



2415 W. 57th Street
Sioux Falls, SD 57108
Phone: 605-334-4752
Fax: 605-335-8981
www.rase-inc.org

To Whom This May Concern,

Enclosed you will find information regarding the mediation process. The documents explain the process, the rules, and the necessary time to allot. The REALTOR® Association of the Sioux Empire contracts with McKnight Mediations. Complete the Request to Initiate Mediation 3-page document as ultimately as possible and return to:

McKnight Mediations
2912 S. Duchess Avenue
Sioux Falls, SD 57103-4826

When returning the Request to Initiate Mediation, include copies of any relevant information involving your claim, such as the Purchase Contract, Seller's Property Disclosure, and copies of estimates (where applicable). All documentation is incorporated with the case file and provided to the other party. They are allowed ten (10) business days to respond. If they have relocated outside of South Dakota, or farther than 360 miles, they are allowed 15 business days to respond.

The Mediation Rules and Procedures require a check made payable to McKnight Mediations for \$213 to confirm your intent to mediate. If you have any questions, contact me at (605) 941-2218.

Sincerely,

Michael S. McKnight
McKnight Mediation
Mike@SDMediator.com

Enclosures

Do you have any disabilities which require special accommodations, including the provision of auxiliary aids and services? If so, please identify your special needs.

HOMESELLERS/HOMEBUYERS DISPUTE RESOLUTION SYSTEM BUYER – SELLER GUIDE FOR INITIATING MEDIATION

When a dispute arises – The decision to initiate mediation under DRS Program rules should be made only after attempting to negotiate a solution acceptable to all parties.

Call your Broker or Sales Agent – Your broker or sales agent can be instrumental in resolving conflicts and disputes. Talk with the broker or sales agent as well as the other party before your initiate mediation proceedings.

Role of an 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 may call the McKnight Mediations at 605-941-2218 if they have any questions or concerns about mediation or the DRS mediation service. Mediation does not forfeit your right to going to court.

Initiating Mediation – When all attempts to negotiate 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 that contains a mediation clause or you have signed the DRS Agreement to Mediate or other written agreement.
 1. The REALTOR® Association of the Sioux Empire, Inc. has an exclusive DRS Service agreement with McKnight Mediations who specializes in providing mediation services. If, however, an individual who is a party to a real estate transaction subject to dispute resolution and who has agreed to mediate, objects to the Mediator in writing on the grounds of economic or other bias, McKnight Mediations will appoint an alternate Mediator.
 2. Complete and sign the Request to Initiate Mediation Transmittal Form. Mail the signed form and required attachments to McKnight Mediations, 2912 S. Duchess Ave., Sioux Falls, SD 57103-4826. When McKnight Mediations receives your fully executed request, copies of the request and documentation will be mailed to the other named party. They are allowed 10 business days to respond to the request. Upon agreement, McKnight Mediations will schedule the mediation in accordance with the DRS Rules and Procedures and contact all parties named. Conferences will be scheduled at least 21 business days after receipt of request, but not more than 45 business days after receipt. All parties to the conference must agree upon any changes in scheduled date.
- 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. The REALTOR® Association of the Sioux Empire, Inc. has an exclusive DRS Service agreement with McKnight Mediations who specializes in providing mediation services, If, however, an Individual who is a party to a real estate transaction subject to dispute resolution and who has agreed to mediate, objects to

the Mediator in writing on the grounds of economic or other bias, McKnight Mediations will appoint an alternate Mediator.

2. Complete and sign the Request to Initiate Mediation Transmittal Form. Mail the signed form and attachments to the McKnight Mediations, 2912 S. Duchess Ave., Sioux Falls, SD 57103-4826, with a cover letter requesting the McKnight Mediations help in obtaining the agreement of the other parties to mediate the dispute rather than litigating or arbitrating the matter. Request that the Association initiate mediation under the DRS Rules and Procedures upon agreement of all parties to mediate the dispute. (Note: Your broker or sales agent may be able to assist you in obtaining the agreement of other parties to mediate the dispute.)

MEDIATION CHECKLIST (COMPLAINANT)

_____ Read **"Mediation Rules and Procedures."** Once you have decided to initiate mediation, please complete each of the following steps:

_____ Complete the enclosed 3-page Transmittal Form, Dispute Resolution System (DRS) Request to Initiate Mediation.

_____ Attach a signed copy of the Purchase Agreement which includes the mediation clause and Sellers Property Disclosure.

