

Southside Virginia Association of REALTORS®

114 Maple Grove Avenue
Colonial Heights, VA 23834
(804) 520-4496
SVARealtors.com

Thank you for your recent inquiry into the mediation process available through SVAR's "Dispute Resolution System" (DRS). Mediation is a process in which a neutral third party, called a Mediator, acts to encourage and to assist in the resolution of a dispute between two or more parties and is an entirely non-adversarial process. As you are aware, there must be a mediation clause in the contract or a separate written agreement for Mediation to occur.

Should you choose to proceed with Mediation, simply complete and return the "Request to Initiate Mediation - Transmittal Form" to SVAR, DRS Coordinator, 114 Maple Grove Avenue, Colonial Heights, VA 23834, along with the following:

- Fully executed copy of the agreement containing the mediation clause
- A copy of such other written agreement invoking these Mediation Rules and Procedures
- In the absence of a contract clause or other such written agreement, a written request by any party seeking to have the Resource for Real Estate attempt to persuade one or more of the others to submit an existing dispute or claim to mediation under these Mediation Rules and Procedures, i.e., DRS "Agreement to Mediate" (Included in DRS packet).

Upon receipt of the Transmittal Form together with those items mentioned above, SVAR will within five (5) days notify the other party/ies. Within ten (10) days of the appointment of the Mediator, a date, time, and place for the mediation conference provided, however, that such date shall not be more than sixty (60) days from date of receipt of the Transmittal Form, and shall allow for not less than twenty (20) days advance notice of the conference, which shall be given by the mediation provider to all parties.

The time limitation by which parties must bring claims in accordance with the DRS Rules and Procedures are governed by state law. Any party may be accompanied by and represented at the conference by legal counsel, however, a party who intends to be represented by counsel shall notify the mediation vendor and other parties of such intent at least ten (10) days in advance of the conference. The mediation settlement must be reduced to writing, dated and signed at the mediation conference by all parties agreeing to its terms, but in no event shall the settlement be signed later than 10 days after the conclusion of the mediation conference. Mediation fees are in accordance with the published fee schedule.

If you have any questions or concerns about the mediation process, please give us a call at (804) 520-4496.

Sincerely,

Joe Croce,
Executive Director

Enclosure

REQUEST TO INITIATE MEDIATION - TRANSMITTAL FORM

Date: _____

1. Names of all parties to the dispute:

2. Party Requesting Mediation:

Name _____ Phone: _____ Fax: _____

Address _____

Buyer Seller Broker Salesperson Builder/Contractor
 Other _____

Professional Liability Insurance Company: _____

Name and Address of Legal Counsel or Other Representative:

Name _____ Phone No. _____

Firm _____ Fax No. _____

Address _____

3. Other Parties:

Name _____ Phone: _____ Fax: _____

Address _____

Buyer Seller Broker Salesperson Builder/Contractor
 Other _____

Professional Liability Insurance Company: _____

Name and Address of Legal Counsel or Other Representative:

Name _____ Phone No. _____

Firm _____ Fax No. _____

Address _____

Name _____ Phone: _____ Fax: _____

Address _____

Buyer Seller Broker Salesperson Builder/Contractor
 Other _____

Name and Address of Legal Counsel or Other Representative:

Name _____ Phone No. _____

Firm _____ Fax No. _____

Address _____

Buyer Seller Broker Salesperson Builder/Contractor
 Other _____

Name _____ Phone: _____ Fax: _____

Address _____

Buyer Seller Broker Salesperson Builder/Contractor
 Other _____

Name and Address of Legal Counsel or Other Representative:

Name _____ Phone No. _____

Firm _____ Fax No. _____

Address _____

Name _____ Phone: _____ Fax: _____

Address _____

Buyer Seller Broker Salesperson Builder/Contractor
 Other _____

Name and Address of Legal Counsel or Other Representative:

