

## MEDIATION AS A METHOD OF RESOLVING DISPUTES

In June 2016 the Cayman Islands Judiciary launched The Mediation Information & Assessment Rules, 2016 as a means of encouraging and facilitating mediation of family law disputes. But what is mediation, how can it help and is it effective?

### What is Mediation?

Mediation is facilitated negotiation between parties. A mediator is a neutral person and her role is to help people to resolve their disputes more effectively than they are able to do on their own. In doing this a mediator will seek some common ground between the parties and find creative ways to help them resolve their disputes fairly.

Mediation can be used in any non-criminal legal cases, but is most often utilized in family law disputes.

### What are the benefits of Mediation?

- Mediation can reduce the cost of resolving a dispute by eliminating or significantly reducing the legal fees involved in running litigation.
- Mediation is quicker than the legal process.
- Mediation is significantly less stressful than court proceedings.
- In the case of family law mediation provides you with the space and time to think about what is the most important issues that effect your family and provides a positive and safe environment in which the best arrangements can be worked out.
- You can control the process.
- Judges must act within what the law allows them to do. Mediation can offer solutions that go beyond conventional thinking.

- Mediation allows people to express themselves freely and in their own words. Litigation does not always offer this because of the rules of evidence.
- Litigation often does irreparable harm to the relationship between parties (who often have to continue on in a co-parenting arrangement). Mediation avoids unnecessary injury to a relationship.
- Mediation allows the parties to take control of their own lives. In the case of litigation, a judge will make a binding decision, which will be imposed regardless of the parties' views of it.
- People are often better able to accept and respect a mediated agreement that they worked out together rather than a court imposed order.
- Mediation is confidential.

While mediation has many benefits it should not be attempted in the case of domestic violence, abuse or other violent situations. If you are in fear of another person you should immediately contact an attorney.

#### The Mediation Information & Assessment Rules, 2016

In 2016 The Mediation Information & Assessment Rules were introduced. These rules do not mandate mediation between divorcing couples, rather they encourage mediation by insisting that parties attend a Mediation Information and Assessment Meeting ("MIAM") with a qualified person to advise and educate about the mediation process.

In certain circumstances parties may claim an exemption.

At every stage in matrimonial proceedings a court must consider whether a non-court dispute resolution process like mediation is appropriate and the judge must take into account must take into account:

- Whether a MIAM has taken place;
- Whether a MIAM exemption was claimed and;
- Whether parties attempted mediation and what the outcome was.

If the judge does think it is appropriate he or she may adjourn the family law proceedings for a MIAM or attempted mediation.

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