

NORTH SAN DIEGO COUNTY ASSOCIATION OF REALTORS

REQUEST FOR MEDIATION

Date: _____

TO: Name of Respondent & Title _____

Firm Name _____ Broker _____

Address _____

City _____ State _____ Zip _____

Telephone () _____ FAX () _____

e-mail address: _____

The undersigned party to an agreement if any contained in a written contract, dated _____ providing for mediation, hereby requests mediation under that agreement **(attach a copy of the mediation clause.)**

Nature of Dispute: _____

(Attach a separate sheet, if necessary)

Claim or Relief Sought: (amount if any) _____

You are hereby noticed that copies of our Mediation Agreement and of this request are being filed with the **North San Diego County Association of REALTORS®** at its Administrative office, with the request that it commence the administration of the mediation. A staff representative of the ASSOCIATION will contact you to arrange the mediation. It is understood and agreed that the mediation will be held at the office of the ASSOCIATION in Vista, located at the address below, pursuant to the mediation rules of the ASSOCIATION. A signed copy of the mediation rules of the ASSOCIATION is transmitted to you herewith along with a **CONSENT TO MEDIATION**.

Request for Mediation

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Signed _____ Title _____
(Signature of Claimant or Claimant's Representative)

Name of Claimant and Title* _____

Firm Name _____ Broker _____

Address of Claimant _____

City _____ State _____ Zip _____

Telephone () _____ FAX () _____

Name of Representative and Title _____

Representative's Address _____

City _____ State _____ Zip _____

Telephone () _____ FAX () _____

To institute proceedings, please send the **original and two copies** of this **REQUEST** to the **NORTH SAN DIEGO COUNTY ASSOCIATION OF REALTORS®**, including the **signed original** copy of the **mediation rules**. A staff representative of the Association will send a **copy** of this **REQUEST**, the **mediation rules** and a **CONSENT TO MEDIATION** to the responding party. Once the signed **CONSENT TO MEDIATION** forms are returned, Co-Mediators will be appointed and a mediation conference date set. You will receive a **21-DAY NOTICE** setting forth the date and time for the mediation.

- **Please indicate title as follows: Buyer, Seller, Broker, Agent, Architect, Contractor, Subcontractor, Attorney, Accountant, etc.**
- **Please indicate below the dates that you will not be available for Mediation.**

(Unavailable dates)

NORTH SAN DIEGO COUNTY ASSOCIATION OF REALTORS®

MEDIATION RULES AND CONFIDENTIALITY AGREEMENT

1. The undersigned parties have agreed to attempt to settle their dispute through mediation, using the service of the **NORTH SAN DIEGO COUNTY ASSOCIATION OF REALTORS®**.
2. The parties understand that mediation is a cooperative process based on factual information and does not assess blame or fault, but serves as an avenue for mutual resolution of their conflict. Most disputes can be successfully mediated if all parties are willing to make a good faith effort to resolve the dispute. It is important to have the critical facts presented at the mediation and that all persons necessary to reach a binding agreement be present at the mediation, including real estate agents, insurance representatives, witnesses, experts, personal representative, attorneys, etc.
3. Mediation is a non-binding process for resolving disputes in which a formally trained mediator facilitates communication between the parties, assists the parties in clarifying issues and explores settlement options. Once an agreement has been reached in mediation, the details of all agreements will be listed in a Settlement Agreement, which can become binding and enforceable in a court of law.
4. Mediation is private and confidential. California State law provides a way to limit the admissibility of evidence and disclosure, in a civil case, of anything said or revealed in mediation. California Evidence Code Section 1152.5, subdivision (a) provides:
 - a. Subject to the conditions and exceptions provided in this section, when persons agree to conduct and participate in mediation for the purpose of compromising, settling or resolving a dispute:
 1. Evidence of anything said, or of any admission made in the course of the mediation, is not admissible in evidence, and disclosure of any such evidence shall not be compelled in any civil action in which, pursuant to law, testimony can be compelled to be given.
 2. Unless this document otherwise provides, no document prepared for the purpose of, or in the course of, or pursuant to, the mediation, or a copy thereof, is admissible in evidence, or subject to discovery, and disclosure of any such document shall not be compelled, in any civil action in which, pursuant to law, testimony can be compelled to be given.
 3. All or part of a communication or document may be disclosed if all persons who conduct or otherwise participate in the mediation consent (in writing) to its disclosure.
 4. Disclosing privileged information to the mediator will not result in waiver of the privilege.
 5. Any mediation participant may seek an injunction to prevent disclosure of information in violation of this Agreement.
5. The **NORTH SAN DIEGO COUNTY ASSOCIATION OF REALTORS®** only exceptions to the nondisclosure policy is as follows:
 - a. If all parties to the mediation, including the mediator, agree in writing to allow disclosure;
 - b. If the mediator reasonable believes that a participant will cause physical harm to another person.
 - c. Notwithstanding Section 1152.5, this Agreement and any written settlement agreement resulting from the mediation will be admissible into evidence for the limited purpose of enforcing the terms of the settlement under Section 664.6 of the California Code of Civil Procedure.
6. The mediation is subject to California Evidence Code Section 703.5, which prohibits the parties from calling either the mediator or the **NORTH SAN DIEGO COUNTY ASSOCIATION OF REALTORS®** or any officer, employee volunteer, **independent contractor a agent thereof**, as a witness in any subsequent civil proceeding of any description in which they are called upon to testify as to any matter regarding the mediation proceeding. The parties will also be prohibited from requiring the production in court of any records or documents presented to or made by the mediator.