Name _____ Phone No. _____

Firm _____ Fax No. _____

Address _____

Buyer Seller Broker Salesperson Builder/Contractor
 Other _____

4. **Brief Description of Claim:**

5. **Amount of Money Involved:** _____ (\$ _____)

6. Have there been any formal court pleadings filed in this case? Yes No

If yes, are there any trial dates or time limitations involved? Yes No

Date _____ Court _____

County _____ Judge _____

Court Case No. _____

7. Do you have authority to enter into and sign a binding written agreement to settle this on behalf of the party you represent? Yes No

Comment: _____

8. Do you need additional information from another attorney? Yes No

If yes, what? _____

9. Has a prior agreement to mediate been signed by the parties Yes No

If yes, please attach copy of the signed agreement.

PLEASE MAIL THIS FORM TO THE Southside Virginia Association of REALTORS®, DRS COORDINATOR, 114 Maple Grove Avenue, Colonial Heights, VA 23834.

Name of DRS Mediation Provider Selected: _____

INTRODUCTION

Dispute Resolution Systems (DRS) is a general term used to identify means of resolving disputes out of court, such as by mediation or arbitration. DRS programs are becoming increasingly important today as parties and the court system alike are now trying to find DRS programs that will take them out of the traditional legal system and solve their disputes in a quick and cost efficient manner. DRS reflects a serious effort to design workable and fair alternatives to traditional civil litigation.

The Southside Virginia Association of REALTORS® DRS program offers mediation. In mediation, a neutral third party assists the disputants in negotiating a mutually acceptable settlement. Mediators do not render decisions but help to facilitate the parties to the dispute to come to their own agreement by clarifying issues, utilizing persuasion and other conflict resolution strategies. Although there is no guarantee that the dispute will be resolved, surveys reveal that settlements are reached over 80% of the time.

BENEFITS OF DRS

1. Faster than litigation.
2. Less expensive than litigation.
3. Discourages litigation of frivolous claims.
4. In mediation, parties do not forfeit their legal rights to arbitrate or litigate the dispute if mediation is unsuccessful.
5. Parties actively participate in the process and control outcomes.
6. Process contributes to long-term goodwill between brokers, their clients, and customers.
7. Provides a service which brokers and salespersons can offer to their clients and customers.
8. Improves image of the association and its members because they have taken the initiative to find and provide alternatives to litigation.
9. Potential for lowering cost of E&O insurance by lowering the number of claims that must be settled or litigated by the insurance company.

This program is designed to resolve disputes between buyers, sellers, real estate salespersons, and other service providers to a real estate transaction. Disputes shall include, by way of illustration and not limitation, claims arising from misrepresentations made by the Buyer, Seller or any real estate broker or other person or entity in connection with the sale, purchase, financing, condition or other aspects of the Property, including allegations of concealment, misrepresentation, negligence and/or fraud. This program is not designed to be used for disputes between REALTOR® members. These disputes must still be arbitrated in accordance with Article 17 of the REALTORS® Code of Ethics and through the Professional Standards Procedures.

HOW THE MEDIATION PROGRAM WORKS

By signing a contract or addendum containing a mediation clause, parties to the transaction pre-commit to submit to mediation any dispute that might arise from the transaction. Where parties do not pre-commit to mediate, an agreement to mediate can be signed by the parties when a dispute arises. In either situation, while the agreement to submit disputes to mediation is binding when signed, parties retain their right to pursue other legal remedies if mediation is unsuccessful. Parties are not bound to agreements reached during the mediation conference until they sign a written mediation settlement agreement. Once parties have signed a written mediation settlement agreement, they are legally bound to abide by its terms and cannot subsequently arbitrate or litigate the dispute.

With few exceptions, almost any type of real estate dispute can be mediated under these rules and procedures. The following matters are excluded from mediation: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanics lien; (d) any matter which is within the jurisdiction of a probate court; or (e) violation of a state's real estate license laws;. (f) extremely complex legal issues; (g) allegations of criminal misconduct; (h) disputes and controversies that are covered under Professional Standards policies and procedures, including commission disputes between REALTORS® that are arbitrated under Article 17 of the REALTOR® Code of Ethics.

