

Dispute Resolution

mediation a better way

Small Business Development Corporation

Disagreements between traders are common. Many are amicably resolved and do not become a major hazard to business survival. Difficulties usually arise when there is a serious and complex dispute over money or contractual obligations.

This is when the parties to the dispute need to step back, take a deep breath and ask themselves the following questions:

- Is my position absolutely correct and does the other party have no legitimate point of view?
- Am I prepared to concede that at the very least, the other person may have something to say which might possibly be worth hearing and which may require me to take a slightly different position?
- If I am not prepared to negotiate, am I willing and able to enforce what I believe to be my 'rights' in a court of law?
- How would my business be affected if a court found against me?
- How much of my time will be taken from running my business to deal with a court determined resolution?
- Am I looking for justice or a fair commercial settlement of what is in reality a commercial matter?

Once these questions have been answered it will in the majority of cases, be apparent that a NEGOTIATED SETTLEMENT will provide an infinitely better result than litigation through the courts. Certainly it may be necessary to swallow a bit of pride but then the other person may have to do the same.

Provided there is a willingness to listen to the other point of view and to give a little ground, then the chances of success are good and this is where a trained, independent mediator can help.

Here are some pointers about mediated settlements:

- The mediator's role is to help the parties in dispute reach an acceptable resolution.
- A mediation can be arranged at short notice and costs are low starting from approximately \$250. By comparison, the court process is lengthy and can be very costly.
- Both parties in the presence of the mediator have the opportunity to present their respective points of view.
- If the mediator considers that it is desirable to have a confidential discussion with one or both of the parties, then this will be arranged.
- Any documents relating to the matter in dispute may be presented to the mediator and any person who is able to provide any information concerning the matter in dispute may be called to the mediation.
- Information disclosed to the mediator is confidential.
- Once the matter has been resolved, the mediator will provide a formal agreement for signature by both parties and this can be legally binding.

The difference between a court resolved dispute and a mediated settlement can be summarised as follows:

A court finds in favour of one party against the other, who can be described as the LOSER. In a mediated settlement it is entirely possible for there to be two WINNERS who, because of the skill of the mediator, may be able to continue in the business relationship often on even better terms than those which existed before the dispute arose.

Further information

The Federal Office of Small Business, within the Department of Industry, Tourism and Resources, has produced a publication outlining six steps for successful dispute resolution. Called *Resolving small business disputes* it is available on the web site www.industry.gov.au.

The Small Business Development Corporation (SBDC) publication *A guide for operating a small business* summarises this information under the heading *Resolving small business disputes*.

The Office of the Mediation Adviser helps franchisors and franchisees to resolve disputes without going to court. Further information is available on their website <http://www.mediationadviser.com.au>. They can be contacted on 1800 150 667.

Mediation services are available through:

The Law Society of Western Australia
www.lawsocietywa.asn.au
Tel: (08) 9322 7877

Accountants Assisting Commercial Dispute Resolution (AACDR). Contact at either CPA Australia
www.cpaaustralia.com.au
Tel: (08) 9481 5944, or

The Institute of Chartered Accountants
www.icaa.org.au
Tel: (08) 94200 0400

Citizens' Advice Bureau of WA Inc.
www.iinet.net.au/~cab
Tel: (08) 9221 5711

The Institute of Arbitrators and Mediators Australia
<http://www.iama.org.au>
Tel: (08) 9368 4755

Some mediation services are also listed in the Yellow Pages. Their website is www.yellowpages.com.au.

For further information and guidance contact:

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