



THE MASSACHUSETTS TRIAL COURT  
LAND COURT  
MEDIATION PROGRAM

Three Pemberton Square  
Boston, MA 02108  
TEL: (617) 788-7470

V.

DOCKET NUMBER

JUDGE

### AGREEMENT TO MEDIATE

We voluntarily agree to engage in mediation with the Land Court Mediation Program's in-house mediator (the "Mediator") to help resolve this case. In connection with such mediation, we agree that:

1. We have read and agree to the terms of the **MEDIATION GUIDELINES** attached to, and made a part of, this Agreement to Mediate.
2. Under the law (G.L. c. 233, s. 23C), the work product of the Mediator, including notes, the Mediator's file, and any other materials pertaining to the mediation, are confidential and shall not be subject to disclosure in any legal or administrative matter or setting, including any trial in the above-identified case, absent final court order. The Mediator may discard mediation materials two weeks after the conclusion of all mediation efforts unless a party either seeks return of the materials or requests that the Mediator retain possession for a reasonable period of time for good cause shown.
3. Neither the Mediator nor the Land Court shall be liable to any of the undersigned participants and/or counsel for any acts and/or omissions in connection with the mediation.
4. This Agreement to Mediate may be executed in counterparts, each of which shall be deemed an original, but all of which shall be considered one and the same valid and enforceable agreement. An electronic, digital, or scanned signature shall have the same force as an original ink signature. All participants, including lawyers, must sign this Agreement to Mediate.

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PARTY SIGNATURE

TITLE (IF APPLICABLE)

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PARTY SIGNATURE

TITLE (IF APPLICABLE)

PARTY NAME

DATE

PARTY NAME

DATE

EMAIL

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ATTORNEY SIGNATURE

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ATTORNEY NAME

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## MEDIATION GUIDELINES

Except as otherwise provided by law or agreed to in writing by the parties, the following Mediation Guidelines are part of the Land Court Mediation Program's Agreement to Mediate and shall guide the conduct and administration of the mediation.

### Mediation Procedures:

Mediation is a voluntary, confidential process through which the parties meet with the Mediator, who works to facilitate the parties reaching their own agreement to resolve their case. The Mediator is a neutral Land Court employee. In addition to the Mediator and the parties, other participants in the mediation may include the parties' lawyers and/or advisers. In the Land Court, mediation is tailored to fit the circumstances and needs of the parties to each case. The mediation process may include a joint mediation session with all participants attending; separate mediation sessions between the Mediator and each party with their lawyer and/or adviser present; separate mediation sessions between the Mediator and one or more of the parties' lawyers; or some combination of all of these.

The Mediator, as a neutral third party, will work with the parties to encourage them to resolve their dispute. Mediation is an informal, supervised negotiation in which the parties make all the decisions. The Mediator is not a judge or arbitrator. The Mediator will not render a decision or impose any order upon the parties.

The parties understand that the mediation is voluntary and their participation in no way prevents them from pursuing legal action(s) that may be in their individual or joint interests. They agree to negotiate in good faith and understand that they are not required to reach agreement on any issue. Parties have the right to withdraw from the mediation process at any time and have their case heard and decided by a judge or judicial officer.

The Mediator will conduct the mediation in a manner that permits a fair opportunity for each party to present their position and discuss resolution of the dispute. The parties may seek the Mediator's perspective on the case and settlement, and while the Mediator may use their knowledge to help the parties in their deliberations, the Mediator cannot take sides or provide legal advice, counseling, or other professional services.

The parties understand that the mediation sessions may be held in person, telephonically, and/or remotely, and all parties assent to the use of electronic signatures.



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**Participants' Presence:**

Lawyers, parties, and other participants present during the mediation must sign the Agreement to Mediate. Self-represented parties are encouraged to consult with a lawyer. All represented parties whose lawyers have filed notices of appearance with the Land Court are required to appear with their lawyers. Some lawyers may offer Limited Assistance Representation ("LAR") and agree to represent parties in parts of the case, like the mediation or the documentation of settlement, instead of the whole case. Lawyers and other participants present during the mediation must possess sufficient authority to reach settlement. All persons needed to authorize settlement must be present or immediately reachable during the mediation. The presence of witnesses or experts is not suggested during the mediation.

**Confidentiality:**

Any communication by any person made in the presence of the Mediator during the mediation process and relating to the subject matter of the mediation, shall be a confidential communication and not subject to disclosure in any judicial or administrative proceeding involving the parties to the mediation, including without limitation the above-identified case.

The Mediator's case file is also confidential. The parties will not subpoena or otherwise attempt to require the Mediator to testify or produce records, notes, or other work product in any future proceedings concerning any matter relating to this mediation or the case or claim(s) to which it pertains.

The parties agree that all offers, promises, conduct, and statements, whether written or oral, made during the mediation process by any party or the Mediator will be inadmissible in any judicial or administrative proceeding concerning their dispute or any related dispute.

Exceptions to these provisions regarding confidentiality are communications by the Mediator to the Land Court as follows: a settlement agreement as discussed below; a request by the parties for additional time to complete mediation; the scheduling of mediation activities; the Mediator's assessment of the case in regard to the progress of mediation; the fact that the mediation process has concluded with the parties having reached an impasse; status reports; and information in connection with the administration and/or evaluation of the Land Court Mediation Program. No other disclosures shall be made except as may be required by law or final court order.



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**Caucuses:**

As part of the mediation process, the parties acknowledge that the Mediator may hold caucuses, which are individual, private sessions with a party and/or their lawyer without the presence of the other party. These caucuses may occur apart from, or as part of, any joint mediation conference and are designed to improve the Mediator's understanding of the party's perspective and to allow the Mediator and a party to speak freely outside the presence of any opposing party. A party may request that any information provided to the Mediator during a private caucus be subject to another layer of confidentiality and not shared unless permission of the party is obtained.

**Settlement:**

If the parties reach a settlement in full or partial resolution of their dispute, that settlement shall be reduced to a written agreement and signed by the parties. The written agreement will be legally enforceable and is admissible in court or in any other proceeding held for the purpose of enforcing the written agreement. If the parties all request, the Land Court may allow an oral agreement instead of a written one.

If the parties do not agree on a resolution of their dispute during the mediation process, the Mediator will close the mediation process and notify the Land Court so the case may be returned to the trial calendar. The parties understand that they may request the Land Court to refer the matter again to the Mediator.