

# DIVORCE MEDIATION GUIDE



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Divorce can be a long, stressful, expensive, and emotional experience. When both spouses choose to resolve their divorce-related issues in mediation rather than litigation, however, the process is usually faster and much less costly in terms of both money and stress.

In this **Mediation Guide**, you'll find articles, book excerpts, advice, and more to help you understand some of the benefits and limitations of this out-of-court dispute-resolution method. Together with other resources and experts, use the information here to help you decide if mediation is the best way forward for you, your family, and your future.



## contents

### 3 Divorce Dispute Resolution: Choosing the Right Method

There are many ways to settle your divorce, but which one is right for you? Here's an overview of your options.

### 5 How Mediation Works

A neutral third party helps divorcing couples settle their differences – without going to court.

### 8 Does Your Family Need a Mediator?

Divorcing parents can benefit from using mediation to resolve conflict and navigate family challenges.

### 9 Major Principles of Divorce Mediation

Just a few of the many benefits of choosing mediation over litigation during your divorce.

### 11 3 Common Misconceptions About Divorce Mediation

These misconceptions keep some people from resolving their divorce issues through mediation.

### 13 The Benefits of Co-Mediation in Divorce

A co-mediation team provides you with additional benefits beyond working with a single mediator.

### 15 A Fair Negotiation

Learn how to use negotiation to resolve disputes and build better interpersonal relationships.

### 18 Keep Your Cool in Heated Situations

Tips for keeping your cool during heated divorce-related negotiations or conversations.

### 21 How to Let Go of the Past After Divorce

Moving on after divorce can be difficult, but there are actions you can take to make the process smoother.

### 23 7 Ways to Reduce Costs During Divorce

Divorce is expensive, so you may have to keep costs down so you can enjoy financial freedom in the future.

### 25 Managing Anger

Even though it's a normal part of the healing process, anger can become a destructive force in your life.

### 28 Be Prepared: Planning Your Financial Settlement

Get ready to negotiate your financial future.

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A man with short dark hair, wearing a dark suit, white shirt, and light blue tie, is shown from the chest up. He is looking off to the side with a thoughtful expression, resting his chin on his hand.

# Divorce Dispute Resolution: Choosing the Right Method

There are many options to settle your divorce issues, including mediation, arbitration, collaboration, litigation, and *pro se* (do-it-yourself). But which one is right for you? Here's an overview of the options at your disposal.

**G**oing through a divorce requires making difficult decisions that will impact the rest of your life. One of the first items you and your spouse must decide upon is the type of dispute resolution that makes the most sense in your unique set of circumstances. Like many people experiencing divorce for the first time, you may not be aware of the options available for resolving your divorce. To help you make an educated decision, here's an overview explaining the options at your disposal.

## Mediation

Some divorcing couples enlist an independent third party, called a mediator, to help them reach a divorce settlement. Both private and court-ordered mediation are designed to encourage couples to voice their opinions and reach a balanced settlement in a neutral environment.

The two main benefits of mediation are lower divorce costs and a higher chance of reaching a balanced agreement that is acceptable to both parties. When divorcing parties reach a resolution together through mediation, they are more likely to adhere to the agreement, which simplifies life during and after divorce. However, in order to remain neutral, mediators are unable to provide legal advice or recommendations to either party.

In mediation, both parties retain a lawyer to read over the mediated agreement and offer advice before the parties sign it. Even if the mediator is also a lawyer, both parties should still have independent legal advice to make sure they fully understand the legal ramifications of the agreement they've created.

If you would like to bypass a lengthy court case and are willing to negotiate fairly with your spouse, mediation may be a great choice for settling your divorce. On the other hand, mediation is usually not recommended in cases where there is a history of abuse or mental illness, if the parties are poor communicators, or if there is any question that the best interests of the children are not being protected. Additionally, mediation is not advisable for couples hoping to rely on a third party to make final decisions for them.

## Arbitration

Unlike mediation, arbitration removes the task of decision-making from the two divorcing parties and hands it over to a third-party individual. The process of arbitration requires both spouses to meet with the arbitrator without their lawyers' present, describe their goals and priorities for the divorce settlement, and leave the final decision to the discretion of the arbitrator.

By Emily Bauer

In most jurisdictions, the decision reached by an arbitrator is final and binding, meaning the couple has no choice but to follow whatever settlement is decided for them. The benefit of arbitration is that a neutral third party assumes control, ensuring that important choices related to the divorce are founded on fact and logic rather than based on the emotionally charged perspectives of the divorcees. Arbitration is also less expensive than litigation through the court system.

If you would prefer to retain the power to renegotiate and potentially challenge the divorce agreement, arbitration is not the best option for you. Nevertheless, many couples who are unable to agree on important issues choose arbitration as a means to overcome their stalemate. As long as you are comfortable accepting the resolutions prescribed by an unbiased third party, arbitration may be a viable approach to divorce dispute-resolution for you and your spouse.

## Collaboration

The newest dispute-resolution option for divorcing couples, collaborative divorce often engages an entire team of professionals to help resolve your case. Experts in the fields of law, finance, mental health, and, when necessary, child advocacy come together to help families through the challenging divorce process. This team approach to divorce allows both parties to retain their own specially-trained lawyer to act as coaches; all other professionals are shared by the divorcing couple, which helps keep costs down.

The lawyers on both sides aim to help their clients reach an equitable settlement. Both lawyers and the parties sign an agreement stating that they will settle without going to court; if the parties fail to reach an agreement, the entire collaborative team must resign, and the parties must start the process over from square-one with new litigation lawyers.

A variation on this theme is collaborative law, in which you hire collaborative lawyers without a full team to support you through the process.

Collaborative divorce can be a very effective approach to divorce, since there are professionals available to handle the legal, financial, emotional, and children's issues that will inevitably arise during the process. The diverse perspectives provided by the collaborative team members facilitate a fair and respectful settlement process.

You should consider the collaborative approach to divorce if both of you are willing and able to negotiate in good faith, and spend the time and energy necessary to reach a mutually agreeable settlement. However, collaborative divorce will not work well for couples who are unwilling to compromise, communicate, and commit to reaching a resolution. If one of you is not actually negotiating in good faith, or not interested in reaching agreement, the process will likely fail.

## Litigation

Although only about 5% of divorces go to court, you should understand the process if you are not good candidates for

any of the Alternative Dispute Resolution (ADR) models described above – or if you fail to reach agreement during ADR. In divorce cases that go to trial, both sides have a chance to make their case (either as a *pro se* litigant or one who is represented by a lawyer); instead of crafting their own agreement, they rely on the knowledge and discretion of a judge to determine their future.

Litigation fees can be very expensive, especially in difficult, drawn-out divorce cases. Another unfavourable aspect of litigation is that couples who are unable to reach an agreement without the intervention of the court often struggle with the judgment delivered to them. Divorcing parties are more likely to honor a divorce settlement that they have contributed towards rather than the orders mandated by a judge.

If you would prefer to retain control over the outcome of your divorce, litigation is not an ideal method for resolving your dispute. On the other hand, if you are comfortable entrusting a judge with your divorce outcome or if other approaches to divorce dispute-resolution have been unsuccessful, litigation may be necessary.

## Pro Se/In Propria Persona

At the other end of the spectrum from litigation is *Pro Se* representation. Sometimes called “*In Propria Persona*” or “*Pro Per*” (from the Latin meaning “in one's own person”), in this approach to divorce, either one or both parties choose not to hire a lawyer to represent them. The Latin term *Pro Se* translates as “on one's own behalf”, meaning that the litigant is acting as his/her own attorney in a lawsuit – including self-representation in court. A *pro se* party is responsible for properly completing all relevant legal paperwork, remembering important court dates, doing his/her own research and discovery, and assuming any other responsibilities otherwise handled by a divorce lawyer.

Many people who opt for self-representation do so for the financial benefit of avoiding lawyer fees and to maintain complete control of their case; however, *pro se* parties face risks not shared by their represented peers. In addition to the extra stress of representing yourself at court appearances, you may struggle to understand the tax and legal implications of a property settlement, and may also fail to grasp the long-term consequences of the support agreement you're negotiating. Pensions and retirement accounts are high-value marital assets, some of which have complex rules about how – or even if – they can be divided, requiring expert advice and assistance.

If your divorce is straightforward, uncontested, you have no children or significant assets, and you are capable of doing thorough research and court preparation without assistance, *pro se* representation may be an appropriate option for you. However, if your divorce involves child custody or support, spousal support, significant property or pension division, then *pro se* is probably not the right choice for you. ■

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*Emily Bauer is a former staff writer at Divorce Magazine.*



A woman in a white long-sleeved shirt and blue jeans walks on the left side of a grey concrete bridge. A man in a light blue polo shirt and blue jeans walks on the right side. A large hand from the bottom center holds up the bridge. In the background, a city skyline is visible under a bright sky.

# How Mediation Works

In this form of alternative dispute resolution, a neutral third party helps divorcing couples to negotiate and resolve their disputes – while avoiding the time and expense (emotional and financial) of going to court.

By Randall M. Kessler, Family Lawyer  
and Domestic Relations Mediator

**M**ediation is a form of alternative dispute resolution in which a neutral third party – known as a mediator, or neutral – helps parties negotiate their differences with an eye toward resolution and settlement. Stated another way, mediation is an informal, out-of-court process that includes rules, ethics, and a timeline by which parties can settle. There is no testimony or other formal means of presenting evidence during mediation, though it is a more structured process than a settlement conference.

