

## D S Mediation

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## Property FDR Mediation Agreement

This agreement for mediation (**this Agreement**) is made between Daan Spijer (**the Mediator**) and each of the two parties (**the Parties**) whose names and signatures appear at the end of this Agreement.

This Agreement is made on the \_\_\_\_\_ day of \_\_\_\_\_ 2023.

### Family Dispute Resolution (FDR) Process

1. Daan Spijer is a nationally accredited Family Dispute Resolution (**FDR**) Practitioner (registration number R1005915) and is empowered to mediate both family property disputes and family parenting disputes.
2. The **Property FDR (Mediation)** process referred to in this Agreement is part of Family Law in Australia.
  - 2.1 It is a voluntary process by which the Parties, with the assistance of the Mediator:
    - 2.1.1 systematically isolate the issues in dispute (**the Dispute**) in relation to their property;
    - 2.1.2 develop options for the resolution of those issues;
    - 2.1.3 explore the usefulness of those options and consider alternatives with the aim of reaching an agreement on the division of their property.
  - 2.2 Any agreement reached must accommodate the interests and needs of the Parties and take into account the best interests and needs of any minor children of the parties and has the effect of resolving the Dispute or of agreeing on some of the issues. A Property Agreement (if there is one) is designed to embody the final agreement between the parties on all matters relating to their property.
  - 2.3 The Property FDR may have to be conducted over a number of sessions.
3. Property FDR is subject to the provisions of the commonwealth *Family Law Act 1975* and Regulations made under that Act. These provisions include considerations of the needs of children and the possibility of the payment of spousal maintenance.

### Appointment of Mediator

4. The Parties appoint the Mediator to conduct the Property FDR in accordance with the terms of this Agreement. The Mediator accepts this appointment.

### Payment of Session Fees and Other Fees

5. The fee to be paid for the Property FDR (**FDR Fee**) for the first session is the amount set out in Schedule 1(a) and this shall be paid by the Parties before the first session in a manner directed by the Mediator, with each Party paying 50% of the fee or in proportions to be decided by the Parties. This fee includes an intake interview with each Party.

6. If a subsequent session is needed, the fee to be paid for this (**Follow-on FDR Fee**) is the amount set out in Schedule 1(b) and this shall be paid by the Parties before any subsequent session in a manner directed by the Mediator with each Party paying 50% of the fee or in proportions to be decided by the Parties.
7. The FDR Fee and any Follow-on FDR Fee are non-refundable except, at the discretion of the Mediator, in the event of the Property FDR not proceeding or of any scheduled session not proceeding.
8. The FDR Fee and any Follow-on FDR Fee are not refundable if the Property FDR or any subsequent session proceeds and no final agreement is reached by the Parties.
9. **Other Fees**
  - 9.1 The Mediator may charge the **Preparation Hourly Fee** set out in Schedule 1 (d) for any extensive preparation required due to complexity of the Dispute and the Parties agree to pay such fee if charged. There will be no charge for an intake interview with each Party.
  - 9.2 If a venue needs to be hired for the Property FDR, the Parties agree to pay this fee (**Venue Costs**).
  - 9.3 In the event that a session in the Property FDR extends beyond the time set aside for its conduct as indicated in Schedule 1 (c) (the **Expected Duration**), the Parties agree to pay the **FDR Hourly Fee** set out in Schedule 1 (e) for any such extended time, subject to the Mediator's right to waive any or all of the FDR Hourly Fee.
  - 9.4 If the Mediator needs to travel further than 50 kilometres from Mount Eliza to conduct the Property FDR, the Parties agree to reimburse him for the costs of travel and any accommodation he may require (**Travel Costs**).
  - 9.5 If payable, the Parties agree to pay 50% each, or such proportions each as the Parties may decide, of the Preparation Hourly Fee, Venue Costs, the FDR Hourly Fee and Travel Costs.

#### **Role of the Mediator**

10. The Mediator will:
  - 10.1 be neutral and impartial;
  - 10.2 not make decisions for either Party or impose a solution on the Parties;
  - 10.3 not bind the Parties by any comments, suggestions or statements made by the Mediator;
  - 10.4 not give legal, financial or other professional advice to either Party;
  - 10.5 not arbitrate between the Parties or make any rulings in relation to the issues in dispute between the Parties;
  - 10.6 not act as an advocate for either Party;
  - 10.7 throughout the Mediation, determine when he may meet with the Parties together or separately; and
  - 10.8 not draft or draw up any final agreement between the Parties; any final agreement between the Parties is to be drafted by their respective lawyers.

