

## **THE COUNCIL FOR ESTATE AGENCIES MEDIATION SUB-SCHEME**

### **SINGAPORE INSTITUTE OF SURVEYORS AND VALUERS (SISV) - THE COUNCIL FOR ESTATE AGENCIES (CEA) MEDIATION RULES**

#### **(1) Introduction**

(a) The mediation process is conducted by the SISV Dispute Resolution Centre. It will be governed by the Singapore Institute of Surveyors and Valuers (SISV) Council for Estate Agencies (CEA) Mediation Rules (The "SISV-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 SISV-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. Where a matter has been referred for mediation under the SISV-CEA Mediation's Rules, the Parties agree and shall be deemed to have agreed to resolve their disputes under these rules from time to time in force in accordance with the Act and Regulations at the commencement of mediation.

#### **(2) Mediation Process**

(a) 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, including any question regarding the existence, validity or termination of such agreement, shall 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 EA may ask the client in writing whether he elects to mediate or not and if he elects to mediate, which approved mediation centre the client 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 SISV as the dispute resolution centre the dispute shall be submitted to the SISV for mediation under the SISV-CEA Mediation Rules. If there is no settlement then the mediation is terminated pursuant to the SISV-CEA Mediation Rules.

(b) The Parties to the mediation process shall be:

(i) EA under the Act, which may appoint any authorized representative, to make decisions on its behalf in the conduct of any mediation under these Rules. There shall not be more than two persons at any one time representing an EA. The EA must also ensure that the salesperson (who represented the EA under the estate agency agreement under which the dispute arises) also attends the mediation; and

(ii) 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.

(c) Any costs incurred by parties in engaging a legal counsel/practitioner shall be fully borne by the parties themselves and such costs shall not be claimable in the mediation.

(d) Parties to a dispute seeking mediation may initiate by sending a request for mediation to the SISV Dispute Resolution Centre. Such a request should include the nature of the dispute and the names, addresses and contact numbers of the Parties to the dispute, licence number of the EA and registration number of the salesperson. A request for mediation shall be submitted together with payment of the prescribed fees. Mediation commences on the date when SISV Dispute Resolution Centre receives a request for mediation from all the Parties; or if the request is from one Party, mediation commences when the remaining Parties agree to mediate.

(e) Where not all the Parties to a dispute have initiated mediation, the Centre will within 7 working days from the date of request contact the remaining Parties to participate in the mediation process.

(f) The mediation will be conducted in confidence and all communications will be on a “without prejudice” basis.

(g) Before mediation is carried out, there must be an indication that CEA has been informed of the outcome of the attempt to resolve the matter between the parties.

(h) In the case of a Client-initiated application, the EA will be notified by the SISV of the Client’s application, and the EA will provide the identity of the EA’s representatives and the EA will notify the salesperson to attend the mediation.

(i) In the case of an EA-initiated application, it is the responsibility of the EA to obtain the Client’s prior agreement to participate in the mediation. The EA is to notify the salesperson to attend the mediation.

### **(3) Mediation Agreement**

(d) Before mediation is carried out, the Parties will enter into an agreement (the “Mediation Agreement”) as attached in Annex A in relation to the conduct of the Mediation.

### **(4) The Parties**

(a) The Mediator determines the steps to be taken during the mediation proceedings after consultation with the Parties. The Parties are deemed to have accepted the terms of the mediation procedure upon signing the Mediation Agreement.

### **(5) The Mediator/s**

(a) The Chairman of the SISV Dispute Resolution Centre will appoint from its Panel of Mediators a person/persons to act as the Mediator/Mediators within 7 working days.

(b) The Centre will choose a person who will be best placed to serve as the Mediator for the matter in its opinion. In the event of objection by any of the Parties, SISV Dispute Resolution Centre will appoint another person.

(c) A person appointed as a Mediator, shall declare or disclose any circumstances that will prevent him/her from giving an impression of being impartial or independent. On receipt of such disclosure, the SISV Dispute Resolution Centre will appoint another person from its Panel as a Mediator, unless decided otherwise by the Parties.

(d) The duties of the Mediator include the following:

(i) Prepare and facilitate himself appropriately before the commencement of mediation;

(ii) Adhere to the terms of the Mediation Agreement and the Code of Conduct (Annex B);

(iii) Assist the Parties in the drafting of any written settlement agreement; and

(iv) Facilitate the negotiations between the Parties with the aim to arrive at a mutually acceptable solution.

(e) The Mediator shall not make any ruling in respect of the dispute.

(f) The Mediator (or any representative of his firm) shall not act for any of the Parties at any time in respect of the subject matter of the mediation. Neither the Mediator nor the SISV Dispute Resolution Centre is agent of, or acting in any capacity for, any of the Parties.

## **(6) The SISV Dispute Resolution Centre**

(a) The SISV Dispute Resolution Centre shall make the arrangements required for mediation, as follows:

(i) appointing the Mediator/Mediators;

(ii) fixing a venue and assigning a date for the mediation;

(iii) organizing the exchange of cases and documents; and

(iv) providing administrative support.