Mediations are conducted by independent, third-party neutrals, whose purpose is to facilitate a voluntary agreement between the parties without necessarily rendering an opinion on the merits of the case. The mediator has no

authority to force a settlement, but rather is to serve as a catalyst for dialogue between the parties. Those present at a divorce mediation can include the mediator, parties, family members, significant others, expert witnesses, and lawyers (although most often only the parties and their lawyers attend). Everything shared during the mediation is generally kept confidential – unless there is a threat of violence, child abuse, or imminent danger. Under these circumstances, the mediator has an obligation to report such conduct or abuse. If the parties do not reach an agreement at mediation, the right to a trial is still available; however, the mediator cannot be called as a witness.

A key advantage to mediation is that the mediator can explore the underlying background and emotional history behind a case far more than a judge can or would, allowing the mediator to get to the root of the underlying conflict. Additionally, mediation can provide an invaluable opportunity to get an unbiased evaluation of the case from experienced judges and family law litigators, should the mediator fall into one of those categories.

have to interact with their opponent again once their case is resolved – but families must continue to communicate on a personal level after the divorce settles, especially where minor children are involved. Therefore, it may be more beneficial in the long run for parents to try to reach an amicable resolution without the time, cost, and emotional toll associated with litigating.

In the majority of cases, families simply cannot afford the costs associated with long, drawn-out litigation. They also do not have the luxury of time, since children need to know where they will live, what school they will attend, etc. Also, parents still have to communicate with each other to some degree following the conclusion of the case, which becomes much harder – if not impossible – once spouses have squared-off in the courtroom. For better or worse, this is the system that families are forced into if they wish to get a divorce. Fortunately, mediation provides an alternative, allowing families to step outside of the system and resolve their disputes with less cost, time, and stress than full-blown litigation.

## **Settlement via mediation can save a divorcing couple a great deal of money by avoiding the costly nature of litigation, and it can also spare them the inevitable emotional drain of trial.**

The goal of mediation is ultimately to avoid the time and expense (emotional and financial) associated with litigation. However, there is never a “one size fits all” solution, and each case must be evaluated on its own merits to determine whether mediation would be fruitful. Cases involving violent parties, bullies, or the opposite (“pushovers”) may not be appropriate for mediation or may not be ripe for mediation unless and until the parties are truly ready to appropriately mediate in good faith.

### **Mediation vs. Litigation**

There are an abundance of reasons why mediation may be preferable to litigation. While litigation is a manageable and perhaps even a desirable forum for corporations and business people to resolve their disputes, their situation is not analogous to two individuals going through what is likely the most traumatic and stressful change of their lives.

Corporations typically have far greater resources and fewer time constraints to resolve disputes between themselves; a family is often just waiting in limbo for closure during their divorce or child custody matter, with the children left to suffer the collateral damage. Corporations, business people, or even car-wreck victims may never

Aside from the time and expense savings, another reason that mediation may be a good alternative to litigation in family law cases is that it allows for a deeper examination of the root cause of the underlying issues that led to the marital discord in the first place. Mediation provides an opportunity to dig deeper into the background of the case, and for the divorcing couple and their lawyers to be heavily engaged in the settlement process. Such dialogue can affect how and when parties settle, and also the quality of the settlement itself. Ideally, it is an opportunity for the parties to address all of their desires in a more comprehensive settlement package than a court can offer. In the majority of family law disputes, it is better for parties to decide the outcome for themselves than to have a judge make the final determination. It also may give parties an opportunity to vent (hopefully while in caucus and not in front of the opposing party), which many need to do before being able to accept a final resolution and the termination of their marriage.

With regard to the quality and comprehensiveness of a settlement, there are many different terms that can be agreed upon through mediation that a court either cannot or will not address. For instance, parties can address and

craft their own resolutions surrounding complex issues like tax exemptions, parenting time, division of property, timing and conditions of property sales, religious upbringing of the children, and almost any other issue arising out of the marriage. For child support and custody, the court does have the discretion – and the obligation – to ensure that any agreement on these issues is in the best interests of the children. But, because courts and judges tend to only deal with the “here and now,” the ability to mold and craft customized settlement terms in mediation is highly advantageous.

Of course, there are also situations in which mediation is not a better alternative to trial. For instance, some lawyers and/or parties may choose to use mediation as an opportunity to posture and “gain an advantage” over, or intimidate, the other side. In such cases, mediation likely will be unsuccessful and may even be detrimental to the ultimate outcome of the case, since it may create even more anger and frustration than already exists. If you and your lawyer sense that this applies to your specific case, then it might actually end up being more cost-effective and efficient to take the case to trial. Outside of these limited situations, however, mediation should be explored by both sides in good faith as a valuable facilitator of settlement.

### When Is Mediation Appropriate?

Mediation is rarely considered “inappropriate,” as there are many advantages to at least attempting it in good faith. In fact, mediation is becoming increasingly required by many judges in all contested cases: many judges now expect parties to have attempted mediation prior to appearing before them for relief.

Of course, there are exceptions to the general presumption that mediation is appropriate, including those situations involving domestic violence or those where one side is clearly not going to participate in the mediation in good faith. In such cases, mediation may prove to be a fruitless endeavor that may not even be worth the time and expense of attempting. However, the specific circumstances should always be evaluated in each particular case, as it may still be appropriate to hold an abbreviated mediation to test the waters and perhaps even learn something valuable about the other side. There is very little risk in this strategy, as you can always leave the session at any time without repercussion if the mediation is futile. Ultimately, the decision of whether or not to mediate should be based on case-specific facts, but generally speaking, it is typically advisable to at least attempt it.

Even if a party lives out of town and cannot afford to travel for mediation and trial, mediation can still occur with

one party only being available by telephone. Of course, almost everyone familiar with mediation will agree that in-person mediation – which allows both parties to experience the true dynamics of the process – makes resolution more likely.

### Must the Case Settle at Mediation?

The case does not have to be settled at mediation under any circumstances; in fact, a good degree of caution should be exercised prior to reaching a final agreement in mediation. In some cases, settlement may be a goal, but the primary goal may be simply to acclimate the parties to the process of mediation in anticipation of future settlement discussions. If the parties learn how to negotiate in good faith the first time around, there may be hope that they will do so again in subsequent interactions and possible future mediations.

Even if the process ultimately breaks down, it is likely that the client will have walked away with more information and insight into the other side’s position than would have otherwise been the case. It has been said that mediation provides the most “bang for your buck” in terms of learning about the other side. There may be a tremendous amount of insightful information gained at mediation that may allow for a far more enlightened case strategy, should settlement negotiations ultimately fail.

During mediation, it might become clear what the other side’s “hot buttons” are, which allegations they acknowledge, which items of property they covet most, and who their potential witnesses may be. Settlement via mediation can save a divorcing couple a great deal of money by avoiding the costly nature of litigation, and it can also spare them the inevitable emotional drain of trial.

The vast majority of people who go through a full divorce trial walk away from it with a strong disdain for the process. Keeping this in mind, it is usually in the client’s best interests to attend mediation in good faith and in furtherance of settlement. If that fails, regroup and discuss what was learned at the mediation and how that information can assist in the case – either in litigation strategy, or in future attempts at settlement. ■



*This article has been excerpted and adapted from How To Mediate A Georgia Divorce (Institute of Continuing Legal Education in Georgia, 2015) by Randall M. Kessler. A distinguished family lawyer, he is also a domestic relations mediator with an active mediation practice in Georgia. [www.ksfamilylaw.com](http://www.ksfamilylaw.com)*





# Does Your Family Need a Mediator?

Families in conflict can benefit greatly from hiring a mediator and using mediation as a way to resolve conflict and navigate family challenges. Mediation can be used to avoid or manage a divorce.

By Elizabeth Esrey, Certified Advanced Mediator

**F**amilies argue – especially around the holiday times. Overbearing in-laws, wayward teens, blended families, elder care, or antiquated parenting plans can turn a happy home into a war zone. While some situations get resolved over time, others can go on for months – even years – sometimes causing severe damage. Instead of allowing conflict to fester, consider mediation.

Discord, when skillfully managed, can be a catalyst for emotional growth and a way to recreate family harmony. Families in conflict (divorce, stepfamilies, parenting plans, etc.) either ignore the problem or constantly argue. Ignoring

problems won't make them better. Furthermore, chronic strife can cause irreversible damage. Do yourself and your family a favor by considering mediation to help resolve family conflict. A mediator helps families resolve disputes completely, peacefully, and privately.

## **An Alternative to Costly and Lengthy Litigation**

Mediation is an effective method of conflict resolution, yet few people truly understand it. Mediation is a voluntary and

Cont. on page 11





By Nicole Gussick,  
Divorce Mediator

# Major Principles of Divorce Mediation

Just a few of the many benefits of choosing mediation over litigation during your divorce.

There are quite a few ways to get divorced these days, so how do you know which way is right for you? In divorce mediation, a neutral third party, chosen by the parties, facilitates conversations that address all issues of divorce.

Mediation is non-binding unless a mutually agreeable settlement is reached. Unlike litigation, the parties, not a judge, control the outcome. This can have great appeal to couples that want creative solutions pertaining to their particular needs. Also appealing, the proceedings are private and are not a matter of public record. This is again in contrast to litigation, which is public.

There are five major principles of mediation: it is voluntary, private, confidential, self-determined, and based on informed decision-making.

