

# INSTRUCTIONS FOR PARTIES PARTICIPATING IN A CCB MEDIATION

## Scheduling the Mediation

The agency will schedule an on-site mediation with the parties and notify them of date and time. Some cases may be assigned for telephone mediation. Examples are if the work has already been repaired or it is strictly a monetary issue.

## Attending and Participating at the Mediation

**Complainant:** The complainant must attend the on-site mediation. If the complainant does not attend the mediation, the complaint may be closed. If the complaint is closed, the complainant will not have access to the bond.

**Respondent:** We urge the respondent (the contractor who is the subject of the complaint) to attend the mediation to tell the contractor's side of the story, see exactly what the complainant believes is wrong, and participate in settlement discussions.

A person who participates in an on-site mediation must be a party to the complaint (a complainant or a respondent) or the party's agent. A party's agent must be over 18 years old and must be authorized (preferably in writing) to sign a binding settlement agreement for the party. Others may attend if their presence might be helpful to the settlement discussions.

**The CCB mediator:** The mediator is trained to help the parties find a mutually agreeable resolution to the dispute. The mediator may exclude anyone from the mediation or cancel the mediation if the person is threatening, hostile or not contributing to the mediation process. The mediator may exclude individuals who are not parties to the complaint or their attorneys from parts of the mediation. If subcontractors attend the mediation, the mediator may have them enter the home one at a time to look at the work they each did.

## What to Expect at the Mediation

- **In seeking resolution to the dispute, options may include:**
  - The respondent completes the work,
  - The respondent or the complainant pays an agreed upon amount of money and performs no more work,
  - The respondent performs part of the work and a monetary agreement is arrived at and respondent is released from the rest of the work,
  - The complainant pays none, all, or a reduced amount of the remaining money owed on the contract and the respondent performs no additional work, all of the work, or part of the work remaining.

2) In preparation for this mediation, please consider all of these options. Don't focus on one option as this may change during negotiations.

3) You may want to consult with an attorney (optional).

4) Please allow time for the mediation process to follow its natural course.

5) Please bring all relevant documents. Your mediator may ask for contracts, change orders, plans or any other relevant documents.

6) Please have all relevant witnesses present. If you had a family member, friend or employee present when the contractor was working, or if you had an employee doing the job, you will want that person present to give a first-hand explanation of what happened.

7) Mediators may offer a recommendation for corrective work. However, they are not experts in every possible field of construction and any opinion is based on their observation of the visible work.

## Types of Settlement Agreements

Settlement agreements differ on the scope of the release and whether the agreement is a *substituted* or *not substituted* contract.

- **Scope of release:** A release is an agreement that a party will no longer be liable for certain claims. The possibilities are as follows:
  - **Complete release:** This is a release of all liability for known and unknown defects. This is normally used only where the complainant is convinced that there is no chance any other defects will be discovered and the parties want to completely end any possibility of future relations with each other.
  - **Partial release:** This is less than a complete release. The release may be limited to only the items addressed in the complaint. The respondent would still be liable for any other defects that are not part of the complaint.
- **Substituted or Not Substituted Contract:** This applies if the respondent promises to take action in the future, such as to repair some work or pay an amount of money. This can also apply if the complainant is paying the respondent a reduced amount or if the parties agree to a walk-away deal. The distinction between a substituted and not substituted contract is what happens if the respondent fails to keep its promise:
  - If the agreement is a **substituted contract**, the complainant is limited to suing for the amount of the agreement but complainant does not have to prove damages. The only item at issue will be whether the respondent fulfilled the settlement as agreed.
  - If the agreement is **not** a substituted contract, the complainant is not limited to the settlement agreement but must prove that the respondent has financially harmed them and to what extent.

Your mediator will try to help you understand each option but cannot give legal advice. If you're having difficulty deciding which option best fits your individual circumstance, you may want to consult an attorney. That consultation should happen before the mediation unless your attorney plans to attend.

### After the Mediation

If the parties settle the complaint, each party receives a copy of the settlement agreement to sign at the mediation conclusion. When there is a settlement agreement as a result of the mediation, the CCB will keep the complaint open until the time for completion of the agreement has elapsed.

If the parties do not settle the complaint, both parties receive a copy of the mediator's report and observations. When you receive the report, your dispute analyst explains the next step in processing the complaint. The mediator's involvement ends with the mediator's report or settlement.

If there is no settlement, the settlement agreement is breached, or either party disputes the CCB mediator's report and observations, the parties must go to court to resolve the problem. The agency will provide instructions if that is required.

A certified court judgement is required to access the contractor's bond.

Remember, the purpose of the mediation is to resolve your dispute and avoid what can be an expensive and lengthy court battle.

**Questions? Call 503-934-2247 or email [disputes@ccb.state.or.us](mailto:disputes@ccb.state.or.us)**

**See you at the mediation.**