



CONSTRUCTION DISPUTE RESOLUTION SERVICES, LLC
Specializing in Mediation & Arbitration

3600 Rodeo Lane, Suite B7
Santa Fe, NM 87507

New Mexico: 505-474-9050
Fax Phone: 505-474-9061

Out of State: 888-930-0011
Email: cdrs@cdrsllc.com

Website: www.constructiondisputes-cdrs.com

HOME INSPECTION
MEDIATION RULES AND PROCEDURES
TABLE OF CONTENTS

AUGUST 15, 2009

©Copyright by CDRS 2009 – all rights reserved

HIM-3 INITIATION OF MEDIATION
HIM-5 PARTY REPRESENTATION AND OBSERVERS
HIM-7 APPOINTMENT OF MEDIATOR
HIM-8 MEDIATOR DISCLOSURE AND DISQUALIFICATION
HIM-9 LOCATION OF MEDIATION SESSION
HIM-10 DATE(S) OF MEDIATION SESSION
HIM-12 MEDIATOR'S PRE-SESSION CONFERENCE
HIM-15 FEES, COSTS AND EXPENSES



SPECIALIZING IN MEDIATION & ARBITRATION & DISPUTE REVIEW BOARDS

3113 Pueblo Sapawe
Santa Fe, NM 87507

CONSTRUCTION DISPUTE RESOLUTION SERVICES, LLC

New Mexico: 505-473-7733 Toll Free: 888-930-0011
Fax Phone: 505-474-9061 Email: cdrs@cdrsllc.com
Website: www.constructiondisputes-cdrs.com

HOME INSPECTION **MEDIATION RULES AND PROCEDURES**

AUGUST 15, 2009

©Copyright by CDRS 2009 – all rights reserved

.....

NOTE: IF YOUR INSPECTION AGREEMENT OR CONTRACT CALLS FOR MEDIATION FOLLOWED BY BINDING ARBITRATION, IF BOTH PARTIES MUTUALLY AGREE THAT THEY ARE TOO FAR APART IN THEIR POSITIONS TO BE ABLE TO SETTLE THE DISPUTE THROUGH MEDIATION, THEY CAN MUTUALLY AGREE TO BYPASS THE MEDIATION PROCESS AND GO DIRECTLY TO THE ARBITRATION PROCESS TO ALLOW AN ARBITRATOR TO RENDER HIS/HER FINAL AND BINDING ARBITRATION AWARD TO SETTLE THE DISPUTE. IF EITHER PARTY WANTS TO ATTEMPT TO SETTLE THE DISPUTE THROUGH MEDIATION, MEDIATION SHALL BE UTILIZED PRIOR TO ARBITRATION AS PER THE AGREEMENT OR CONTRACT.

.....

THESE HOME INSPECTION MEDIATION RULES AND PROCEDURES SHALL BE UTILIZED WHEN THE MEDIATION IS A RESULT OF A DISPUTE INVOLVING A HOME INSPECTOR, BUILDER, SUBCONTRACTOR, FINANCIAL INSTITUTION OR ANY OTHER PARTY WHO HAS A DIRECT INTEREST IN THE RESIDENCE THAT IS SUBJECT TO THE MEDIATION PROCESS, THAT IS STIPULATED AS THE DISPUTE RESOLUTION PROCESS IN A HOME INSPECTOR'S AGREEMENT OR RELATED DOCUMENT. THE MEDIATION RULES AND PROCEDURES SPECIFIED BELOW SHALL REPLACE THE STANDARD CDRS MEDIATION RULES AND PROCEDURES. THE STANDARD CDRS MEDIATION RULES AND PROCEDURES SHALL BE UTILIZED UNLESS THERE IS A CORRESPONDING RULE OR PROCEDURE SPECIFIED BELOW IN THESE RULES AND PROCEDURES.

THE HOME INSPECTION MEDIATION RULE (HIM) CORRESPONDS TO THE STANDARD CDRS MEDIATION RULE (M).

RULE – HIM3 INITIATION OF MEDIATION

A party may initiate the mediation process, as authorized by the Home Inspection Agreement or document, by fully executing a CDRS *Home Inspection Request for Mediation Services* and the *Home Inspection Agreement to Mediate* and transmitting them to CDRS, along with the \$675.00 required fees by US Mail, Fed-Ex or similar recognized delivery service. The Party requesting the mediation shall be the "Claimant". The Claimant shall send a copy of the *Home Inspection Request for Mediation Services* and a copy of the *Home Inspection Agreement to Mediate* form to the other Party whether it is

the home inspector, or other Party by certified or registered mail, return receipt requested. The Other Party to the mediation shall be referred to as the "Respondent".

RULE – HIM5 PARTY REPRESENTATION AND OBSERVERS

A Party to a mediation may be represented by themselves, their attorney(s), or any individual(s) that the Party designates to be their representative(s). The Party must notify the CDRS case administrator, and the other named Parties to the mediation, if they are to have any other individual serve as their representative. The representative's name, address, phone number, fax number, e-mail and any pertinent information about the representative must be supplied in writing to the case administrator and to the other named Parties to the mediation, as soon as possible. Parties who choose to not represent themselves and/or will utilize the assistance of an attorney, must notify CDRS, and the other named Parties to the mediation, of the name, address, telephone number, fax number and e-mail address of the attorney at the time of submission of the *Home Inspection Request for Mediation Services*. If a decision to utilize the services of an attorney is made after the submission of the *Home Inspection Request for Mediation Services* has been filed with CDRS, the Parties must notify CDRS, and the other named Parties to the mediation, of the attorneys information, as stipulated above, as soon as the decision has been made to utilize the services of an attorney.