MEDIATION RULES AND PROCEDURES

1. **Agreement of Parties.** These Mediation Rules and Procedures shall apply when the parties have agreed in writing to mediation under the SVAR Dispute Resolution System. By mutual written agreement of all the parties to the claim, any specific provision of these Rules and Procedures pertaining to mediation may be modified.

2. **Initiation of Mediation.** Any party may initiate mediation under these Rules and Procedures by completing, signing, and mailing to The Southside Virginia Association of REALTORS® and all other parties, a Request to Initiate Mediation Transmittal Form. Such form shall contain or be accompanied by the following information, to the extent known or readily available:

- a. A fully executed true copy of the agreement containing the mediation clause;
- b. A copy of such other written agreement invoking these Mediation Rules and Procedures;
- c. In the absence of a contract clause or other such written agreement, a written request by any party seeking to have The Southside Virginia Association of REALTORS® attempt to persuade one or more of the others to submit an existing dispute or claim to mediation under these Rules and Procedures.
- d. The names, addresses, and telephone numbers of the parties to the case, including the name of the parties insurance company;
- e. Nature and amount of the claim (brief statement of the facts that give rise to the claim, the damages of relief sought);
- f. Preferred place and time of hearing.

3. **Selection of Mediator.** On the Transmittal Form, please select a mediator, or SVAR will assist in the appointment of a qualified mediator or qualified mediation center if you are not sure. All parties must agree to the approved 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.

4. **Time and Place of Mediation Conference.** Within ten (10) days of appointment, the mediator and the parties shall set the date, time, and place of the mediation conference provided, however, such date shall not be more than sixty days from date of receipt of the Transmittal Form, and shall allow for not less than twenty (20) days advance notice of the conference, which notice shall be given by the mediation vendor to all parties.

5. **Conduct of Mediation Conferences.** At the mediation conference, the parties will be expected to produce all information reasonably required for the mediator to understand the issue presented. Such information will usually include relevant written materials and a description of any witnesses and what each could testify to. For more complex cases, the mediator may ask the parties for written materials or information in advance of the mediation conference.

At the mediation conference, the mediator will conduct an orderly settlement negotiation. Parties at the mediation conference shall have authority to enter into and sign a binding written agreement to settle the dispute. The mediator will be impartial in such proceedings and has no authority to force the parties to agree to a settlement.

6. **Representation by Counsel.** Any party may be accompanied by and represented at the conference by counsel. In the interest of fairness, however, a party who intends to be represented by counsel shall notify the mediation vendor and other parties of such intent at least ten (10) days in advance of the conference.

7. **Confidentiality.** No aspect of the mediation shall be relied upon or introduced as evidence in any arbitration, judicial or other proceeding, including but not limited to:

- Views expressed or suggestions made by a party with respect to a possible settlement of the dispute;
- Admissions made in the course of the mediation;
- Proposals made or views expressed by the mediator or the response of any party thereto.

No privilege shall be affected by disclosures made in the course of mediation.

Disclosure of any records, reports, or other documents received or prepared by mediation vendor cannot be compelled.

The mediation vendor shall not be compelled to disclose or to testify in any proceeding as to information disclosed or representations made in the course of the mediation or communication to the mediator in confidence.

8. **Mediated Settlement.** The mediated settlement must be reduced to writing by the parties or by the mediator (if the mediator is an attorney), then dated and signed at the mediation conference by all parties agreeing to its terms, but in no event shall the settlement be signed later than ten (10) days after the conclusion of the mediation conference.