(b) The SISV Dispute Resolution Centre shall assist in the drafting of the Mediation Agreement.

## **(7) Provision of Information**

(a) The Parties will provide information to the Centre at least 5 working days before the mediation, as follows:

(i) A summary of the case; and

(ii) Copies of all documents referred to in the summary for reference by the Parties during the mediation.

(b) Each party may send to the Mediator, through SISV Dispute Resolution Centre, which it seeks to disclose only to the Mediator by stating in writing that the contents /documents are to be kept confidential by the Mediator and the SISV Dispute Resolution Centre.

(c) The Parties shall endeavour to reach an agreement on the maximum number of pages to be contained in the Summaries and on the maximum number of pages of supporting documents to be submitted.

## **(8) The Mediation**

(a) The mediation shall be conducted in confidence where no transcription or formal recording will be made.

(b) Audio-visual recording of the proceedings will not be made.

(c) Presentation time will only be accorded to Mediators and the Parties only.

(d) The Mediator/s may seek expert advice/opinion on technical matters with the consent of the Parties who shall bear the expenses incurred jointly/individually.

(e) The Mediator may conduct joint meetings with the Parties or separate meetings with each of the Parties, before or during the mediation.

(f) All communications made in the mediation, including all information disclosed and expressed are on a "without prejudice" basis which shall not be used in any proceedings.

## **(9) Settlement Agreement**

(a) Only settlement in writing signed by or on behalf of Parties is recognized and binding. Settlement in writing in the form of an electronic record is also permitted provided it is signed by applying electronic signatures.

## **(10) Termination of Mediation**

(a) Client may withdraw from the mediation at any time before the scheduled mediation session by giving notice of withdrawal in writing to the Mediator and the other Party.

(b) The mediation is deemed terminated under the following circumstances:

(i) A settlement agreement in writing has been concluded;

(ii) The Mediator decides to withdraw from the mediation for reason/s within the ambit of the Code of Conduct;

(iii) The Mediator decides that continued mediation will not result in any settlement; and

(iv) No settlement is reached at the end of day 1 of mediation.

- (c) Where mediation is terminated pursuant to paragraphs 9 (b) (ii), 9 (b) (iii) or 9 (b) (iv) the SISV shall, as soon as practicable, give notice confirming the termination of the mediation to all the Parties. In any event, SISV shall keep CEA informed of any termination.

## **(11) Fees**

(a) The Mediator shall not make any unilateral arrangements with any of the Parties for additional fees outside of the fee scale set by the SISV Dispute Resolution Centre under the SISV-CEA Mediation Rules

(b) All fees payable to the SISV Dispute Resolution Centre (including Mediator's fees) will be borne by the Parties in accordance with the fee schedule set out in Annex C on the basis of 50:50 ratio.

(c) Each Party will bear its own costs, expenses and disbursements of its participation in relation to the mediation.

(d) Each Party will bear the full fees of its experts/advisors/solicitors in relation to the mediation.

## **(12) Confidentiality**

(a) All Parties and Mediator/s involved in the mediation shall maintain confidentiality at all times and shall not use for any purpose:

(i) the fact that mediation shall take place or has taken place;

(ii) any views expressed, suggestions or proposals for settlement made by either Party during the mediation; and

(iii) views or opinions expressed by the Mediator/s or Expert/s.

(b) The Parties shall not contact the Mediator or the SISV Dispute Resolution Centre (or its employees or representatives) as a witness, consultant, arbitrator or expert in any proceedings relating to the matter.

(c) A Party, the Mediator(s), or SISV shall not, without the written consent of all the parties, disclose to a third party any matter related to the items listed in paragraph 12 (a) above except a copy of the settlement agreement and compiled statistics disclosed to CEA on mediations under the SISV-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,

## **(13) Waiver of Liability**

(a) The SISV Dispute Resolution Centre and/or the CEA shall 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.

(b) The Mediator/s shall not be liable to the Parties for any act or omission in connection with the services rendered by the Mediator/s or in relation to the mediation, unless the act or omission is fraudulent or constitutes misconduct.

(c) The Parties shall not make any claim/s against the Mediator/s and/or the SISV Dispute Resolution Centre and/or the CEA, their employees and/or officers for any matter in connection with the following

(i) The mediation;

(ii) The dispute between the Parties; and/or

(iii) The services provided by the Mediator/s and/or the SISV Dispute Resolution Centre.

#### **(14) General Interpretation**

(a) The interpretation of any provision in this Mediation shall be made by the SISV Dispute Resolution Centre.

(b) The SISV-CEA Mediation Rules shall be governed and construed in accordance with the laws of Singapore.

Encl:

Annex A (Mediation Agreement)

Annex B (Code of Conduct)

Annex C (Fee Schedule)