

MEDIATION GUIDELINES

- 1) Mediation is a way for people to resolve their own conflicts comfortably and without lingering bitterness. The mediator is an impartial person who has no stake in the outcome. The mediator helps the participants outline the issues they want to resolve and helps them keep their discussions rational, allowing them to find their own solutions.
- 2) Here is a general idea of the mediation process – general, because each person brings different qualities, different ideas, different requirements to the meetings and the mediation process utilizes those differences:
 - a) The first meeting with the mediator is for information. It is the time that the participants and mediator decide whether or not they want to work together and how the mediation will proceed;
 - b) If the participants decide to retain the mediator, they sign an agreement. The mediator then obtains more in-depth information from the participants, including, where necessary, financial or other material. This helps the mediator understand and helps the participants see more clearly what they want to accomplish;
 - c) Normally, all meetings will involve all the participants. In that case, if one of the participants contacts the mediator, the mediator may or may not talk with the single participant, depending on the subject matter. If the mediator does have a discussion with a single participant, the mediator will inform the other participant (s) of the contents of the discussion;
 - d) If for some reason face to face mediation becomes difficult but the participants still wish to continue to work out an agreement, then the mediator will, in that special case, at the participants' request, "shuttle" mediate between the participants and with their lawyers where necessary;
 - e) Unless there is some special reason against full disclosure which the participants agree to, the participants must disclose all financial and other information so that the participants can reach agreement based on all the facts. If later on, one of the participants discovers another of the participants withheld information which, if know, would have changed the final agreement, the participants may ask the Court to set aside the agreement;
 - f) The mediator cannot give legal advice to the participants but may provide the participants with information about the state of the law in the area in dispute. The mediator may also offer suggestions if the participants bog down and ask the mediator for help in creating some new and different ways to seek solutions;
 - g) Depending on the number of issues, mediation sessions can range over several

weeks, 1 to 3 hours at a time. It may complete in one session, or it may complete in eight sessions, depending on the number of issues to be resolved, the number of participants, the depth of feeling the participants might have towards each other and the ease or difficulty in their trying to be objective and to hear and understand each other's point of view so they can reach a mutually acceptable conclusion;

- h) While the participants are involved in mediation, the participants agree to not make changes which might affect the issues under mediation without written consent of the other participant(s), for instance:
 - i) when a participant is covered under the other's medical and dental insurance, the medical and dental coverage will continue,
 - ii) when division of assets or payment of money is an issue, the participants will not change ownership of any of the assets, or
 - iii) when child custody or visitation is an issue, the participants will not make changes to the residence or lifestyle of the child.

This is a common-sense rule. Mediation cannot work if the participants do not play fair;

- i) All communications, correspondence and information exchanged by the participants are confidential and privileged. It follows that should the mediation process not work out, nothing said or done in the mediation sessions may be used in evidence in a Court proceeding, except in the following instance:
 - i) Every person is obliged by law to report any information which would indicate a child needs protection.
- 3) The stated goal of the mediation process is to reach a final agreement on all outstanding issues. When final agreement is reached, the mediator will write up the agreement and give a copy of the agreement to each of the participants who are advised to review the agreement with their own lawyers before signing it.
- 4) An agreement reached in mediation, drafted by a lawyer-mediator, signed before a witness, by both participants who have received independent legal advice is as fully binding on the participants and is as enforceable as an agreement reached in any other fashion.
- 5) The cost of mediation is most often shared equally by the participants. But the cost sharing depends entirely on whatever financial arrangements the participants make and does not sway the impartiality of the mediator.

**EXAMPLES OF ISSUES NEEDING AGREEMENT
(these may or may not apply to you)**

- full disclosure of assets and liabilities
- custody and access
- child support, including tax credits and income tax issues
- review of child support
- spousal support
- variation of spousal support
- medical and dental insurance
- life insurance
- real estate in BC. – eg, family residence, rental property, recreational property
- real estate outside of B.C.
- pensions and RRSPs
- Canada pension plan
- investments and bank accounts, including stock options, capital gains, etc.
- motor vehicles
- club memberships
- hobbies
- furniture and chattels
- debts
- income tax issues – these generally require advice from a tax accountant