

# Mediation as an alternative dispute resolution tool

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Mediation is a popular method for resolving family law disputes when negotiations simply are not enough on their own. We are able to arrange for a mediation to be conducted between you and your former partner with the assistance of an independent third party mediator.

## The mediator's role and function

- The mediator does not represent either of the parties to the dispute. Legal advice will only be given by and taken from each party's own lawyers who are solely responsible for protecting their client's interests.
- The mediator's job is to guide the parties towards a mutually satisfactory settlement. The role of the mediator is not to reconcile the parties or their conflicting points of view with each other.
- The mediator is required to act fairly and impartially in identifying and considering points of difference, discussing legal rights and duties, and the practical implications of competing proposals with the parties and their legal advisors.
- Any opinions, suggestions or recommendations of the mediator are not binding and will not force an unwanted solution by either party.

## The mediation process

- The mediation conference will be conducted at an appropriate, agreed time and venue.
- The mediation may involve private meetings between the parties and the mediator to help define or narrow any contentious issues between the parties.
- The mediation will normally include a preliminary conference between each party and the mediator individually, so that the mediator can ascertain whether or not, in their opinion, the mediation is worthwhile proceeding with.
- Before the mediation, each party is required to sign a mediation agreement which sets out the rules of the mediation, which are tailored to suit each particular case.

## The parties' responsibilities

- Each party agrees to act courteously and co-operate in good faith throughout the mediation process and to comply with all reasonable requests made by the mediator, including making full and frank disclosure of their respective financial situations and providing documents, if necessary.
- Each party has an obligation of full and frank disclosure of all relevant documents and information. Any agreements reached in mediation based on incomplete or misleading information may be a ground to set aside any agreement reached at mediation.

## Termination of mediation

The mediation ends when:

- a settlement agreement is signed by the parties;
- either party gives written notice of termination; or
- the mediator withdraws their services, in writing (this usually occurs if the mediator considers

there is no prospect of resolving the matter).

## **Settlement by mediation**

Any resolution of a dispute by mediation is binding when a final settlement agreement has been signed by the parties. The agreement is not enforceable until it is converted to an Order of the Court or a Binding Financial Agreement.

Upon reaching final settlement agreement at mediation, the mediator will arrange for parties to sign a document which provides an acknowledgment by each party that, should a party default on the final settlement agreement reached, that party may be susceptible to an Order of the Court that they pay the other party's costs for any ensuing Court proceedings. This acknowledgement signed by the parties is not enforceable, but the Court is likely to take it into consideration when making any further Orders.

## **Mediation fees**

- The parties usually agree to share the mediator's professional fees equally; please let us know if you cannot pay half of the fees and we can discuss other options with you.
- The normal daily fee for an experienced mediator is approximately \$5,000 per day in addition to any travel or accommodation expenses incurred.

## **Advantages of mediation**

- Provided an experienced and respected mediator is selected for the process, mediation is normally quicker, cheaper and more informal than the court process or other forms of dispute resolution.
- If agreement is not reached at mediation, then at least some of the issues can be identified and limited by the process.
- Anything said at mediation is confidential and cannot be used in court (subject to some minor exceptions).

## **Disadvantages of mediation**

There are no real disadvantages to mediation, for the following reasons:

- Mediation may resolve the matter, but if it does not resolve the matter it often limits the issues.
- If the matter does not resolve by way of mediation, all that is lost is one day's mediation and the mediation fees – which are usually insignificant in comparison to the costs of alternative dispute resolution or the court process.

If the mediation is unsuccessful the parties can proceed to institute proceedings in court or continue with court proceedings if they are already instituted.

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