

Disclosure of Entity (ies)



OM Services (OMS) is the authorized mediation service provider for the Maryland REALTORS® “Buyer-Seller” Mediation Program.

OMS is an independent commercial service provider of Ombudsman and Mediation Services and which conducts or transacts business directly with the consumer public. OMS does not derive any financial gain directly from Maryland REALTORS®. Maryland REALTORS® “Buyer-Seller” Mediation Program has been developed and designed by OMS for the benefit of REALTOR® members and their associated clients and customers. OMS reserves the right to accept or reject any requests for mediation where a REALTOR® contract of sale has been used without the benefit of an agency relationship with a REALTOR® professional (FSBO contracts) and such requests may be subject to increased administrative and mediator fees.



MARYLAND REALTORS® is the state trade association dedicated to supporting all segments of its membership (REALTOR®) and their specialties. As part of the adopted mission,

Maryland REALTORS® seeks to “assist members in serving the public ethically and successfully with the highest degree of professional ability in real estate matters”.

Maryland REALTORS® “Residential Contract of Sale “ and “Unimproved Land Contract of Sale” are copyrighted and are intended for the exclusive use by the association’s REALTOR® members.



Use of term(s) REALTOR®: The REALTOR® trade name and logo is an exclusive trademark and logo for authorized use only by members of the local, state and National Association of REALTORS®. REALTOR®, REALTOR-ASSOCIATE®, the REALTOR® Block “R” logo, REALTOR.com, and REALTOR.org are trademarks, service marks, membership marks, and/or logos of the NATIONAL ASSOCIATION OF REALTORS®. Non-REALTOR® mediators may not use the REALTOR® trademark name or logo under any circumstances while providing mediation services on behalf of OMS.

Maryland REALTORS® Mediation Program BUYER – SELLER DISPUTES

Service Provided by

OM Services
Maryland REALTORS® Mediation Program
Administrative Office
P.O. Box 686
Elkton, MD 21922-0686
1-888-412-6740 toll free voice
Email: mdrealtors@mediate.com

www.mediate.com/mdrealtors

OMServices2020©



Brief Overview of Mediation Process

Welcome & Introduction(s) by Mediator

- Background of Mediator
- Definition and review of Mediation process
- Role of the Mediator
- Role of the Participants
(and invited support persons)
- Role of Legal Counsel / Attorney (if present)
- Questions before beginning Mediation process
- Compensation of Mediator

Setting the “Ground Rules” of the Mediation Process

- Review Agreement to Mediate & Confidentiality
(must be signed by all parties & attendees before the mediation conference may begin)
- Each party will have an opportunity to speak without interruption
- Parties are asked to refrain from the use of any foul language or name calling
- Either party, Mediator or Attorney may call for a recess, a caucus, or a halt to the mediation (recess is limited to 1 hour)

Cross-Talk Communication

- Mediator will begin by asking the Requesting Party to talk about the reason(s) why the Mediation process was initiated (Opening Statement)
- Once the Requesting Party has completed their Opening Statement, the Mediator will then ask the Responding Party to address or respond to the information provided by the Requesting Party
- Joint Discussion(s)
 1. clarifications
 2. questions asked by mediator and/or other party
 3. identify objectives (to reach acceptable resolution)
- Caucus (if necessary or appropriate)
- Reconvening of joint session
- Reaching agreement

Close of Mediation

- Writing of the Agreement (Memorandum of Understanding)
or
- Writing of No Agreement (parties do not waive any legal rights)
- Parties are requested to complete session survey or online poll

