



*another
day
in paradise*

Mediation Agreement

This is an Agreement between _____,
_____, and Allen Kreutzkamp, hereinafter
“mediator,” to enter into confidential mediation discussions regarding:

The parties and the mediator understand and agree as follows:

Confidentiality

The parties and the mediator understand and agree to the strict confidentiality of their mediation. Mediation discussions, materials, correspondence, any draft resolutions and any unsigned mediated agreements shall not be admissible in any court proceeding or other contested proceeding. Only an Agreement signed by all parties may be so admissible. The parties further agree to not call the mediator to testify concerning the mediation or to provide any materials from the mediation in any court proceeding between the parties. The mediation is considered by the parties and the mediator as “Settlement Negotiations.”

The parties further agree that any meetings between the mediator and the parties in shall be confidential between that party and the mediator, except to the extent that the party specifically authorizes the mediator to share information in joint mediation sessions.

We the undersigned understand that we have agreed to mediate and are doing so voluntarily. We understand that only we can reach a resolution and that the mediators do not make decisions for us nor do they serve as counselors or legal advisors.

Confidentiality is a critical part of the mediation process. Mediation encourages frank and open discussion, full exploration of issues, and the possibilities of settlement. However, we understand and agree that confidentiality means:

- All communication made in the course of the mediation process is confidential.
- All materials documented are confidential.
- Confidential materials and communications are not subject to disclosure in any subsequent judicial or administrative proceeding.
- Mediators not willingly disclose or discuss any confidential mediation communication with any other person.
- Mediators may not be compelled to testify in any proceeding regarding this dispute unless all parties to the mediation and the mediator agree in writing.

Exceptions to Confidentiality

- Statements made of child abuse or threats to commit harm to oneself or others.
- Threats to commit crimes.
- Attempts to commit fraud.

The Mediation Process

Mediation is a confidential decision-making process in which a neutral third party (mediator) facilitates the communications between disputants by guiding the process towards a voluntary and mutually acceptable resolution of their conflict or issues. The mediator does not make decisions. Any resolution of the conflict or issues is determined by the disputing parties.

Mediation is private, practical and gives the disputants control of the place, setting and timing of their negotiations. A successful mediation can reduce legal expenses, time spent in litigation, the stress and frustration associated with litigation, and the uncertainty of a decision reached by a judge or jury. Mediated agreements help to preserve relationships between parties and have better “staying power” than court ordered structures or traditionally negotiated settlements. No legal rights are waived by participation in mediation.

Mediation is a voluntary and informal process in which a third party that facilitates settlement discussion between the parties. Any settlement is voluntary.

All parties here state their good faith intention to complete their mediation by a “Settlement of Marital Asset Agreement”. It is, however, understood that any party may withdraw from or suspend the mediation at any time, for any reason.

The parties understand that the mediator must remain impartial throughout and after the mediation process. Thus, the mediator shall not champion the interests of any party over another in the mediation or in any court or other proceeding. The parties agree that the mediator may discuss the parties’ mediation process with an Attorney, CPA/Accountant and/or Financial Advisors that may retain as individual counsel and paid for by the mediator. Such discussions will not include any negotiations, as all mediation negotiations must involve all parties directly. The mediator will provide copies of correspondence, draft agreements, and written documentation to the parties and their independent legal counsel at a party’s request. The mediator will communicate separately with individual mediating party; however, these communications will be used to reach an equitable agreement for both parties.

Each party agrees to fully and honestly disclose all relevant information and writings as requested by the mediator and all information requested by any other party of the mediation if the mediator determines that the disclosure is relevant to the mediation discussions.

Unlike a judge in a trial, or an arbitrator in arbitration, the mediator does not impose a decision upon the parties. In a mediation, the parties themselves decide whether and how to settle the dispute.

The mediator guides the parties through a discussion of their problems or issues that need to be resolved and facilitates alternative solutions for the resolution of the dispute.

Mediation is non-binding unless the parties reach a settlement agreement. In the absence of settlement, the parties lose none of their rights to trial by judge or jury.

The parties agree that the costly and timely fact based information gather during the mediation process can be used in court if a settlement agreement is not reached - (See Phases of Mediation 1-6 below).

