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**Because reasonable individuals can always craft a better solution than one imposed on them by a Court.**

## **QUESTIONS AND ANSWERS ABOUT MEDIATION**

**WHAT IS MEDIATION?** Mediation is an informal process in which the parties, with or without attorneys, communicate with each other with the help of an independent, neutral third person, called a mediator. This process attempts to help the parties clarify and focus on the issues, identify their interests, and to create options in negotiating a mutually acceptable agreement. This is done in an informal setting with no Court-imposed rules. The mediator does not have the authority to impose a solution. When both parties agree on a solution, the agreement may be put in writing by the parties, the mediator or a lawyer. If the parties are unable to reach a mutually acceptable agreement, they still have the option of taking their dispute to Court or arbitration.

**WHAT TYPES OF DISPUTES CAN BE MEDIATED?** Virtually any dispute or conflict can be mediated if the parties are willing to sit down together and are open to the possibility of resolving their dispute. Examples:

Animal disputes	Employment disputes/relations	Land use/real estate issues
Association issues	Environmental/policy issues	Landlord/tenant disputes
Business disputes	Guardianships	Licensing Board Complaints
Child custody/visitation	Health care Issues	Malpractice claims/settlements
Conservatorship	Harassment claims	Neighborhood/housing issues
Contractual issues	Human resources issues	Parenting and Familial Disputes
Discrimination issues	Insurance settlements/claims	Personal injury claims
Divorce/family issues	Juvenile issues	Probate/property distribution
Education issues	Labor/management disputes	Sexual harassment claims

### **MEDIATION IS:**

- Voluntary: The parties agree to meet with the mediator and to develop solutions that work for them.
- Neutral: Mediators do not take sides.
- Confidential: The parties agree that the discussions within the mediation process are private and confidential. One exception to the confidentiality is the final written agreement which may become part of the Court's records (if applicable).
- Binding: A final written agreement which is developed by the parties, is binding and enforceable unless otherwise stated in the agreement.
- Effective: Approximately 80-90% of all cases I have mediated are resolved.

### **BENEFITS OF MEDIATION?**

- ☺ The parties decide the outcome, not someone else.
- ☺ Mediation is private and confidential.
- ☺ Mediation is usually faster and less expensive than litigation efforts and trials.
- ☺ Mediation creates a safe environment for the parties to voice their interests and concerns.
- ☺ Mediation gives the parties the opportunity to fashion an agreement to meet their needs.

**WHAT HAPPENS IN MEDIATION?** The mediation process varies between individual mediators. Generally, the mediator begins by describing the process, then the parties have an opportunity to tell their side of the story without interruption, as well as participate in moderated questioning of the other party. The mediator helps identify issues, suggests a negotiation process, promotes communication, and helps the parties look at all possible options for an agreement. During the mediation, the mediator may meet with each party separately. These meetings provide an opportunity for the parties to discuss with the mediator specific concerns or goals that they do not want to disclose to the other parties, as well as potential settlement offers.

**IS THE MEDIATION CONFIDENTIAL?** Colorado law provides that all mediation is confidential. Additionally, anything a party tells the mediator in confidence will not be disclosed to the other party unless the mediator has been given express permission. At the start of the mediation, the parties are asked to sign a mediation agreement. Part of this agreement is that they will not call the mediator as a witness in any legal or administrative proceeding concerning the dispute; however, this does not prevent the mediator from reporting matters such as threats or actual instances of injury to a child or other party.

**WHAT ROLE DO LAWYERS PLAY IN MEDIATION?** In mediation, the parties are responsible for determining their agreement. The agreement may be different from what a Court or either of the parties' lawyers might propose. However, it is important for the parties to be aware of their legal rights and responsibilities and to know the options available to them. It is recommended that the parties discuss the mediation with and keep their lawyers informed throughout the process. Lawyers are not required to attend mediation sessions, but they may do so to advise their client and protect the client's rights. If either party plans to have his attorney present, the mediator, all parties, and their lawyers should be notified in advance.

**WHO ARE MEDIATORS AND HOW ARE THEY TRAINED?** Mediators come from a variety of backgrounds and professions. They have received specialized training in mediation and conflict resolution. Mediators are subject to codes of professional and ethical conduct.

**WHAT HAPPENS WHEN WE REACH AN AGREEMENT?** When a final agreement has been reached, the mediator, the parties or their attorneys prepare a Memorandum of Understanding. The parties are advised to take the final agreement to their attorneys for review processing through the Court (if applicable).

**HOW DOES THE PROCESS BEGIN?** Both parties must mutually agree on the mediator to use and then contact the mediator to schedule an appointment. The mediator will require:

- ☞ An agreement will be signed by the parties and any representatives in attendance, relating to the proposed mediation (real estate brokers who are not parties are not required to attend unless requested by their clients).
- ☞ A brief description of the nature of the dispute (copies of documents/evidence establishing the parties' opinions on the matter are helpful).
- ☞ That if anyone has concerns about safety or any other issues, they raise those issues when scheduling an appointment with the mediator (we typically start out together in one room unless the parties prefer otherwise).
- ☞ That everything discussed in mediation will be held in strict confidence by all. Further, if not successful in reaching a settlement and the dispute goes to arbitration or litigation, neither party can use anything said in mediation, and the mediator cannot be called to testify as to the content of mediation discussions.
- ☞ That the parties come with a conciliatory attitude, willing to hear each other out and discuss a compromise settlement to ensure the greatest possibility of success.
- ☞ That the parties agree to maintain an appropriate demeanor to increase their chances of resolution.