Page intentionally left blank

Agreement to Confidentiality & Mediation

1. The parties agree to try to resolve this case through Video/Teleconferencing with the established “Online Mediation Protocols” used by the Maryland REALTORS® Mediation Program, attached to this Agreement and made a part of this Agreement.
2. The parties understand that settlement during mediation is entirely voluntary.
3. The parties understand that the Mediator has no power to decide who wins or loses this case and will not express an opinion on who is right or wrong. Rather, the Mediator is going to try to help the parties reach their own resolution of this case by facilitating the discussion. Consistent with State law, the Mediator has read and will abide by the Maryland Standard of Conduct for Mediators during the mediation.
4. The parties understand that the Mediator is not going to act as an advocate or attorney for any participant and that each party has the right to have a representative during mediation.
5. The parties agree that all mediation conference communications are strictly confidential and understand that the purpose of mediation is to explore whether the parties can reach a resolution, not to gather information for a hearing or trial. The parties agree not to subpoena the Mediator or any observer to testify about what was said in mediation.
6. The Mediator and all parties to the mediation process agree not to voluntarily testify on behalf of any party and will not report anything said during this mediation *UNLESS* one of the participants makes a genuine threat of physical harm, or a report of criminal activity or is otherwise required under Maryland law to report a communication made during this mediation.
7. The mediation session will not be recorded by anyone (either video or audio) and no transcription of the session will be produced.
8. The parties understand that any documents prepared for or during mediation (such as case summaries presented to the Mediator or notes taken by the Mediator) are for settlement purposes only and may not be subpoenaed for, or used in, a hearing or trial.
9. The parties understand that no participant will be bound by anything said or done in mediation, unless and until there is a written settlement agreement.

EXAMPLE

Helpful information from.....

Lisa Cameron, Ombudsman

Greetings!

The real estate contract you’ve entered into requires both parties to participate in mediation as a means to resolve disputes prior to pursuing a formal process (like litigation).

There are many benefits to mediation!

MEDIATION IS CONSUMER FRIENDLY - MEDIATION IS NON-ADVERSARIAL

A Mediator does not pass judgment and serves to help the parties openly communicate to identify their differences and reach agreement on how to resolve their differences.

A Mediator assists disputing parties in reaching a mutually acceptable solution to everyone’s satisfaction.

Here are some helpful reminders & information to assist you through the process

- Cost(s): Each party pays their own fees.
Administrative fee *per party* is \$200
Mediator fee *per party* is \$250*
- Forms: Parties that initiate mediation must *fully complete* the Requesting Party Forms; include Administrative Fee and provide the requisite documentation to verify a contract between the parties.
- Forms: Parties that are to respond to the mediation request must fully complete the Responding Party Forms and include the Administrative Fee by or before the 30 day deadline so that OM Services can schedule the mediation conference.
- Read the information provided in this pamphlet! The rules of the program are included as well as a copy of the Agreement to Confidentiality & Mediation.

**As of July 1, 2020, Mediator Fees have been increased to \$250 per party.*



1. **AGREEMENT OF THE PARTIES:** These Mediation Rules and Guidelines shall apply when the parties have agreed in writing to mediation under the Maryland REALTORS® “BUYER – SELLER” Mediation Program as provided by OM Services. Any provisions may be modified by mutual written agreement by all parties to the dispute. The parties understand and acknowledge that neither OM Services, Maryland REALTORS®, nor the assigned Mediator to this matter has the power or authority to render a decision, compel the parties to settle their dispute, or to continue to mediate beyond the parties desire to do so. However, by agreeing to mediate, the parties agree to attempt to resolve their dispute by negotiating in good faith.

2. **INITIATION OF MEDIATION:** Buyers or Sellers may initiate mediation under these Rules and Guidelines by fully completing all items on the REQUESTING / RESPONDING PARTY AUTHORIZATION & CHECK-OFF LIST (with required attachments and payment) to OM Services. **BUYERS & SELLERS ARE THE ONLY PARTIES THAT CAN BE NAMED. ANY INCOMPLETE INFORMATION WILL DELAY THE PROCESSING OF YOUR REQUEST OR RESPONSE**

3. **SELECTION OF MEDIATOR:** No person shall 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 given their written consent. OM Services reserves the right to select all Mediators for assignment.