9. **Judicial Proceedings and Immunity.** Neither the mediation vendor, nor the mediator, nor the National Association of REALTORS® or any of its member associations, shall be deemed "necessary parties" in any judicial proceedings relating to mediation under these Mediation Rules and Procedures. Neither the mediation vendor, nor any mediator nor the National Association of REALTORS®, serving under these procedures shall be liable to any party for any act, error or omission in connection with any service or the operation of this Mediation Program.
10. **Mediation Fees.** Mediation fees shall be in accordance with the published fee schedule.
11. **Timing of Claims.** The time limitation by which parties may submit disputes to the Southside Virginia Association of REALTORS® Dispute Resolution System is 365 days from the closing of the real estate transaction.

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**SELLER/BUYER GUIDE FOR INITIATING MEDIATION
DISPUTE RESOLUTION SYSTEM (DRS)**

When a dispute arises: The decision to initiate mediation under DRS program Rules should be made only after all attempts to negotiate an acceptable solution have been exhausted.

Call your broker or salesperson: Your broker or salesperson can be instrumental in resolving conflicts and disputes. Talk with your broker or salesperson before you initiate mediation proceedings.

Consult your attorney: You should inform your attorney of your intent to initiate mediation under the DRS Rules. Your attorney will be able to provide you with advice and counsel – and may be able to help you resolve the dispute without having to proceed to mediation.

To initiate mediation: When all attempts to negotiate a settlement have failed you should proceed as follows:

- A. **If You and other parties “have” pre-committed to Mediation**, i.e., you have signed a sales contract or addendum to the contract that contains a mediation clause or you have signed the DRS Agreement to Mediation or other written agreement:
1. Contact the Southside Virginia Association of REALTORS® to request a Seller-Buyer Information Packet. The packet contains everything you will need to initiate mediation.
 2. The name, address, telephone number and fee schedule of each mediation provider appears on a list prepared by the Association. You must select a mediator from those listed. If you need help, call the Southside Virginia Association of REALTORS®.
 3. Complete and sign the Request to Initiate Mediation Transmittal Form. Mail the original form and required attachments to the Association at the address shown on the Information Brochure. When the Association has received your request, the provider will contact all parties named and will schedule the mediation in accordance with DRS Rules and Procedures.
- B. **If you or other parties “have not” pre-committed to Mediation**, i.e., you have not signed a sales contract or addendum to the sales contract that contains a mediation clause.
1. Contact the Southside Virginia Association of REALTORS® to request a Buyer-Seller Information Packet. The packet contains everything you will need to initiate mediation.
 2. The name, address, telephone number and fee schedule of each provider, appears on a list prepared by the Association. You must select a mediator from those listed. If you need help, call the Southside Virginia Association of REALTORS®. All parties must agree to an approved mediator.
 3. Complete and sign both the Agreement to Mediate and the Request To Initiate Mediation Transmittal Form. Mail both forms and required attachments to the Association with a cover letter requesting help in obtaining the agreement of other parties to mediate the dispute rather than litigating or arbitrating the matter and requesting that the Association initiate mediation under the DRS Rules and Procedures upon agreement of all parties to mediate the dispute. (The mediator may charge an additional fee for this service.) The Association will proceed with your request.

(Note: Your broker, salesperson, and attorney may be able to assist you in obtaining the agreement of other parties to mediate the dispute.)

RESPONSES TO FREQUENTLY ASKED QUESTIONS ABOUT MEDIATION

Q: What is mediation?

A: Mediation is a non-adversarial process that brings disputing parties together with a neutral, unbiased third party (mediator) who assists the parties in reaching a mutually agreeable settlement of the dispute. The mediator does not render decisions or impose sanctions. Settlement terms reached and agreed to by the parties during the mediation become binding when parties sign a written agreement.

Q: How does mediation differ from arbitration?

A: An arbitrator has the authority to render a binding decision, similar to a judge in a court of law. The parties, therefore, forfeit their right to have their dispute tried in a court of law. Mediators, on the other hand, have no authority to render a decision but merely assist the parties to arrive at a mutually agreeable solution. If the parties fail to reach a settlement, they are free to pursue other forms of dispute resolution including arbitration and litigation. In successful mediation all parties have a part in working out the terms of the eventual settlement and must agree to the final outcome for it to be enforceable.

