

**Arbitration Service
of Portland, Inc.**
www.arbserve.com
Providing Mediation and
Arbitration Services
Throughout Oregon
Since 1985

MEDIATION AND ARBITRATION

(for disputes arising under Oregon realtors printed forms)

Realtor associations throughout Oregon have collectively designed and use a printed sale agreement form to facilitate sales of residential property and other real property. Those agreements include provisions that require the parties to resolve any future disputes by mediation or arbitration, rather than by formal court litigation. This pamphlet explains how those mediation and arbitration procedures work.

MEDIATION: Settlement Negotiation Assisted by Mediator.

In mediation, the parties attempt to settle their dispute with the assistance of a neutral third person if direct negotiation between the parties has not resolved the dispute. The neutral person (the mediator) is skilled in helping people settle their own disputes. Any party can terminate the mediation process at any time for any reason (with or without good cause). The mediator does not take sides and does not render a decision. The dispute is resolved only if the parties themselves reach a settlement agreement. The mediator helps each party (in joint and private sessions) to share emotions and different view points in a constructive fashion, to focus on the underlying interests and goals of each party, to develop and refine settlement options, and to use objective standards. The mediation process will settle many disputes privately and quickly.

ARBITRATION: A Binding Decision Rendered by an Arbitrator.

In arbitration, the parties choose an impartial third person to decide the dispute. The parties are bound by the arbitrator's decision after a hearing in which the parties have an opportunity to be heard. The arbitration procedure takes the place of formal court litigation. If the mediation process has not resulted in a settlement, or if one of the parties refuses to take part in a mediation, any party can complete and file a simple claim form with Arbitration Service of Portland. The parties then choose an arbitrator from a list provided by Arbitration Service of Portland (ASP). A convenient hearing date is promptly set so that each side can present its case (with or without an attorney). The hearing (which is not open to the public) usually takes place in a conference room and is conducted in a dignified but informal manner. After listening to the testimony and considering the evidence, the arbitrator decides the dispute. The arbitrator's decision on the facts and the law is final. The arbitrator's written decision is called an "award." The claimant (the party who filed the claim form to begin the arbitration process) pays the arbitration filing fee. The parties share in paying the arbitrator's fee. Compared with court litigation, arbitration is said to have the advantages of speed, economy, convenience, privacy, finality and in having the dispute decided by a person with legal expertise and experience. Federal and state statutes allow the arbitration award to be confirmed as a court judgment.

(Note: Frequently, a claimant starts a mediation and arbitration simultaneously. If that happens, both procedures move forward, but the mediation takes place well in advance of an arbitration hearing. If the mediation results in a settlement, the arbitration process is terminated. If mediation does not produce a settlement, the arbitration continues to move forward and the parties have not lost any time in having the matter finally decided at an arbitration hearing.)

MEDIATION: Questions and Answers

Q. How does someone start the mediation process?

A. By completing a form and mailing it to Arbitration Service of Portland (ASP) with a non-refundable mediation filing fee of \$300. (Call ASP to receive a "Request for Mediation" form or download this form from ASP's website: www.arbserve.com.)

Q. What happens next?

A. ASP immediately writes all parties acknowledging the request for mediation. The other party has ten days to refuse or to respond affirmatively by mailing ASP a non-refundable \$300 mediation acceptance fee.

Q. What if the other party is not willing to mediate?

A. The other party may lose its right to recover attorney fees, because many of the sale agreement forms condition the right of a party to obtain attorney fees on a party's willingness to mediate. If the other party refuses or does not respond by the ten-day deadline (despite ASP's attempt to telephone and encourage participation), ASP will confirm such rejection or non-response by a letter to all parties, and you may initiate an arbitration (if you have not already done so).

Q. Are realtors required to mediate?

A. Only if the underlying agreement requires realtors to mediate. But, as a practical matter, even if not required to mediate, realtors, their insurance companies, and their attorneys usually voluntarily participate in a mediation because they know they will be required to arbitrate the claims against them and, therefore, they want the opportunity to participate in mediated settlement discussions.

Q. What happens if the other party accepts mediation?

A. ASP tells all parties by letter that mediation has been accepted and identifies the mediator. The mediator then arranges a conference call to set the time and place of the mediation.

Q. How long does the mediation process take?

A. After the mediator is appointed, the mediation usually occurs within 30 days (depending on the schedules of the parties and the mediator).

Q. Who pays the mediator?

A. The parties jointly share in paying the compensation of the mediator, who will be a retired judge or a real estate lawyer. The mediator charges at his/her regular hourly rate (but this cannot exceed \$300/hour).

Q. How does the mediation terminate?

A. When the mediator completes and mails to the parties a form stating that:

1. The mediation did not take place because a party failed to participate; or
2. The parties could not achieve a settlement; or
3. Mediation succeeded (and enclosing a copy of the settlement prepared by the mediator or the attorney for one of the parties).

Q. Am I required to have an attorney to represent me in mediation?

A. No, but consider this: your ability to persuade the other side will often depend upon the strength of your legal position. Whether you decide to hire an attorney to assist you at the mediation may depend on how many dollars are at risk. At the very least, most people see the wisdom of consulting with a real estate lawyer for an opinion on the legal issues and their chances of prevailing (if the dispute is not settled and must then be decided in arbitration by an arbitrator).