7. The mediator cannot and will not offer any legal advice to any party and the mediator's statements do not constitute legal advice. The mediator is a neutral intermediary who may not, and will not, act as an advocate for or give legal advice to any party. In this regard, if the mediator is an attorney, no attorney-client relationship is created between any party and the mediator. If the mediator is involved in the preparation of a settlement agreement, each party should have his or her attorney review the agreement before signing.
8. A trained mediator uses various techniques to assist in the resolution of the dispute. The mediator may, at times, meet privately (referred to as a caucus) with any and all parties in this dispute. The mediator will not disclose any information received in caucus without the permission of the party making the disclosure.
9. The mediator shall not reveal to third parties information provided by participants without the consent of all participants. However, without disclosing participants, names or other identifying information, the mediator may consult with colleagues about this matter, and may describe this matter in publications about mediation.
10. The parties are required to fully disclose and produce all information (witnesses, documents, exhibits) reasonable necessary for the mediator to understand the issues and to support the party's position. In the event that any of the parties are unsure about the advisability of disclosure of sensitive information, it is critical to the effectiveness of the mediation process that this be discussed with the mediator in private caucus. The mediator may request any party to supplement the information presented and may accept testimony by affidavit.
11. Prior to the mediation, each party or his or her representative must designate the person with final authority to settle the dispute on behalf of such party, and such designated person must be present at the mediation. At least seven (7) business days prior to the mediation, each party may choose to provide the mediator with a memorandum or confidential mediation brief setting forth the nature of the dispute, the party's position and claim for relief sought, the names of the party's representatives, attorney (s), witnesses, experts and/or any other persons that will appear at the mediation on that party's behalf.
12. A party may be represented at the mediation by an attorney or other person of the party's choice. Expert witnesses, such as appraisers, accountants, interpreters, etc. may appear and/or present testimony, evidence or information at the mediation in a manner mutually agreed upon by the parties and the mediator. Each party shall be responsible for the fees of any such experts appearing for, and/or presenting evidence or information on behalf of such party. Either party may also request the mediator to inspect or investigate property, documents, goods, etc. however, such party must pay for any associated costs, including any additional fee for the mediator's time.
13. Agreements reached in the mediation process concerning this dispute may differ greatly from the result that may be reached in court. A mediated agreement could be more favorable or less favorable than a decision that a judge or jury may render if this dispute were resolved in court, or by any other dispute resolution process. The parties agree to hold the mediator and the **NORTH SAN DIEGO COUNTY ASSOCIATION OF REALTORS®**, any official, employee, volunteer, independent contractor or agent thereof, harmless from liability of any kind whatsoever based upon a claim that the mediation process failed to provide the same outcome, or an equally advantageous outcome, as could have been obtained in court or in another dispute resolution process.
14. Notices will be given to the parties or their representative at the respective address indicated on the **SUBMISSION TO MEDIATION, REQUEST FOR, or CONSENT TO MEDIATION**.
15. Any party may seek from a court any interim or provisional relief that may be necessary to protect the rights or property of that party pending the outcome of the mediation or to prevent the disclosure of confidential information in violation of this Agreement. Any party breaching this Agreement shall be liable for and shall indemnify the non-breaching parties and the mediator for all costs, expenses, liabilities, and fees, including attorney's fees and cost, which may be incurred as a result of such breach.
16. Mediation sessions usually take from 4 to 6 hours. Parties need to allow for the maximum time so the session need not be forced to conclude when the parties are close to settlement. For good cause in the discretion of the mediator, or pursuant to the agreement of the parties, the mediation may be postponed one time free of charge. Any further postponements will result in the imposition of an administrative charge to be borne by the party requesting the postponement or by both parties if the postponement is by mutual agreement.
17. The mediation shall be held at the Administrative office of the **NORTH SAN DIEGO COUNTY ASSOCIATION OF REALTORS®**, LOCATED AT 906 Sycamore Ave., Suite 104, Vista, CA 92083, unless the parties and the mediator otherwise agree.