4. **MEDIATION CONFERENCES / SCHEDULING:** Parties agree to participate by Video/Teleconference and agree to the Online Mediation Protocols and must sign the Agreement to Mediation and Confidentiality prior to the scheduling and convening of the mediation conference. It is OM Services’ custom and practice to schedule mediations no less than 30 days nor more than 90 days from the initial request. If parties are not able to agree upon a date, at the expiration of 90 days, OM Services will have the ability to close the case file due to non-compliance in scheduling; document the circumstances for closing the case file, thus allowing the parties to pursue a remedy for their dispute through the courts. Parties are required to list any restrictions or special accommodations on the scheduling form provided. (Refer to the Mediation Scheduling & Contact Information forms [4RQP & 4RSP] for complete details.)

5. **REPRESENTATION BY LEGAL COUNSEL:** During the mediation and thereafter, neither OM Services nor the Mediator will act as legal advisor or legal representative for any of the parties. Any party may be represented at the conference by legal counsel. Any party who intends to do so shall notify OM Services of such intent when executing the “Requesting/Responding Party Contact Information” form(s). OM Services shall insure that all parties are made aware of all representations of which it is notified.

6. **CONDUCT OF THE MEDIATION CONFERENCE:** The Mediator will conduct orderly proceedings at the mediation conference. Protocol, behavior and logistical issues will be discussed with the parties prior to commencement of the mediation. Parties participating in the mediation conference must have the proper authority* to enter into and execute a binding written Memorandum of Understanding setting forth the terms and conditions of their understanding in the event an acceptable resolution is reached. *Proper authority includes parties who would be represented by another person and has granted that person the legal right to represent them in this matter. Parties electing to be represented by another must submit a written Power of Attorney to OM Services prior to the convening of the mediation conference. Such representative, unless an attorney authorized to practice law, must avoid engaging in the unauthorized practice of law. The Mediator will be neutral in these proceedings and will not offer any opinions, impose any determinations or make any awards between the parties. Moreover, neither the mediation service provider nor the Mediator has a duty to assert, analyze or protect any legal right or obligation of the parties as they pertain to the dispute being mediated under the “Rules & Guidelines.” Neither will the mediation service provider nor will the Mediator make an independent analysis of the dispute or raise issues not raised by the parties, or determine that additional necessary parties should participate in the mediation. The Mediator will attempt to create an atmosphere that facilitates communication and negotiation between the parties. Parties to the mediation conference will be expected to produce all information reasonably required for the Mediator to understand the issues presented. Such information will usually include full copies of the contract of sale and related addenda. In more complex cases, the Mediator may request that the parties provide written materials in advance of the mediation conference. Materials provided to OM Services by the parties, other than the OMS required forms, will not be reproduced or distributed to other parties prior to the mediation conference.

7. **ATTENDANCE: (PARTY/IES)** Attendance at the mediation conference is limited to the named parties and/or their attorney. All named parties to the contract must be in attendance at the mediation conference and must have the proper authority* to enter into and execute a binding written Memorandum of Understanding setting forth the terms and conditions of their understanding in the event an acceptable resolution is reached. *Proper authority includes parties who would be represented by another person and have granted that person the legal right to represent them in this matter. Parties electing to be represented by another must submit a written Power of Attorney to OM Services prior to the convening of the mediation conference. Such representative, unless an attorney authorized to practice law, must avoid engaging in the unauthorized practice of law.

ATTENDANCE: (AGENT) Real estate agents are not parties to the contract. You may invite your agent to attend the mediation conference although the agent is under no obligation to attend. If you elect to invite your agent to attend the mediation conference, you must submit complete contact information to OM Services via the Requesting / Responding Party forms prior to the scheduling of the mediation conference. Agents who agree to attend the mediation conference must also adhere to the program’s policies and rules regarding confidentiality and will be expected to sign the Agreement to Mediation & Confidentiality along with all parties to the mediation. Scheduling of the mediation conference will not be predicated upon the availability of the agent to attend the conference.

ATTENDANCE: (SUPPORT PERSONS) Because mediation is not an evidentiary hearing or an adjudicatory process, attendance at the mediation conference is limited to the named parties and/or their attorney. All other persons attending the mediation conference must be registered with OM Services before the scheduling of the mediation conference or they will not be allowed to participate. Parties wishing to include persons other than agents to attend the mediation conference are responsible for notifying those persons regarding the scheduled conference date, time and location. Scheduling of the mediation conference will not be predicated upon the availability of the other persons to attend the mediation conference.

