

## BENEFITS OF MEDIATION

**Control** The outcome of mediation is controlled by the parties – not by the mediator or an outside authority who imposes a solution.

**Less Adversarial** The mediation process is informal because most parties enter mediation in “good faith”, meaning they come to the table with the intention of trying to resolve the matter.

**Preserves Option** Parties can enter into mediation without jeopardizing their option to arbitrate or litigate.

**Swift Settlement** Mediation often leads to a resolution much sooner than litigation.

**Lower Cost** Mediation usually minimizes legal and preparatory costs; productivity is maximized; and the fees and expenses of mediation itself are modest.

**Preservation of Relationships** By reaching an early, mutually satisfactory agreement, chances for preserving personal or business relationships are greatly enhanced.

**Creative Solutions** Mediators help parties fashion creative solutions that may not be obvious to the parties or available through court.

*For more information, please contact:*

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Homesellers/Homebuyers  
**DISPUTE RESOLUTION  
SYSTEM**

**MEDIATION PROGRAM**

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**A FAST, EASY, AND  
INEXPENSIVE ALTERNATIVE  
TO LITIGATION**

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**LEXINGTON-  
BLUEGRASS  
ASSOCIATION OF  
REALTORS®**

## INTRODUCTION

Although a majority of real estate transactions close without incident, there is a possibility that a problem or dispute will occur. When a dispute does arise, it is usually successfully resolved through normal channels of communication and negotiation. Occasionally, a dispute arises which the parties cannot resolve themselves. In the past, when this has happened, parties took their cases to court. Today, they are taking their disputes to mediation.

## WHAT IS MEDIATION

Mediation is a process in which disputing parties attempt to resolve their disagreements with the help of an impartial, trained third party -- the mediator. The mediator does not offer opinions, pass judgment, or render binding decisions. The mediator's only function is to help parties identify their differences and reach agreement on how to resolve them.

When the disputing parties have reached and agreed on a mutually acceptable solution, they sign a written agreement which outlines the terms of the settlement. Once the agreement is signed, parties are legally bound to abide by its terms. If the parties cannot reach a mutually agreeable settlement, they are free to arbitrate or litigate.

In addition to being easier, faster, and less expensive than litigation, mediation is non-adversarial. Decisions rendered by an arbitrator or judge usually involve a winning party and a losing party. In mediation, there are no losing parties because the parties have been part of the process and together have agreed on the terms of the settlement.

## HOMESSELLERS/HOMEBUYERS DISPUTE RESOLUTION SYSTEM MEDIATION

### ■ Access to Service

Mediation can be used by any of the parties to a real estate transaction -- sellers, buyers, brokers, builders, home inspectors, etc. With the exemption of controversies that are subject to hearing under REALTOR® Professional Standards procedures, including disputes between REALTORS, almost any type of dispute that arises from the transaction can be mediated.

### ■ Rules and Regulations

How, when and by whom mediation is initiated and conducted is covered under the Mediation Center of Kentucky's guidelines. The guidelines ensure fairness, uniformity, and expediency.

### ■ Agreeing to Mediate

When homesellers/homebuyers enter into a sales contract they may choose to sign a mediation clause or an addendum which includes mediation. The clause states, in part, that parties agree to submit any dispute or claim that arises from the transaction to mediation under the guidelines of the Mediation Center of Kentucky. Once the contract or addendum is signed by the parties, parties must submit their disputes to mediation. Parties who do not pre-commit to mediation when the sales contract was executed may still choose mediation to resolve a dispute. The same process and guidelines apply to parties who have not pre-committed to mediate.

### ■ Steps Toward Mediation

First, the party who has the dispute needs to contact the other party and discuss the problem. If the two parties cannot agree on a resolution to the problem, then the Mediation Center will schedule a mediation session. Both parties need to call the Mediation Center, 859/246-2664, in order to start the mediation scheduling process. The typical session will last approximately three hours and is held at the Mediation Center office.

### ■ Mediators

Mediators at the Center have professional backgrounds and have been specially trained to conduct mediation. While many mediators are attorneys, a law degree is not required. All mediators are required to be knowledgeable with the major issues in a real estate case before being assigned to the case.

### ■ Role of the Attorney

Although parties to the mediation have the right to be represented by counsel, attorneys do not have to participate in the mediation conference. Parties should have legal questions or concerns answered by an attorney. Mediators will not give the parties legal advice during the mediation session.

### ■ Fees

Fees for mediation services are established by the Mediation Center of Kentucky. The Mediation Center requires that the fee is paid by both parties prior to the scheduling of the mediation session.