#### **Commitment to Mediation**

11. Each Party agrees to co-operate with the Mediator and the other Party in the Property FDR with a commitment to negotiate towards achieving a resolution of the Dispute.
12. Each Party agrees:
  - 12.1 before the first Property FDR session, to prepare a full inventory of their respective assets and liabilities and, to the extent known, the assets and liabilities of the other party; and
  - 12.2 during the Property FDR session, to make full and honest disclosure of their respective assets, liabilities and income even though not all property, liabilities or income may be subject to inclusion in a final agreement.

13. The Parties acknowledge each other's right to be heard and agree to behave with courtesy and respect towards each other and towards every person participating in the Property FDR, including towards the Mediator.
14. Once a date or dates have been set for any session of the Property FDR, any changes may only be made with the consent of the Mediator and both Parties.

### **Conflict of Interest**

15. The Mediator must, prior to the commencement of the Property FDR, disclose to the Parties to the best of his knowledge any prior dealings with either of the Parties as well as any interest in the Dispute and any other possible conflict of interest.
16. If, during the Property FDR, the Mediator becomes aware of any circumstances that may affect his capacity to act impartially, he will, to the extent that he may do so, immediately inform the Parties of this situation.

### **Confidentiality**

17. To the extent allowed by law, the Mediator and the Parties agree to keep confidential all information and documents concerning the Dispute which are disclosed during the course of the Property FDR.
  - 17.1 Any disclosures, exchanges and all aspects of any communication occurring within the Property FDR shall be 'without prejudice'.
  - 17.2 The confidentiality does not extend to disclosure by a Party to that Party's own legal or financial advisers or to a therapeutic counsellor.
18. In order to preserve confidentiality, audio or video recording of any session of the Property FDR by anyone attending such session is strictly prohibited.
19. Subject to any limits imposed by law, including to ensure the safety of any person, the Parties and the Mediator agree that the following will be privileged and will not be disclosed or be the subject of a subpoena to give evidence or to produce documents in any proceedings in respect of the Dispute:
  - 19.1 any settlement proposal made in the course of attempting to resolve the Dispute, whether such proposal be made by a Party or by the Mediator;
  - 19.2 the willingness of a Party to consider or accept any such settlement proposal;
  - 19.3 any admission or concession made within the Property FDR by a Party;
  - 19.4 any views expressed, suggestions made or exchanges passing (orally or documentary) between either of the Parties and the Mediator or between the Parties themselves;
  - 19.5 documents brought into existence for the purpose of the Property FDR that have not been or are otherwise incapable of being discovered or subpoenaed for the purposes of legal proceedings.
20. In Property FDR all property over which each party has full or partial control, whether individually or jointly, needs to be disclosed and considered.
  - 20.1 Subject to clauses 17 and 19, the Parties acknowledge that the conduct of this Property FDR is only possible if each makes full disclosure of their respective assets, liabilities and incomes and of all property over which they have full or partial control.
  - 20.2 The Mediator may postpone or conclude the Property FDR before a final agreement is reached between the Parties if he is of the opinion that either of the parties is not fully disclosing their assets or income.

## **Communication between the Mediator and the Parties**

21. Any information disclosed by a Party to the Mediator in private is to be treated as confidential by the Mediator unless the Party who makes the disclosure authorises the Mediator to disclose the information to the other Party. This includes any information communicated by either Party to the Mediator during any private session between the Mediator and either Party before the Property FDR commences, including any intake interview;
22. The Mediator may communicate with the Parties or their representatives or both, separately or in conference, before the Property FDR in order to agree on:
  - 22.1 the suitability of the matter for Property FDR;
  - 22.2 the collation, disclosure and presentation of documentation and other material for use in the Property FDR;
  - 22.3 the setting of a time, date and venue for any session of the Property FDR;
  - 22.4 any other planning or administrative arrangements and considerations to enable the Property FDR to take place.

## **Authority of the Parties**

23. Before the Property FDR commences, in order to come to the Property FDR fully informed, each Party will seek any relevant professional advice in relation to:
  - 23.1 legal matters, including:
    - 23.1.1 relevant provisions of family law in Australia;
    - 23.1.2 the likely costs of the Dispute being taken to a court or tribunal; and
    - 23.1.3 the prospects of success if the Dispute were to be taken to a court or tribunal;
  - 23.2 financial matters;
  - 23.3 taxation matters, including the taxation implications of possible settlement scenarios;
  - 23.4 anything else that may affect that Party's ability to negotiate and settle the Dispute.
24. Each Party shall attend the Property FDR on their own behalf and not attend to represent or speak for any other person and come with full authority to negotiate and settle the Dispute and to enter into a binding agreement.
25. If, during the Property FDR, a Party needs to seek further advice, the Mediator will facilitate this as far as is practicable.

