

SINGAPORE MEDIATION CENTRE -

COUNCIL FOR ESTATE AGENCIES (CEA) MEDIATION RULES (the “SMC-CEA Mediation Rules”)

1 The Mediation Process

1.1 The mediation process administered by the Singapore Mediation Centre (the “SMC”) is governed by the SMC-CEA Mediation Rules as set out herein and subject to the Estate Agents Act 2010 (No. 25 of 2010) (the “Act”) and the Estate Agents (Dispute Resolution Schemes) Regulations 2011 (the “Regulations”). The SMC-CEA Mediation Rules are enacted as part of the CEA Mediation-Arbitration Scheme (the “CEA Mediation-Arbitration Scheme”) which is a dispute resolution scheme established under regulation 3 of the Regulations and the Terms of Reference of the CEA Dispute Resolution Scheme.

1.2 The CEA Mediation-Arbitration Scheme provides that disputes between a licensed estate agent (“EA”) and his client (“Client”) arising from or relating to an estate agency agreement entered into between them on or after 1 January 2011, in the form prescribed by the Estate Agents (Estate Agency Work) Regulations 2010, including any question regarding the existence, validity or termination of the agreement between them, shall first be resolved in the following manner:

Mediation First

- (i) The parties shall proceed to mediation under the mediation scheme prescribed by the CEA unless Client elects in writing not to mediate.
- (ii) The estate agent may ask the Client in writing whether he elects to mediate or not and if he elects to mediate, which approved mediation centre the consumer wishes to select. If the client does not reply, make any election or select an approved mediation centre in writing within three weeks of receipt of such enquiry, he shall be deemed to have elected in writing not to proceed to mediation. If the client has elected to mediate and the client has selected SMC as the dispute resolution centre the dispute shall be submitted to the SMC for mediation under the SMC-CEA Mediation Rules. If there is no settlement then the mediation is terminated pursuant to the SMC-CEA Mediation Rules.

1.3 The Parties to the mediation process shall be:

a Any EA under the Act, which may only be represented by any person authorised to make decisions on behalf of the EA in the conduct of any dispute resolution proceedings under the Regulations (up to 2 representatives per EA) . The Estate Agent must ensure that the salesperson (“SP”) (who represented the EA under the estate agency agreement under which the dispute arises) also attends the mediation;

and

- b Any current, or former client of an EA who has entered into an estate agency agreement in the form prescribed by the Estate Agents (Estate Agency Work) Regulations

- 1.4 The mediation process will involve the Parties and the Mediator(s). The mediation will be conducted in confidence, and all communications will be on a "without prejudice" basis.

2 Agreement for Dispute Resolution Services

- 2.1 Before mediation is carried out,
- a there must be an indication that CEA has been informed of the outcome of the attempt to resolve the matter between the parties
 - b the Party applying to refer the dispute for mediation must complete the Application for Dispute Resolution Services (the "Application Form") in Annex A; and
 - c all parties must indicate their consent to their involvement in the mediation in the following ways:-
 - (i) for the Client, the consent must be indicated by his signature in Part (E) of the Application Form; and
 - (ii) for the EA, the consent will be indicated by the party's endorsement in Part (F) of the Application Form.
- 2.2 In the case of a Client-initiated application, the EA will be notified by the SMC of the Client's application, and the EA shall endorse its consent in Part (F) of the Application Form and will provide the identity of the EA's representatives for the mediation to the SMC and the EA will notify the salesperson to attend the mediation.
- 2.3 In the case of an EA-initiated application, it is the responsibility of the EA to obtain the Client's signature in the Application Form to signify his prior agreement to participate in the mediation. The EA is to notify the salesperson to attend the mediation.
- 2.4 Only completed Application Forms together with payment in accordance with the Fee Schedule and clause 10.3 herein will be accepted by SMC.
- 2.5 The Parties will be deemed, upon completion and lodgement with SMC by either party of the Application Form in accordance with the above terms, to have accepted and to be bound by the terms of this procedure.