- 1 Voluntary**  
Attendance at an initial meeting may be mandatory if ordered by a judge, but continued participation is strictly voluntary. A resolution cannot be imposed on either party, and any resolution reached must be mutually agreed to and voluntary.
- 2 Private**  
The mediation only involves those necessary to come to an agreement. This includes the two parties, the mediator, and any other professionals – such as a coach or financial neutral – agreed to by the parties. Any records or notes cannot be used in any future court proceeding, which is public record, should the mediation

break down. Most mediators destroy all records of the mediation once complete for this reason.

### 3 Confidential

All mediation sessions are confidential and, as stated above, limited to only professionals agreed to by the parties. The parties must sign a waiver allowing access to information for a requesting party. The parties must also agree that it would be beneficial or there are compelling reasons to limit confidentiality in order to do so.

### 4 Self-Determination

The parties are responsible for their own conflict, behavior, and solutions. A third party will not determine or enforce resolutions. It is up to the parties to create their own solutions and be accountable to the decisions reached.

### 5 Informed Decision-Making

Each party must have the necessary information needed to make an informed decision with regard to their conflict's resolution. This will sometimes require a professional to "level the playing field." For example, a financial neutral can ease the anxiety by providing scenarios that even a party less confident in financial matters can understand. In this way,

**Mediation is non-binding unless a mutually agreeable settlement is reached. Unlike litigation, the parties, not a judge, control the outcome.**

all parties can rest assured that the information was received and understood, and an informed decision can then be made.

Mediation may work for your situation, but it may not. It can work for couples that are looking for a more cost-effective way to divorce and are focused on a better long-term relationship in order to co-parent. However, one spouse may not agree to mediate. If this is the case, collaborative or litigated divorce may be a good alternative. ■



*Nicole Gussick is a former Certified Financial Divorce Practitioner® and Certified Divorce Mediator. She enjoyed helping couples going through divorce take ownership of the process and make decisions that worked for their situation.*

#### Need a Mediator? / Cont. from page 9

confidential process that offers families an alternative to costly and lengthy litigation and therapy. What issues need to be addressed and who needs to do what to resolve the conflict is determined by the parties involved in the mediation. Mediators provide a safe platform for a difficult yet direct conversation. If a resolution is reached, the parties craft a written document of expected behaviors. Mediated cases typically settle in one or two sessions with flexible scheduling and locations.

The goal of mediation is to craft a written agreement, meeting each family member's unique needs. Mediation is not limited by the rules of evidence or legal relevance. Since the people in conflict draft the agreement, they are more likely to abide by it. Mediation is cooperative, not adversarial; civility during discourse is required. With the help of the mediator, parties talk openly and constructively about problems and potential solutions. Relationships may be preserved through mediation, and communication is often ameliorated.

#### A Confidential and Compassionate Way to Resolve Issues

For those seeking a resolution to the conflict, mediation is a

confidential and compassionate way to work through differences. Instead of wasting time on destructive behaviors, mediation promotes effective problem solving. Families who mediate model cooperation and compromise while protecting loved ones from the public and emotional toll of court. I've worked with families who litigated their divorce longer than they were married. After one mediation session, acrimonious debates gave way to collaboration. More importantly, communication improved. When people in conflict are properly guided, they are perfectly capable of absolute resolution.

Stop spending precious time fighting and stressing. Sit down with a mediator to talk constructively about your needs and how to best meet them. You may be surprised at what you learn about yourself and your family. You might even be surprised by how much you can resolve and improve. ■



*Elizabeth Esrey is a private, court-approved mediator who works with families and businesses in conflict. With years of mediation experience & education, she understands the importance of helping people resolve differences privately and effectively. [www.esreymediation.com](http://www.esreymediation.com)*



# 3 Common Misconceptions About Divorce Mediation

There are common misconceptions that keep some people from resolving their divorce issues – such as alimony, property settlement, and child custody – through divorce mediation.

By Susan E. Guthrie, Family Lawyer and Mediator

**A**s a family law attorney and mediator for almost 30 years, I spend a great deal of time educating prospective clients and the public about the many benefits of choosing to mediate their divorce rather than selecting the more traditional litigation path. Even though divorce mediation is much less costly, less time consuming, and less divisive and stressful than the adversarial model of litigation, I often hear the same three concerns raised about mediation.

In reality, because mediation is such an adaptable and holistic approach to divorce, these common concerns are all well-handled in the mediation setting. In fact, almost any divorce case, or really any family law matter, is suitable for mediation, and the parties can successfully resolve their issues without the great expense and emotional costs of litigating.

## **Misconception #1: Mediation Won't Work in High-Conflict Cases**

Probably the most common misconception that I hear from people about divorce mediation is that they believe it is only suitable for couples that are very amicable. Their perception is that since they are not getting along very well with their spouse, they can't sit down together and discuss anything let alone issues regarding their money and children. In fact, mediation is very well suited to helping high-conflict parties work through their differences and come to a reasonable solution.



While it may be true that the two people are too emotional to sit down together alone, in mediation they work with their mediator, a trained professional and neutral third party, who has experience and training to help them focus on the issues at hand, and to work together to resolve them. The mediator has many tools available to assist when emotions run high, such as caucusing by meeting with the parties in separate rooms or using an online platform until emotions have a chance to settle down. The mediator is skilled at helping the people to focus on the issues at hand and the future rather than the things that happened in the past that brought them to divorce in the first place.

Another helpful approach for very high-conflict cases can include bringing an additional professional into the mix, such as a marriage and family therapist, who can meet with one or both parties in the mediation session or separately, as appropriate. The goal of the therapist is not to reconcile the parties, but to help them develop a better ability to communicate around the emotional roadblocks that they are facing. In the end, by going through the mediation process together and reaching reasonable solutions to the issues facing them, parties that mediate learn new ways of working together as they go forward into their new future. This is a huge benefit, especially when children and co-parenting are involved.

## Misconception #2: The Mediator Makes Decisions for You

The belief that the mediator will act as a quasi-judge and tell the people what they are going to do is another very common misunderstanding that I hear about the divorce mediation process. In actual fact, one of the greatest advantages of the mediation process is that the parties themselves retain control over all decisions made and agreements reached. This is very different from the litigation model where a judge, essentially a stranger in a black robe, imposes orders and judgments on the parties.

In mediation, the mediator's role is not decision-maker; instead, they act as a neutral support system for both parties equally. The mediator helps the couple identify all the issues that they need to resolve around their divorce, gives them information and education about the law and other facts around those issues, and facilitates their discussion of those issues so that the parties themselves can decide what is the best course of action for them.

It is understandable that when people reach agreements together based upon what they think is right and fair, their agreements are much more sustainable going forward than court orders that tell the parties what they must do or not do, pay or give to the other party. In fact, a great advantage of mediating your divorce settlement is that you will make all the decisions together about what is best for you both and for your children as you go forward.

## Misconception #3: You Don't Need a Lawyer if You Are Mediating Your Divorce

Finally, the parties in mediation are often surprised to hear their mediator suggest that they consider retaining consulting attorneys. The thought is that they chose to mediate to avoid fighting their case out with attorneys and they don't want that extraordinary expense. However, the role of a consulting attorney in mediation is very different than the role of a litigation advocate, and is a very helpful assistance when mediating.

In the mediation process, your mediator will provide you with much of the information and legal background that you need to discuss your issues. At times, though, because the mediator must remain neutral, they cannot give either party advice specific to their best interests because that would be against the interests of the other party. Here, a consulting attorney whom is accessed on a limited, as-needed basis, can provide that specific legal advice to help a party decide how to best move forward in the negotiations.

The small hourly cost for the attorney's time is well worth the expense as it helps the client to make decisions and thereby move the mediation forward. In addition, at the point in the process when the parties have finalized all their agreements and a draft Separation Agreement is prepared, it is advisable that both parties review that agreement with their own attorney before they sign it. After all, this document will have a lasting impact on their finances, their children, and their lives for some time to come, and it is prudent and wise to be sure that they both fully understand the terms in the agreement, and that it accurately reflects their wishes.

In the end, the use of a consulting attorney in mediation only as needed will cost far less than full-scale divorce litigation representation and is well worth the expense to ensure that both parties are fully advised and supported, and the divorce mediation can be successful.

To sum up, these misconceptions about divorce mediation really highlight some of the many advantages of mediating your divorce. Because the format is highly adaptable and collaborative, the mediator will support and assist you and your ex-partner to work cooperatively to resolve your issues. Through the process, you will make agreements that you choose to live by, which will be prepare you to go forward in a productive and positive manner. Best of all, you will have avoided the expense and stress of a long, protracted court battle. In the end, almost every divorce case is suitable for mediation – despite these common misconceptions. ■



*As a divorce mediator, Susan Guthrie brings her wealth of knowledge and experience in the family law and divorce arena to the table in assisting the parties in coming to agreement in mediation.*

[www.divorceinabetterway.com](http://www.divorceinabetterway.com)



# The Benefits of Co-Mediation in Divorce

Working with a co-mediation team of professionals during divorce provides you with additional benefits beyond working with a single mediator.

By Dr. Deanna Conklin-Danao, Clinical Psychologist

A mediated divorce uses a neutral third-party mediator to help the parties resolve issues that arise during the divorce. The mediator is not there to make decisions or mandate outcomes. Their role is to help the parties collaborate respectfully to reach mutually agreeable solutions. Co-mediation is a model that uses two professionals – often a mental health provider and a lawyer or financial neutral – who work as a mediating team.