_____ Provide at least two estimates for comparable work from reputable providers which are itemized and signed.

_____ Attach a check in the amount of \$213.00 (non-refundable) as required by the rules and mail to:

McKnight Mediation
2912 S. Duchess Avenue
Sioux Falls, SD 57103-4826

_____ Read the following documents and note any questions you have regarding the:

- _____ Mediation Rules and Procedures
- _____ Mediation Terminology, Process and Guidelines
- _____ Agreement to Begin Mediation

_____ Have originals or copies of the following documents with you at mediation:

- _____ Closing Documents
- _____ Written stipulations, contingencies or memorandums of understanding.
- _____ Inspection Report
- _____ Home Warranty Insurance
- _____ Insurance claims

Some of these items may not apply to your case; however, if they do it is important that you bring the documentation with you.

_____ Provide physical evidence regarding the problem-photos, etc.

If at all possible, do not correct the problem prior to the mediation session. Make temporary repairs where necessary to stop the damage and to prevent further damage.

_____ Experts and witnesses may attend the mediation; McKnight Mediation must be notified **at least 10 days in advance** so that all parties can be notified. The notice should include the name, address, and phone number of each witness/expert.

_____ Attorneys may accompany parties to the mediation. **If an attorney will be attending you must contact the McKnight Mediation at least 10 days prior to the mediation so that all parties can be notified.**

_____ Written statements are welcome. **Hearsay will not be accepted during the mediation.**

Experts, witnesses, and legal counsel are allowed to be present and to provide facts or counsel relative to the case. They are not participants in the mediation.

MEDIATION CHECKLIST (RESPONDENT)

_____ Read **"Mediation Rules and Procedures."**

_____ Attach a check in the amount of \$213.00 (non-refundable) as required by the rules and mail to:
McKnight Mediation
2912 S. Duchess Avenue
Sioux Falls, SD 57103-4826

_____ Read the following documents and note any questions you have regarding the:

- _____ Mediation Rules and Procedures
- _____ Mediation Terminology, Process and Guidelines
- _____ Agreement to Begin Mediation

_____ Have originals or copies of the following documents with you at mediation:

- _____ Closing Documents
- _____ Written stipulations, contingencies or memorandums of understanding.
- _____ Inspection Report
- _____ Home Warranty Insurance
- _____ Insurance claims

Some of these items may not apply to your case; however, if they do it is important that you bring the documentation with you.

_____ Provide photos, etc. if appropriate.

_____ Experts and witnesses may attend the mediation; McKnight Mediation must be notified **at least 10 days in advance** so that all parties can be notified. The notice should include the name, address, and phone number of each witness/expert.

_____ Attorneys may accompany parties to the mediation. **If an attorney will be attending you must contact the McKnight Mediation at least 10 days prior to the mediation so that all parties can be notified.**

_____ Written statements are welcome. **Hearsay will not be accepted during the mediation.**

Experts, witnesses, and legal counsel are allowed to be present and to provide facts or counsel relative to the case. They are not participants in the mediation.

REALTOR® ASSOCIATION OF THE SIOUX EMPIRE, INC.
DISPUTE RESOLUTION SYSTEM (DRS)
REQUEST TO INITIATE MEDIATION

(TO BE COMPLETED AND MAILED BY PARTY REQUESTING MEDIATION)

DATE _____

Has a prior agreement to mediate been signed by the parties? () Yes () No

If yes, please attach a copy of the signed purchase agreement.

If no, please complete, sign, and return the Agreement to Mediate.

Property Address _____

Actual Closing Date _____

YOUR INFORMATION (Complainant(s))

Name _____ Phone _____

Address _____

Email _____

Are you the ____ Buyer; ____ Seller; ____ Other Party _____

Preferred Method of Communications ____ Email; ____ Mail; ____ Phone

Did you work with a REALTOR®? If so, please provide the following information:

REALTOR® Name _____

REALTOR® Firm _____

Are you planning to ask your Attorney or other legal representative to attend the mediation? If so, please provide the following:

Name _____ Phone _____

Address _____

Email _____

Please note that you, not your attorney, will be the primary participant in the mediation. You will be able to consult privately with your attorney, if necessary.

FOR MCKNIGHT MEDIATIONS USE ONLY:

File Received: _____ Case No.: _____ Date Packet Mailed to Respondent: _____

OTHER PARTY INFORMATION (Respondent(s))

Is this the ____ Buyer; ____ Seller; ____ Other Party

Name _____ Phone _____

Address _____

If Other, please explain _____

Did the other party work with a REALTOR®? If so, please provide the following information:

REALTOR® Name _____

REALTOR® Firm _____

OTHER RELEVANT EXPERTS, WITNESSES, ETC.

