

Mediation in Florida Frequently Asked Questions

- **What is Mediation?** Mediation is a way for people who are having a dispute to talk about their issues and concerns and to make decisions about the dispute with the help of another person (called a mediator). A mediator is not allowed to decide who is right or wrong or to tell you how to resolve your dispute. In mediation, you can try to find solutions that make sense to you and the other person in the dispute to resolve some or all of your concerns. While the goal is to try to work something out, you may decide it would be better for you not to come to an agreement. Sometimes emotions may be driving the dispute which can make talking to the person or party with whom you are in a dispute difficult. A mediator can assist you in easing the way for communication. The mediator is there as a neutral person to help you focus on solving your dispute; however, the mediator is prohibited from providing therapy, counseling or legal advice.

- **What is a Mediator?** A mediator helps you talk with the party with whom you are having a dispute. The mediator does not make decisions for you. The mediator is a neutral and impartial *guide* to help you come up with possible solutions, stay on track, and clarify areas of agreement and disagreement. The mediator may help you and the other party see the conflict from each other side's point of view. Many kinds of people can be mediators: mental health or business professionals; attorneys; educators; and others. To become certified by the Florida Supreme Court, a mediator must meet many requirements. There are ethical standards for mediators adopted by the Florida Supreme Court. A mediator is not there to provide therapy, counseling, business or legal advice. While mediation is a good place to recognize the emotions that may be driving the dispute, the mediator is there as a neutral to help you focus on resolving your dispute.

- **What Happens if We Don't Reach an Agreement?** Mediation is used by the courts; additionally there are state and local agencies as well as individuals and corporations which use mediation. When it is used by the court, it is called a "court-ordered mediation." If you are court ordered to mediation and you are unable to settle your differences, you will go back to court and the judge will make a decision for you.

- **What Are Some Advantages to Mediation?** Mediation provides an opportunity to talk with someone who is impartial. The issues in your dispute are not decided by someone else, they are decided by the parties. This is known as self-determination – you are the decision maker. The mediator helps you discuss your concerns, but cannot make decisions for you. What you say in mediation is confidential, with a few exceptions. The mediator can help you overcome obstacles to communication with the other person or party in your dispute. Mediation agreements are enforceable. If reached, they must be put into writing and signed. The written agreement becomes a legal binding contract. A mediated agreement allows you and the other person or party to reach flexible solutions to your dispute. You can reach a "win-win" scenario.

Mediation is not a trial nor an arbitration. Rather, the mediator assists the parties as they talk about their dispute to help them find mutually acceptable resolutions to their dispute. Mediation can save time and costs because it is quicker than a formal trial. You know what you have agreed to in mediation instead of gambling with what the judge may decide if you go to court. It is uncertain what decision will be made at trial, but you will be bound by that decision whether you agree with or like the outcome of the decisions. At mediation, the parties make the decisions. Mediation is an opportunity to gain a greater understanding about why the dispute arose.

- **What Happens in Mediation?** Court-ordered mediation begins with an introduction by the mediator explaining the process and the role of the mediator. Among other things, the mediator should explain that the parties make the decisions, not the mediator. The mediator's introduction is usually followed by an opportunity for you and the other party to describe your concerns. If your lawyer is with you at mediation, these opening remarks may be made by you, your lawyer, or both of you. After these initial procedures, how the mediation is conducted varies. The mediator usually will meet with both parties together to discuss the issues to help you work out your differences. The mediator may also meet with each party privately. This separate meeting is called a caucus. Generally, unless you give the mediator permission to repeat what you say in caucus, the mediator is prohibited from sharing what is discussed. If you are represented by a lawyer, you and your lawyer will decide how the two of you will interact during the mediation. Some lawyers instruct their clients not to talk during mediation. If this is your decision with your lawyer it is fine; however, it is important for you to know that you are allowed to speak to the mediator at any time. Eventually, the mediation will end in one of three ways, either: 1) the parties reach an agreement as to some or all issues - all parties (and their lawyers if present) must sign the agreement; 2) the mediator declares an impasse (because you, the other party, or both are unwilling to continue discussing resolution); or 3) the mediator, with the parties' consent, continues the mediation session by adjourning for the day. If the mediator declares an impasse as to some or all issues, then you and the other party will have to go back to court to have the judge decide your case.

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