### Benefits of Mediation in Divorce

The main benefit of a mediated divorce is that it allows the parties to maintain control of the decision-making in their divorce as opposed to having those decisions made by the court. Other benefits include the following:

- **Increased control over the divorce process:** Allows the parties to maintain control of the divorce settlement in terms of the process and the outcome
- **Improved communication:** Promotes a collaborative decision-making process, which can benefit post-divorce interactions

achieving this. Co-mediators can help model how to effectively communicate and solve problems in real time.

- **Increased potential for connection:** Mediators have different personalities and differ in terms of gender, race, and age. Similar to other relationships, a key aspect of success in mediation is “fit.” If a client feels that a mediator understands them and is neutral, it helps the process. Co-mediation creates more opportunity for a client to feel that there is a good fit.

### Considerations in Hiring a Co-Mediation Team

So, let’s say you and your spouse are interested in pursuing a co-mediated divorce. What should you look for in assembling a team? Here are some things to think about:

- **Good fit:** As previously mentioned, it is important that both parties feel comfortable with their mediator(s). This doesn’t mean that you will like everything you hear from them or that you will always get your way. Instead, you want to look for mediators that make you feel comfortable and safe. Mediation will involve difficult conversations,

**Utilizing a co-mediation team allows you to gain insight and expertise from legal, financial, and psychological backgrounds.**

- **Privacy:** Maintains the privacy of the parties as everything but the final decree occurs outside of the courtroom
- **Decreased cost:** Reduces the cost of the divorce process compared to litigation

### Benefits of Co-Mediation in Divorce

Working with a co-mediation team provides some additional benefits beyond the use of a single mediator. These benefits include the following:

- **More expertise:** When you have a team that includes a mental health professional and a lawyer and/or financial neutral, you benefit from the specialized expertise of each professional. With each professional acting in a neutral capacity, their knowledge facilitates discussions and moves conversations forward.
- **Checks and balances:** Having multiple professionals at the table creates a checks and balances system. Each professional can promote neutrality and keep the process on track. We are all human and have the potential for bias. Co-mediation reduces the likelihood that any unconscious bias enters the process.
- **Role modeling:** One of the goals of mediation in divorce is helping parents learn how to co-parent effectively post-divorce. The ability to communicate effectively is key to

so that type of fit is critical. If you are using co-mediation, it is also important to feel that the co-mediators work well together. Feel free to ask them about their previous experience working together.

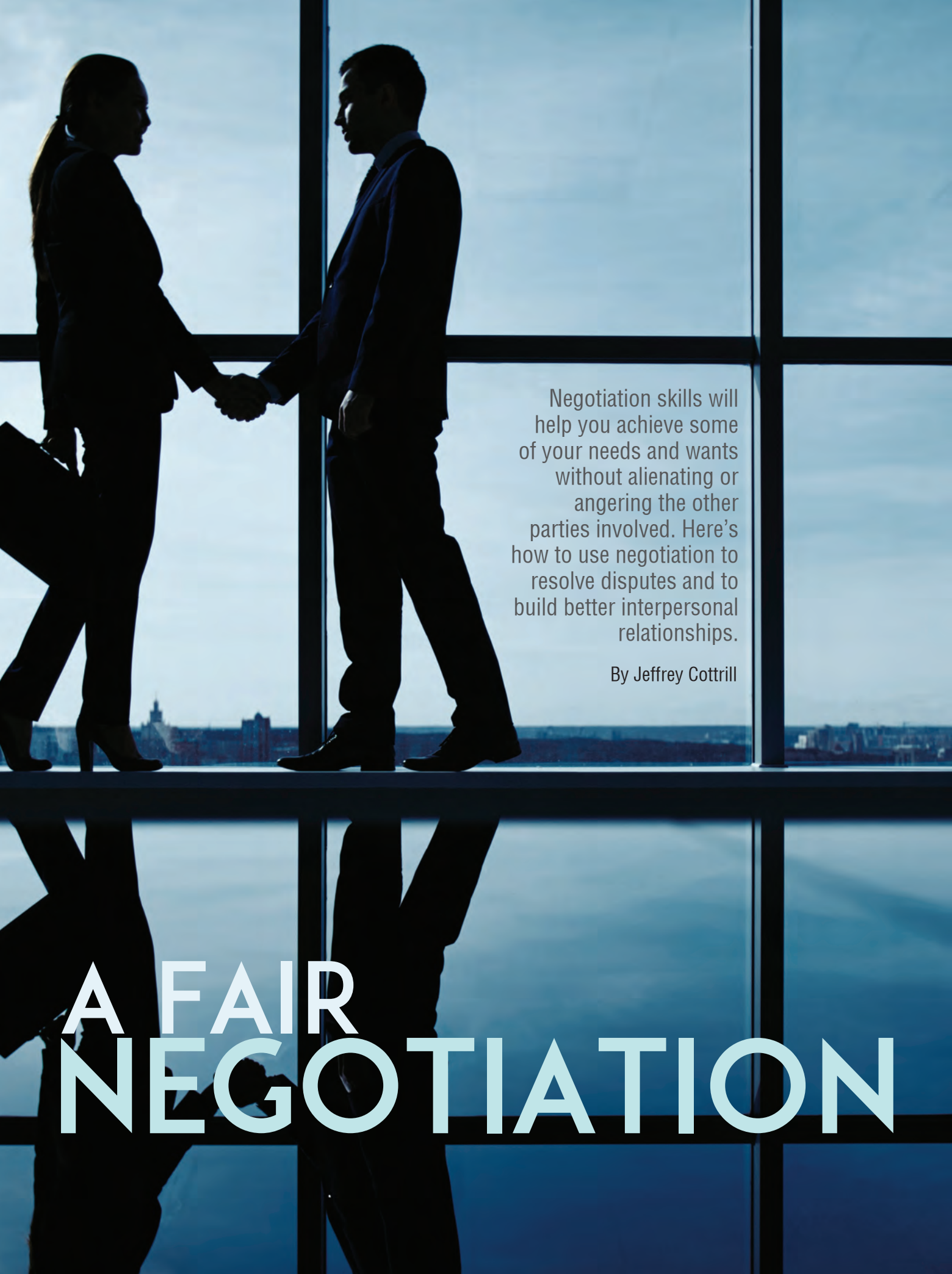
- **More expensive:** It is more expensive to use co-mediation as you are paying multiple professionals. While it may end up being more efficient to utilize professionals with specific expertise, the hourly rate will be more expensive than a single mediator.

Getting a divorce is a difficult, painful process and many decisions need to be made while you are mourning the loss of your marriage. Mediation allows you to create solutions that meet the unique needs of your family. Utilizing a co-mediation team allows you to gain insight and expertise from legal, financial, and psychological backgrounds to promote a respectful, collaborative and productive process that sets you up for the future you want. ■



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A man and a woman in business attire are silhouetted against a large window. They are shaking hands, and the woman is holding a briefcase. The window looks out onto a city skyline under a blue sky. The scene is reflected in the floor below.

Negotiation skills will help you achieve some of your needs and wants without alienating or angering the other parties involved. Here's how to use negotiation to resolve disputes and to build better interpersonal relationships.

By Jeffrey Cottrill

# A FAIR NEGOTIATION

**W**e've all heard about those nightmarish divorces that drag on in court for months or years because one or both parties is determined to get his or her way in the final outcome no matter the cost. There are also cases in which one party gets "cleaned out" by the other because of a failure to communicate or an inability to stand against the more powerful personality's demands.

Extended litigation is a costly, damaging process; the adversarial "win-lose" contest inevitably results in bitterness and dissatisfaction for at least one of the parties. That's one reason why mediation and collaborative law have become more popular as cooperative "win-win" methods of settling divorce. Rather than duking it out until one party wins, it's more constructive to work out an agreement together through the art of negotiation.

Negotiation is an important personal-relations skill that enables you to get what you want without running roughshod over those around you. Whether you're dealing with your ex-spouse, friends, relatives, neighbors, co-workers and supervisors, professionals, or even your children, you have to be able to put everybody's point of view in clear perspective, so that you can create a solution that works for both of you.

## Be Fair to the Other Party

You know what you want, of course. That's the easy part. It's when you show respect for what the other person wants that you move toward fair negotiation. Sometimes a solution that addresses both parties' goals is possible, and sometimes both parties' goals directly conflict with each other. But once both parties understand and empathize with each other's point of view, the situation can change from an adversarial deadlock to a resolvable dispute.

One of the most difficult barriers to successful bargaining is when at least one party chooses a fixed position or "bottom line" and stubbornly sticks to it without considering its fairness to the other. For example, if both spouses in a divorce want full custody of the children and completely refuse to compromise, the process won't go anywhere. But if one spouse yields to the other – or better yet, if both agree on joint custody – the process can move toward resolution. Smart negotiators know that they will have to compromise on some issues to a certain extent and that they're highly unlikely to get everything they want.

Sometimes, however, a party will be immovable not because of needs or wants but out of a personal desire to "get back" at the other party. This only leads to escalated conflict and the kind of expensive, draining, adversarial

mud-slinging that you're trying to avoid. Don't give in to anger or hate. Even if you're still carrying hostility toward the other person over past issues, keep it out of the negotiation process. Remember that the goal is a fair agreement, not revenge or "teaching a lesson."