Name _____ Phone _____

Address _____

____ Expert; ____ Witness; ____ Other *Please check one.*

If Other, please explain _____

Name _____ Phone _____

Address _____

____ Expert; ____ Witness; ____ Other *Please check one.*

If Other, please explain _____

Name _____ Phone _____

Address _____

____ Expert; ____ Witness; ____ Other *Please check one.*

If Other, please explain _____

CLAIM INFORMATION

Estimated amount of money-involved: _____

Please provide a brief description of the claim:

Has there been any formal court proceedings filed in this case? ☐ Yes ☐ No

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

If yes, please provide the following information:

Date _____ Court _____

County _____ Judge _____

Court Case Number _____

Do you need additional information from another attorney? ☐ Yes ☐ No

If yes, what? _____

After completing, Scam and Email documentation to: Mike@SDMediator.com or Mail To:

**McKnight Mediations
2912 S. Duchess Avenue
Sioux Falls, SD 57103-4826**

Be sure to include all relevant paperwork, such as copies of: the Purchase Agreement, Sellers Property Disclosure, estimates etc., along with the Mediation Fee, \$213.00.

Questions? Contact Michael McKnight at 605-941-2218 or Mike@SDMediator.com.

HOME SELLERS/HOME BUYERS DISPUTE RESOLUTION SYSTEM (DRS)
MEDIATION RULES AND PROCEDURES

1. **Agreement of Parties** – These DRS Mediation Rules and Procedures shall apply when the parties have agreed in writing to mediation under the Home Sellers/Home Buyers DRS. By mutual written agreement of all parties to the claim, any specific provision of these DRS Rules and Procedures pertaining to mediation may be modified.
2. **Initiation of Mediation** – Any party may initiate mediation under these DRS Rules and Procedures by completing, signing and mailing to the McKnight Mediations and all other parties, a Request to Initiate Mediation DRS Transmittal Form (Transmittal Form). The form will 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 agreements invoking these DRS 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 McKnight Mediations attempt to persuade one or more of the others to submit an existing dispute or claim to mediation under these DRS Rules and Procedures.
 - D. The names, addresses and telephone numbers of the parties to the case, including the name of every insurance company known to have received notice of the dispute or claim and the corresponding insurance company file or claim number;
 - E. Nature and amount of the claim (brief statement of the facts that give rise to the claim, the damages of relief sought.)
3. **Selection of Mediator** – If an individual who is a party to a real estate transaction subject to the DRS and who has agreed to mediate objects to the mediator on the ground of economic or other biases, they must do so in writing within two weeks of the date scheduled for the conference.
4. **Time and Place of Mediation Conference** – all parties involved in a mediation conference will be given a minimum of 21 days' notice of the scheduled date and time. The conference date shall not be more than 45 days from the date of receipt of the DRS Transmittal Form (with the exception of unforeseen problems beyond the control of McKnight Mediations or the mediator).

If the date chosen by the mediator is a conflict for either party, written notice must be provided to the McKnight Mediations within 7 days of receipt of the notice of scheduled date. Any changes must be agreed upon by all parties to the mediation. Only in the event of a family or medical emergency, acts of God, war, disaster or any other event beyond either party's control, may mediation be rescheduled after this point. The mediation conference shall be held virtually through Zoom.

5. **Conduct of Mediation Conferences** – Before 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 or written statements from a witness, if necessary.

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 counsel at the conference. In the interest of fairness, however, a party who intends to be accompanied by counsel shall notify McKnight Mediations and other

parties of such intent at least ten (10) days in advance of the conference. If a party appears with counsel and fails to give ten (10) days' notice before the session is convened, that party shall pay \$100 for the cost of rescheduling another mediation session.

7. **Confidentiality** – No aspect of the mediation shall be relied upon or introduced as evidence in any arbitration, judicial or other proceedings, 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 responses of any party hereto.

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

Disclosure of any records, reports, or other documents received or prepared during the mediation conference cannot be compelled for a court proceeding.

