



Office of the Small Business Commissioner

MEDIATION AGREEMENT

This agreement is between the following parties:

The parties appoint the mediator to mediate the issues between them in accordance with the terms of this agreement.

Applicant:

Respondent:

Other parties:

Mediator:

Role of the parties

1. All parties to the dispute will attend the mediation or send a representative with authority to act on the party's behalf. The parties acknowledge the following rules of conduct are fundamental to the effectiveness of the mediation:
 - a. Courtesy - parties will treat each other with respect and courtesy and will not make inflammatory statements or personal attacks.
 - b. Listening to others - parties will listen to each other and the mediator and consider what everyone has to say.
 - c. Good faith - parties will make a serious attempt to resolve the issues at hand and cooperate in trying to find a resolution to the dispute.
 - d. Honesty - parties will approach the mediation in an open, honest manner. A failure to act honestly may void any agreement reached in the mediation.
 - e. Cooperation – parties are to cooperate with the mediator's requests regarding the management of the mediation process in so far as the mediator's requests do not disadvantage a party.

2. The parties recognise they are responsible for resolving the dispute and the mediator's role is to facilitate this process in a neutral and impartial way. The parties are not bound by any comments, opinions, suggestions, statements or recommendations made by the mediator.
3. Parties are encouraged to seek legal or other professional advice about their rights and obligations in relation to the dispute and the mediation.
4. Parties may bring legal representatives or another person to the mediation to assist and advise them. These persons must sign the confidentiality agreement, attached to and incorporated within this agreement. The Office of the Small Business Commissioner (OSBC) should be notified that others will be attending.
5. Parties are encouraged to consider settling some of the issues being mediated, where a complete settlement cannot be reached.

Authority

6. If a party to the dispute is a company or organisation, or if a party itself is unable to attend the mediation, the party must provide written notice to the OSBC of a representative acting on its behalf ('the appointee'). The appointee must have knowledge of the dispute and full and flexible authority to negotiate and the ability to enter into a binding agreement to settle the dispute within any range which can reasonably be anticipated.
7. When a party does not or cannot have unlimited authority, this must be disclosed to the OSBC prior to the date of mediation or the mediation is likely to be cancelled and late cancellation fees will apply.

Role of the mediator

8. The mediator will facilitate clear and effective communication between the parties in a neutral and impartial manner. Where appropriate the mediator will assist the parties in:
 - a. Identifying the issues in dispute.
 - b. Identifying the parties' interests.
 - c. Joint problem solving and brainstorming to generate options to resolve the dispute.
 - d. Reality testing any options and proposals.
9. Before the mediation, the mediator will disclose any personal interest and/or any prior dealings/he can recall having with any person present at the mediation or any person known to have a material interest in the outcome of the mediation.
10. If something happens during the mediation which affects the mediator's ability to act impartially, the mediator will immediately inform the parties. The parties will then decide whether or not to continue the mediation or to have another mediator appointed.
11. The mediator will not act as an advisor, advocate, arbitrator or judge during the mediation or in any subsequent legal proceedings relating to the issues raised in mediation.
12. The mediator is not responsible for ensuring that any settlement agreement reached by the

parties at the mediation is either valid or enforceable.

13. The mediator will not disclose information received in confidence from a party to the other party without the disclosing party's permission.

Role of legal advisors

14. Legal advisors are encouraged to participate in the mediation by advising and assisting their clients and discussing legal matters that arise.
15. Legal advisors are encouraged to discuss with their clients the possible benefits of settling some of the issues being mediated if an overall settlement cannot be reached.
16. Legal advisors are expected to assist the parties in preparing any written settlement agreement reached by the parties at the end of the mediation.

Confidentiality

17. The parties and the mediator will not disclose to anyone not involved in the mediation any confidential or privileged information or document given to them during the mediation, including the preliminary steps, unless required by law, except for
 - a. the purpose of obtaining professional advice, or
 - b. with the consent of each other party to the mediation.In these exceptions, the party must advise the person that the information or document is confidential and request that the person observe this clause and clause 18.
18. The parties and the mediator agree the following cannot be used as evidence or relied on in any legal proceedings in relation to the dispute, except where those matters are otherwise not confidential or privileged:
 - a. statements, views expressed and suggestions or proposals made in the mediation;
 - b. documents prepared and produced for the mediation;
 - c. admissions made in the mediation; and
 - d. indications made by a party that they are willing to accept a proposal.
19. Evidence and other material, which is otherwise admissible or discoverable, whether or not discussed in the mediation, does not become inadmissible or undiscoverable because it was used in the mediation.
20. The mediation and any communications relating to the mediation, with the exception of any settlement agreement executed by the parties, shall be without prejudice, except as otherwise provided by law.
21. The mediator and the OSBC may disclose information about the mediation for research, educational and statistical reporting purposes. Information disclosed must not identify the parties.

