

NC Chapter of the Community Associations Institute

Community Association Mediation Program (CAMP)

NC General Statute § 7A-38.3F provides that:

The parties to a dispute arising under [the North Carolina Condominium Act, North Carolina Planned Community Act], or an association's declaration, bylaws, or rules and regulations are encouraged to initiate mediation pursuant to this section.

The Community Association Mediation Program (“CAMP”) of the NC Community Associations Institute is designed to provide a faster and less expensive alternative to litigation. The goal is to provide a resolution framework for HOA or condo disputes and deliver an efficient, economic and fair proceeding for both parties.

A mediator assists the parties in reaching their own decision on a settlement of the dispute. **The mediator is not a decision-maker.**

1. Initiation of Mediation. At least one party to an association dispute must be a North Carolina community association (HOA or condo association). Both parties must agree between themselves to initiate mediation, and both must complete the online mediation request form on the CAI-NC website at <https://cai-nc.site-ym.com/?Mediation> within 30 days of each other.

2. Consent to Mediation. A party initiating mediation must notify the other party of the mediation request submission. Consent to mediation by a Party constitutes consent to all terms of these Procedures.

3. Required Information. The association is responsible for providing to the mediator any governing documents relevant to the dispute prior to the mediation.

4. Representation. No attorney is necessary for mediation, but attorneys are not prohibited from participating on behalf of a party. A party wishing to bring an attorney to mediation must notify the mediator and all other parties at least 5 days prior to mediation.

5. Mediators. The CAMP shall utilize mediators from CAI-NC’s preapproved Panel of Mediators. To be eligible for the Panel, a mediator must:

- a. be a current member of the Community Associations Institute (CAI);
- b. have attended an CAI-NC Annual Conference or Law Day within the past 2 years;
- c. have not been convicted of fraud, misrepresentation, or misappropriation of funds or property;
- d. have not had a professional license or credential suspended or revoked;
- e. have not been reprimanded, censured or placed on probation by a professional or licensing organization;

- f. have demonstrated experience with problem solving in the context of community association disputes; and
- g. either:
 - i. possess the Professional Community Association Manager (PCAM)[®] designation; or
 - ii. be an attorney licensed to practice law and in good standing with the NC State Bar; have a demonstrated concentration in community association law for at least five years; and attest that community association law constitutes at least half of the attorney's current practice.

6. Appointment of Mediator. A mediator shall be appointed as follows:

- a. Upon receipt of both parties' Request for Mediation, the CAMP will appoint a mediator from the Panel of Mediators. The parties must consent to any appointed mediator prior to mediation.
- b. If the parties fail to consent to the appointed mediator or if the appointed mediator is unable to serve, or if for any other reason the appointment cannot be made, the CAMP may appoint another mediator from the Panel.

7. Mediator Impartiality. An appointed mediator must:

- a. decline a mediation if it cannot be conducted in an impartial manner;
- b. disclose, as soon as practicable, all actual and potential conflicts of interest that could reasonably be seen as raising a question about the mediator's impartiality.

8. Mediator Duty to Disclose. Prior to accepting appointment, mediators are required to make a reasonable inquiry to determine whether there are any facts that are likely to create a potential or actual conflict of interest for the mediator. Mediators must disclose any facts likely to create a presumption of bias or that could prevent a timely resolution of the parties' dispute.

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, the CAMP shall appoint another mediator, unless the parties agree otherwise.

11. Responsibilities of the Mediator.

- a. Mediation is based on the principle of party self-determination, which means a voluntary, un-coerced decision in which each party makes free and informed choices.
- b. The mediator is authorized to conduct separate discussions or meetings with the parties or their representatives, whether before or during the mediation conference. Such communications may be conducted by telephone, in writing by letter or email, in person, or otherwise.
- c. The mediator cannot and will not provide legal advice to the parties.

- d. The parties are encouraged to exchange all pertinent documents to the dispute. The mediator may request in writing a statement of the issues in dispute, including any prior history of negotiations. Information that a party wishes to remain confidential should be sent to the mediator in a separate communication marked as “confidential.”
- e. A mediator assists the parties in reaching their own decision on a settlement of the dispute. **The mediator is not a decision-maker.**
- f. 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. The mediator may make recommendations for settlement to a party privately or, if the parties agree, to both parties jointly.
- g. In the event that a settlement of all or some issues in dispute is not achieved within the mediation conference, the mediator with the parties’ consent may continue to communicate in an effort to facilitate a complete settlement. The mediator is not the attorney of any party and has no fiduciary duty to any party.

12. Responsibilities of the Parties.

- a. Each party shall ensure that someone with complete authority to resolve the dispute attends the mediation.
- b. Prior to and during the mediation, the parties shall exercise their best efforts to prepare for and engage in a meaningful and productive mediation.

13. Privacy. Mediation conferences and communications are private proceedings. The parties and their representatives may attend mediation conferences. Other persons may attend only with the advance permission of the parties and the mediator.

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. No mediator may be called to testify in any judicial or other proceeding as to any aspect of the mediation process.

15. Confidentiality by the Parties. The parties agree that all evidence, statements and discussions made during the mediation process shall be considered conduct or statements made in compromise negotiations and not admissible in any proceeding or trial. 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, unless agreed to by the parties:

- 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;
- c. proposals made or views expressed 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.

- 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 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. The mediator and CAMP are not necessary parties in any judicial proceeding relating to the mediation. Neither the CAMP nor any mediator shall be liable to any party for any error, act, or omission in connection with any mediation.

19. Interpretation and Application of Rules. The mediator shall interpret and apply these Rules as they relate to the mediator's duties and responsibilities. All other Rules shall be interpreted by the CAMP.

20. Sharing of Costs of Mediation. All costs of the mediation, including travel or expenses or charges of the mediator as may be agreed to by the parties, shall be paid equally by the parties unless otherwise agreed. Any expense of a participant in mediations shall be paid by the party requesting the participant's attendance.

21. Mediation Fees. The total cost of the basic mediation is \$500, with half to be paid online by each party when submitting their respective request for mediation. Of this amount, the mediator will receive \$300 for the mediation, not to exceed two hours. The initial cost of mediation must be paid in full prior to any action on the mediation. Any mediation exceeding two hours will be billed at the rate of \$300 an hour, split equally between the parties, and such funds shall go to the mediator.

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