

## **MEDIATION OF REAL ESTATE DISPUTES**

### **RESPONDING PARTY**

The Santa Clara County Association of REALTORS® has expanded its services to offer mediation of disputes with reference to a real estate transaction. **Enclosed is a Dispute Resolution Information Form and Agreement to Mediate from Claimant Party in which you are named as a responding party.** Please review the following information:

### **RESPONDING PARTY DISPUTE INFORMATION FORM AND/OR COUNTER DEMAND:**

#### **ALL FORMS MUST EITHER BE TYPED OR CLEARLY HAND-PRINTED**

1. Responding Party information for and Agreement to Mediate - Request for Mediation, Claimant Dispute Information Form and Agreement to Mediate. The \$100.00 filing fee, payable to the Santa Clara County Association of REALTORS® must be included. All filing fees are non-refundable even if the dispute is resolved prior to the mediation conference.
2. Complete the Mediator Disqualification Form identifying any mediators you wish to disqualify. Include dates you would be available for a mediation conference. (Allow a six-week period.)

Upon the receipt of the above, the case will be assigned to a Santa Clara County Association of REALTORS® Mediator that was not disqualified by any of the parties. The mediator will then be in communication with the parties. Please respond within (15) days and mail the following to Professional Standards Department, 1651 N. First Street, San Jose, CA 95112:

- Responding Party Information Form
- \$100.00 filing fee payable to the Santa Clara County Association of REALTORS®
- Mediator Disqualification Form

If you have any questions, contact Professional Standards Department by calling at (408) 445-5099 or fax: (408) 445-5082.

**REQUEST FOR MEDIATION  
RESPONDING PARTY DISPUTE INFORMATION AND AGREEMENT TO MEDIATE**

NAME \_\_\_\_\_ DATE \_\_\_\_\_

ADDRESS \_\_\_\_\_ City \_\_\_\_\_ Zip Code \_\_\_\_\_

PHONE (day) \_\_\_\_\_ Alt PHONE \_\_\_\_\_

Are you the buyer \_\_\_\_\_ seller \_\_\_\_\_ Other, specify \_\_\_\_\_

Name of Other Party \_\_\_\_\_

Nature of Dispute (i.e.) Return of deposit, contract, structural, other \_\_\_\_\_

NAME OF ATTORNEY (if any) \_\_\_\_\_

Address \_\_\_\_\_ Zip Code \_\_\_\_\_ Phone \_\_\_\_\_

Are you currently involved in litigation regarding this matter? \_\_\_\_\_

NAME OF AGENT OR  
REPRESENTATIVE \_\_\_\_\_

Address \_\_\_\_\_ Zip Code \_\_\_\_\_ Phone \_\_\_\_\_

Dates available for mediation (within 6 week period) \_\_\_\_\_

The undersigned agrees to Mediation in accordance with the rules and regulations contained in the attached Real Estate Mediation Service Rules & Regulations of the Santa Clara County Association of Realtors®

**PLEASE BE SURE ALL PARTIES TO THE DISPUTE HAVE SIGNED THIS STATEMENT.**

\_\_\_\_\_  
Signature \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
Signature \_\_\_\_\_ Date \_\_\_\_\_

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## MEDIATOR DISQUALIFICATION FORM

\_\_\_\_\_ VS. \_\_\_\_\_

\_\_\_\_\_  
**CLAIMANT PARTY**

\_\_\_\_\_  
**RESPONDING PARTY**

All of the mediators listed below are members of the Santa Clara County Association of REALTORS® and are Mediators. Notice is hereby given to the parties; you have the right to disqualify the selection of a Mediator in the above caption matter. Cross out any names you wish to disqualify. A mediator will be appointed from those not disqualified by either of the parties. The mediator will be a neutral third-party who has no financial or personal interest and will disclose any circumstances likely to create a presumption of bias or prevent a prompt meeting of the parties.

**SUSAN GOLDEN**

**DOUG TOBIN**

**CARL SAN MIGUEL**

**ANTHONY VENTURA**

\_\_\_\_\_ I have no objection to any of the above mediators.

\_\_\_\_\_ I object to the following persons.

Reason: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2008.**

\_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**NAME**

\_\_\_\_\_  
**NAME**

**SUSAN GOLDEN, CRS, GRI**

Susan Golden Mediation Services  
Golden Group Properties  
1540 Parkmoor Avenue, Suite A  
San Jose, CA 95128  
Office (408)295-4653, Fax (408) 295-4657

Primary business: Real Estate sales since 1985  
Mediator since: 1995  
Types of Disputes: Real estate deposit disputes, Real estate non-disclosure disputes, landlord-tenant, neighbor-to-neighbor, Homeowner Association  
Over 110 mediations performed  
Experience: Santa Clara County Superior Court Mediation Panel; Santa Clara County Small Claims Court, Mediator and Mediation Trainer for Santa Clara County Dispute Resolution Program Services, Hearing Officer & Chair of SCCAOR Professional Standards Committee 1999, 2003, 2004, 2005, 2006; Chair of SCCAOR Grievance Committee, 1995

