



A Subsidiary of the Real Estate Bar Association for Massachusetts

Mediation Guidelines

Except as otherwise provided by law or agreed to in writing by the parties, the following guidelines are part of the REBA Dispute Resolution Agreement to Mediate and shall guide the conduct and administration of the mediation.

Mediation Procedures:

The mediator, as a neutral third party, will work with the parties to encourage them to resolve their dispute at the mediation conference. The parties recognize and acknowledge that mediation is a voluntary, informal, supervised negotiation and that the mediator is not a judge or arbitrator and will not render a decision. The parties will make all of the decisions in the mediation; the mediator cannot impose any decision upon them.

The parties understand that the mediation is voluntary and their participation in no way prevents them from pursuing legal action(s) that may be in their individual or joint best interests. They agree to negotiate in good faith, and understand that they are not required to reach agreement on any issue. Any party may choose to end the mediation at any time.

The parties also understand that the mediator is in charge of the mediation and will give each of them equal time as much as possible during the mediation. The parties may seek the mediator's perspective on the case and settlement, and while the mediator may use his or her knowledge to help the parties in their deliberations, the mediator cannot take sides or provide legal advice, counseling or other professional services.

Participants Presence:

Lawyers, representatives and other individuals present must possess sufficient authority to execute settlement agreements.

The presence of witnesses or experts is not suggested; however, if desired, written opinions may be exchanged in advance of the mediation.

Consulting with Attorneys:

The parties may attend the mediation conference with or without counsel. Parties are encouraged to consult with their lawyers before and during the mediation, and before signing a settlement agreement.

Confidentiality:

The mediation conference is confidential, and all communications made in the presence of the mediator and the work product of the mediator, cannot be disclosed in any judicial or administrative proceeding involving the parties to the mediation. The parties agree that all offers, promises, conduct and statements, whether written or oral, made in the course of the mediation proceedings will be inadmissible in any judicial or administrative proceeding concerning their dispute or any related dispute. The parties will not subpoena or otherwise require the mediator to testify or produce records, notes or work product in any future proceedings concerning any matter relating to this mediation. All communications made in the mediation session will be held confidential and will not be disclosed in any future proceedings or court appearance. All communications, oral and written, made in the course of the mediation in the presence of the mediator shall be privileged and shall not be disclosed by the parties or the mediator. Exceptions to these provisions concerning confidentiality are a settlement agreement, as discussed below, and as may be required by law or order of court.

Caucuses:

As part of the process, the parties acknowledge that the mediator may hold individual sessions with parties without the presence of the other parties. These "caucuses" are designed to improve the mediator's understanding of the participants' perspective. All information given to the mediator in these private sessions will be held confidential unless the party giving the information permits its disclosure.

Settlement Agreement:

In the event the parties reach an agreement in resolution or partial resolution of their dispute, that agreement will be legally enforceable and is admissible in court or in any other proceedings held for the purpose of enforcing the agreement.

If the parties do not agree on a resolution to their dispute at the mediation conference, they understand they may proceed with whatever other dispute resolution methods they deem appropriate.

Termination:

The mediation shall be terminated by any of the following circumstances;

1. By the execution of a settlement agreement by the parties.
2. By a declaration of the mediator that in the judgment of the mediator, further efforts at mediation are no longer worthwhile; or,
3. By a declaration of any party that the mediation is terminated.