

MEDIATION AND FEE AGREEMENT: PREMARITAL AGREEMENT

1. MEDIATION. Mediation is a way to work together to prepare a Premarital Agreement in a non-adversarial way. In mediation you have the opportunity to negotiate your own “rules” to guide you during your marriage rather than have them imposed on you by California law. Too often the Premarital Agreement process creates distrust and disharmony at a time when couples, who love each other, should be looking forward to spending their lives together. The process of mediation is mutual and you should come out of it with “rules” that are acceptable to both of you and controlled by both of you to govern your marital finances and to govern a divorce, should this be an unfortunate future event.
2. THE MEDIATOR. My function as mediator is to assist you in reaching an agreement, and my commitment is to one you can both live with. I will use my mediation and legal skills to help you identify areas of agreement and disagreement and areas where problems arise. When you disagree, I may try to point out how others have handled issues like yours, how a court might look at the problem and to provide you with some suggestions for alternative solutions. All final decisions must be yours.
3. THE MEDIATOR IS NOT YOUR LAWYER. I have explained to you that a mediator does not represent either of you and cannot be your individual lawyer or the lawyer for both of you. There may be complex legal questions, questions of valuation of property, and tax and accounting problems involved in your agreement. You may obtain your own independent legal, tax, accounting or other expert advice at any time and it may be advisable to do so. It is understood that as mediator, I am not responsible for setting the value of any item of your property and that each of you is free to obtain an appraisal of any item of property.
4. INDEPENDENT COUNSEL. When a settlement is reached, either I or one of your lawyers will prepare the Premarital Agreement for you. I have advised you that I cannot be the lawyer for either of you, and each of you should take the agreement to your own independent legal counsel before signing it.
5. DISCLOSURE. The Premarital Agreement mediation process requires a high degree of mutual respect and honesty. This does not mean that you have to accept everything the other party says, particularly concerning an opinion as to the value or character of property. You each agree to make a full disclosure of all property and income in which you have an interest to the other and to me and to disclose any information you have bearing on the value of your property.

6. CONFIDENTIALITY. The mediation process is in the nature of settlement negotiations of your rights relating to the marriage or domestic partnership.
- a. You agree that all communications with me are privileged and not admissible in any court of law pursuant to Evidence Code 1115 and following.
 - b. You agree that I, as mediator, shall not be called as a witness in any legal proceeding.
 - c. [the following is a waiver of a statute that might endanger the confidentiality of our mediation through the passage of time]: Evidence Code section 1125 (a) that provides :

For purposes of confidentiality under this chapter, a mediation ends when any one of the following conditions is satisfied:.... (5) for 10 calendar days, there is no communication between the mediator and any of the parties to the mediation relating to the dispute. The mediator and the parties may shorten or extend this time by agreement.

We hereby agree to extend the time through the date of the second person to sign the Premarital Agreement until the mediation is terminated in writing, whichever occurs first. The effect of this will be to protect the confidentiality of all conversations, communications and mediation activities throughout the mediation process, regardless of whether or not 10 days pass without communication between the mediator and the parties.

7. MEDIATION ENDS. Mediation ends when:
- a. You reach a complete written and signed Premarital Agreement
 - b. When the mediator or either party terminates the mediation in writing, or:
 - c. Under Evidence Code Section 1125, if there is no communication between the parties and mediator for 10 calendar days. However as to the last requirement, the time frame is hereby extended by paragraph 6 of this written agreement.
8. MEDIATOR'S FEE. My fee is not fixed because I have no way of knowing at the outset the difficulty of the services to be performed or how much time will be required. The complexity of your assets may require substantial time; however, even when assets are not complex, the feelings of the parties may require unusual time or effort on my part. My fees are charged on a straight time basis (at **\$450** per hour in San Francisco and **\$400** per hour in Santa Rosa) for all time spent during the actual mediation sessions and outside of the sessions, including research and drafting, drafting minutes of our meetings, correspondence sent and received and telephone calls. I reserve the right to adjust my hourly rate after the date you have retained my services, but not sooner than

six (6) months after the date of execution of this agreement. Both parties will be notified in writing of any change in my billing rate.