**DOUGLAS TOBIN**

Intero Real Estate Services  
12900 Saratoga Avenue  
Saratoga, CA 95070  
408-342-8690 fax:408-904-7619

Primary Business: 30 years in residential real estate  
Mediator since: 1991  
Types of Disputes: mediation and arbitration involving real estate transactions  
Experience: Full-time professional 30 years, in all areas of real estate including, single family residential, income property & exchanges, short sales, REO transactions, foreclosures, bankruptcy and probate and expert witness testimony. SCCAOR: "Realtor of the Year-2000", Hearing Officer, Past Chairman of Arbitration & Professional Standards Committee, Past CAR Director, Past CAR Regional Chair and Past President of Santa Clara County Association of REALTORS®.

**CARL SAN MIGUEL, GRI**

Highland Properties & Highland Financial  
286 E. Hamilton Ave., Suite B  
Campbell, CA. 95008  
408-374-5211, fax: 408-374-9991

Primary Business: real estate sales, finance, management  
Mediator since: 1994  
Types of Disputes: mediation and arbitration involving real estate transactions  
Experience: Jr. Col. Prof. Real Estate, business purchases, Lending, Sales & Leasing SCCAOR: Hearing Officer Arbitration & Professionals Standards Committee, Past CAR Regional Chair, Past CAR VP Regional Chair and NAR Director, and Past President of Santa Clara County Association of REALTORS®

**ANTHONY F. VENTURA**

Miller, Morton, Caillat & Nevis  
25 Metro Drive, 7<sup>th</sup> Floor  
San Jose, CA 95110  
408-292-1765, fax: 408-436-8272

Primary Business: Partner with practice involving real estate, business and insurance litigation.  
Mediator since: 1998  
Types of Disputes: mediation and non-binding arbitrations involving real estate transactions  
Experience: Since 2003, Mr. Ventura has served as a Judge Pro Tempore for the Santa Clara County Superior Court serving as a settlement officer for mandatory settlement conferences. Mr. Ventura also gives seminars regarding various real estate topics for the Santa Clara County Association of Realtors and various escrow companies and brokers.

## **MEDIATION SERVICE FEE SCHEDULE**

<u><b>DESCRIPTION</b></u>	<u><b>FEE</b></u>	<u><b>EXPLANATION</b></u>
Non-refundable filing fee (Payable to SCCAOR)**	\$200.00	(shared equally by the parties)
Mediator fee	\$125.00	per hour (shared equally by the parties)
Reading/Research fee	\$100.00	per hour (shared equally by the parties)
Conference Room rental	\$100.00	(first 3 hours + \$75.00 each additional hour) (shared equally by the parties)
Continuance fee	\$125.00	to be paid by the party requesting the continuance and at the discretion of the Mediator

\*\* (1) Claimant Party's filing fee must accompany the initial Request for Mediation/Dispute Information form. The check shall be in the amount of \$100.00, payable to the Santa Clara County Association of REALTORS®. All filing fees are non-refundable.

\*\* (2) Responding Party's filing fee must accompany the Responding Party Dispute Information Form and/or Counter Demand. The check shall be in the amount of \$100.00, payable to the Santa Clara County Association of REALTORS®.

(3) If a SCCAOR member is a direct party in the case, the Mediator fee will be waived.

**All other fees will be billed.**

**WHAT IS MEDIATION?** It is a process by which parties submit their dispute to a third-party neutral mediator who works with them to reach a settlement. Mediators receive a fee from the parties for their services and are rewarded in knowing that their efforts have resulted in an amicable settlement and diverted time and money required by arbitration and litigation.

**HOW DOES IT DIFFER FROM ARBITRATION?** It is less formal and the decision rests with the parties working through the mediator to reach their own settlement. Through caucuses each party is able to better understand the opposing party's view. It enables the parties to explore alternatives and compromise.

**BENEFITS OF MEDIATION.** The parties are directly engaged in the negotiation of the settlement; the neutral mediator can view the dispute objectively and can assist the parties to explore alternatives. The dispute can be resolved at an earlier stage which usually saves time and money. Creative solutions can become part of the settlement.

**STAGES OF MEDIATION.** As mediation is a voluntary process, the parties must agree in writing that their dispute will be conducted through mediation. The filing party requests mediation describing the dispute and the amount of money being sought. A filing fee must be submitted with the request. The responding party is contacted and may submit a written response and/or counterclaim in addition to the filing fee. (The \$200.00 filing fee is split and \$100.00 paid by each of the parties.) A roster of potential mediators is mailed to each party. The parties have the right to challenge any mediator. The filing papers are delivered to the mediator who sets the time, date and place for the mediation conference. Mediation fees are payable in advance of the mediation conference.

**APPOINTMENT OF A MEDIATOR.** The SANTA CLARA COUNTY ASSOCIATION OF REALTORS<sup>®</sup> will appoint a mediator from those persons not disqualified by either of the parties.