Termination of the mediation

22. The mediation may be terminated if a party believes the issues cannot be resolved at the mediation. The Small Business Commissioner or the Registrar of Retail Tenancy Disputes may issue a certificate that indicates the mediation failed to resolve all or some of the issues being mediated, or that mediation did not take place.

Settlement agreement

1. Parties are encouraged to reach resolution on the day of the mediation. Parties are also encouraged to document issues that have been resolved in the form of a written settlement agreement, even where other issues remain outstanding.
2. The terms of the settlement agreement, and the extent to which they are binding, will be decided and agreed upon by the parties.

Cost of the mediation

3. The parties agree to share equally and to be individually liable for their share of the OSBC's mediation fees. The OSBC will collect the mediation fees from the parties.
4. Each party agrees to pay its own costs of attending the mediation.
5. Each party will pay the mediation fees according to the arrangements described in the letter from the OSBC confirming mediation.
6. A party will have to pay a late cancellation fee if the party cancels or postpones the mediation, unless at least three working days' notice is given to the OSBC. The late cancellation fee is equivalent to the fee for three hours of mediation.
7. If mediation does not resolve the dispute and the dispute is subject to further legal proceedings, the costs of mediation may form part of a costs claim in those proceedings.
8. The OSBC will provide tax invoices as required.
9. If a party seeks to call the mediator to give evidence or produce documents in legal proceedings relating to this dispute, that party agrees to pay the mediator for any expenses, time and other costs incurred as a result.

Subsequent Proceedings

10. Where a mediator is required by law to attend subsequent proceedings the party requiring that attendance shall be liable for all costs and expenses.
11. Where the Small Business Commissioner, the Registrar of Retail Tenancy Disputes or OSBC officers or employees are required to attend subsequent proceedings the party requiring that attendance shall be liable for all costs and expenses.

Privacy

12. Any personal information collected by either party or the mediator about another person during the mediation is protected by the *Privacy and Personal Information Protection Act 1998 (NSW)*.
13. Any personal information collected will only be used by the OSBC for the purpose of contacting parties, organising the mediation and for obtaining feedback about the mediation.
14. The mediator will take all reasonable steps available to him/her to ensure that personal information will only be collected from the parties during the mediation where it is strictly necessary to conduct the mediation.
15. The mediator will take all reasonable steps to ensure that any personal information collected will not be used by the mediator for any other purpose, including for future referral work, and that it will not be disclosed to any other person who is not a party to the mediation.
16. If a party is not satisfied with or aggrieved by the conduct of the mediator they should contact the Director of the Dispute Resolution Unit at the OSBC on 1300 795 534 to discuss the matter.

Contact details

Office of the Small Business Commissioner,
Dispute Resolution Unit (incorporating Retail Tenancy Disputes)
GPO Box 5477
SYDNEY NSW 2001

Tel 1300 795 534
Fax 1300 795 644
Email we.assist@smallbusiness.nsw.gov.au
Web smallbusiness.nsw.gov.au

Signing of the mediation agreement

The parties and the mediator have signed this mediation agreement as follows:

Name of party

Signature

Print name

Date

Name of party

Signature

Print name

Date

Name of mediator

Signature

Date

Confidentiality agreement

To be signed by third parties and advisors present at the mediation

In consideration of my involvement in, or observation of, the mediation of the dispute described in the mediation agreement to which this agreement is attached, I independently and separately agree with each of the parties and the mediator that:

I will not disclose to anyone not involved in the mediation any confidential or privileged information or document given to me during the mediation, unless required by law, except

- a. for the purpose of obtaining professional advice, or
- b. with the consent of each party to the mediation, or
- c. if I am compelled to give evidence in legal proceedings relating to the terms of the settlement agreement.

In these exceptions, I will advise the person to whom I disclose the information or document that it is confidential and will request that the person observes clauses 17 and 18 of the mediation agreement.

Dated _____

Name

Signature

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