



ALTERNATIVE DISPUTE RESOLUTION

This memorandum was prepared by legal counsel for the Hawaii Association of REALTORS® to provide buyers and sellers of real estate in Hawai'i with a general explanation of the types of so-called "alternative dispute resolution" – that is, methods to settle disputes which might arise in a real estate transaction other than filing a lawsuit.

Lawsuit. Filing a lawsuit has been the traditional method of resolving disputes which the parties are unable to resolve through negotiation. The litigation process is governed by a complex set of procedural rules and procedures and almost always requires legal counsel. A decision is rendered in favor of one party and against the other by a judge or jury who may lack expertise in the subject matter of the dispute. The losing party has a right to appeal. Litigation is ordinarily very expensive, very cumbersome, and very slow. The remedies available are generally fixed by statute or by prior court decisions.

Sections C-32 and C-33 of the Hawaii Association of REALTORS® standard form Deposit Receipt, Offer and Acceptance (DROA) offer alternative dispute resolution options for buyers and sellers of real estate in the form of mediation and arbitration:

Mediation. Mediation is a voluntary non-adversarial process in which a trained mediator (neutral third party) acts to facilitate the parties in reaching a creative solution to their dispute. The mediator is generally selected by the parties for his or her knowledge of the subject area and is usually a skilled communicator and negotiator. The rules and procedures are less formal and less rigid than litigation. A mediation may include representatives and attorneys, although they are not required. The key difference between mediation and litigation or arbitration is that the mediator does not render a decision. Instead, the mediator helps the parties reach their own decision. A successful mediation results in a mutually satisfactory settlement agreement which is enforceable as a contract between the parties. Mediation is generally fast and inexpensive, and an unsuccessful mediation does not preclude the use of the legal options (e.g., arbitration or litigation).

Arbitration. Arbitration is a process where the arbitrator, a neutral third party, conducts a hearing during which each party to the dispute presents evidence and arguments of counsel, after which the arbitrator renders a decision in favor of one party and against the other. The parties collaborated in the selection of the arbitrator who is knowledgeable of the subject and who is both neutral and objective. The parties make prior agreements regarding the rules of the proceedings. Attorneys are not required, but are generally recommended. In "binding arbitration," the parties agree to be bound by the decision of the arbitrator and to waive any right to appeal on the merits of the dispute. An award in arbitration can be taken to court and converted to a legal judgment for purposes of collection. Arbitration may be quicker and more cost-effective than litigation.

(NOTE: This information is not intended to be exhaustive list of considerations in deciding whether or not to elect alternative dispute resolution over litigation. This information is not a substitute for proper evaluation and advice by an attorney of the specific facts and law governing selection of a dispute resolution process.)

For Mediation and/or Arbitration Services, consult: an attorney, the American Arbitration Association (call AAA Western Case Management Center toll free at 877-528-0880 to file a claim, www.adr.org, email websitemail@adr.org), the Mediation Services of Maui (808-244-5744, www.mauimmediation.org, or info@mauimmediation.org), or the telephone book for other alternate dispute resolution providers.