

MEDIATION AGREEMENT

BETWEEN:

(called one of the “parties” in this Agreement)

and his/her lawyer:

AND:

(called one of the “parties” in this Agreement)

and his/her lawyer:

AND:

(called the “Mediator” in this Agreement)

Both parties to this agreement understand and agree as follows:

A. *MEDIATION:*

1. Both parties appoint and retain the Mediator to assist them in the resolution of matters at issue between them. Both parties are aware that, when consensus is reached, they may retain the services of the Mediator or one of their lawyers to draft a document for them to sign to record and finalize the consensus.
2. The parties understand that mediation is a process whereby they attempt, with the assistance of an impartial third party (the mediator), to reach a consensual settlement of the matters at issue between them.
3. It is understood that most mediation sessions will involve both parties in joint sessions with the Mediator, but separate meetings may be held between the Mediator and the parties individually prior to and during mediation. If the Mediator requests a separate meeting with one party during a mediation session, she will also have a separate meeting with the other party.

4. The Mediator may prepare summary notes at the end of a mediation session for circulation to the parties and their lawyers, but no formal minutes of the mediation sessions will be kept and the mediation sessions will not be taped or otherwise recorded.

5. The parties understand that, although the Mediator is a lawyer, she is not acting as legal counsel for either party. It is understood that the Mediator shall remain impartial in all contacts with the parties and will not advance the interests of one party over the other.

6. The Mediator confirms that she is a qualified family law dispute resolution professional who meets the requirements set out in s. 4 of the Family Law Act Regulation.

B. NEGOTIATING PRINCIPLES:

7. The parties understand that honest disclosure of relevant information is essential to the mediation process. Accordingly, the parties agree to communicate in good faith regarding all information and to disclose all relevant documents during mediation. Unless otherwise specifically stated by a party beforehand, it is agreed that the Mediator may disclose fully to each party all information provided to her or any other information of which she becomes aware which is relevant to the issues being mediated.

8. The parties understand and agree that they will attend all mediation sessions with full authority to settle the matters at issue at the mediation sessions.

C. CONFIDENTIALITY AND COMPELLABILITY:

9. The parties agree that, because the mediation process is an attempt to settle the differences between them through assisted negotiation, all communications between the parties (either with one another or with the Mediator privately) will be made “without prejudice”. “Without prejudice” means that any information arising out of mediation sessions shall be treated by all parties as both confidential and non-compellable. Non-compellable means that such information will not be raised by either party in any legal proceeding. Accordingly, the Mediator shall not be asked or required by either party to provide information, give evidence or produce documents in any legal proceeding concerning the content of any of the mediation sessions.

10. The parties acknowledge that the confidentiality referred to in this agreement will not apply where the Mediator is obliged by law to report information to a third party or where a Court compels any of the parties to give evidence. Examples of situations where a Mediator might be obliged by law to report information to a third party is where criminal activity is involved or where there is information that a child is in need of protection. In the event that the Mediator is obliged to report information to a third party, the Mediator will immediately advise the parties of the duty to report such information and mediation will be terminated.

D. PRESERVATION OF THE STATUS QUO:

11. If the parties have children, they agree that the best interests of the children shall be of paramount concern and no changes will be made to existing residences, access arrangements or lifestyles of the children during mediation without the express agreement of both parents, or unless a Court Order allows otherwise.

12. If there are assets in dispute, the parties agree that neither of them will do any act that will prejudice or harm the interest, actual or potential, of the other party in any asset during mediation without the written consent of the other party.

E. MEDIATION PROCEDURE:

13. The parties may have their lawyers attend some or all mediation sessions with them if they wish. If either party wishes to have other persons attend a mediation session or sessions (such as children, relatives, counsellors or other advisors), the parties will first mutually agree that such persons should attend.

14. During mediation sessions, there will be an effort to clarify the issues, to isolate points of agreement and disagreement and to explore and negotiate alternative options and solutions for consensus. The goal is to reach a fair and lasting consensus.

15. Mediation shall continue until terminated by any of the parties. Mediation may be terminated if the parties reach agreement or if a party, or the Mediator, decides that issues cannot be resolved by mediation and wishes to terminate mediation.

16. Although the Mediator may draft a document, such as a memorandum or an agreement to record the consensus reached by the parties, the Mediator will not advise the parties legally concerning the contents of the document. Since the parties may have adverse interests, it is emphasized that both participants in the mediation should continue to retain legal counsel or consult with legal counsel to obtain legal advice concerning any legal questions arising during mediation and to review any document resulting from mediation before signing. Each party's lawyer is encouraged to contact the Mediator to discuss the consensus and each party gives the Mediator permission to discuss the terms of any document resulting from mediation with his or her lawyer.

F. FEES:

17. The parties will be billed for mediation services, legal services (if applicable) plus applicable taxes and disbursements from time to time and/or at the conclusion of mediation. Disbursements are expenses for such things as long distance telephone calls and faxes, delivery charges, photocopies and other reasonable expenses, including any applicable taxes.

18. Unless otherwise arranged, the parties agree that each will be responsible for one-half of the Mediator's bills.

19. It is agreed that the Mediator will be paid at the rate of \$_____ per hour, plus applicable taxes and disbursements for mediation services. Mediation services include all meetings, telephone calls, e-mail and written correspondence, drafting memoranda and other services.

20. Most communication during the course of mediation outside of mediation sessions will be by e-mail. Although every effort is taken to ensure that e-mail correspondence is kept confidential, the parties acknowledge that due to the inherently public nature of the internet, e-mail correspondence may or may not be confidential.

G. *SIGNING THIS AGREEMENT:*

21. By signing this agreement, the parties acknowledge their willingness to begin the mediation process and to work toward a fair and wise resolution of the issues in dispute.

THIS AGREEMENT is entered into on _____ at _____, British Columbia.

Mediator

SAMPLE