet privately (referred to as a caucus) with any and all parties in this dispute. The mediator will not disclose any information received in caucus without the permission of the party making the disclosure.
9. The mediator shall not reveal to third parties information provided by participants without the consent of all participants, However, without disclosing participants, names or other identifying information, the mediator may consult with colleagues about this matter, and may describe this matter in publications about mediation.
10. The parties are required to fully disclose and produce all information (witnesses, documents, exhibits) reasonably necessary for the mediator to understand the issues and to support the party's position. In the event that any of the parties are unsure about the advisability of disclosure of sensitive information, it is critical to the effectiveness of the mediation process that this be discussed with the mediator in private caucus. The mediator may request any party to supplement the information presented and may accept testimony by affidavit.
11. Prior to the mediation, each party or his or her representative must designate the person with final authority to settle the dispute on behalf of such party, and such designated person must be present at the mediation. At least five (5) days prior to the mediation, each party may choose to provide the mediator with a memorandum of not more than five (5) pages setting forth the nature of the dispute, the party's position and claim for relief sought, the names of the party's representatives, attorney(s) witnesses, experts and/or any other persons that will appear at the mediation on that party's behalf.
12. A party may be represented at the mediation by an attorney or other person of the party's choice. Expert witnesses, such as appraisers, accountants, interpreters, etc. may appear and/or present testimony, evidence or information at the mediation in a manner mutually

agreed upon by the parties and the mediator. If a party is represented by an attorney, that attorney is required to obtain their client's signature on a separate printed disclosure form confirming the client understands mediation confidentiality under Evidence Code Section 1119. Evid. C. § 1122; 1129 (a)(3). Such disclosure must be in the preferred language of the client.

13. Each party shall be responsible for the fees of any such experts appearing for, and/or presenting evidence or information on behalf of such party. Either party may also request the mediator to inspect or investigate property, documents, goods, etc. however, such party must pay for any associated costs, including any additional fee for the mediator's time.
14. Agreements reached in the mediation process concerning this dispute may differ greatly from the result that may be reached in court. A mediated agreement could be more favorable or less favorable than a decision that a judge or jury may render if this dispute were resolved in court, or by any other dispute resolution process. The parties agree to hold the mediator and the Association, any official, employee, volunteer, independent contractor or agent thereof, harmless from liability of any kind whatsoever based upon a claim that the mediation process failed to provide the same outcome, or an equally advantageous outcome, as could have been obtained in court or in another dispute resolution process.
15. Notices will be given to the parties or their representative at the respective address indicated in the Consent to Mediation form ("Consent").
16. Any party may seek from a court any interim or provisional relief that may be necessary to protect the rights or property of that party pending the outcome of the mediation or to prevent the disclosure of confidential information in violation of this Agreement. Any party breaching this Agreement shall be liable for and shall indemnify the non-breaching parties and the mediator for all costs, expenses, liabilities, and fees, including attorney's fees and costs, which may be incurred as a result of such breach.
17. Mediation sessions usually take from three (3) to five (5) hours. Parties need to allow for the maximum time so the session need not be forced to conclude when the parties are close to settlement. For good cause in the discretion of the mediator, or pursuant to the agreement of the parties, the mediation may be postponed one time free of charge. Any further postponements will result in the imposition of an administrative charge to be borne by the party requesting the postponement or by both parties if the postponement is by mutual agreement.
18. The mediation shall be held at the Administrative office of the **PACIFIC WEST ASSOCIATION OF REALTORS®** located at **1601 E. Orangewood Avenue, Anaheim, CA 92805** unless the parties and the mediator otherwise agree.

19. The Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same agreement.
20. The Agreement is signed before commencement of mediation by each of the parties to the mediation on the dates set forth below.
21. The fee schedule attached as **Exhibit "A"** applies to this mediation.
22. The mediation process may be continued from time to time, in which event, the mediator's subsequent oral and/or written communications with the mediation participants in a continuing effort to resolve the dispute are subject to this agreement. The mediation may be terminated by agreement of the parties or at the discretion of the mediator declaring that further efforts would not be worthwhile.
23. If the parties come to a resolution at the conclusion of the mediation, the parties shall, by mutual agreement, complete and execute the Mediation Settlement Agreement & Mutual Release ("Settlement Agreement") provided by the Association.

The following signatures acknowledge that the designated representatives for the parties to the mediation have the authority to negotiate and settle this matter. Each party agrees that they have read and fully understand the terms set forth above in this Agreement.

**PACIFIC WEST ASSOCIATION OF REALTORS®**

By: \_\_\_\_\_

DATED: \_\_\_\_\_

**NAME:** \_\_\_\_\_

\_\_\_\_\_  
Signature

DATED: \_\_\_\_\_

**NAME:** \_\_\_\_\_

\_\_\_\_\_  
Signature

DATED: \_\_\_\_\_

\_\_\_\_\_  
Signature

DATED: \_\_\_\_\_

**MEDIATOR:** \_\_\_\_\_

\_\_\_\_\_  
Signature

DATED: \_\_\_\_\_

**Pacific West Association of REALTORS®**

**EXHIBIT "A" MEDIATION FEE SCHEDULE**

The Pacific West Association of REALTORS® charges a non-refundable administrative fee of \$325.00 **per party** to be remitted upon execution of the Mediation and Confidentiality Agreement. This fee covers the time spent on case administration, the initial intake call, toll calls, postage, photocopying, faxes and file administration. The administrative fee does not cover extraordinary out-of-pocket expenses such as the cost of messenger services and Federal Express, or extraordinary long-distance telephone, travel and other charges, for which clients will be charged separately.

**Fees: For Disputes under \$20,000,** the mediation fee shall be \$650 **per party** for up to 4 hours of Mediation (this fee includes the non-refundable \$325 administrative fee due upon filing).

**Fees: For disputes over \$20,000,** The fee shall be \$750 **per party** for up to 4 hours of Mediation (this fee includes the non-refundable \$325 administrative fee due upon filing).

This fee covers (4) four hours of mediation. Any mediation in excess of (4) four hours will be assessed a fee of \$100 **per party**, per hour. Any party requesting to have mediation rescheduled will be assessed a fee of \$100.

**The Association reserves the right to adjust fees or reject mediations depending on the complexity of issues.**

Mediators are entitled to compensation for all time spent on the case, including preparation time, telephone time and attendance at mediation sessions. Travel time is charged at the full hourly rate.

**Cancellation Fees:** If the case settles during the administration period or is withdrawn after the Agreement to Mediate has been signed, The Pacific West Association of REALTORS® will retain the non-refundable \$325 administrative fee and will bill the parties for any mediation services already performed (e.g., telephone time with any of the parties after the initial intake call).

6/19/19

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|---------------|-------|
| Insurer:      | _____ |
| Claim Number: | _____ |
| DR No.:       | _____ |