## **Support People at Property FDR**

26. At the Property FDR, each Party may be accompanied by one or more 'support' people, including a lawyer or other professional advisor, provided the other Party consents to such support people being present. Such a support person may be:
  - 26.1 a lawyer or accountant;
  - 26.2 an interpreter, because the Party has difficulty with language, hearing or speaking;
  - 26.3 some other person deemed necessary for support by the Party.
27. If either Party objects to the other Party being accompanied at the Property FDR by a support person:
  - 27.1 this will have to be resolved, with the help of the Mediator, before Property FDR can take place;
  - 27.2 the Mediator will make a decision whether the other Party may be accompanied by a support person.
28. Anyone attending the Property FDR who is not a Party, may only attend after signing a third-party confidentiality agreement.

29. Any support person present at the Property FDR does not have the right to speak on behalf of the Party they are supporting. The Mediator may direct if and when any support person may speak at the Property FDR.

### **Settlement of the Dispute**

30. In the event that the Dispute is settled:
- 30.1 a settlement agreement (**Property Settlement**) may be drafted by the Parties with the aid of their respective lawyers if these are present at the Property FDR;
  - 30.2 the parties will not sign any Property Settlement at the Mediation unless both Parties are accompanied by legal professionals who are able to properly advise them at the time
  - 30.3 any informal agreement drafted by the Parties at the Property FDR will not be binding until it is drafted by a lawyer and signed by both parties;
  - 30.4 the Mediator will not draft any Property Settlement.

### **Enforcement of Property Settlement**

31. The Parties may apply to a competent court for a consent order in the terms of the Property Settlement.
32. Either Party will be at liberty to enforce the Property Settlement referred to in clause 30 by judicial proceedings and for those purposes, either Party may call evidence of the Property Settlement.

### **Adjournment or Termination of Property FDR**

33. The Parties and the Mediator may mutually agree to an adjournment of any session of the Property FDR.
34. The Mediator may terminate his involvement in the Property FDR if, after consultation with the Parties, the Mediator decides he is unable to further assist the Parties to achieve resolution of the Dispute.
35. Either Party may terminate the Property FDR at any time after consultation with the Mediator.
36. If the Property FDR is terminated without the drafting of a Property Settlement, any future Mediation of the Dispute between the Parties will be a new Property FDR and not a continuation of the current Property FDR. However, a Property FDR session may be adjourned to be continued at a future date.

### **Exclusion of Liability and Indemnity**

37. The Mediator will not be liable to either Party for any act or omission in the performance of the Mediator's obligations under this Agreement unless the act or omission is fraudulent.
38. The Parties together and separately indemnify the Mediator against any claim for any act or omission in the performance of the Mediator's obligations under this Agreement unless the act or omission is fraudulent.
39. If a Party requires the Mediator to give evidence in a court or tribunal concerning anything said or done in the course of the Property FDR, or to produce documents created for the purpose of or during the Property FDR, that Party will:
- 39.1 indemnify the Mediator for all costs and expenses incurred by the Mediator (including the Mediator's legal costs and any legal costs the Mediator is ordered to pay to any other person, such legal costs to be assessed on a solicitor-client basis) in connection with the appearance at the court or tribunal, the giving of evidence or the production of the documents;
  - 39.2 pay the Mediator at the **Hourly Rate** specified in Schedule 1 (g) for the time expended by the Mediator in connection with the appearance, the giving of evidence or the production of documents; and
  - 39.3 reimburse the Mediator for any travel or other expenses properly incurred by the Mediator in connection with the appearance, the giving of evidence or the production of documents.

40. For the purposes of any dispute handling between either Party and the Mediator, the Mediator is a professional member of the Resolution Institute (<https://resolution.institute/>).

**Schedule 1 – Mediation Costs** (all inclusive of GST)

- a. The **FDR Fee** to be paid for each session under clause 5 is \$ \_\_\_\_\_
- b. The **Follow-on FDR Fee** to be paid for each session under clause 6 is \$ \_\_\_\_\_
- c. The **Expected Duration** of each Parenting FDR session is \_\_\_\_\_ hours
- d. The **Preparation Hourly Fee** to be paid under clause 9.1 is \$ \_\_\_\_\_
- e. The **FDR Hourly Fee** to be paid to the Mediator in relation to clause 9.3 is \$ \_\_\_\_\_
- f. The **Venue Costs** to be paid per session under clause 9.2 is \$ \_\_\_\_\_
- The **Hourly Rate** to be paid by a Party under clause 39.2 is \$ \_\_\_\_\_

**Execution of Agreement**

|    |                                  |  |
|----|----------------------------------|--|
| 1. | Name of Party (please print):    |  |
|    | Address of Party (please print): |  |
|    | Signature of Party:              |  |

|    |                                  |  |
|----|----------------------------------|--|
| 2. | Name of Party (please print):    |  |
|    | Address of Party (please print): |  |
|    | Signature of Party:              |  |

|    |                        |             |
|----|------------------------|-------------|
| 3. | Name of Mediator:      | Daan Spijer |
|    | Signature of Mediator: |             |

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