

## **Appendix N**

### **Checklist for Presenting DRS Mediation Clause to Buyers and Sellers**

1. [ ] Review mediation program and mediation clause with buyer/seller. Explain that:
  - Mediation is a process that brings disputing parties together with a neutral, unbiased third party who helps the parties reach a mutually acceptable solution to the dispute.
  - The mediator does not have the power or authority to render a decision as do arbitrators or judges. Explain that the mediator may suggest options and possible solutions in order to help the parties, but that the mediator will not decide the dispute or render a binding decision.
  - Terms of settlement reached during mediation conference are not binding until all parties sign a written agreement. This is usually done at the close of the mediation conference.
  - The mediation clause is similar to other clauses in the contract and does not imply or suggest that a problem or dispute is going to arise.
  - Pre-committing to mediation binds the buyer/seller to submit any dispute that might arise to mediation. Agreeing to mediate does not mean that the buyer/seller is agreeing to a settlement, rather, he/she is agreeing to try to resolve the dispute through mediation rather than in court.
  - Buyer/seller does not give up any legal right to pursue other remedies such as arbitration or litigation if mediation is not successful. Mention that mediation is successful in many cases.
  - Pre-commitment expedites the mediation process and that while parties can agree to mediate after a dispute arises, there is no guarantee parties will submit to mediation without pre-commitment.
  
2. [ ] Emphasize the value and benefits of mediation as an alternative to litigation. Explain that:
  - Mediation is fast (typically, mediation takes less than thirty [30] days).
  - Mediation is less expensive
  - Buyer/seller can consult an attorney, but attorney does not have to be present at the mediation; attorneys generally do not attend the mediation conference.
  - Mediation is a more positive and constructive method of resolving disputes because parties participate in the process and resolve the dispute themselves; win-win resolution versus win-lose result.
  - Mediation is successful much of the time. If mediation isn't successful, parties have not lost substantial amounts of time or money (parties usually share the cost of mediation), and parties are free to pursue other legal remedies.

- Parties usually do not have problems enforcing terms of settlement because the terms and conditions have been developed by the parties themselves rather than being imposed by an arbitrator or judge.
3.  Provide buyer/seller with copy of the *Mediation the winning solution for buyers and sellers* brochure.
  4.  Advise that buyers and sellers can consult with an attorney at any time.
  5.  Obtain signed disclosure verifying:
    - Buyer/seller received a copy of the brochure
    - Broker/salesperson reviewed and explained mediation clause and DRS program
    - Buyer/seller was advised that they can consult with an attorney at any time.
  6.  Close with positive statement about decision to pre-commit to mediation.

**Note:** If an association endorses an arbitration program, this checklist can be used to develop a similar one to explain arbitration to buyers and sellers. Because of the concern regarding brokers/salespersons engaging in the unauthorized practice of law, any such checklist needs to be reviewed by the association's legal counsel.