Negotiation is about working together, not competing against each other. So if you want the other party to understand your needs and make a few compromises in your favor, you will have to do the same for him or her. Listen to the other person. Give the other party the space and time to make his or her needs clear. Try honestly to understand how the situation looks from the other side's point of view; this may be the most valuable skill you can master in bargaining with others in any dispute situation. Listen to the other side in the way you would like them to listen to you. The more respect and attention you show, the more likely the other person will be to let down his or her defensive guard and show you the same respect.

Even if you know that something the other side wants is impossible or unfair to you, don't immediately criticize the person for it. That's a good way to burn down the bridge of understanding you're trying to build. Instead, hear the

*The object of negotiation  
is not to right past wrongs or  
to keep the other person quiet:  
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other party out first and then deal with how to reconcile your conflicting wants. Is there a solution that leaves both of you satisfied, as opposed to having one happy and the other unhappy? Also ask yourself if this particular issue is as important to you as you think it is. Would it really be that much of a loss if you made a sacrifice in this area or just gave way a little? Or maybe there's a way both of you can "share" the benefits.

This will require you to "take the high road" and leave the past in the past. You can't drag old hurts and resentments into your negotiation and expect it to succeed. Find somewhere else to vent your anger and frustration – with a counselor or a support group, for instance – so that you can be as calm and cooperative as possible under the circumstances. A

complete understanding of the other person's perspective as well as your own is essential to negotiating a fair resolution to any problem.

## Be Fair to Yourself

Negotiation is about give-and-take. While it's important to let the other party feel that his or her needs are being addressed, be sure that you're being heard equally. As admirable as it is to give way on issues, a deal can't be truly fair unless you're receiving the same generosity and respect in return. Remember, the saying isn't "do unto others better than you would have them do unto you."

There are instances in which one party may give in too much to the other because of a power imbalance: the former may feel threatened or simply be too much in the habit of giving in. For example, this may happen for a marriage in which one spouse has always been dominant; sadly, this pattern often continues when the couple breaks up. There are also instances in which one party may want to "give away the farm" to ease guilt, particularly if the other party has been very vocal about supposed injustices done by the former. But the object of negotiation is not to right past wrongs or to keep the other person quiet: it's to achieve a fair resolution for both parties. This is where a neutral third party (such as an experienced divorce mediator) may help in assuring that all get their say in a negotiation; he or she would be able to spot when one person is getting the short end of the stick or just isn't being heard.

If no neutral third party is available, you may have to stand up for yourself when dealing with somebody who tries to take advantage of your guilt or generosity. Listen to the other party's needs and concerns, but don't let them completely override your own. Be firm if you know that you're not being treated fairly; don't give in to guilt or feelings of inferiority. If the person you're trying to negotiate with continues to be unreasonable, a fair final agreement may be impossible without the assistance of a trained mediator or collaborative lawyers. Sometimes a firm, confident attitude in bargaining can work wonders. A normally domineering or stubborn person may be baffled by your refusal to back down and eventually find no other alternative than to give in on the issue.

When the other party agrees to let you have something your way, don't be ashamed to take it. In exchange, of course, assure the other person that some other issue will go his or her way. Accepting the other party's concessions

is just as important to negotiation as offering concessions: both reinforce the fact that you are aiming at a "win-win" solution rather than either of you being short-changed.

As important as it is to understand the other party's needs, he or she has a duty to do the same for you. Negotiation is a cooperative process: it won't work if either of you is trying to get the better of the other.

## A Better Outcome

There are many benefits to bargaining instead of arguing or fighting to the bitter end over an issue. Negotiation turns your opponent into a partner – even, potentially, an enemy into a friend – because you're working together to benefit both of you. You can avoid the increased hostility and awkwardness that result from continued antagonism – the wasted energy, stress, and emotional strain involved in clinging to your position and pursuing your wants at all costs – and wind up with an outcome that's fair, pleasing, and the result of your own empowerment.

Better negotiation skills lead to better outcomes in most situations. Follow the tips we've provided, and you can reap benefits without having to risk being defeated in any "battles."

## Negotiating Dos and Don'ts

Here are some things to do and not to do when negotiating with someone:

- Do listen attentively.
- Do demonstrate respect for the other person's point of view.
- Do make your own point of view clear without blaming or whining.
- Do separate your "non-negotiables" from areas where you're willing to compromise.
- Do look for "happy medium" solutions that satisfy both parties.
- Don't drag past disputes into this one.
- Don't be rude to, interrupt, blame, or patronize the other party.
- Don't back the other party into a corner with absolute demands; these inflexible statements usually begin with phrases such as "You must..." or "You will never..."
- Don't give in to demands out of intimidation or guilt.
- Don't expect to get everything you want. ■

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*Jeffrey Cottrill is a former Divorce Magazine staff writer.*





# KEEP YOUR COOL IN HEATED SITUATIONS

When emotions run high, intelligence tends to run low. Use these ten simple tips to help you keep your cool when the conversations get heated.

By Carolyn Ellis, Divorce Coach

*Patricia was negotiating a separation agreement with her soon-to-be ex-husband with the help of a mediator. After months of mediation sessions and mounting legal bills, she felt like abandoning the negotiations and taking her ex to court. “I don’t even recognize who this man is anymore. How did I ever decide to have two children with Frank?” she asked during one of our coaching sessions. “All I’m trying to do is what’s in the best interest of our kids and obtain the kind of support that the law requires him to pay. But Frank is being so belligerent and disrespectful!”*

*At this point, Patricia was too upset to negotiate calmly; she wanted to “give Frank a taste of his own medicine” by becoming equally belligerent and disrespectful to him. This could have derailed the mediation process and ended with the two of them slugging it out in court. Instead, Patricia worked to control her emotions to prevent the heat of the moment from undermining her long-term goals, and she was able to negotiate a settlement that both of them could live with.*

**T**here aren’t many people who jump for joy at the prospect of having a potentially contentious and heated conversation with someone they used to love. It can be very unsettling, profoundly frustrating, and deeply disappointing. The unfortunate reality for the vast majority of divorcing couples is that tense moments, conflicts, and arguments are inevitable during your divorce journey; but it is how you handle the conflict that will help to determine how long and how difficult the process will be.

Negotiating your separation agreement requires you to make decisions about crucial factors that will impact you and your family for years to come – such as division of marital assets, child custody, and financial support. When emotions run high, intelligence tends to run low. During divorce, you're asked to make decisions about your life when you're least equipped to do so.

Brain science helps to explain why it's so hard to make complex and challenging decisions when you're in a place of emotional upset. When faced with situations that create fear or insecurity, the amygdala in the limbic brain is triggered and sets off the "flight or fight" response. Adrenalin floods through your body, creating physiological responses to ensure your physical survival. For example, breathing and heart rates increase, sending blood to your limbs so you can run or go into battle.

Instead of being able to respond, you can only react when you are hijacked by your amygdala. The cerebral cortex, the part of your brain that governs reasoning and logic, is hard to access; however, this is what you'll need to call upon the most when you're in the midst of finalizing your divorce or co-parenting agreement with your ex.

Use these ten simple tips to help you keep your cool when the conversations get heated.

### Tip 1 – Take Some Deep Belly Breaths

Nothing helps prevent you from spiraling into emotional reactivity like taking a few deep breaths. Plus, this strategy is free, easy, and something you can do any place, any time.

Studies show that taking deep, conscious breaths for even one minute can help you feel more grounded quickly. Breathing like this helps to dial down the amygdala response that triggers the "fight or flight" response so you can better access the part of your brain that governs rational thought.

Most of us tend to breathe more shallowly, using primarily the chest cavity. It can take a bit of an adjustment to learn how to breathe more deeply, using your full lung capacity. To help you get the deep breaths going, place your hand on your navel and breathe deeply right down into your diaphragm. When you inhale, imagine you're sending your breath right down to your hand. You're on the right track when you see your hand moving outwards with your inhale, and then back in towards your body on the exhale.

### Tip 2 – Move Your Energy

To help express yourself clearly in your negotiations, it's important to get your energy clear. Past upsets and grievances, unexpressed emotions, worries about the future, or feelings of anger, sadness, guilt, or fear create static that can make it harder to get your point across effectively.

If you're feeling angry, write an angry letter (don't send it, however!), write about your feelings in a journal,

take your dog for a walk, or work up a sweat at the gym. If you're feeling sad, spend time with people you love or do some yoga. To get a fresh perspective, take a nature walk, or get creative in the kitchen or with a hobby. Finding ways to move and release pent-up emotions before you have your tough conversations makes it easier to speak your truth when it really counts.

### Tip 3 – Get the Big Picture

When you're deep in the trenches of negotiating your divorce settlement, it's so easy to lose perspective. Everything feels urgent and high-stakes. It's important to take the time to get the big picture.

One of the most effective ways to do this is to look out into the future: imagine what you want your life to look and feel like 20 years from now. Do you want to be upset and still resentful about your ex, or do you want to feel more peace and clarity in your life from all the wisdom you're gaining from this divorce experience? If you have children, what do you want the day they graduate college or get married to be like? Keep the big picture in mind and do your best to let that vision pull you through the stress and conflict you might feel today.

### Tip 4 – Don't Give Away Your Power

When it comes to a divorce, everyone has an opinion for you. We hire lawyers; we talk with therapists or coaches; we poll friends, family, and neighbors for their experiences and suggestions. We devour self-help books and attend workshops to try and find our way through the divorce maze. But at the end of the day, you are the world's best expert on you and what's right for your life.

