

Appendix J. DRS Mediation Orientation

To participate in an association's DRS program, principal brokers need to conduct orientation programs for their affiliated/employed salespeople. The purpose of this orientation is to acquaint the salespeople with the selected DRS program and how it works. In addition, the broker needs to ensure that the salespeople can successfully present and explain the program to buyers and sellers. Lastly, an orientation program gives salespeople an opportunity to ask questions and discuss DRS.

Each salesperson should receive the following materials:

- Salesperson Orientation Outline
- Mediation Clause/Addendum
- Agreement to Mediate Form
- Mediation Procedures
- Request to Initiate Mediation Transmittal Form
- Sample Mediation Settlement Agreement
- *Mediation the winning solution for buyers and sellers* brochure
- Checklist for Presenting DRS Mediation Program to Sellers and Buyers
- Salesperson Script for Discussing Buyer-Seller DRS Mediation
- Tips for Promoting DRS Program
- Responses to Frequently Asked Questions about Mediation
- Evaluation Forms

To assist in this training, included with this orientation is a Salesperson Orientation Outline and a Broker's Presentation Outline

If using the arbitration component, also handout the forms and materials developed by the association or arbitration provider.

Salesperson Orientation Outline

The need for alternative dispute resolution systems

1. Brokers/salesperson liability
2. Cost and inefficiency of litigation
3. Win-lose litigation hurts long-term broker-client-customer relationships

The selected dispute resolution system

1. Introduction
2. How mediation/arbitration works
3. Why one type of DRS was selected over another
4. Benefits of DRS

DRS program components

1. *Mediation the winning solution for buyers and sellers* brochure
2. Relevant forms
3. Mediation/arbitration procedures
4. Buyer-Seller Guide for Initiating Mediation

Presenting DRS information to buyers and sellers

What to do when a dispute arises

1. Try to resolve the dispute through negotiation before suggesting the DRS program
2. Mail or deliver Buyer-Seller DRS Packet upon request

Broker's Office Policy and Procedure for DRS

Questions and Answers

Broker Presentation Outline

Need for alternative DRS

1. Broker-salesperson liability

- a. Salespersons are aware of liabilities they incur in their everyday activities.
- b. Claims against salespersons are sometimes frivolous or made simply because the salesperson is “there.” DRS programs discourage frivolous claims.

2. Higher Errors and Omissions insurance costs

- a. Because costs for litigating claims are so high - many frivolous or small claims are settled; DRS programs discourage frivolous claims
- b. Increased number of claims and settlement by insurance companies increases premium costs; lowering number of claims may lower insurance costs

3. Cost and inefficiency of litigation

- a. Because of the increased number of cases being filed in court, resolution can take months or even years
- b. Attorney fees and court costs frequently cost more than the amount of the claim

4. Win-lose litigation hurts long-term broker-client-customer relationships

- a. Litigation is adversarial - somebody wins and somebody loses
- b. Losers are unhappy, and unhappy clients or customers, fairly or unfairly, will likely blame the broker or salesperson
- c. Unhappy clients and customers:
 - Don't come back
 - Don't speak highly of company
 - Don't refer other clients and customers.

DRS mediation program

1. Introduction

- a. Voluntary participation by associations and firms
- b. Program gives brokers, sellers, buyers, and other parties to a real estate transaction a non-adversarial, efficient, affordable alternative to litigation through mediation
- c. Almost any type of dispute can be mediated under DRS procedures
- d. Exceptions include disputes that involve:
 - Complex legal issues or allegations of criminal misconduct

- Disputes and controversies that are subject to ethics or arbitration proceedings under the Association's professional standards procedures including disputes between REALTORS®
- Violations of a state's real estate license laws

How the mediation component works

1. Buyers and sellers voluntarily pre-commit to mediate disputes by signing a sales contract or addendum to the contract that contains a mediation clause.
2. Salesperson presents and reviews mediation clause just as he presents other clauses in contract.
3. Signing a contract or addendum that contains a mediation clause legally binds the buyer and seller to submit disputes to mediation under DRS procedures.
4. When a dispute arises, contact your broker or salesperson, or the local Association of REALTORS® for a Buyer-Seller DRS packet.
5. The initiating party completes the "Request to Initiate Mediation Transmittal Form" and delivers it to the mediation provider and association for process. When the mediation provider has received your request, the provider will contact all parties named and will schedule the mediation conference.
6. Mediation brings disputing parties together with an unbiased, objective third party (mediator) who assists the parties in reaching a mutually agreeable settlement to the dispute. The mediator does not render decisions as do arbitrators and judges. Rather, the mediator acts as a facilitator.
7. Settlements reached as a result of mediation are not binding until parties have signed a written settlement agreement.
8. If mediation is unsuccessful (i.e., a settlement is not reached), parties are free to pursue other legal remedies including arbitration and litigation.
9. If buyer/seller does not sign a contract or addendum pre-committing to mediation, buyer/seller can initiate DRS Mediation by signing the Agreement to Mediate. The agreement can be signed either before or after a dispute arises.

Benefits of DRS for brokers and salespeople

1. Improves REALTORS® public image because we have taken initiative to offer an alternative to litigation
2. We are offering service to clients and customers that will save them time and money should a problem arise
 - a. Mediation is non-adversarial; parties participate in resolving the problem so they are satisfied with results which means they are more likely to come back and to refer other clients and customers to us.
 - b. Avoid delays that postpone closings by being able to resolve disputes quickly and efficiently.
3. Participating in DRS may lower Errors and Omissions insurance costs by reducing the number of claims. Insurance companies recognize value of mediation and may give premium credits or deductible incentives to firms that use mediation.

Benefits of DRS for buyers and sellers

1. Faster
2. Less expensive
3. Non-adversarial approach; parties have control over outcome
4. Avoid cost of litigating frivolous claims
5. Freedom to pursue other legal remedies if mediation isn't successful
6. Reliable – mediation is extremely successful in most situations

Mediation Components

1. *Mediation the winning solution for buyers and sellers* brochure
2. Mediation Clause
3. Agreement to Mediate
4. Mediation Procedures
5. Request to Initiate Mediation Transmittal Form
6. Buyer-Seller Guide for Initiating Mediation
7. Evaluation Forms
8. Sample Mediation Settlement Agreement

Presenting mediation information to buyers and sellers (review and discuss salesperson checklist).

What to do when a dispute arises

1. Try to resolve through negotiation before mediation is invoked.
2. Provide buyer/seller with the Buyer-Seller DRS packet to explain what he/she needs to do.

Note: If dispute involves broker or salesperson, party can contact the association for this information.

Broker's office policy and procedures for DRS (cover any policies and procedures the company has.)

Questions and answers (Refer to "Responses to Frequently Asked Questions" found in Appendix Q)