

## Success Story

Here is an example of a family property dispute matter that was filed in court, yet was resolved through the mediatory process.

### Case Study – Property Dispute

Relationships turned unpleasant when a family was in dispute over their property. Eventually the disagreement became so intense that the family members took the matter to the High Court. The parties were the registered proprietors of one undivided fourth share each in the property with improvements. A loan was secured over the subject property in 1979. One of the brothers, Sam, had the property under his care and was collecting rental monies for the premises rented out. According to Sam, he was using the rental monies towards the repayment of loan and payment of rates and necessary maintenance of the property. The other property owners asked Sam to account for the rental monies received, including payments made for repairs and maintenance. However, since, he failed to do so, the other three owners instituted legal proceedings against him in the High Court in 2014. They applied for an Order either that the property be sold and distributed equally among the titleholders or that the other three proprietors purchase the whole property including Sam's share. They also claimed that all rental monies being received from the property were to be deposited in the Court until the matter was resolved. This family dispute had built up over the years before the parties agreed to resort to Fiji Mediation Centre for a speedy resolution of the matter. All differences between the relatives were set aside, as they successfully reached an amicable solution. The parties agreed and understood that the mediation proceedings constituted settlement negotiations between them. They were able to maintain their sound relationships among each other. The family members were provided an opportunity to make decisions in the matter on their own accord. This was a win-win situation for the family.

## FMC Facilitates Efficient and Effective Dispute Resolution

- FMC offers professional case management under the FMC Mediation Rules, including a competitive and transparent fee structure.
- We arrange all the logistics, facilities and services for mediation at Level 1, Tabatolu House, Goodenough Street.
- FMC can assist to appoint a suitable mediator from FMC's panel of mediators in the event that parties are unable to agree about who should be nominated as mediator.
- Mediation at FMC comes with unique benefits of enforceability.
- Settlement agreements may be made consent awards.
- Mediated settlements will be enforced as orders of court.

## Model Clauses

### FMC Mediation Clause

*For use in contracts:*

All disputes, controversies or differences arising out of or in connection with this contract, including any question regarding its existence, validation and termination, shall first be referred to mediation in Fiji in accordance with the Mediation Rules of the Fiji Mediation Centre for the time being in force.

### Mediator's Fees

FMC has a fixed fee schedule. Mediators' fees will be based on scheduled rates. The fees shall be shared by the parties.



## CONTACT US

### Fiji Mediation Centre

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# MEDIATION IN FIJI



**MEDIATION:  
WHERE FINDING THE WINNING  
SOLUTION IS IN YOUR HANDS**



SUPPORTED BY



EUROPEAN UNION

**JUDICIAL**  
DEPARTMENT



CONSUMER COUNCIL OF FIJI

## What is Mediation?

The mediation process brings parties together to resolve their differences through discussion and problem solving. It seeks to achieve win-win solutions acceptable to all parties. The mediation process is flexible and informal.

## Why Choose the Fiji Mediation Centre (FMC)?

FMC understands your needs

- FMC is headed by the Judicial Department in Fiji.
- FMC's panel of mediators comprises experienced and respected mediators from Fiji.
- FMC's panel of mediators are accredited by Singapore Mediation Centre.
- FMC is managed by an executive team with a shared belief in the benefits of amicable dispute resolution.

## Why Mediate

- Parties can save time and money.
- Early resolution of the dispute can reduce emotional stress.
- Disputes can be dealt with promptly.
- May be less costly than litigation. If parties mediate early in their dispute, it is likely that they can avoid many costs associated with preparing their case for trial.
- Complainants and respondents can resolve the dispute in privacy without the details of the dispute and its resolution becoming public.
- Mediation provides an informal setting and atmosphere, conducive to productive communication between the parties. No one feels defensive or threatened.
- Substantive legal issues in dispute are separated from personal issues, reducing tension and making settlement more likely.
- Mediation to a great extent preserves the relationship between the parties.
- Mediation lets parties retain control of their own dispute. If parties go to trial, they are giving up total control of the outcome to a magistrate or judge. One party will win; the other will lose.
- It results in a win-win situation as both parties play an important role in formulating the terms of the settlement.

## Mediation is confidential

Unlike court, where it is open to the public, with a few exceptions, parties can agree that anything said or done in mediation remains completely confidential. The mediator also keeps all communications confidential, and will not willingly testify as to what was discussed in mediation.

## Consent by Parties

Participation in mediation is voluntary. Both parties need to provide informed consent on whether they choose the mediatory process to resolve their disputes.

## What mediators do

Mediators help people clarify issues, identify common interests, and the parties arrive at their own solutions. The mediator is a neutral party (who does not take sides) and helps facilitate the dialogue, but is not the final decision-maker, arbitrator, or judge. With the mediator's assistance, the parties design their own solutions. The mediator does not impose a solution.

## What kinds of problems can be worked out through mediation?

Many types of disputes can be resolved through mediation. Here are just a few examples:

- Business and contract disputes
- Uncollected debt
- Personal injury
- Property disputes
- Accident/Insurance claims
- Consumer and trader/service provider disputes
- Landlord/tenant disputes
- Family disputes
- Disputes over wills and trusts
- Anything you would sue somebody for in the Small Claims Tribunal
- And many other disputes, as long as both sides agree for mediation.

## Languages

FMC is able to mediate with I-Taukei and Hindi speakers, as well as in English. Interpreters can be found to assist with these languages.

## Mediation can take place right away

Mediation can usually take place as soon as the parties and their solicitors, if any, can agree on a date. Most sessions take just a few hours, but in complex cases and divorces, for example, it is not unusual for parties to meet over several sessions.

## Legal advice and Lawyers

Mediators do not provide legal advice to parties. Lawyers are permitted to attend mediation, but it is common for parties to attend without their lawyer present and to have their lawyer review a tentative agreement that parties reach through mediation. It is also common for parties to speak directly to each other during a mediation session rather than having their lawyers speak for them.

## Can I try Mediation if I have already filed a case in Court?

Yes. Judges and Magistrates in Fiji strongly encourage parties to try to resolve problems on their own at any stage of the proceedings. If you resolve your problem before the hearing, you do not proceed to trial in court. You have to file a Terms of Settlement indicating that you have resolved the case. If you try mediation, but do not come to an agreement, you can still go to court.

## Mediation helps people restore ongoing relationships

Family members and business partners who have ongoing contact with the person they are having a conflict with can restore their relationship by resolving their problem and agreeing how to avoid or effectively manage any conflict that may arise in the future.