ARBITRATION: Questions and Answers

Q. Do I have to arbitrate?

A. Yes. Nearly every Listing Agreement and every printed form for the sale of residential real estate in Oregon requires all of the parties (including the real estate brokers and agents that were involved) to arbitrate all disputes arising out of the transaction. Those sale agreements require arbitration of all such disputes and specifically allow claims to be filed with Arbitration Service of Portland (ASP). Therefore, all such non-settled disputes must be arbitrated (unless it is a “small claim” (less than \$10,000)). Oregon and federal law expressly authorize the use of private arbitration in lieu of court litigation, and courts routinely enforce agreements to arbitrate.

Q. How do I begin an arbitration?

A. By filing with ASP a “Statement of Claim” form and by paying a non-refundable filing fee. (ASP will send you a Statement of Claim form upon request, or you may download the form from ASP’s website: www.arbserve.com).

Q. How much is the filing fee?

A. The amount of the arbitration filing fee is based upon the number of parties (sides) to the dispute and the amount in controversy, as follows:

<u>Under \$100,000:</u> (\$700 for 2 parties, plus \$200 for each additional party)	<u>Over \$100,000 up to \$1,000,000:</u> (\$1,000 for 2 parties, plus \$300 for each additional party)	<u>Over \$1,000,000:</u> (\$2,000 for 2 parties, plus \$500 for each additional party)
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If the amount in controversy does not exceed \$100,000, the dispute will be decided by a sole arbitrator. If the claim exceeds \$100,000, then the dispute is decided by a panel of three arbitrators, unless the parties agree to use a sole arbitrator. For example, in a dispute between buyer and seller involving less than \$100,000, whoever files the claim pays a filing fee of \$700, and the dispute will be decided by a sole arbitrator.

Q. What happens when an arbitration claim is filed?

A. ASP immediately gives written notice to all parties that an arbitration has been initiated, encloses a list of proposed arbitrators, and advises each party how to participate in the selection of the arbitrator(s).

Q. What if the other party does not respond or participate in the arbitration?

A. Unlike mediation, the arbitration process will move forward with or without the other side’s participation. Even if one party does not appear, the arbitrator’s decision (the written award) will be binding on all parties (because the parties committed themselves to the arbitration process when they signed the real estate agreement).

Q. How is the hearing date set?

A. The parties are sent calendars, which they send to the arbitrator after striking out dates they cannot appear due to a scheduled vacation, business trip, surgery, or some other valid reason. The arbitrator will select the first date that will accommodate all concerned.

Q. Who pays the arbitrator(s)?

A. The parties jointly share in paying the regular hourly compensation of an arbitrator (who will be a retired judge or real estate lawyer) but not to exceed \$300 per hour.

Q. How long does the arbitration process take?

A. Most arbitrations conclude within three months from the date the claim is filed.

Q. Are parties required to hire attorneys?

A. No. Each party separately decides whether to be represented by an attorney. One party might have an attorney, while the other side chooses to not use a lawyer. The more money that is at stake, the more likely that parties will hire attorneys because they recognize that:

1. The arbitrator(s) will decide factual disputes and legal issues based on legal principles;
2. A lawyer is trained to analyze facts and to understand and interpret the law;
3. A lawyer is trained to properly present evidence, examine witnesses, understand arbitration procedures, and argue a client's position.

Additional Questions and Answers

Q. Am I required to mediate or arbitrate a small claim?

A. The current state-wide sale agreement form provides a small claims court exception, and those small claims are to be resolved in a small claims court (and not by mediation or arbitration) if the claim is within the small claims jurisdiction amount (currently, \$10,000).

Q. What is Arbitration Service of Portland?

A. ASP is a neutral, independent, and professional arbitration company that provides mediation and arbitration services to every county in Oregon. ASP's administrator is an attorney.

Q. What does ASP do?

A. ASP acts as a procedural umpire and provides the disputants with the security of an all-encompassing set of rules so that the mediation or arbitration process moves forward efficiently and fairly. Created in 1985, ASP has assembled high quality mediators and arbitrators and is the only Oregon company that administers mediations and arbitrations throughout Oregon.

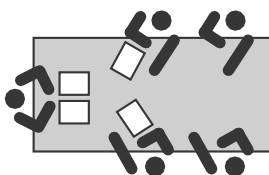
Q. Is ASP connected with any real estate group?

A. No. The Oregon Association of Realtors (OAR) has formally endorsed ASP as its preferred provider of mediation and arbitration services throughout Oregon, but ASP is not allied with OAR or any other realtor association, business, industry, or profession. ASP has been designated in mediation and arbitration clauses in printed forms and other agreement used throughout Oregon by banks, title companies, motor vehicle dealers, builders, and other entities and attorneys to resolve many types of disputes: construction, employment, consumer, partnership, leases, loans, buy-sell and all kinds of business transactions.

Q. What if I have other questions?

A. You may call ASP with procedural questions, but ASP cannot give legal advice. You should call your lawyer with questions about your legal rights and duties.

This information (revised 3/1/23) was prepared by:



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