When you decide to take responsibility for your choices, you put yourself in the driver's seat of your life. When the heat is on and the conversation gets tough, it's tempting to give your power away to others in order to avoid conflict. Your lawyer may be an expert on the law, but you and your family are the ones who will have to live with the consequences of your legal decisions. Your ex-partner will know what buttons to push to upset you; during your marriage, you may have backed down when he or she pushed those buttons. Today, don't take the bait. You have both the power and the responsibility to give input on decisions that will affect the rest of your life.

### Tip 5 – Pick Your Battles

What tends to surprise most people is how grueling it is to actually implement the decision to end your divorce. Especially if you have children, there are a lot of major issues that need to be negotiated such as child support and custody, spousal support, and division of assets and debts.

It's crucial to pick your battles. You'll get exhausted

if you go to the wall on every single issue that arises. Brainstorm a list of all the issues that you can think of – holiday schedules, education choices for the kids, what happens when one of you loses a job or when a new partner comes on the scene, and how to handle it when your teenager wants to get tattoos and a few piercings. What’s negotiable for you? What’s a deal-breaker issue for you?

Get clear on your core issues and set some priorities. You’ll need to have some give and take in your relationship with your ex, particularly if you are co-parents. Learn to become strategic and identify where you’re willing to get creative or compromise in order to build good-will for the long run.

### Tip 6 – It’s Not Personal

One big trap that is easy to fall into is taking interactions and choices made by your ex-spouse personally. Especially in situations of conflict, people will inevitably have different opinions and strong emotional reactions. Allow others to have their own emotional upsets. Doing your own emotional homework with a therapist or coach can help you defuse some of those “hot buttons” that ex-partners are so skilled at pushing.

Realize that what your ex-partner thinks of you is no longer any of your business. The degree to which you continue to respond and react to what your ex thinks, says, or does is the degree to which you help create your own suffering. In the words of spiritual teacher Matt Kahn, “What others think of you is their journey. What you think of yourself is yours.”

### Tip 7 – Own Your Part

We are human beings, not saints. Particularly when under stress, we’re likely to do or say things that we may regret later. Help keep your negotiations moving in the right direction by taking responsibility for your actions and how you may have contributed to the conflicts you’re trying to resolve.

In negotiations, take ownership for your feelings when you speak. Avoid blaming statements such as: “You’re being unfair!” Instead, take responsibility for your feelings by using “I” statements, such as: “I feel upset when XYZ happens.”

When you do find yourself making a misstep or losing your cool, show yourself compassion. See these “mistakes” as enormous learning opportunities.

### Tip 8 – Get Support

Einstein said that problems cannot be solved at the level of thinking that created them in the first place. Learn to ask for help and support; if you don’t ask, the answer will always be no. If you do ask, the chances are great that you’ll be able to

break through whatever problem is keeping you stuck.

If you reach an impasse with your ex-spouse, get help when you need it. You may need to enlist a third party (counselor, mediator, lawyer, etc.) to help resolve difficult issues. It’s critical that you find effective support in your social network during your divorce process. Find a trusted friend or divorce “buddy,” a divorce coach, therapist, or a community support group.

### Tip 9 – Talk It Out

When you have big stakes on the line, it’s best not to “wing it” and hope it all turns out the way you want. Taking time to prepare yourself in advance helps give you the confidence and clarity that can make all the difference.

One way to do this is to write down all the key points you want to make. Get some of those nervous jitters and hesitations out of the way before the meeting even starts by practicing out loud. You can even do this in front of a mirror to take your “talk it out” strategy to an even deeper level.

### Tip 10 – Surrender

Anyone who has ever tried to paddle a canoe or swim upstream can confirm that going against the current can be exhausting. When you make the choice to surrender, you let go of needing to know or control everything all the time. Surrendering isn’t a sign of weakness; it doesn’t mean you’re giving up your position or your beliefs. Sometimes, the best choice about “what to do” is simply to breathe and stay in the present moment; stay open to learning any wisdom this situation has to offer you.

Before you head in to your next tough conversation, take a moment to close your eyes and get centered. Create an intention that you can come back to when you feel challenged or unsettled, such as: “Let this be resolved in the highest and best interests of all involved” or “Let me speak my truth powerfully and clearly today.” You can even anchor this intention by holding a small object, such as a small crystal or stone, in your hand. Bring this object with you to your meeting to help you stay centered and remind you of your intention to surrender your desire to control every aspect of the negotiation. ■



*Carolyn Ellis is an award-winning coach, transformational expert and author of the award-winning [The 7 Pitfalls of Single Parenting: What to Avoid to Help Your Children Thrive After Divorce](#) and [The Divorce Resource Kit](#). She specializes in helping individuals navigate change and uncertainty by tapping into their own inner brilliance and emotional resilience. To learn more or to book a session, please visit [www.ThriveAfterDivorce.com](#) and [www.BrillianceMastery.com](#).*



# How to Let Go of the Past After Divorce

Moving on after divorce can be difficult, but there are actions you can take to make the process smoother. Try the following suggestions and start looking forward to a happy future!

By Wendi Schuller, Therapist

It can be hard to let go of the past after divorce. Focusing on what was instead of what is can hinder you from moving on post-divorce. Divorce may come as a shock, and fixating on what used to be gets in the way of taking action now.

Some people interviewed for this article said they kept dreaming about the past – likely through the lenses of rose-colored glasses – as the present was too painful to think about. Others felt that if they denied what was happening (i.e., that their spouse was leaving them), things would go back to the way they were.



One sign that a person is hanging on to an ex-spouse and not letting go is talking endlessly about them. An acquaintance went on and on about her former husband until somebody else changed the subject. She did not date but instead wallowed in that relationship which she failed to leave behind post-divorce. There were no children and it was a clean break. I occasionally run into her former husband; he has never brought up his ex in conversation with me, and he was able to move on with his life. He is happily remarried and is a proud step-father.

You must realize that you can and must choose whether to stay mentally and emotionally attached to a former partner or face the cold truth of reality that they are not coming back.

### How to Let Go and Move On

Part of getting beyond reliving the past is filling the void left by your divorce. When an old life and marital relationship ends, something has to fill this gaping hole. This was the

**Instead of focusing on  
what you're missing,  
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your divorce cloud.**

problem with my acquaintance. She did not try to meet people, take a class, or pursue new endeavors. The void remained.

One of the first steps to moving on is replacing the loss of friends (those who departed from your life with your ex) with new friends, pursuits, hobbies, and adventures. Expand your social circle by joining a special interest group or renewing friendships that may have fallen by the wayside when you got married. I joined travel and book clubs. Other divorced pals are in film and hiking clubs.

If you haven't already done so, go find your "tribe"! There are many studies globally that show the health benefits of being connected to others, so you must leave the (depressing) safety of your sofa by enjoying pleasurable outings with like-minded people.

### Stay (or Get) Mentally and Physically Active

A new job during the early phase of my divorce proceedings was mentally stimulating, and it gave me less time to think about my losses. Others have taken courses or changed career paths after a divorce. Take up a sport for a physical challenge (start slow if the only "sport" you've engaged in for years is

channel surfing). The goal is to keep mentally and physically active to fill the void and find life more satisfying. When your agenda is crammed full of entertaining events and pleasurable pursuits, looking ahead instead of behind becomes much easier.

Some divorced individuals told me that they became more active in their churches, synagogues, or mosques. The support received helped them realize that they were not alone and that other people care about them. Divorced people in the congregations offered advice and shared their own stories. One divorced friend even met her next husband in her church's singles group.

### Start New Traditions

Rituals and routines can keep one rooted in the past. If you always went out for Sunday brunch with your spouse, make it a Saturday brunch with friends. Discover different dining or coffee venues. Doing the same activities at the same places that you did when married triggers memories.

My boys and I dropped some routines that we did with their father. Instead, it was exciting to dream up fresh ways to have family fun and create new experiences after divorce. My sons and I shook up Christmas rituals by leaving town over the holidays several times. Think about what no longer serves you or keeps you tethered to your former spouse, and drop those traditions, habits, and routines like a hot coal.

### Focus on the Positive

Being in the company of positive people can help you leave the past behind and notice what good things lie ahead. They tend to look at the bright side of life and not dwell on the negatives. Emotions are contagious, and being around these people is uplifting.

Instead of focusing on what you're missing, look for the silver lining in your divorce cloud. I gave up being on the party circuit and entertaining, which we did to further my husband's career. After divorce, I realized how draining the constant parties were and am so glad to have given them up. I have more time for my sons, which resulted in a closer relationship with them.

Think about what aspects are better in your life now, and keep looking forward to your next adventure. ■



*Wendi Schuller is a nurse, hypnotherapist, and is certified in Neuro-linguistic Programing (NLP). Her most recent book is The Global Guide to Divorce, and she has over 200 published articles. She is a guest on radio programs in the US and UK. [www.globalguidetodivorce.com](http://www.globalguidetodivorce.com)*

# 7 Ways to Reduce Costs During Divorce



Divorce is expensive. These seven tips can help you to keep costs down so you can enjoy financial freedom in the future.

By Donna M. Cheswick, Divorce Financial Analyst

**D**ivorce has a way of pulling the rug out from under you, even if you are the one who initiated the divorce. The adversarial nature can cause the process to be extremely expensive, and there are usually no “winners” in divorce. Splitting one household into two only multiplies the cost. However, education, planning, and rational thinking can help curb the financial impact. Here are some suggestions to help you keep costs down during divorce.