18. This agreement may be executed in counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same agreement.
19. This Agreement is signed before commencement of mediation by each of the parties to the mediation on the dates set forth below.
20. The fee will be confirmed in our conference schedule letter. Our base fee schedule, which is subject to the Mediation Department's review, is available online at NSDCAR.com on the Professional Standards page.
21. The mediation process may be continued from time to time, in which event, the mediator's subsequent oral and/or written communications with the mediation participants in a continuing effort to resolve the dispute are subject to this Agreement. The mediation may be terminated by agreement of the parties or at the discretion of the mediator declaring that further efforts would not be worthwhile.
22. My signature following acknowledges that I or my designated representative have the authority to negotiate and settle this matter. I have read and fully understand the terms set forth above in this Agreement to Mediate.

Date

Print Name of Party

Authorized Signature

Date

Print Name of Party

Authorized Signature

Date

Print Name of Party

Authorized Signature

Date

Print Name of Party

Authorized Signature

Insurer: _____

Claim Number: _____

DRE#: _____

**North San Diego County Association of REALTORS
EXHIBIT "A" FEE SCHEDULE**

Costs: The North San Diego County Association of REALTORS® charges a non-refundable administrative fee of \$75 per party to be remitted upon execution of the Mediation and Confidentiality Agreement. This fee covers the time spent on case administration, the initial intake call, toll calls, postage, photocopying, faxes and file administration. The administrative fee does not cover extraordinary out-of-pocket expenses such as the cost of messenger services and Federal Express, or extraordinary long distance telephone, travel and other charges, for which clients will be charged separately.

Fees: The mediation fee shall be \$250 per party for disputes under \$5,000; \$300 per party for disputes between \$5,000-\$25,000; \$500 per party for disputes between \$25,000-\$50,000; \$600 per party for disputes \$50,000-\$100,000; and disputes over \$100,000 is subject to assessment by Mediation personnel. This mediation fee shall be \$_____ per party. The initial administration fee of \$ **\$75.00** is due and payable upon the signing of this agreement. The remaining balance will be due upon confirmation of scheduling Mediation. Additional fees will be due and payable upon confirmation of scheduling.

If an NSDCAR REALTOR is involved as an agent there is a filing fee of \$150.00 for the claimant. If an agent is involved as a principal in the transaction the above fee schedule would be instituted.

**Any mediation over (4) hours is charged at \$75 per hour, per party. This fee must be paid at the conclusion of the mediation. _____

Initials Initials

Should any party request to have a mediation rescheduled, they will be charged as follows:

- 1st Reschedule: \$50.00
- 2nd Reschedule: \$150.00
- 3rd Reschedule: \$300.00

The Association reserves the right to adjust fees or reject mediations depending on complexity of issues.

Mediators are entitled to compensation for all time spent on the case, including preparation time, telephone time and attendance at mediation sessions. Travel time is charged at the full hourly rate.

Cancellation Fees: If the case settles during administration or is withdrawn after the Agreement to Mediate has been signed, The North San Diego County Association of REALTORS® will retain the non-refundable \$75 administrative fee and will bill the parties for any mediation services already performed (e.g., telephone time with any of the parties after the initial intake call).

Agreement: My signature following acknowledges that I or my designated representative has read and is in full agreement to pay any and all fees incurred by NSDCAR for the provided mediation services.

SIGNATURE

DATE

SIGNATURE

DATE

Realegal ®

A legal update from the California Association of REALTORS ®

COURT HOLDS FAILURE TO MEDIATE UNDER C.A.R. PURCHASE CONTRACT IS GROUNDS FOR DENIAL OF ATTORNEY'S FEES

A recent California Court of Appeal decision serves as a reminder that parties who agree to mediate should take that commitment seriously. In *Leamon V. Krajcikewcz*, home sellers filed a lawsuit to unwind a contract for the sale of their property which, they claimed, they had signed under duress from the buyers. The parties used C.A.R.'s Residential Purchase Agreement which, in most cases, requires the parties to mediate disputes before resorting to arbitration or court action, and denies recovery of attorney's fees to a party who fails to do so. In this case, the buyers' request for mediation had not been answered.

Even though the sellers claimed they did not have a valid contract with the buyers, both the trial court and the Court of Appeal denied their request for attorney's fees of over \$27,000.00, citing their failure to honor the mediation clause in the C.A.R. purchase agreement. The *Leamon* case demonstrates that disregard of mediation clauses can carry very real financial consequences for a contracting party.

The CALIFORNIA ASSOCIATION OF REALTORS® is a trade association representing more than 100,000 REALTORS® statewide.

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