Q: When the DRS mediation clause is presented to a buyer or seller, isn't the real estate salesperson raising a "red flag" by bringing up the issue of a potential dispute at the outset of the transaction?

A: Not if the salesperson presents mediation in a positive, non-threatening way. The salesperson should point out that the mediation clause is similar to other clauses in the contract that are designed to protect interests of the parties. The mediation clause in no way suggests that a dispute will arise, any more than the option to have a home inspection means that there will be defects in the property. The mediation clause provides parties with an efficient, less expensive alternative to litigation in the event a dispute should arise. The salesperson should emphasize that mediation does not involve high risks. Parties are not bound to agreements reached in mediation unless they sign a written settlement agreement, and if a settlement isn't reached, parties are free to submit their dispute to arbitration or go to court. Salespeople should stress that mediation is successful 80% of the time.

Q: If a party signs a contract or an addendum that contains a mediation clause, is the party required to mediate if a dispute arises?

A: Yes. The signed agreement to mediate is binding and parties must submit the dispute to mediation. The agreement to mediate does not bind the parties to results that might be achieved during mediation, and parties retain the right to go to court in the event that mediation is unsuccessful. If a settlement is reached during mediation it becomes binding only when it is put into writing and signed by all the parties. Once the parties have signed a written settlement agreement, they are legally bound to abide by its terms and cannot subsequently litigate the dispute.

Q: Who are the mediators?

A: DRS mediators are trained professionals who have absolutely no personal interest in the outcome of the mediation. The Southside Virginia Association of REALTORS® does not handle the mediation but allows you to choose mediations from mediator providers who are acting in their own individual capacity.

Q: Do the parties involved in a dispute have the option of choosing the mediator who will mediate their dispute?

A: Yes.

Q: What types of disputes can be mediated?

A: Almost any type of dispute between or among buyers, sellers, brokers and other parties to a real estate transaction can and should be mediated. These include: disputes over earnest money deposits, e.g., who gets the deposit if the sale falls through; cost of repairs to property when there is a question of possible negligence or failure to disclose a

known defect, e.g., a defective roof or termite infestation; claims for damages when there is a charge of possible misrepresentation concerning the condition of the property, e.g., central air conditioning was never connected to the new addition on the house.

Q: Are there any types of disputes that cannot be mediated under DRS?

A: Yes. Disputes that cannot or should not be mediated under the DRS Mediation rules include: disputes that involve extremely complex legal issues or allegations of criminal misconduct, violations of Virginia real estate license laws, disputes and controversies including disputes between REALTORS® that are subject to arbitration or hearing before a Professional Standards panel, and disputes that are not directly connected to a real estate transaction.

Q: Who pays for the mediation?

A: Parties are free to negotiate their own arrangements. In most cases, parties split mediation fees equally.

Q: How much does mediation cost?

A: There is currently no cost for using the mediation process.

Q: How long does the whole process take?

A: Under the DRS Rules, the mediation conference must be held within 60 days from the date on which the Association receives the “Request to Initiate Mediation - Transmittal Form” from the party initiating mediation. Most mediation conferences, however, are scheduled and conducted within 30 days. The typical mediation conference lasts from between 1 to 4 hours, and a second conference is rarely needed.

Q: Can parties be represented by counsel?

A: Yes. DRS Rules and Procedures state that any party may be represented by counsel. If a dispute involves a small sum and does not raise complex issues, parties may choose not to be represented by counsel, which means that a party does not have to pay the attorney to attend the mediation conference. The Rules also state that all parties must be notified, in advance of the mediation conference, of another party’s intention to be represented by counsel.

Q: What about confidentiality?

A: No aspect of the mediation shall be relied upon or introduced as evidence in any arbitration, judicial or other proceeding. No privilege shall be affected by disclosures made in the course of mediation.