- d. Fees shall be payable as follows:
- e. A retainer of \$_____ is to be paid immediately and will be credited to billings, to be made as indicated below.
- f. Payment shall be made at each mediation session for time spent to date. Other time spent outside the mediation sessions shall be billed as indicated below.
- g. Bills will be rendered monthly and you both agree to be responsible for full payment. Payment is due on billing and in the event payment is not made within 30 days of billing, a late payment charge of 1% per month on the unpaid balance will be made.

We agree to the foregoing.

DATED: _____

DATED: _____

DATED:

JENNIFER JACKSON

GROUND RULES FOR MEDIATION

1. Difference of Mediation from Adversary. I do not represent either party, which represents a drastic difference from my work representing one client where my primary goal is to protect one party. My function is one of looking at the whole of the situation rather than at any particular part or any particular "position" of one party.
2. Non-Representation. I am unavailable to work for either of you as a counselor or advocate in connection with any of the matters arising in the mediation at a later time, nor would I be a witness for either of you unless both consented and felt that it was in the best interest of the parties to do so.
3. Mutuality. The process of how we work together is mutual and to be determined by the three of us rather than by my imposing an immutable process on you.
4. Voluntariness. Nothing binding happens in a mediation process until after an agreement has been reached, and drafted by me. I highly recommend that you have it reviewed by lawyers before signing any agreement. Either party is free to leave at any time.
5. Risks. Coming to an agreement just for the sake of agreeing and not standing up for what you each believe to be right is more dangerous than failing to reach an agreement and having to resort to representation by adversarial lawyers.
6. Good Faith Negotiation. We agree that this is a good faith negotiation and that any statements made by either party would be inadmissible as evidence against the other. The basis for this is to allow you to say whatever you would like without legal representation.
7. Full Disclosure. Each party promises to fully disclose any and all relevant facts, documents, etc., requested by the other party that may have relevance to the mediation.
8. Fees. We will mutually agree about how my fees will be paid.
9. Confidentiality. I hold nothing confidential between the parties. If I speak with either of you separately, the content of the conversation is available to the other party. I will not speak with either of your lawyers about anything that was said in the mediation unless both parties give me permission.
10. Expression of Opinion by Mediator. My highest priority in these mediations is for you to reach an agreement that you each believe to be fair. I will not offer my advice or opinion about any particular issue unless one or two conditions exist: (a) if the two of you agree to

ask me for my opinion, b) if it feels to me that one party is taking advantage of the other in the process, or (c) that you are reaching an agreement that appears to me to be extremely unfair, sufficiently unfair for me to feel that it would be a severe miscarriage of justice.

11. The Role of Law. Similar to the above, if you ask me to, I will make predictions about what a court would do and will role play what I think your lawyers would say in a given situation. I try to strike a balance between keeping law or my prediction about what a court would do from taking over, or being disregarded as irrelevant. The law is more subjective than most people experience it, and lawyers disagree about what the law is, as do judges. Ideally the law is part of the mix of things which are relevant in mediation, having no greater or lesser strength than other equally important factors.
12. Lawyer Review. It is important to have your individual attorneys review the agreement reached.
13. Setting Agenda. We mutually decide on the agenda, and I will emphasize our developing a process which responds to your most normal way of behaving with each other for utmost effectiveness.
14. Mediator Role. I will act as an impartial person and will make interventions pointing out unproductive communication patterns, suggest options to the parties, clarify statements made by either of you, help point out errors of disagreement and agreement, draft the agreement if asked, and comment about the process.

CONSENT

The undersigned have consulted Jennifer Jackson, Attorney at Law, to act as a mediator to assist in the drafting of a Premarital Agreement. They have been informed by Jennifer Jackson that they may have adverse legal interests in connection with some of the matters about which they are consulting her. They acknowledge that they have been so informed and understand that the said adverse legal interests may be substantial, but nevertheless consent to being jointly advised and mediated by Jennifer Jackson at this time about the legal implications of said matters. They understand that by consulting with Jennifer Jackson at this time they do not waive their rights to separate and independent legal consultation at any time.

The undersigned also agree that it is in their best interest that communications between them in the presence of Jennifer Jackson are confidential and the undersigned further agree not to request or require that Jennifer Jackson reveal or disclose to anyone what we say to her or to each other in her presence.

DATED: _____

DATED: _____