CDRS has the authority, with the approval of the mediator, to allow up to three CDRS ADR Specialists to attend all meetings, conference calls or mediation sessions as observers, for educational purposes only. These CDRS ADR Specialists will not participate or be involved with the mediation in any way, unless the Parties and the mediator mutually agree to allow the observer(s) to participate in the mediation process.

RULE – HIM7 APPOINTMENT OF MEDIATOR

There shall be one mediator, experienced in residential construction, assigned to the case by the CDRS administrator. The CDRS Administrator will consider the construction-related expertise of the mediator required to handle the mediation session, the location of the mediator and the fees of the mediator in selecting the mediator to handle the dispute. Neither the Claimant nor Respondent shall participate in the selection of the mediator.

RULE – HIM8 MEDIATOR DISCLOSURE AND DISQUALIFICATION

- (a) If the mediator is dismissed, a new mediator shall be appointed according to RULE-HIM7. (replaces RULE-A8(d))
 - (b) If an mediator becomes ill, resigns or is unable to continue with the arbitration, a new mediator shall be appointed according to RULE-HIM7. (Replaces RULE-A9(e))
- (All other provisions of RULE-M8 shall remain in effect)

RULE – HIM9 LOCATION OF MEDIATION

The mediation shall be held at the homeowner's residence that is the subject residence of the mediation or unless both the Claimant and Respondent agree to hold the mediation at a different location.

RULE – HIM10 DATE(S) OF MEDIATION SESSION

CDRS shall select and specify the date(s) of the mediation session. CDRS shall make every effort to accommodate the requests of the Parties as to a convenient date(s) to conduct the mediation session with the concurrence of the mediator.

- (a) If additional time shall be required to complete the mediation session, the mediator shall select and specify the additional date(s) for the continuance of the mediation session. The mediator shall make every effort to accommodate the requests of the Parties as to a convenient date(s) to conduct the continuance of the mediation session.
- (b) By mutual consent of the Parties and the mediator, any scheduled mediation event may be rescheduled.
- (c) Upon a request by either of the Parties, the CDRS case administrator and/or the mediator, if appointed, shall determine if there is good cause or compelling circumstances that would merit a postponement or cancellation of the mediation session. If the request for a postponement is approved by the case administrator and/or by the mediator, the case administrator and/or the mediator shall select and specify the rescheduled date(s) of the mediation session. The mediator shall make every effort to accommodate the requests of the Parties as to a convenient date(s) to conduct the rescheduled mediation session. Please review the fees related to postponements or cancellations in the Fees and Costs Schedule located on the CDRS website.
- (d) If the CDRS case administrator or the mediator determines that a case needs to be postponed due to an illness or injury to one of the Parties or the mediator, due to inclement weather, due to non-payment of fees due to CDRS, due to travel arrangement problems or due to any other reason where the case administrator or mediator decides that a postponement is necessary, the case administrator will notify the Parties as soon as practicable as to the postponement and the date(s) of the rescheduled mediation session. The case administrator and mediator shall make every effort to accommodate the requests of the Parties as to a convenient date(s) to conduct the rescheduled mediation session.

RULE – HIM12 MEDIATOR’S PRE-SESSION CONFERENCE

If the mediator determines that it is necessary, a pre-session mediator’s conference shall be held between the mediator(s) and all of the Parties or their representatives to the mediation prior to the mediation session. The conference may be held in person or may be held by teleconference phone call at the discretion of the mediator(s). Items to be discussed shall include but not be limited to the following: claims and counterclaims, opening statements, closing statements, witnesses, depositions, rules and procedures to be followed during the session, dates and location for the mediation session, mediator disclosure information, and other related items at the discretion of the mediator(s) or at the request of the Parties. The mediator shall be empowered to schedule additional pre-session mediator conferences if deemed necessary by the mediator(s) or requested by one or more of the Parties, with the approval of the mediator(s). At the conclusion of the pre-session conference, the CDRS Administrator shall issue to the Parties, an *Mediation Pre-Hearing Order* specifying the particulars of the mediation session as agreed to by the Parties or specified by the mediator during the pre-session conference.

RULE – HIM15 FEES, COSTS AND EXPENSES

All fees, costs and expenses of the mediation should be specified and agreed upon in the *Home Inspection Agreement to Mediate* and in other CDRS or Home Inspection documents related to the mediation.

- (a) The cost of the mediation, as to which party is responsible to pay the costs of the mediation, shall be as specified in the *Home Inspection Agreement to Mediate*.
- (b) Prior to the issuance of the certified mediation agreement, any payments for the mediation process shall be made according to the payment process as stipulated in the *Home Inspection Agreement to Mediate*.
- (c) A deposit shall be required in all mediations as specified in the CDRS *Home Inspection Agreement to Mediate* unless there is a written agreement specifying other payment procedures. Non-payment of the required deposit may necessitate the postponement or cancellation of the mediation session.
- (d) At the conclusion of the mediation session, if applicable, the Parties will be invoiced for their applicable portion of the additional mediation fees, costs and expenses. Failure to pay when due may delay the issuance of the certified copy of the *Mediation Settlement Agreement*.