

## **MEDIATION PROCESS**

1. Mediation is one model for spouses to discuss and resolve issues that need to be resolved to in a marriage or cohabitation to minimize disputes and conflict in the event of an eventual separation. The Mediator is an impartial and neutral party who does not have decision-making power. The Mediator's role is to assist the participants to clearly define the issues that need to be discussed, or are in dispute, and to shape the communication process so that a rational discussion can take place allowing the parties to voluntarily reach their own mutually acceptable settlement of the issues.
2. Mediation is a cooperative problem solving process where a neutral professional assists the parties to clearly define the issues and reach agreements that account for everyone's needs and interests.
3. The mediation process works as follows:
  - (a) The couple meets with the Mediator in an informal office environment;
  - (b) Nearly all meetings will involve both spouses, but separate meetings may, if necessary, be called between the Mediator and one of the spouses;
  - (c) The Mediator explains the mediation process to the spouses and once the process is understood and agreed upon, the Mediator collects the information necessary to understand the issues;
  - (d) The Mediator guides the communication process so each spouse has an opportunity to be heard. The Mediator will define an Agenda and the issues will be discussed one at a time and various solutions will be explored so that the best possible agreement can be reached. The Mediator cannot give legal advice to the parties but may provide the parties with legal information respecting the state of the law in the area being discussed. The Mediator may offer suggestions and assist the spouses to develop options for resolution;
  - (e) Mediation sessions typically occur weekly or every 2 to 3 weeks, with each session being for a period of approximately an hour and one half to 2 hours in duration. The mediation process will be scheduled for as many sessions as are

necessary for the areas to be discussed to the spouses' satisfaction. For a marriage or cohabitation, one or two sessions may be all that is necessary. Generally, it will be clear to the spouses if more sessions are required;

- (f) Certain simple rules apply during the mediation process. These rules provide that each spouse will be free to speak without interruption by the other and there will be no personal criticism or raised voices during the session; and
  - (g) All communication, correspondence and information exchanged by the spouses is confidential and privileged. It follows that should the mediation process fail, nothing said or done in any of the mediation sessions may be used in evidence in a Court proceeding.
4. The goal of the mediation process is to reach an agreement of all the areas of concern to each spouse. When the final agreement is reached, the Mediator may reduce the agreement to writing (the "Agreement"). The parties will each be provided with a copy of the Agreement and will review the Agreement with an independent legal advisor before signing it. In this way, the parties are better assured that any Agreement reached is fully consistent with their independent legal rights and obligations.
  5. The mediation process can be applied to the resolution of almost any form of dispute. Typically, in marriage and cohabitation mediations, the spouses are concerned to discuss and resolve the distribution of family property and debt and address any support issues that may arise in the event of a separation. Equally important to many spouses in a second or subsequent relationship is discussion and resolution of the distribution of property that will form the estate of a spouse where either spouse has children from a prior relationship. An Agreement reached in mediation, drafted by a lawyer-mediator and signed before independent lawyers, is fully binding on the parties and enforceable as an Agreement reached in any other fashion.
  6. Typically, the cost of mediation is shared equally between the spouses. Where this is not possible other arrangements can, in some circumstances, be made.