The parties agree to refrain from pre-emptive maneuvers and adversarial legal proceedings (except in the case of an emergency necessitating such action), while actively engaged in the mediation process and for a period of at least 60 days from the execution of this contract.

Although anyone can serve as a mediator if mutually agreed upon by both parties to the dispute, it is important to consider mediators based on their education, training and experience.

Mediators do not make decisions for us. **Mediators do serve as counselors, financial, or legal advisors.**

The mediation process varies in length depending on the agenda, the complexity of the issues, and the willingness of the parties to reach a resolution. The parties of this mediation agree to the following principles:

1. Voluntary—any party can stop the mediation process at any time for any reason.
2. Collaborative—parties work together on their shared problem, resolving their conflict through their perceived fairest and most constructive agreement. There is no need to convince the mediator of the value of a position because the mediator decides nothing; the parties decide everything.
3. Fair—mediation utilizes standards of fairness which include recognized objective standards and principles of fair play, full disclosure, fully-informed decision making, opinions of mutually-agreed-upon experts and the full and equal participation of all parties of the mediation.
4. Confidential—Mediation is confidential by contract.

5. Informed—The mediation process provides a full opportunity to obtain and incorporate legal and other expert information and advice. Mutually acceptable experts (accountants, appraisers, pension evaluators, child development specialists, career planning specialists, and legal counsel) may be retained by the parties at their expense.
6. Impartial and Safe—The mediator has equal responsibility to each mediating party and cannot favor the interests of any one party over another. Parties are assisted to feel comfortable and confident in their agreement-reaching discussions.
7. Self-Responsible, Satisfying, Creative--People support what they help to create and participant satisfaction, compliance and self-esteem are usually elevated. The mediation process is flexible; mediated agreements are personal, customized and creative. Mediation is the beginning of a new relationship that is respectful, solidly based, and future-focused.
8. Parties may choose to never meet together and have all opinions and ideas communicated through the mediator.

Ten Phases of Mediation

Development of Needed Information and Documentation by Mediator

1. Introductions, Orientation, and Agreement to Mediate.
2. Documentation of assets through current information that is already available. (Three copies of all documents.) Parties agree to openly supply for review, copy and documentation all necessary documents to the mediator:
 - a. Copy of most recent appraisals on all real estate
 - b. Copy of current title reports on all real estate—to be ordered by mediator
 - c. Copy of the current months' mortgage statements on all real estate
 - d. Copy of the current months' debts
 - e. Documentation of all significant personal property
 - f. Copy of all Titles on all automobiles
 1. Document Blue Book value—by mediator
 - g. Tax return for two years
 - h. Copy of two years Business Bank Statements
 - i. Copy of two years Personal Bank Statements
 - j. Copy of two years Brokerage Accounts
 - k. Credit Report and background check on both parties—to be ordered by mediator
3. Financial Analysis of assets:
 - a. Summary of business income for two years
 - b. Summary of real estate income for two years
 - c. Summary of business expenses for two years
 - d. Summary—Identification of all assets
 - e. Other:
4. Conclusion of Value:
 - a. Summary of Assets and Value
 - 1) Statement of Assets
 - 2) Statement of income of Assets
 - 3) Statement of expenses of Assets

- b. Sign and agree on the of value, income, expenses of all assets
- 5. List of excluded assets:
 - a. Prior to marriage
 - b. Inheritance
- 6. List asset kept by each party
 - a. Home(s)
 - b. Car(s)
 - c. Personal items (Home furnishings, jewelry, sentimental items, etc.)
- 7. Discussion on division of assets and desired outcomes:
 - a. Each party will put in writing to the mediator 3 to 5 acceptable outcomes
 - b. Mediator will individually meet with both parties discussing other parties' acceptable outcomes
 - c. Each party will put in writing mediated possible out comes

The parties will be provided with weekly reports. Phases 1–6 shall be completed within 3 to 6 weeks of the execution of mediation contract.