Q: Can commission disputes between REALTORS® be mediated under DRS?

A: No. Disputes that are normally arbitrated under Article 17 of the REALTOR® Code of Ethics are specifically excluded from mediation under the DRS Rules.

Q: Why should the Association adopt DRS when we already offer mediation services through our Professional Standards Committee?

A: The DRS Mediation Program is not intended to replace or to be used in connection with arbitration or mediation activities conducted by an association’s Professional Standards Committee. The program is designed to accommodate and provide for disputes that are not covered under Professional Standards Policies and Procedures.

Q: Can DRS be used to resolve disputes for commercial real estate transactions?

A: Yes. Provided all parties in the dispute agree to mediate the dispute under the DRS Rules and Procedures.

MEDIATION SUMMARY COMPONENTS

1. **Rules and Procedures.**
 - a. **Agreement of Parties** - The commitment to mediate.
 - b. **Initiation of Mediation** - Filing of Request to Initiate Mediation Transmittal Form.
 - c. **Selection of Mediator** - Provider must appoint mediator within 10 days of receipt of the Transmittal Form.
 - d. **Mediation Conference** - Mediation conference must take place within 60 days of the receipt of Transmittal Form. All relevant information must be presented. The mediator has no authority to render a binding decision.
 - e. **Representation by Counsel** - Any party may be represented by counsel.
 - f. **Confidentiality** - No aspect of the mediation conference shall be relied upon or introduced as evidence in any arbitration, judicial or other proceeding.
 - g. **Mediated Settlement** - The mediated settlement must be put into writing and signed by all parties within 10 days of the conclusion of the mediation conference. Parties who do not agree with the terms as stated are not obligated to sign the settlement agreement.
 - h. **Timing of Claims** - The time limitation by which parties must bring claims in accordance with these Rules and Procedures are to be governed by state law. Local counsel should be consulted regarding this issue.
2. **Mediation Clause.** Clause stated that the parties commit to submit to mediation any disputes which may arise out of the transaction.

Option A. If you and other parties have pre-committed to mediation, i.e., you have signed a sales contract or addendum to the contract that contains a mediation clause or you have signed the DRS Agreement to Mediation or other written agreement.

Option B. If you or other parties have not pre-committed to mediation, i.e., you have not signed a sales contract or addendum to the sales contract that contains a mediation clause.
3. **Agreement to Mediate.** Serves the same purpose as the Mediation Clause but is not part of the sales contract. The Agreement is used by parties who have not pre-committed to mediation but who later agree to mediate disputes. The Agreement documents the willingness and commitment of the parties to submit disputes to mediation. It may be signed before or after a dispute arises.
4. **Endorsement Notice.** Must be sent to NAR's Risk Reduction Department immediately after the association's Board of Directors endorses the mediation program. This triggers the professional liability insurance coverage for the endorsement.
5. **Request to Initiate Mediation Transmittal Form.** The form which a party files with a mediation provider to initiate the mediation process. The form includes all information the mediator needs, including the names and addresses of parties to the dispute, the amount in dispute and the intention of the parties to be represented by counsel.
6. **Sample Mediation Settlement Agreement.** Evidence of the settlement agreement between the parties. Parties who do not agree with the terms as stated are not obligated to sign the agreement.
7. **Seller/Buyer Information Brochure.** Provides an overview of DRS in concise, easy to understand language. Brochure is designed to introduce clients and customers to the DRS Mediation Program.

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LIST OF MEDIATORS

<p>REALTOR® Ron C. Hardy 1st Choice Realty 2306 Boulevard Colonial Heights, VA 23834 804-520-9755</p>	<p>REALTOR® Carmen Martin Ford Agency, Inc P.O. Box 829 Hopewell, Virginia 23860 804-458-6333</p>
<p>REALTOR® Doug Compton Tennek Realty Inc 214 South Main Street Blackstone, Virginia 23824 434-292-5377</p>	