McKnight Mediations shall not be compelled to disclose or testify in any proceedings 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 mediator, 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 days after the conclusion of the mediation conference.
9. **Judicial Proceedings and Immunity** – Neither the REALTOR® Association of the Sioux Empire, Inc., nor the mediator, nor the NATIONAL ASSOCIATION OF REALTORS® or any of its member boards, shall be deemed “necessary parties” in any judicial proceedings relating to mediation under these DRS Rules and Procedures. Neither the REALTOR® Association of the Sioux Empire, Inc., nor the 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 the Home Seller/Home Buyer Dispute Resolution System.
10. **Fees** – Both the buyer and the seller will remit \$200.00 for three (3) hours of mediation (non-refundable) to McKnight Mediations. Mediation exceeding the three (3) hours allotted time will be billed \$50.00/hour per party to be collected by the mediator before the mediation conference continues.

MEDIATION GUIDELINES

TERMINOLOGY:

MEDIATION is a process by which parties who perceive there is a conflict present, discuss, and explore practical alternatives with the aid of a neutral third party in a confidential setting.

CONFIDENTIALITY means to keep private or secret information that is shared in mediation. This MOST vital component to mediation differentiates it from other dispute resolution processes.

AGREEMENT TO BEGIN MEDIATION is the form that all parties to the mediation, as well as the mediator, sign to signify that A) they will follow the process, B) they will abide by the personal conduct guidelines, and C) they will keep the process and all information shared confidential.

CAUCUS means that one party and the mediator or a group of people meets in private in order to discuss or brainstorm. A caucus may be held at any time and may be called by the mediator or any participant to the mediation.

NEUTRAL in the context of “a neutral third party” means the mediator is not aligned with either side and does not stand to gain from the agreement or settlement obtained in your mediation.

ADVICE from counsel in the form of attorneys or accountants is encouraged. The mediator is not an advocate or advisor for either party. Legal counsel is allowed to be present and to provide facts or counsel relative to the case. They are not participants in the mediation.

EXPERTS may be called to testify during mediation but are not participants.

MEDIATION PROCESS:

The **MEDIATION PROCESS** involves the following stages:

- 1) Introductory and information statement by the mediator followed by all parties signing the Agreement to Begin Mediation.
- 2) Facts are presented and opening statements are delivered by all parties to the conflict.
- 3) Issues are identified and clarified.
- 4) Options are developed; there is no ownership of options or evaluation of options.
- 5) Evaluation of options; bargaining and movement to agreement.
- 6) Agreement or memorandum of understanding is drafted and signed. Agreements are crafted to include all details, no mention of fault, and are full and final. Legal assistance may be obtained for the final draft of the agreement.

GUIDELINES:

The Ground Rules and Personal Conduct Guidelines are as follows:

- No interruptions.
- No tape players.
- Defer judgment.
- Focus on the future, not fault.
- No put-downs.
- No side talking.
- Focus on the problem, not the people.

Important considerations before beginning the mediation:

- Have the fees been paid by both parties?
- Are all the parties to the dispute present?
- Do you have the authority to make a decision today?
- Mediation takes time – expect a minimum of 2.5 hours and no more than 5 hours.
- Please make work/childcare arrangements prior to mediation.

HOLD HARMLESS PROVISIONS

The parties further understand and agree to the following:

- 1) The mediator is a neutral facilitator who will assist the parties to reach their own settlement or agreement. The parties will provide the necessary information in a timely manner, actively negotiate any settlement and must agree to the outcome they create.
- 2) The mediator does not offer legal advice nor does the mediator provide legal counsel. Each party is advised to retain their own attorney in order to be counseled throughout the mediation process about their legal interests, rights and obligations.
- 3) In order for mediation to work, open and honest communications are essential. Accordingly, mediation proceedings shall be held in private and all written and oral communications, negotiations, and statement made in the course of mediation will be treated as privileged settlement discussions and are absolutely confidential.

As a result of the above provisions, the parties further agree that:

- 1) They will not at any time, before, during, or after mediation, call the mediator as a witness or demand the production of any records, notes, work product or the like of the mediator in any legal or administrative proceeding concerning the dispute.
- 2) To the extent that a party may call the mediator as a witness or demand production of records, those rights are hereby waived.
- 3) If, at a later time, either party decides to subpoena the mediator, the mediator will move to quash the subpoena. That **party agrees** to reimburse the mediator for any expenses the mediator incurs in such an action (including attorney's fees) plus \$100 per hour for the mediator's time that is taken by this matter.

All parties to this dispute shall show their agreement to the above provisions as well as the process, ground rules and guidelines by signing the **Agreement to Begin Mediation PRIOR** to beginning the mediation proceeding.