**QUALIFICATION OF A MEDIATOR.** No person will serve as a mediator in a dispute in which that person has any financial or personal interest. Prior to accepting an appointment, the mediator will disclose any circumstances likely to create a presumption of bias or prevent a prompt meeting of the parties.

**VACANCIES.** The SANTA CLARA COUNTY ASSOCIATION OF REALTORS<sup>®</sup> has the right to substitute a mediator in the event the original mediator assigned is unable or unwilling to serve.

**AUTHORITY OF THE MEDIATOR.** The mediator does not have the authority to impose a settlement on the parties but will attempt to help them reach a satisfactory resolution of their dispute. Whenever necessary, the mediator may obtain expert advice for technical aspects of the dispute provided the parties agree and assume the expense of obtaining such advice.

**REPRESENTATION.** Any party has the right to be represented by any person at the mediation conference provided the name and addresses are communicated in writing to the mediator and other party at least fifteen (15) days in advance of the mediation conference.

**DATE, TIME AND PLACE OF MEDIATION.** The mediator will set the date, time and place of each mediation session and communicate that information to each of the parties.

**CONTINUANCES.** Requests for continuances or rescheduling of mediation conferences must be made through the mediator. The party requesting the continuance will pay the \$125.00 continuance fee.

**PREPARING FOR THE MEDIATION CONFERENCE.** Define your needs and analyze the issues, prioritize the issues in light of your needs. Seek to make your proposals reasonable and legitimate and be willing to accommodate the other party's needs. Ascertain the strengths and weakness of your case. Have your facts and documents ready to support your claims. Focus on the interests and main points of the dispute.

**THE MEDIATION CONFERENCE.** The parties should come to the conference prepared and have all persons and documentation with them. The mediator will describe the procedures and ground rules covering each party's opportunity to talk, order of presentation, decorum, discussion of unresolved issues, use of caucuses and the confidentiality of the proceedings. The filing party discusses their view of the dispute then the other party responds. If joint discussions reach a stage where there is no progress, the mediator will break into

caucuses. The mediator serves not as an advocate for either party but as “an agent of reality.” The mediator will attempt to assist each party to view the other parties’ demands and work toward reducing a disagreement into a workable solution. The mediator will help the parties to remain focused and help prevent new outbreaks of disagreement.

**PRIVACY.** Mediation conferences are private. Only the parties and their representatives may attend. Other persons may only attend with the permission of the parties and the mediator.

**NO STENOGRAPHIC RECORD.** There will be no stenographic of the mediation process. The proceeding will not be tape-recorded.

**CAUCUSES** are meetings in which a mediator talks with the parties individually to discuss the issues.

**CLAIMANTS** are filing parties, also known as plaintiffs.

**CONFIDENTIALITY.** The mediator will not divulge information disclosed to the mediator by the parties or witnesses in the course of the mediation. All documents received by the mediator while serving in that capacity is confidential. The mediator will not be compelled to produce such records or to testify in regard to the mediation in any adversarial proceeding or court.

**COUNTERCLAIMS** are counter demands made by a respondent in his or her favor against a claimant. They are not mere answers or denials of the claimant’s allegation.

**DEPOSITS.** Each party will pay their portion of the mediator's fees, payable to the mediator, prior to the beginning of the mediation conference. The mediator will submit an accounting of estimated costs to each party. Subsequent bills will be paid promptly by the parties directly to the mediator. (*see filing fees.*)

**END OF MEDIATION.** The mediation will end when: (a) settlement agreement is signed by the parties; (b) the mediator determines that further efforts at mediation are no longer productive; or (c) the party or parties declare(s) in writing that the mediation has ended.

**EXPENSES.** All witness other fees and the party requiring such services will pay expenses. Costs of any proofs or expert advice produced at the request of the mediator will be borne equally by the parties unless they agree otherwise.

**EXCLUSION OF LIABILITY.** Neither the SANTA CLARA COUNTY ASSOCIATION OF REALTORS® nor the mediator will be a necessary party in judicial proceedings relating to the mediation. Neither the SANTA CLARA COUNTY ASSOCIATION OF REALTORS® nor the mediator(s) will be liable to any party for any act or omission in connection with any mediation conducted under these rules.

**FILING FEES.** The two hundred dollar (\$200.00) non-refundable filing fee (payment equally shared by all the parties) must be payable to the SANTA CLARA COUNTY ASSOCIATION OF REALTORS® prior to the appointment of a mediator. (*see deposits paid to mediator*)

**MEDIATION** is process in which a neutral assists the parties in reaching their own settlement but does not have the authority to make a binding decision.

**NEGOTIATION** is a process in which disputants communicate their differences to one another and with this knowledge, try to resolve them.

**PARTIES** are the disputants.

**REFUNDS.** Once the parties agree to submit their dispute to mediation, no refund of the filing fee will be made.

**RESPONDENTS** are responding parties, also known as the defendants.

**SETTLEMENT.** When the parties reach an agreement, they should reduce the terms in writing. If any or all of the issues remain unresolved, the parties may submit to arbitration.