## 1 Be Mindful of Spending.

The financial reality of tomorrow may be quite different from today, so it is essential to track and identify how money is being spent each month. It may be necessary to eliminate any unnecessary spending until you have a clear understanding of just how much money is needed and the various sources of income available.

## 2 Do Your Own Discovery.

Accurate information on your case is critical for the professionals you hire to adequately represent you. They will need detailed information regarding all assets, debts, sources of income, expenses, tax information, real estate holdings, and employee benefits. You are your best source of information. Invest your own time locating and providing as much of this information as possible. If you don't, your lawyer will have to spend significant time (and your money) gathering the information or requiring your spouse to produce the documents. Keep copies of all documents in an organized fashion. Realize that in some cases, documents can sometimes "disappear" as emotions escalate, so it may be best to store all copies of documents in a neutral safe location.

## 3 Limit Conflict and Increase Communication.

You must recognize that the more you "fight," the longer and more drawn out your divorce will be, and the more it will cost. Don't let your lawyer or your spouse's lawyer encourage conflict. Try to think rationally and keep the lines of communication open with your spouse. If you can remain open to compromise, it will potentially save thousands of dollars. There is no benefit in trying to extract vengeance on your spouse or try to make your ex pay for their bad behavior. Leave revenge at the door. The division of marital property typically culminates in a fashion that is fair and equitable to both parties.

## 4 Get Help to Understand Your Financial Situation.

Financial issues and property division can be one of the most complicated and time-consuming aspects. Costs can quickly escalate the more drawn out a settlement becomes. You retain a lawyer because of their expertise on legal issues; however, many lawyers do not possess specialized knowledge in dealing with complex financial issues.

Seek the services of a Certified Divorce Financial Analyst® (CDFA®) to get the necessary help organizing information, understanding the various property and tax issues, and with other decisions you will be facing before you consent to a settlement. Using specialized software, a CDFA can show a variety of property division options to visually illustrate the short- and long-term financial implications for both parties. Reviewing the financial impact of a settlement,

not just on the date of division but also into the future, can help you move forward with confidence. These types of reports can also help you and your lawyer demonstrate to your spouse an equitable division of the marital property. Professional assistance during negotiations helps assure you don't make irreversible mistakes.

## 5 Don't Use Your Lawyer as Your Therapist.

The divorce process is stressful. With that said, your lawyer is your legal representative, not your psychologist. At \$200-\$400 per hour, it is very expensive to use your lawyer for this purpose. If you need support, use a trained mental-health professional. Their hourly rate will be significantly less expensive and services may be covered by your health plan.

## 6 If at All Possible, Stay Out of Court.

The costs of a litigated divorce can often "wipe out" or seriously deplete a couple's marital assets. Investigate mediation or collaborative divorce as a way to save time and money, and avoid an adversarial atmosphere. These approaches help find common ground and settle on an agreement that is mutually satisfactory. If the parties can be flexible and determine solutions to their issues, this can help promote a cooperative relationship in the future. This often helps the parties to move on with the least amount of stress and conflict, especially when there are children involved. To effectively co-parent, both parties will need to work together post-divorce to minimize negative consequences the divorce may have on their children.

## 7 Empower Yourself with Knowledge.

Relying on your lawyer to manage every aspect of the divorce can be expensive. Take charge of your situation by researching the divorce laws in your state so that you can get a general overview of what to expect. As you become more knowledgeable and informed, that will help diminish some of the fear and uncertainty that may be present, and you will benefit from making logical decisions. Take advantage of community resources like your local library or the Internet to research and learn as much as you can.

No two divorces are the same, and it is imperative to remain level-headed and realistic so that you can make good decisions for yourself and your family throughout the process. ■



*Donna M. Cheswick is a CDFA®, financial advisor, and collaborative divorce professional. She guides decision-making and problem-solving on the critical financial issues related to divorce. [www.medallion-wealth.com](http://www.medallion-wealth.com)*



# Managing Anger

Divorce-related anger can literally make you crazy, causing you to say and do things you'd never dream of if you were thinking clearly. Even though it's a normal part of the healing process, anger can become a destructive force in your life.

By Jane Zatylny, Author

**A**nger is a very familiar emotion for all of us, and in healthy relationships, it can be an overwhelmingly positive force in our lives. Healthy anger can tell us if there's something wrong, painful, or threatening that we need to take care of. It helps us protect ourselves and to know when people are crossing our boundaries.

But for couples who are going through separation or divorce, anger is often anything but healthy. In her informative book *The Good Divorce*, Dr. Constance Ahrons defines divorce-related anger as "an extreme rage, vindictiveness, and over-powering bitterness that is felt when a love relationship is ending. It is a special kind of anger that usually hasn't been experienced before."

When anger is coupled with divorce, it's often used as a misguided means of hanging onto a failed marriage. After all, for many people, a bad relationship is better than no relationship at all. Divorce anger allows people to punish their ex as often as possible while maintaining an ongoing (bitter) relationship with him or her. It's a situation that leaves both partners in divorce limbo, a perilous situation that obstructs growth and self-awareness. If you wish to move forward, you'll need to learn to handle your anger.

Some people hold onto their anger so tightly – stoking the fires on a daily basis – that their rage takes over their whole lives, coloring and informing all their thoughts and actions. They weigh every action to see how much emotional or physical harm it will inflict on their ex-spouse (even simply being a nuisance will do "in a pinch") without seeing the injuries they may be inflicting on innocent victims. Using children as human shields in the divorce battle is a common way to fan the flames of divorce anger. Many scenarios are possible, all of which are damaging and punitive to the children: the custodial parent withholds visitation from the non-custodial parent; the non-custodial parent refuses to pay child support; the custodial parent "forgets" to pick the children up; or the non-custodial parent is hours late in bringing them back. "We forget what's best for the children because we are so intent on getting that other person," writes Ahrons. But "getting back through the kids is hitting below the belt."

Divorce anger is also often expressed through the legal process itself. Here, it's very important to remember that your lawyer is your advocate, not your therapist or your best friend. Expressing anger to your ex-spouse through

the legal process invariably leads to prolonged, emotional proceedings that will ultimately leave you and the family resources drained dry.

Using the court as a setting to vent your anger is a bad idea for a couple of key reasons: it's the wrong venue, and it's very expensive (both financially and emotionally). Unfortunately, the legal divorce process itself tends to add fuel to the fires of anger. Dividing property (some of which has great sentimental value) and trying to prove your case for custody and/or support can be very emotionally charged because these issues underline what is being lost or changed

by your divorce. Some degree of upset is inevitable, but driving yourself alongside your ex into bankruptcy is truly cutting off your nose to spite your face.

So, how can you cope with this new and intense anger? The key lies in understanding its

roots and in finding constructive ways to express the hurt, disappointment, and loss that both you and your former spouse are feeling as you proceed through separation and divorce.

Here's some advice about coping with your own and your ex-spouse's divorce-related anger.

### If You're Angry

- **Write it out.** Work through your anger by keeping a journal or by writing letters you don't intend to mail. By doing so, you can release your anger without engaging another person. Also, it is possible that you maybe angry with yourself.
- **Shout it out.** Roll up the windows in your car, or put your head in a pillow and scream.
- **Talk it out.** It's important when you're angry to develop your own personal support system. Instead of directing your anger at your ex-spouse, talk to a good friend (or two), or find a therapist who specializes in anger management.
- **Get some professional help.** Anger can suppress other emotions, both positive and negative. Talking to a professional can help you begin to feel those emotions you've been suppressing and move past the anger. You could also benefit from a support or anger management group, where you can share your story and help yourself and others move to a position of growth and development.

**Remember that anger is a projection of one's own inner feelings and one's own world. Accept the fact that your ex is angry because they're going through turmoil.**



- **Take responsibility for your part of the marriage break-up.**

“It’s a rare couple in which both partners were exactly equal in the breaking of the marriage, but it’s an even rarer couple in which one partner was solely at fault,” writes Constance Ahrons in *The Good Divorce*.

- **Do some personal growth work.** Anger is a great motivator toward action and can propel you to take steps in your life to change situations.
- **Learn what “pushes your buttons”.** Try to understand your anger – and what triggers it – before you express it. Don’t be afraid to say that you need some time to think about your response.
- **Protect your children.** Never make them part of your conflict with your former partner by withholding visitation or support or poisoning their minds against your ex. “For the sake of the children, if for no other reason, learn constructive methods of expressing anger,” Ahrons says.
- **Keep conflicts at a moderate level.** Your ex will often match your level of intensity. Be sure to choose your battles carefully, as expressing every little irritation and disagreement provokes resentment. Think about the most important issues and let go of the small stuff.
- **Use “I-messages” when expressing anger.** Say: “I feel disappointed when you don’t call,” not: “You stupid idiot, you’re always late!”
- **Give yourself time to recover from the loss of your marriage.** On average, experts say that the healing process takes at least two years and often longer. “It’s important to realize how sad you are,” says Ahrons. “This won’t necessarily make you more vulnerable to your ex-spouse; your successful handling of your emotions puts you in a more powerful position.”
- **Forgive, let go, and move on.** Anger can become a comfort, a constant in our lives, but as long as you continue to nurse your anger against your ex, you will never have a happy, fulfilled, post-divorce life. Own your responsibility for the break-up and realize that you have the power to make the choice to forgive and move on, or stay angry and remain stuck. It doesn’t matter what your ex does; you can still choose forgiveness.