ATTENDANCE: (OBSERVER/TECHNICAL ADVISOR) OM Services reserves the right to have an Observer /Technical Advisor present at or during the mediation conference as a means to review Mediator skills and evaluate performance. Observers/Technical Advisors would not participate in the process but will be expected to sign the “Agreement to Mediation & Confidentiality”. Parties will be notified prior to the mediation conference if an Observer/Technical Advisor will be in attendance.

8. **TIMING OF CLAIMS: CLAIMS MUST BE FILED WITHIN 1 YEAR OF ACTUAL CONTRACT SETTLEMENT DATE OR WHEN SETTLEMENT SHOULD HAVE OCCURRED;** however the time limitation by which parties must bring claims in accordance with these “Mediation Rules & Guidelines” is to be governed by Maryland law. Consult local legal counsel regarding this issue.

9. **TERMINATION OF THE MEDIATION CONFERENCE:** The mediation conference shall be terminated by the occurrence of any of the following:

A. By the execution of a “Memorandum of Understanding” between the parties;

B. By a declaration by any party that they wish to terminate the mediation; or

C. By a declaration by the Mediator that in the Mediator’s assessment, “further efforts at mediation would not result in resolution of the dispute”.10. **CONFIDENTIALITY OF MEDIATION CONFERENCES:** All mediation conferences will be held in accordance with and will be subject to the “Agreement to Mediation & Confidentiality” and or the “Online Mediator Protocols” if Video/Teleconferencing is selected. All parties, attendees or invitees participating in the Mediation Conference will be required to sign and execute the “Agreement” and/or “Protocols” prior to the commencement of the Mediation Conference. Consistent with State law, the Mediator will abide by the Maryland Standard of Conduct for Mediators during the mediation.

11. **PRIVATE SESSIONS (caucus):** From time-to-time during the mediation conference, the Mediator may determine that he/she would like to meet with the parties separately. This may be to clarify some matter or to overcome something inhibiting the progress of the mediation. When private sessions occur, the Mediator will consider any discussions to be strictly confidential and will not disclose the contents thereof unless instructed to do so by the party with whom the private session is being held. All discussions held in private session will also be subject to the provisions of the “Confidentiality Agreement”.

12. **MEMORANDUM OF UNDERSTANDING:** Should the parties agree to resolve their dispute through mediation, a “Memorandum of Understanding” shall be written by either the legal counsel for one of the parties, or by the Mediator if the parties are un-represented. The “Memorandum of Understanding” shall be signed and dated by all parties agreeing to its terms prior to the conclusion of the mediation conference.

13. **JUDICIAL PROCEEDINGS AND IMMUNITY:** Neither the mediation service provider nor the Mediator shall be deemed ‘necessary parties’ in any judicial proceedings relating to the dispute being mediated under these “Rules and Guidelines”, nor shall the mediation service provider or the Mediator serving under these “Rules and Guidelines” be liable to any party for any act, error or omission made in connection with this service or the operation of the mediation program.

14. **ADMINISTRATIVE FEE:** Both Requesting and Responding Parties will be charged an administrative fee which is **NON-REFUNDABLE**. All administrative fees associated with the scheduling of the mediation conference will be in accordance with the Administrative Fee Schedule in effect at the time that the mediation request is confirmed by OM Services. Administrative fees may be paid by check, money order or charged to a valid MasterCard or VISA account if there is sufficient credit available to do so. **CURRENT NON-REFUNDABLE ADMINISTRATIVE FEE: \$200 PER PARTY**

15: **MEDIATOR FEE / EXPENSE:** In addition to the Administrative Fee, the Requesting and Responding Parties will be charged a Mediator fee and any travel expenses in addition to the OM Services’ Administrative fee. All Mediator fees or expenses will be in accordance with the Mediator Fee Schedule in effect at the time that the mediation request is confirmed by OM Services. OM Services will notify the parties prior to the mediation conference regarding the Mediator fee charges or expenses.