

A FRESH APPROACH TO RELATIONSHIP PROPERTY DISPUTES: ARB-MED

By Catherine Green

Tried mediation? Thought about arbitration? How about taking a whole new approach and considering Arb-Med? The FDR Centre has just launched its 2018 revised suite of Mediation, Arbitration, and Arb-Med Rules for Family Law disputes (relationship property, trusts, wills and estates).

Each of the Family Law processes provides parties with a credible, effective, efficient, and importantly confidential process for resolving their dispute. However, each process is designed to meet different needs and each is a valuable addition to any Family Law practitioner's toolkit.

In terms of uptake to date, the most popular of the options has by far and away been the FDR Centre Family Law Mediation offering. That process allows parties to come together to find an amicable resolution to their dispute with the assistance of one of our highly experienced Family Law mediators. Where parties have adopted this process, we have seen a significant level of success over the course of a single mediation session, even where the dispute has involved multiple parties and highly complex financial arrangements.

At the other end of the spectrum, parties may also adopt an arbitration process, the benefits of which are also widely acknowledged.

But what about the third option: Arb-Med?

Recognising that disclosure is fundamental to enable effective negotiation or determination of relationship property disputes, and that asymmetrical information can lead to negotiation failure and/or lengthy and costly proceedings, the FDR Centre Family Law Arb-Med Rules were drafted to provide parties with an option that brings together the best of both worlds such that just and efficient resolution of

relationship property disputes may be achieved.

Family Law Arb-Med is a hybrid dispute resolution process that combines the benefits of arbitration and mediation, including: speed, procedural flexibility, confidentiality, choice of decision maker, ease of access to the tribunal, continuity, finality, and enforceability of the outcome.

The primary objective of the process is the informed good faith negotiation and settlement of the dispute by the parties, with the initial assistance and efficiency of the Arbitral Tribunal's information gathering powers, in the context of a formal arbitration process that will immediately resume if the mediation that follows is not successful.

If full settlement is not reached in the mediation the arbitrator who was acting as mediator will have been informed as to the issues in dispute and the facts of the case which can be carried over into the arbitration with potentially significant time and cost savings for the parties.

The advantage of this approach is that, unlike a Settlement Agreement which must be enforced as a contract where there is a subsequent breach, an arbitrator's award may be enforced by entry as a judgment in the High Court, or by action, and enforced in terms of the award. The process is relatively simple and straightforward.

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If on the other hand the parties are unable to settle the whole of the dispute by mediation, the mediation is terminated and, so long as no will continue with the arbitrator who was acting as the mediator then acting as arbitrator to make an award that finally determines the dispute.

If, following the mediation, a party withdraws its consent to the arbitrator who was acting as mediator continuing to hear and determine the dispute, a replacement arbitrator will be appointed by the FDR Centre (appointments are typically made within 24 hours).

The FDR Centre recognises that this area of the law is complex and, as such, the arbitrators and mediators who work with us are not only highly skilled private dispute resolution providers, they also include some of the most highly regarded leaders in the field of Family Law in New Zealand.

Our Rules also recognise the central importance of sound legal advice for both parties throughout the process. Accordingly, our Rules require parties to not only meet the minimum requirements of the Property Relationships Act in terms of obtaining legal advice, but also require the parties to be represented throughout the process. In our experience, this approach results in the most effective and efficient process possible for the parties.

We firmly believe that Family Law Arb-Med truly does offer parties to relationship property disputes a positive and highly effective way forward to find the best resolution to their dispute with the minimum of cost in terms of time, money, and emotional stress.

Will you add Family Law Arb-Med to your toolkit?



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