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## **MEDIATION AGREEMENT FOR PREMARITAL AGREEMENT, MARITAL AGREEMENT, OR CO-OWNERSHIP AGREEMENT**

### **The Purpose of Mediation:**

Although both parties to any contract of course have the right to hire separate attorneys, many couples or persons purchasing a home together prefer to go through this process together, via mediation, in order to minimize the expense and avoid the adversarial nature of being represented by two separate attorneys. The advantages of having two separate attorneys is that you would both receive completely independent, private, and confidential advice. By going through mediation in an effort to develop a written agreement and estate plan, you will be giving up these advantages.

If you choose mediation, the purpose of the mediation will be to attempt to arrive, in a cooperative and informal manner, at a mutually acceptable agreement that resolves all financial and legal issues that may arise in connection with your upcoming marriage, your existing marriage, or your co-ownership of property. A more detailed description of the mediation process follows this introductory section. If you do not choose to use mediation, but desire separate legal representation in connection with the preparation of a written agreement, then you should skip over the information below dealing with mediation.

In addition to signing this Mediation Agreement, you must also fill out this our [Lifetime Planning Intake Form](#) which is available on our website on our [Forms](#) page -- it's the very first form listed on that page. The information you provide in this questionnaire is needed to help you organize your personal and financial information so that we can properly assist you in preparing an agreement that you are happy with. We recognize that this questionnaire is fairly lengthy. Keep in mind, however, that the more complete the information is, the better it will equip us throughout the mediation process to come up with the best possible agreement for you. The information you do provide should be as accurate as possible. If you are uncertain about exact information, simply note your uncertainty and give your best assessment. If exact information is required, that information can be obtained at a later date.

The [Lifetime Planning Intake Form](#) deals with issues involving estate planning. Many people think of a premarital or marital agreement as only dealing with what happens in the event of a divorce. However, in our firm, that's not the reason we do premarital or marital agreements -- the most important reason for such an agreement is to determine how your estate will be distributed if one of you dies during the marriage (which, of course, is the intended goal of all marriages - you know, the whole "till death does us part" thing). Even if you're just buying a home together with a friend or romantic partner, you need to address what happens to the home when one of you dies. Therefore, even though you may have already completed an estate plan of your own, a new marriage or purchase of a new home almost always calls for changes to that plan.

Your written premarital or marital agreement or co-ownership agreement will guide the creation of your estate planning

and/or asset protection documents, whether you wind up using Wills, Revocable Living Trusts, Irrevocable Living Trusts, or other advanced estate planning or asset protection techniques. One of the requirements of your agreement will be that both parties sign appropriate estate planning documents in order to give effect to the agreed-upon provisions in your agreement. In other words, in going through this mediation process, you will also be making many of your estate planning and asset protection decisions. It is therefore natural and logical to go through the mediation process with an experienced mediator who also happens to be an estate planning and elder law attorney and can therefore prepare the estate planning documents needed to give effect to the provisions in your written agreement.

#### **DETAILED INFORMATION ABOUT THE MEDIATION PROCESS.**

1. The mediator, Evan H. Farr, will conduct an initial joint session with both of you to discuss all of the issues relevant to reaching an agreement, including the various estate planning options. The mediator will conduct additional joint sessions and/or separate confidential sessions as needed. The mediator will review any and all written submissions by either of you and may confer via telephone, fax, or email, with one or both of you at any time during the mediation process.

2. No formal rules of evidence shall apply at any time during the mediation process.

3. During the mediation process both of you must provide full and honest disclosure of all property, assets, and financial information. Lack of full and honest disclosure may invalidate any section or portion of any written agreement that may be based on such disclosure or lack thereof.

4. The mediator may provide you with factual legal information, but the mediator can not and does not provide you with legal advice, even though the mediator may also happen to be an attorney.

5. Both of you will at all times have the opportunity to have independent counsel of your choice present during the mediation, and both of you will at all times have the opportunity to consult with your own independent legal counsel at any time during mediation, and are encouraged to do so. In addition, either party may terminate or postpone any mediation session in order to seek counsel's advice. Furthermore, you both agree that you will obtain legal counsel prior to signing any written agreement or statement of understanding that may arise from the mediation process.

6. Neither of you shall be legally bound by anything said or done during the mediation process. However, you and your heirs will be legally bound by any written agreement that is signed by as a result of the mediation process.

7. The mediator shall not be subject to subpoena for any matter in connection with any written agreement, or in connection with the underlying mediation, nor shall the mediator voluntarily appear in any subsequent proceeding related to any of the matters arising from this mediation.

8. All proceedings in connection with the mediation, including statements made and documents prepared by any party, attorney or other participant are confidential and privileged and shall not be disclosed during or after the mediation to third parties or in any other judicial or administrative proceeding pending or subsequent to the mediation process, or in any document, unless both parties and the mediator otherwise agree, and shall not be or construed for any purpose as an admission against interest or for any other purpose outside of the mediation. Rather, all communications made during the mediation process shall be considered compromise negotiations and shall thereby be inadmissible except as otherwise stated herein.

9. Either of you or the mediator may terminate this Agreement and may withdraw from, postpone, or terminate the mediation process at any time. Fees will only be owed for time spent by the mediator up until the time of termination.

10. The fee for mediation (after the free initial 1 hour consultation) is \$600 per hour. The flat fee for preparation of the ensuing Premarital Agreement, Marital Agreement, or Co-ownership Agreement is \$3,995. The fees for the Estate Planning that will be required pursuant to the Agreement are in addition to the above fees, and will be discussed at the free initial consultation.

**AGREEMENT**

By signing immediately below, we both acknowledge: that we have read all of the above; that we understand and agree to the above paragraphs numbered 1 through 10; and that we understand we have the right to obtain separate attorneys and receive independent and confidential advice. Nevertheless, we desire to waive that right and enter into mediation in connection with our agreement and estate planning needs. We both understand that we are waiving the privilege of attorney-client confidentiality with respect to each other.

\_\_\_\_\_

Date

\_\_\_\_\_

Signature

\_\_\_\_\_

Date

\_\_\_\_\_

Signature