

## **MEDIATION AGREEMENT**

The undersigned have agreed to attempt mediation in order that they might resolve the various issues attendant to their marital problems and agree to the following terms:

1. The undersigned husband and wife agree to provide each other and the mediator with the following:

a. A statement of all income, dividends, interest, bonuses, deferred compensation, commissions, pending claims, trust and estate interests and all other financially remunerative expectations of which they are presently aware and covering the period of time requested by the mediator.

b. A statement of all of their liabilities and current living expenses, using the attached Income and Expense sheet (which, for information purposes, the undersigned are aware is generally used by domestic relations attorneys in Fairfax County, Virginia).

c. A list and complete description of assets of every kind and the undersigned's best and fairest estimate of the value of each and every asset.

d. A statement of the derivation of each and every asset and liability, if not considered by a party to be joint.

e. A statement on their ages, education, accomplishments, health problems, and counseling requirements.

f. Future job changes and/or education or training requirements that are reasonably expected to occur in the future.

g. Expected retirements and expected Social Security benefits.

2. The undersigned further agree to submit a confidential statement of their goals which they hope to be achieved by mediation; that is, a statement as to what each party would hope for with regard to custody, primary residential care, physical custody schedule, and participation (both on a monetary and non-monetary basis) in attending to any unusual problems that any of the children may have, a furtherance of any gifts or talents that the children may have and future college plans that the parents may wish to have addressed. The confidential statement of goals should also include a division of property, both real estate, personal property, all investment type property and all retirement plans.

3. The parties agree to provide the mediator with the above information \_\_\_\_\_ days prior to the date set for the mediation.

4. Unless otherwise agreed, the parties agree that the mediator may meet with each party, and his/her counsel, in a confidential setting.

5. **While parties may sign binding Settlement Agreements without having counsel, the parties have agreed, in this instance, that any Settlement Agreement drafted by the mediator will have a proviso that it is conditioned and NOT effective until the draft agreement by the mediator is reviewed by an independent attorney for each party.**

Note: it may be desirable to have the agreement also reviewed by a CPA or tax counsel.

6. The parties understand that alimony may be an issue and if alimony is provided by one spouse without there being a cost of living allowance or automatic increase in that amount of alimony or with a reservation for the Court to later determine whether that amount of alimony should be increased, decreased, or terminated, then that amount of alimony, and the duration, that is clearly and specifically fixed by way of an agreement can never be changed by a Court after that agreement is signed. The parties further understand that the IRS rules on deductibility of the amount of alimony paid to one spouse and the inclusion for the recipient spouse as income are strict and, if not strictly adhered to, in some instances alimony is not deductible to the payor nor taxable to the payee.

The parties understand that child support is never tax deductible to the payor nor taxable to the payee, may always be modified by the Court and that all changes in child support **must** be memorialized by a Court Order signed by a Judge to be effective.

The parties understand that in order to divide pension assets without causing taxes to be incurred at the time of the transfer, most pension plans require separate "Qualified" Orders to be entered at, or immediately after, a Final Decree of Divorce is entered; also that after pensions are transferred, he or she who subsequently withdraws any pension assets or has a pension annuity paid to him or her, is then required to pay tax on those amounts (and penalties for any "early withdrawals"). Tax advice may be appropriate in some cases.

7. The parties understand and agree that the mediator shall charge an hourly fee of \$\_\_\_\_\_.

The parties further agree that the initial fee to be paid to the mediator shall be \$\_\_\_\_\_ to cover the first \_\_\_\_\_ hours of the mediator's time; if the mediator's time is less than the aforesaid time stated, all unused fees shall be refundable to the parties in the same percentages as paid by the parties.

If additional time is needed, any subsequent mediation sessions shall be paid for on the date of such sessions.

The parties agree that the aforesaid amount shall be paid as follows:

a. From the parties' joint account with the last four digits of \_\_\_\_\_, with \_\_\_\_\_ Bank/ Credit Union/Money Market account; **or**

b. It shall be paid by the Husband providing \$\_\_\_\_\_ and the Wife providing \$\_\_\_\_\_ and that the aforesaid percentage shall apply to all fees and expenses incurred over and above the initial fee stated herein (if different, state the percentages that will apply to subsequent fees incurred: \_\_\_\_\_ % to be paid by Husband and \_\_\_\_\_ % to be paid by Wife).

The parties further understand and agree that in the event the mediator incurs any out-of-pocket expenses for long distance telephone calls, photocopying, messenger service, postage, or other out-of-pocket expenses, the aforesaid initial fee may be applied toward those expenses and, in that event, the resulting number of hours may be somewhat affected by such expenditures. The mediator agrees to promptly and periodically advise the undersigned parties as to all such out-of-pocket expenses and provide a statement of time spent both in mediation and in preparation of agreements, correspondence, phone calls with either side's attorneys, psychologists, accountants, or other persons. The undersigned parties understand and agree that the time that the mediator spends on the telephone, reviewing documents prior to the mediation, preparation of documents requested by the parties and post-mediation conference calls (if requested), will be paid for at the rates provided herein and that each of the parties is jointly and severally liable for the entire unpaid balance, if any.

8. The parties state that they have reviewed the attached Virginia statutes relating to mediation. The parties understand that there are some exceptions to confidentiality as are set forth in Virginia Code § 8.01-581.22 (attached).

The parties further understand that:

- (i) the mediator does not provide legal advice,
- (ii) any mediated agreement may affect the legal rights of the parties,
- (iii) each party to the mediation has the opportunity to consult with independent legal counsel at any time and is encouraged to do so,
- (iv) each party to the mediation should have any draft agreement reviewed by independent counsel prior to signing the agreement,
- (v) in cases in which the dispute involves support for the minor children of the parties, an order incorporating a written agreement shall also include the child support guidelines

- worksheet and, if applicable, the written reasons for any deviation from the guidelines. The child support guidelines worksheet shall be attached to the order, and
- (vi) Virginia Code § 8.01-581.26 sets forth certain grounds upon which a mediated agreement may be vacated.

9. The parties specifically understand and agree that the mediator has agreed to mediate the issues provided and conditioned upon a complete disclosure as called for herein or as may be reasonably called for in other areas and upon good faith negotiations. The parties further state that they have had ample opportunity and time to review this agreement, ask questions about it and have it reviewed by their own attorney or other advisor. The parties hereto represent that they are entering into this agreement freely and voluntarily.

10. The parties further specifically agree that all mediation efforts are efforts to settle the various issues that concern each one of the parties and that, therefore, none of the discussions, tentative agreements or any other matters resulting from mediation can be used in litigation in the event mediation fails. That is not to say that the financial information and documents reflecting financial information cannot be used and the parties understand that in all likelihood all financial documents provided may very well be used in subsequent litigation in the event there is no agreement. The parties agree that the mediator shall not be called or subpoenaed as a witness in any litigation between the parties and that his records shall, likewise, not be subpoenaed. The parties understand and agree that the Mediator's records and notes will be destroyed after mediation has been concluded.

AGREED & ENTERED INTO on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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Mediator:  
Charles C. Dunn, Esq.  
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Fairfax, Virginia 22030  
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Fax: (703) 591-5151

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Printed Name of Party

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Signature of Party

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Printed Name of Counsel  
for: \_\_\_\_\_

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Signature of Counsel

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