3 The Mediator(s)

- 3.1 Upon receipt of the completed Application Form, the SMC will appoint a person to act as the Mediator and, where necessary, for an additional person to act as Co-Mediator.

- 3.2 The SMC, in the selection, will choose a person who, in its view, will be best placed to serve as the Mediator. In the event that any of the Parties has reasons to object to a choice, the SMC will appoint another person.
- 3.3 A person selected as a Mediator will disclose any circumstances likely to create an impression of bias or prevent him from acting promptly. The SMC, upon receipt of such disclosure, will appoint another person as a Mediator, unless the Parties decide otherwise.
- 3.4 The Mediator(s) will -
- a prepare himself appropriately before the commencement of mediation;
 - b abide by the terms of this SMC-CEA Mediation Rules and the Code of Conduct in Annex B;
 - c assist the Parties in the drawing up of any written settlement agreement; and
 - d in general, facilitate negotiations between the Parties and steer the direction of the discussion with the aim of finding a mutually acceptable solution.
- 3.5 The Mediator (or any member of his firm or company) should not act for any of the Parties at any time in connection with the subject matter of the mediation. The Mediator(s) and the SMC are not agents of, or acting in any capacity for, any of the Parties. The Mediator is not an agent of the SMC.

4 The SMC

- 4.1 The SMC will make the necessary arrangements for the mediation, including -
- a appointing the Mediator(s);
 - b organising a venue and assigning a date for the mediation;
 - c organising an exchange of summaries of cases and documents; and
 - d providing general administrative support.

5 Exchange of Information

- 5.1 The Parties will exchange through the SMC, at least five (5) working days before the mediation, the following: -
- a a concise summary (the "Summary") stating its case; and
 - b copies of all relevant documents that the Party wishes to refer to for the purposes of the mediation.
- 5.2 Each Party may also send to the Mediator(s), through the SMC, or bring to the mediation documents which it wishes to disclose only to the Mediator(s), stating clearly in writing that the contents of these documents are to be kept confidential by the Mediator(s) and the SMC.

- 5.3 The Parties should try to agree to the maximum number of pages to be contained in their respective Summaries and on the maximum number of pages of supporting documents to be submitted. The Parties should also try to agree on a joint set of documents.

6 The Mediation

- 6.1 The mediation will be conducted in confidence, and no transcript or formal record will be made. No audio-visual recording will be made of the proceedings. Only the Mediator(s) and the Parties will be permitted to be present during the mediation.
- 6.2 All communications made in the mediation, including information disclosed and views expressed, are made on a strictly "without prejudice" basis and shall not be used in any proceedings.
- 6.3 The Mediator(s) may obtain expert advice in technical matters with the consent of the Parties, who shall bear the expenses incurred. The Mediator(s) may conduct joint meetings with all or separate meetings with each of the Parties, whether before or during the mediation.

7 Settlement Agreement

- 7.1 No settlement reached in the mediation will be binding until it has been reduced to writing and signed by or on behalf of the Parties.
- 7.2 For avoidance of doubt, a settlement that has been reduced to writing may take the form of an electronic record.
- 7.3 For avoidance of doubt, where a settlement reduced to writing takes the form of an electronic record, it may be signed by applying electronic signatures.

8 Termination of Mediation

- 8.1 The Client may withdraw from the mediation at any time before the scheduled mediation session, by giving notice of withdrawal in writing to the SMC, the Mediator(s) and the other Parties.
- 8.2 The mediation will terminate when -
- a a written settlement agreement is signed by the Parties;
 - b the Mediator(s) decides that continued mediation is unlikely to result in settlement;
 - c the Mediator(s) decides that he should withdraw from the mediation for any of the reasons stated in the Code of Conduct; or
 - d no settlement is reached at the end of one (1) day of mediation, or such longer period which shall be mutually agreed by all Parties and the Mediator(s).
- 8.3 Where mediation does not take place or is not completed for any reason whatsoever, the SMC may, in its absolute discretion, without further reference to the Parties or providing any reasons, terminate the Mediation.