- 8. Mediator will prepare draft of settlement of assets for attorney(s) to prepare for the courts.
- 9. Mediator will document and provide service to both parties with the transfer, distribution of assets, changing of title of properties, amendment—assignment or dissolution of cooperation, forming of cooperation's, assignment of trust deeds, transfer of stock, creation of trust deeds and notes...
- 10. Both parties agree to meet with a counselor/facilitator:
 - a. Each party will meet individual for at least three hours
 - b. Each party will draft 5 points of successfully dealing with each other and family members to preserve relationships
 - c. Both parties will read and seek to understand the other parties' opinions
 - d. Then the parties will draft a non-legal agreement of "Rules and Boundaries" as a future "guideline" of dealing with the family and each other
 - e. Both parties will sign this non-legal guideline agreement prepared by counselor/facilitator

The parties will be provided with weekly update reports by the mediator. Once a settlement agreement is reached, it will be the goal of the mediator to complete phases 7–10 within an additional 2 to 4 weeks. All legal fees to draft, file, and record the final settlement agreement will be split 50/50 by the parties.

In the absence of settlement, the parties agree to allow the above collected fact based information to be use in legal proceedings. Any analysis, opinions, or negotiation by or with the mediator will not be used in any legal proceedings.

Mediation Fees

The parties and the mediator agree that the fee for all mediator services above shall be \$_____ for time spent with the parties and for time required to collect, study documents, research issues, correspond, telephone call, prepare draft and final Agreements, and do such other things as may be reasonably necessary to facilitate the parties reaching full Agreement. The mediator shall pay for expenses incurred as a part of the mediation process with the exclusion of attorneys' fees, accounts, CPA, financial planners employed jointly or severally by the parties.

Should payment not be timely made, the mediator may, in his sole discretion, stop all work on behalf of the parties, including the drafting and/or distribution of the parties' Agreement, and withdraw from the mediation.

The mediation process is generally much less expensive to the parties and to the court system. The charges of this mediation shall be a set fee, paid in two installments. One at the beginning of mediation process, the second within 15 days of conclusion of all

documentation or a settlement agreement is reached or impasses and/or halt mediation occurs.

The cost of this mediation will be divided between the parties.

Financial Disclosure

The documentation and disclosure of assets is intended to satisfy several purposes. First, it provides the data base of financial information needed to reach a settlement agreement in an informed and organized manner. This supports your understanding your rights and responsibilities and you're looking for attractive and balanced settlement alternatives.

Second, the documentation and disclosure of assets is used in conjunction with the filing of a "Settlement of Marital Assets", the documentation and disclosure of assets may be used in legal proceedings, you are required to fill out the Judicial Council forms used for the final agreement.

To comply with the Family Code disclosure of asset requirements, you are hereby encouraged and advised to list *all* property and debts known to you, regardless of when the asset was acquired or when the obligation was incurred and without consideration of any separate or community characterization issues. Listing the property will not constitute an admission or a characterization that it is separate or community. Nor will listing property constitute any type of waiver of rights by either party regarding the listed property or debt. This disclosure is your protection that any subsequent agreement or court order dividing the property and debts will not be set aside, reviewed or modified based upon the discovery of an asset or liability that was not disclosed prior to the making of the agreement or entry of the judgment.

Regarding requests for statements of estimated present value, your best estimate is all that is requested at the present time. You need not know the appraised value, nor is it expected that you will be in agreement with each other regarding value at this time. If formal appraisals have not been done, they will be obtained only if the need arises. Regarding the disclosure of personal property, you need not provide a detailed list of the household furniture/furnishings and personal property unless the parties make an agreement to exchange such lists. If there are any unusual factors regarding the furniture or personal properties (such as rare or valuable items which are noteworthy or extensive antiques or other collections of unusual value) those items may be inventoried. If your furniture consists of the normal type of household contents, merely note the normal content of said household shall be retained by which party.

You are also requested to provide copies of your most recent state and federal tax returns. If you are a sole proprietor of a business, it would be helpful for you to provide a current profit/loss or income statement or other documentation as to the current operation and value of the business through the current quarter.

All of the information provided in response phases 1–10 should not be considered conclusive as to the documentation of these assets and liabilities. The most important thing is to see that *all* assets and obligations are identified. Information regarding the details of the assets and liabilities will be obtained if needed. Because of the nature of the disclosure the content of all assets will not be considered confidential in the context of the confidentiality provision as set forth in the Mediation Agreement. If a settlement agreement can not be reached, this fact based information can be use by both parties legal counsel and in a court of law.

This is a legal and binding agreement.

Dated this _____ day of _____, 20_____.

_____ Client

_____ Client

_____ Mediator