

## **CIVIL AND COMMERCIAL MEDIATION**

Sooner or later, in the normal course of your business, a dispute may bring you into conflict with one of your clients or suppliers. Mediation is a way to resolve this kind of problem without having a third party make decisions for you. More and more notaries offer this alternative method of reaching agreement by acting as mediators to help find the right solution for you.

Mediation is a versatile, flexible, voluntary process. It requires cooperation and good faith on the part of each concerned party, who must accept the move to mediation with a commitment to arrive at a viable, mutually satisfactory agreement.

The purpose of mediation is to re-establish communication and thus repair the relationship between the parties. It can even help avoid subsequent conflict.

After confirming that the parties wish to submit their dispute to mediation, the mediating notary asks them to sign a mediation agreement, which contains clear definitions of the mediator's role, the responsibilities of the parties, mediation procedures, confidentiality and fees.

### **THE MEDIATOR - AN UNBIASED PARTICIPANT**

The mediator's role consists of providing the parties with supervision, support and structure to help them resolve their dispute to their mutual satisfaction.

To accomplish this, the mediator first tries to create an atmosphere that encourages communication. He or she then gathers all relevant information about the dispute to determine the needs and interests of each party. The mediator guides the sessions to foster calm, productive discussions likely to inspire creativity in the search for a solution.

The mediator does not represent either of the parties. He or she is neutral and impartial, offering neither advice nor legal opinion on the subject of the dispute. However, the two parties are perfectly free to request at any time the opinion of a third party for their own advantage. The mediator's role is not to settle the dispute or impose a solution, because in mediation, it's the responsibility of the parties to resolve their conflict.

Mediators have received specialized training and are required to respect strict professional ethical standards. With the necessary training, and the legal duty to be impartial, notaries are the ideal professionals to act as mediators and help you negotiate a long-lasting, satisfactory agreement.

### **THE PARTIES' RESPONSIBILITIES: YOU HAVE TO TALK TO EACH OTHER TO UNDERSTAND EACH OTHER!**

To arrive at a mutually satisfactory solution, the parties participate in open, honest discussion concerning their needs and interests, then negotiate in good faith in an atmosphere conducive to communication. The mediator facilitates this discussion to help the parties determine areas of agreement and disagreement, and to encourage their progress in the search for a suitable solution.

Resorting to mediation does not mean that you give up your rights or that the other party is relieved of his or her obligations. You are not required to accept a compromise that does not satisfy you. Mediation is a voluntary process from which you may withdraw at your discretion. Mediation does not preclude the possibility of initiating legal proceedings at any time or the right to call in one or more arbitrators to settle the dispute if mediation fails. On the other hand, if the

parties do come to an understanding, a draft agreement is drawn up and submitted to the parties for approval before signature. An agreement signed by the parties constitutes a contract, which can be enforced if it's not respected.

### **THE MYSTERIES OF MEDIATION**

You will learn very little from talking to people who have gone through the mediation process, because the parties and the mediator have agreed from the beginning to keep all details confidential. All statements and information disclosed by the parties, written or oral, cannot be used in subsequent judicial proceedings without the permission of all parties involved. Moreover, the mediator may not be called as a witness in any judicial proceeding concerning the dispute in question. The parties are therefore able to express themselves freely.

### **AN EFFICIENT AND ECONOMICAL CHOICE**

Most of the time, the parties agree to share mediation costs (i.e. mediators fees and miscellaneous expenses) equally. The mediators fees vary according to professional qualifications and experience. Even so, mediation usually costs much less than court proceedings. Furthermore, although the duration of mediation may vary from one case to another, depending on the complexity of the dispute and the time the parties are willing to devote to settling it, this method of conflict resolution is proving to be much faster than the traditional judicial route.