- 8.4 Where mediation is terminated pursuant to paragraphs 8.2b, 8.2c, 8.2d or 8.3, the SMC, shall, as soon as practicable, give notice confirming the termination of the mediation to all the Parties and keep CEA informed of such termination. In any event, SMC shall keep CEA informed of any termination

9 Confidentiality

- 9.1 All Parties and Mediator(s) involved in the mediation will keep confidential and not use for any collateral or ulterior purpose -

- a the fact that mediation is to take place or has taken place;
- b any views expressed, or suggestions or proposals for settlement made by another Party in the course of the mediation;
- c proposals suggested or views expressed by the Mediator(s);
- d the fact that another Party had or had not been willing to accept a proposal for settlement made by the Mediator(s); and
- e all information (whether oral or in writing) produced for or arising in relation to the mediation, including any settlement agreement, except as directly necessary to implement and enforce any such settlement agreement.

- 9.2 A Party, the Mediator(s), or SMC shall not, without the written consent of all the parties, disclose to a third party any matter related to the items listed in 9.1 above except a copy of the settlement agreement and compiled statistics disclosed to CEA on mediations under the SMC-CEA Mediation Rules, including but not limited to compiled statistics on settlement rates, outcome of mediations, classification of disputes, size of claims, and the nationality, age, and education level of Clients

- 9.3 All documents (including electronically stored documents) or any other information produced for, or arising in relation to, the mediation will be privileged, and will not be admissible as evidence or discoverable in any proceedings connected with the dispute unless such documents would have in any event been admissible or discoverable.

- 9.4 The Parties will not call the Mediator(s) and/or the SMC (or any employee, officer or representative of the SMC) as a witness, consultant, arbitrator or expert in any proceedings in relation to the dispute.

10 Fees

- 10.1 All fees payable to the SMC (including Mediator'(s)' fees) will be borne by the Parties in accordance with the Fee Schedule set out in Annex C.

- 10.2 Each Party will bear its own costs, expenses and disbursements of its participation and the fees of its advisors or solicitors (if any) in relation to the mediation.

- 10.3 Where the mediation is initiated by the EA, the fees payable for the mediation must be paid in full upon submission of the Application Form. Where the mediation is initiated by the Client, the Client need only pay, at the time of the application, the portion of the fee

payable by him. The EA would have to forward the payment of its share of the fee within 14 days from the commencement of the mediation.

11 Waiver of Liability

- 11.1 The Mediator(s) will not be liable to the Parties for any act or omission in connection with the services provided by him in or in relation to the mediation, unless the act or omission is fraudulent or involves wilful misconduct.
- 11.2 The SMC and/or CEA will not be liable to the Parties for any act or omission in connection with the services provided by it or in relation to the mediation.
- 11.3 The Parties will not make any claim against the Mediator(s) and/or the SMC and/or CEA, their officers and employees for any matter in connection with or in relation to -
 - a the mediation;
 - b the services provided by the Mediator(s) and/or the SMC; and/or
 - c the dispute between the Parties.

12 Interpretation and Governing Law

- 12.1 The interpretation of any provision in the SMC-CEA Mediation Rules shall be made by the SMC.
- 12.2 The SMC-CEA Mediation Rules shall be governed and construed in accordance with the laws of Singapore.

13 Amendments to the SMC-CEA Mediation Rules

- 13.1 The SMC reserves the right to amend and/or vary the SMC-CEA Mediation Rules in consultation with CEA and approval of CEA, in accordance with the Act and Regulations.

Annexes

- Annex A Application for Dispute Resolution Services
- Annex B Mediator(s) Code of Conduct
- Annex C Fee Schedule

Issued by the Singapore Mediation Centre
January 2011.