

HARMAN



COMPROMISE

"A compromise is where you both change a little so you both can be happy".

Sesame Street

I was watching Sesame Street with my daughter when I heard the above magical definition of the word "*compromise*". Abby and Elmo were trying to play Twinkle Twinkle Little Star together but playing at different tempos. This meant that, rather than complimenting each other, they were generating a discordant noise (so much so that Oscar the Grouch loved it!).

Chris explained to Abby and Elmo that they were playing at different tempos. So, Abby sped up and Elmo slowed down, and they then played beautifully together. When they asked Chris what has happened, he said, "*you compromised*" and then explained compromise to them as above. Kids get it!

Mediation is a process that is about compromise. The term "*mediation*" has been used since the 14th century. The term is derived from the Latin verb "*mediāre*", meaning "*to be in the middle*". That's what compromise is.

Court is where you go to spend a lot of time and money, trying to persuade a judge to see things your way and to give you the best possible outcome that your legal advice suggests might be available, but with no guarantee (even if you persuade the judge to see it your way) that you'll get that best outcome.

Mediation is where you go (and what you do) when you want to obtain the best outcome you can without having to spend time and money fighting in court. It is about compromising. It is about accepting that whilst you will

not get the best possible outcome, it is guaranteed that you won't get the worst (or a worse) outcome. You might think of compromise as being a little like hedging your bets – you won't finish first, but you won't be last.

So why are people so slow to compromise? There are many reasons. Some of them about emotions, about a sense of “*fairness*” (I always tell my kids that “*fair*” is the F word, as it can play havoc in a mediation) or a sense of “*justice*”. Sometimes, it is about a sense of entitlement or a fundamental misunderstanding about how contributions are assessed or an inability to value and recognise the contributions made by others.

Sadly, when negotiations occur in a distributive justice model, this can also impact a person's willingness to compromise. When there is only so much to go around, especially when a two-income household has become two single income families, people have a natural desire to get the “*best*” possible outcome. In a distributive justice model, it is not possible for both parties to get their best possible outcome (as this will usually be more than 100% of the property). In fact, it is not possible for one party to get their best possible outcome without the other party getting their worst possible outcome. And that is a path to winners and losers that rarely produces agreement.

So, why you may ask, is compromise a good thing?

Compromise is about making your own decisions, rather than having an outcome imposed upon you by a judge, based on what is important to them.

Compromise is the price you are prepared to pay for certainty and finality.

Compromise is an acknowledgement that whilst the range of outcomes you could obtain from a court are predictable, they are not guaranteed, even when you have a good case. You can spend a lot of time and money pursuing your best outcome but not get it. Someone else (a judge) controls that. And even a well prepared and well-run case does not guarantee a good outcome.

Compromise is cost efficient. Legal fees, in pursuing court outcomes, eat up a chunk of your property. As Abraham Lincoln once opined, “*the nominal winner is often a real loser -- in fees, expenses, and waste of time*”.

Compromise is focused on “*what difference will it make to the money in my pocket*”. Negotiations should not just focus on the gross outcome but also the nett outcome - what you'll be left with is what matters.

Compromise lets you find solutions, an end to your dispute, so that you can

move on and get on with life.

Compromise is not about winners and losers. Compromise allows both parties to get what they need and without running the risk of losing.

Compromise is where you both change a little so you both can be happy.