

WSCAI Mediation Program Procedures

In Washington State, mediation is protected by statute. The statute defines mediation as “Mediation’ means a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.” RCW 7.07.010. In most cases mediation is confidential. There are some exceptions. These are set forth in Chapter 7.07 RCW and in particular RCW 7.07.030. RCW 7.07.040, RCW 7.07.050 [<https://app.leg.wa.gov/rcw/default.aspx?cite=7.07&full=true>] If confidentiality is important to you, please review these statutes for more detailed information concerning the scope of the mediation confidentiality and exceptions.

The parties to a dispute arising under any of the States’ community association statutes, for example Chapter 64.32 RCW, 64.34 RCW, Chapter 64.38 RCW, Chapter 64.90 RCW, or an association's declaration, bylaws, or rules and regulations are encouraged to initiate mediation. Under RCW 64.90.405(2)(w), an association may “require that disputes between the association and unit owners or between two or more unit owners regarding the common interest community, other than those governed by chapter 64.50 RCW, be submitted to nonbinding alternative dispute resolution as a prerequisite to commencement of a judicial proceeding.”

The WSCAI mediation program is designed to provide a faster and less expensive alternative to litigation. The goal is to provide a resolution framework for common community association disputes and deliver an efficient, economic and fair proceeding for all participating parties.

A mediator assists the parties in reaching their own decision on a settlement of the dispute. The mediator is not a decision-maker. If a voluntary settlement of all matters at issue is not reached at the mediation, it is the secondary goal of the program to improve the ability of the participants to communicate and to better understand each other and to reach agreement to the extent possible.

The mediation process involves the following:

1. **Initiate Mediation.** Both parties must agree to mediation. Both must complete the online mediation Intake Form on the WSCAI website at <https://wscai.org/wscai-mediation-program/mediation-intake-form/> and pay the mediation service fee, within 30 days of each other.
2. **Consent to Mediation.** A party initiating mediation may notify the other party of the mediation request submission. In the alternative, upon receipt of a completed Intake Form and payment of the first one-half of the mediation fee, the Chapter office will make reasonable efforts to contact the second party and extend the invitation to mediate. Consent to mediation by a party constitutes consent to all terms of these Procedures.
3. **Required Information.** After both parties have consented to mediation, the matter is assigned to a mediator, who is provided with the Intake Forms.

4. Representation. No attorney is necessary for mediation. If a party is represented by an attorney, the attorney is **not** permitted to attend or participate in the mediation. This does not prohibit a participant from seeking legal advice.

5. Mediators. The WSCAI mediation program utilizes mediators from its approved Panel of Mediators. To be eligible for the Panel, a mediator must: (a) be a current member of WSCAI; (b) have been a member of CAI, either individually or as employee of a member for at least five (5) years; (c) have successfully completed a 40-hour mediator training program in facilitative mediation administered by the Dispute Resolution Center of any county in Washington State or, if approved by the WSCAI Board of Directors in its discretion, an equivalent program administered by a different provider, among other qualifications.

6. Appointment of Mediator. A mediator shall be appointed as follows: (a) Upon receipt of a request for mediation consented to by both parties, a completed Intake Form and payment, WSCAI will appoint a mediator from the Panel of Mediators. (b) The Mediator will confirm with WSCAI that the mediation is accepted. (c) The parties will be informed of the appointment of their mediator. The parties may request the assigned mediator to be disqualified based upon a conflict of interest or perceived conflict. (d) The mediator will then receive the Intake materials and communicate with the participants, generally via email, to organize scheduling, location, time and any other necessary logistics. The mediation will generally be scheduled to occur within 30 days after assignment to the mediator. (e) If either party objects to the appointed mediator or if the appointed mediator is unable to serve, WSCAI will seek to appoint another mediator from the Panel. WSCAI reserves its right to decline to accept the mediation or to attempt to appoint a different mediator, at its sole discretion.

7. Mediator Impartiality. An appointed mediator must: (a) decline a mediation if the mediation cannot be conducted in an impartial manner; (b) disclose, as soon as possible, all actual and potential conflicts of interest that could reasonably be seen as raising a question about the mediator's impartiality, if any.

8. Mediator Duty to Disclose. Prior to accepting appointment, mediators are required to make a reasonable inquiry to determine whether there are any participants or other facts, or issues that are likely to create a potential or actual conflict of interest for the mediator. Mediators must disclose any such facts or any issues likely to create an appearance of bias or that could prevent a timely resolution of the parties' dispute. The mediators will rely upon the information provided in the Intake Form to perform this reasonable inquiry.