**Realize that you have the power to make the choice to forgive and move on, or stay angry and remain stuck.**

what you can do to help. It also really helps to defuse the situation by saying something like, “I understand why you’re angry with me.”

- **Don’t be afraid to take a “time-out”.**

Walk away from an anger attack if you can’t handle it. You can try saying, “I’m not going to talk to you until you calm down.” Put limits on what you’ll take and how you’ll be treated.

- **Get some assertiveness training to boost your self-esteem.** “Anger is like a fire that must be burned up into the ashes of forgiveness,” writes Ahrons. “If we are passive, it is like throwing more logs onto the fire.”
- **Try not to take your ex-spouse’s comments too personally.** Remember that anger is a projection of one’s own inner feelings and one’s own world. Accept the fact that your ex is angry because they’re going through turmoil.
- **Stay calm.** It can really help de-escalate the other person’s anger. Relaxation techniques, such as deep breathing, can be effective when you’re listening to someone who’s really angry.
- **Learn to recognize your own hot buttons.** When someone pushes one of your buttons, your response is going to be way out of proportion to the offense.
- **Try to feel a little compassion – no matter how hard that may be.** Your ex may be feeling fearful and threatened, so try to hear what’s underneath the anger; quite often, it’s fear, pain, or shame. Showing empathy or compassion for your ex can go a long way to defusing his or her anger.
- **Be honest with yourself.** Recognize that when someone is angry with you, there may be some truth in what they’re saying. If your ex is yelling at you, you can choose to think he or she’s a jerk and start yelling back, or you can “dig for the gold” in what he or she is saying. Keep the gold; discard the dirt and rocks.
- **Value your safety above all else.** If your former partner’s divorce anger seems to be headed in a dangerous direction, put some boundaries in place and communicate through a third party. Threats should always be taken seriously: remove yourself from the situation and refuse face-to-face contact if you sense any danger at all. ■

## If Your Ex Is Angry

- **Listen to and validate your ex-spouse’s comments.** By really listening to his or her concerns, you may learn where the anger is coming from and identify

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## Be Prepared:

# Planning Your Financial Settlement

By Dr. Fadi Baradihi

When you're negotiating the financial aspects of your divorce settlement, preparation is the key to success. Are you really ready to negotiate your financial future?

**D**uring the course of your marriage, you accumulated both assets and liabilities. Although there are regional differences when it comes to who gets what, basically, everything purchased, received, or saved during your marriage must be divided when you divorce. So now you're about to sit down and negotiate a financial settlement with your ex – but are you truly ready to do so? As with any negotiation, preparation – including a thorough understanding of the situation, as well as assistance from professionals to ensure your interests are being protected – is the key to success. Here are a few questions you need to be able to answer before sitting down to negotiate.

## Do You Know What Your Marital Assets Are?

You can't divide the marital assets fairly if you don't know what's there. The discovery process, which can be informal or formal, is important in every divorce. The informal way is to exchange lists of your assets and debts in an affidavit form. This method should only be used if you are sure that you know everything that exists in your estate; if you're not sure, then a more formal means of discovery should be utilized.

Start by collecting statements for all your financial holdings and put together a list of your assets. Here's an example of items you'll need to list on the Asset Worksheet at the end of this article (remember to note the value of each asset, and who owns what portion of it):

- Retirement Assets
- Liquid Assets
- Real Estate
- Personal Property
- Cash Value Life Insurance
- Business Interests

As you work your way through the asset split negotiations, each asset can be moved to its appropriate column: "Husband" or "Wife". To figure out the percentage split, divide the total for each spouse by the grand total.

## What if There's a Business or Professional Practice Involved?

A business or professional practice tends to complicate a divorce. More often than not, the value of the business becomes a focal point of contention. Couples need to seriously consider getting a professional and objective valuation of the business. The costs of a professional valuation are usually steep, but you can't divide something fairly if you don't know its true worth. Then comes the question of what to do with the business.

There are a few options, such as:

- One spouse keeps the business and gives the other a reciprocal dollar value using other assets.
- Sell the business and split the proceeds.
- Keep ownership in the business at 50/50.

In a business-owner situation, the business is usually most or all of their net worth, so there aren't usually enough other assets to compensate the other spouse. Even if selling the business is an option (it usually isn't), finding a buyer to pay the right price within an acceptable time frame is practically impossible. Most divorcing couples don't want to maintain a relationship – not even a business relationship – after the divorce. So what do you do? The only real options are a property settlement note (one spouse buys the other's share in a series of installment payments at a market-interest rate) or a spousal support arrangement to compensate for the difference.

## What About a Budget?

It is critical to determine the incomes and expenses of the parties and to try to estimate what the future expenses will be after the divorce is final. If there are children, one spouse will probably pay child support to the other, and in many marriages, one spouse will also pay spousal support ("alimony"). It is important to determine both income levels and future needs before you start negotiations. A Certified Divorce Financial Analyst® (CDFA™) can play a critical role in determining both a budget and cash-flow needs. They can also help to plan a course of action for the future by preparing different scenarios utilizing assumptions based upon needs and projections with different income levels.



## What About Pensions?

In many divorces, the most valuable assets are future benefits such as pensions. These must all be determined and considered before starting to think about a settlement. In most cases, the marital portion of these benefits – in other words, the portion of the pension or other deferred benefits that have been acquired during the marriage – is subject to division as part of the divorce settlement. A good lawyer and CDFA will help you consider these benefits as part of the overall settlement plan, making sure your future needs will be met.

## What About Personal Property?

Personal property is important, but don't spend thousands of dollars fighting over property with more sentimental than real value. Items such as collectibles, favorite home



# Worksheet: Charting Assets

Make one copy of this page for each of the following assets you and/or your spouse own: Bank Accounts (including investments and CDs); Retirement Accounts; Real Estate; Businesses; Vehicles; Patents, Copyrights, Royalties; Antiques, Art, Collections; Cash-Value Life Insurance; Licenses and Degrees (if applicable). Note whether Marital or Non-Marital funds were used to purchase the item under the “Source of Payment” category.

Description of Asset	Date Acquired	Titleholder	Cost	Source of Payment	Value as of (date)

## *Insoluble disagreements arise when divorcing couples are negotiating based on wants rather than needs.*

furnishings (from chairs to rugs to pots and pans), hobby equipment, and other personal property must not become the focus of your negotiations. A good lawyer and CDFA can help you gain perspective on these items and focus on the big picture when you're getting ready to negotiate a settlement. Remember that an expensive television or computer has almost no value a few years after you made that big-ticket purchase. The courts don't look at replacement value but the actual value of the item, which, in the case of used furniture, is often valued at garage-sale prices.

### **What About Your Home?**

Over the years, we have seen people who were determined to stay in the marital home no matter what. In some cases, that can be a big mistake. First of all, it may be too expensive to maintain. In some situations, it's better to sell the home and find another one that's smaller and less expensive to pay for and maintain. As you move ahead and rebuild your life, it may be better to start fresh in another home. Aside from the financial considerations, there may be too many memories attached to the marital home to let you move forward emotionally as long as you're still living there.

Here are the traditional options for the matrimonial home:

- One spouse stays in the house (with the children, if any) and buys the other spouse's share by:
  - a) Cash-out refinance
  - b) Giving up another asset
  - c) Property settlement note
- The spouses sell the house during or after the divorce process and split the proceeds.

In many cases, one spouse – often the wife – wants to keep the house. Though this might be emotionally satisfying, it usually makes little or no financial sense. The equity in the house is illiquid, meaning it won't pay the bills.

If one spouse wants – and can afford – to keep the house, that spouse should pre-qualify for a mortgage before the divorce is final. Sometimes, a divorcing couple will decide that one spouse is going to keep the house. They take the

other spouse's name off the deed – and then the spouse who wants to keep the house gets turned down for a mortgage because he/she doesn't make enough money to qualify to refinance in his/her name alone. The spouse who is leaving the marital home ends up being on the hook for the debt, has no reciprocal asset, and can't qualify for his/her own mortgage because he/she doesn't make enough to support both mortgages.

### **What Do You Want – and Why?**

You must have a game plan when you enter into settlement negotiations. Do you know what you want? Do you know what you need? Are you thinking about all options? Are you being realistic in your demands? It is standard negotiating practice to ask for more than you expect to receive without going to extremes. Don't be a doormat, but don't be excessively greedy, either. Insoluble disagreements arise when divorcing couples are negotiating based on wants rather than needs. So take the time to objectively determine your own needs and those of your spouse before starting to negotiate. We have found over the years that if your demands are reasonable and based more on needs than wants, then the chances for a quick, fair settlement are good.

There must be give-and-take as well as wiggle room in your settlement proposals; your lawyer and your financial advisor can help you strategize and come up with different game plans and scenarios as you prepare for negotiation.

### **The Bottom Line**

You must be well-represented and advised in order to negotiate effectively. This includes knowing the “ingredients” of the marital pie, and also how much of that pie you can realistically expect to keep as you prepare to negotiate your settlement. A team consisting of a lawyer and a Certified Divorce Financial Analyst® (CDFA™) – and perhaps a therapist if emotional issues are getting in your way – can help you understand your needs, your rights, and your true “bottom line” before you sit down with your mediator to negotiate with your spouse.

Divorce is one of the most difficult and stressful experiences you'll ever have. During this emotional time, it can be hard to think clearly or rationally, so make sure to enlist the help of professionals who can guide you when you've lost your way. Remember: if both sides are somewhat unhappy with the outcome, then the negotiations went well. ■

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