9. Waiver of Conflict. The parties may, upon receiving disclosure of any actual or potential conflict of interest of the mediator, waive such conflict and proceed with mediation.

10. Replacement Mediator. If any mediator is unwilling or unable to serve, WSCAI will appoint another mediator or terminate the mediator appointment process, in which case a full refund of the parties' fees will be made.

11. Responsibilities of the Mediator. Mediation is based on the principle of party self-determination, which means a voluntary decision in which each party makes free and informed choices, based upon the information the parties share with each other.

- The mediator will actively listen and may reflect, summarize or restate a participant's goals and positions.
- The mediator is authorized to conduct separate confidential discussions or meetings with the parties during the mediation conference. These separate communications are called a caucus.
- The mediator does not provide legal advice to the parties.
- The parties are encouraged to exchange all relevant documents that pertain to the dispute. The mediator will rely upon the information provided in the Intake Form. Being factual and complete on the Intake Form is productive and helpful to the process.
- Information gained in a separate caucus is confidential, but a participant may be encouraged to share information brought up in a caucus to the extent that it may be helpful to the mediation process.
- The mediator assists the parties in reaching their own decision on a settlement of the dispute. The mediator is not a decision-maker. The mediator does not judge the case or the parties, but facilitates the dialogue between the parties.
- A mediator does not have the authority to impose a settlement on the parties but will attempt to help the parties reach a satisfactory resolution of their dispute.

12. Responsibilities of the Parties. Each party shall ensure that someone with complete authority to resolve the dispute attends the mediation. For a community association that may be an officer, director or manager duly authorized to bind the association. Each participant must approach the mediation in good faith, with a willingness to work toward a solution. During the mediation, the parties shall exercise their best efforts to be prepared for problem solving, to be courteous, respectful and to engage in a meaningful and productive mediation.

13. Privacy. Mediation conferences and communications are private proceedings. The parties attend the mediation conference. Other persons may attend only with the advance permission of the parties and the mediator. Attorneys for the parties are not permitted to attend.

14. Confidentiality by Mediator. Confidential information disclosed to a mediator shall not be divulged by the mediator. The mediator shall maintain the confidentiality of all information obtained in the mediation, and all documents received by a mediator while serving in that capacity shall be kept confidential. In general, a mediator may not be called to testify in any judicial or other proceeding as to any aspect of the mediation process. (See Chapter 7.07 RCW).

15. Confidentiality by the Parties. The parties agree that all information, statements and discussions exchanged or held in the mediation process will be considered as statements made and information exchanged in furtherance of a compromise and settlement and will not be admissible in any proceeding or trial, unless the parties jointly agree otherwise. They shall be protected by the mediation statutes referenced above and Rule of Evidence ER 408. The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any judicial or other proceeding the following, at a minimum, unless agreed to in writing by all participants: (a) views expressed or suggestions made by a party or other participant with respect to a possible settlement of the dispute; (b) admissions made by a party or other participant in the course of the mediation proceedings (except as set forth by law); (c) statements made by the mediator; or (d) the fact that a party had or had not indicated willingness to accept a proposal for settlement.

16. No Mediation Record. There shall be no written or electronic recording of the mediation. In addition, no party shall audio or video record any part of the mediation process. Any violation of this restriction may be a violation of RCW 9.73.030 and may subject a person to penalties under RCW 9.73.060, among other penalties, or consequences.

17. Termination of Mediation. The mediation shall be terminated: (a) by the execution of a settlement agreement by the parties; (b) by a written or verbal declaration of the mediator to the effect that further efforts at mediation would not likely contribute to a resolution of the dispute; or (c) by a written or verbal declaration of both parties to the effect that the mediation proceedings are terminated.

18. Liability. Neither WSCAI nor any mediator shall be liable in any way to any person for any claim of any nature whatsoever including but not limited to any alleged error, act, or omission in connection with any mediation. Neither the mediator nor WSCAI are necessary parties in any judicial proceeding relating to the mediation, for example an action to enforce a mediation settlement agreement.

19. Interpretation and Application of Procedures. The mediator shall interpret and apply these Procedures as they relate to the mediator's duties and responsibilities. WSCAI shall interpret and apply the balance of the procedures for which it is responsible. The parties shall interpret and apply the procedures for which they are responsible.

20. Mediation Fees. The total cost of the basic mediation is \$250 per person (\$275 for parties who are not members of WSCAI). A portion of this amount will be retained by WSCAI for administration of the program and a portion will be paid to the mediator. The mediation fee must be paid in full prior to any mediation session.