

MEDIATION
DIVORCE
GUIDE



**BRANDMEYER GILLIGAN
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Specializing in Family Law

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Divorce can be a stressful, prolonged, expensive, risky and confrontation-filled experience. However, it doesn't have to be that way when both spouses choose mediation instead of litigation.

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 children, and your future.



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The Mediation Alternative

Mediation can be a viable alternative to standard divorce litigation. Here's what you need to know.

By Brad Marcoux

WHILE death and taxes may be the only guarantees in life, acrimony and financial woe almost always accompany an adversarial divorce. It isn't surprising, really: after all, the legal system by its very nature pits people against each other, seeming to offer the possibility of only one "winner" and little opportunity for compromise. The search for a way to make the process of divorce less painful has led many to mediation — also known as "assisted negotiation" and it is a form of alternative dispute resolution.

Unlike traditional divorce proceedings, mediation takes the approach that individuals who were once able to organize their lives together can also arrange to live them apart. It's a different way of viewing divorce, and one with many advantages. But there are a few concerns that need to be addressed before you can be sure that mediation is for you.

What is it?

Mediation is a negotiated agreement between divorcing spouses on the issues of children, finances, and property. The key word here is "agreement" — you and your future ex create an agreement that both of you can live with. The mediator is simply there to keep you on track, assure negotiations are fair, and

make suggestions when roadblocks are encountered.

The focus for both parties is on controlling their own divorce, not on giving control to a judge. Unlike in litigation (in which the lawyers speak on behalf of their clients), in mediation, mediators act as advisors while the spouses speak for themselves based on their own individual needs and priorities.

The stages

While mediators handle each case differently depending upon their personal style and their training (an attorney-mediator might handle things very differently than a therapist-mediator) there are generally a few common stages. An initial meeting with you and your spouse is arranged to assess the dynamic between both of you, explain what you can expect, and discuss costs. Some mediators may also have you fill out a questionnaire or come in individually, based on what kind of relationship you currently have with your spouse and the mediator's personal preferences.

Once this initial stage is complete, you'll set meeting times (usually weekly, but you can arrange any schedule that suits you), ground rules (no degrading or insulting language), and goals (usually

regarding support, asset division, and visitation).

Next, information-gathering begins: your mediator will need documentation for property, assets, and debts, as well as tax returns, bank and pension statements, and any other paperwork relating to your marriage and finances. Based on the initial assessments and this documentation, a decision is made as to whether financial, legal, or emotional experts need to be consulted, and the actual process begins.

While individual cases vary, most cases can be resolved in a couple of months.

The big plus

This short duration highlights one of the most appealing aspects of the process: although mediators generally charge between \$150 and \$450 per hour — about the same as a lawyer — the speed can make it tens of thousands of dollars cheaper than fighting it out in court.

There are other advantages as well: since you're the one who is crafting your own agreement, you can arrange for all of your concerns to be addressed to your satisfaction before the process ends.

Because of this, you're more likely to be happy with the final result, and be more willing to follow through with your commitments than if your settlement had been decreed by a court. No one likes being told what to do, after all. And you can arrange visitation and support that's beneficial to your kids — a massive plus, considering how harmful a disputed divorce can be for children. And there aren't any worries about your agreement not being legally binding, as the final agreement is drafted by the mediator into a "memorandum of understanding" that is then hammered into legalese by your lawyers.

The perfect process?

Saving time, money, and perhaps your dignity are all wonderful; these potential advantages may make mediation seem like the perfect way to end your imperfect relationship. But, as with anything else, there are complexities that you should be aware of before you dive in headlong.

One of the biggest bricks to be hurled at mediation is that of power imbalances. It's felt by some that if one person in the relationship has dominated the other in the past, the weaker party is put at an impossible disadvantage when trying to represent themselves. It's a valid worry, especially if you feel that you're the weaker party — and even more so if there is or has been abuse in the past. But it's also a problem that a good mediator should be able to correct. Power imbalances — from resource possession to intimidation or even outright physical abuse — does not have to rule out mediation as an option. Training for mediators in recognizing and dealing with power imbalances is the key.

Questions to ask

In your initial interview with the mediator, they will be looking for specific signs that your case is appropriate for dispute resolution. You should take advantage of this initial consultation to assure yourself that the mediator has all of the qualities necessary to bring your marriage to a fair and balanced end. Here are some of the essential questions you should ask:

Unlike in litigation, in mediation, lawyers act as advisors while the spouses speak for themselves based on their own individual needs and priorities.

- What is your training and experience? Most organizations require mediators to complete at least 30 hours of training (and, in some cases, extra hours of schooling in domestic violence awareness), several hours of negotiation, and several cases. You should be looking for someone who has done at least ten divorce dispute resolutions. Ask if they have experience with cases like yours (especially if you have some unique circumstances to negotiate) and what training they've had.
- What organizations are you affiliated with? You can follow up with phone calls to find out some information about those organizations.
- What is your approach? You should get as much information about the process as the mediator gets from you about your case. Some mediators hold individual meetings, while others use questionnaires or other methods of screening. Ask questions and be sure you're clear and comfortable with everything you're told.
- Do you have any biases? It's a blunt question, but a valid one: everyone has viewpoints that skew their perspective. Ask them how they feel about the role of mothers or fathers or about the care of children.
- Should our children be involved in the mediation process? If so, how?
- Should new partners be involved in the process? If so, how?
- What is the cost?
- How much time do you feel the process will take?
- Should other experts be involved?
- What role will my lawyer play in the process?

When used by a skilled and sensitive mediator, techniques such as shuttle mediation (where the parties are separated and the mediator "shuttles" messages between them) and precautions such as separate arrival and departure times can

often effectively deal with the fear of psychological or physical violence. More general fears of a gender advantage can usually be balanced out by a trained individual mediator.

Subtle power

The mediator has a vested interest not in taking sides but in keeping the process balanced and fair. Because a mediator's business can rely heavily on word-of-mouth, crafting an unbalanced settlement would likely cost them both business and reputation. And there's also an incorrect assumption made here: that the mediation process will be less empowering to an individual than a legal battle.

Those who voice concerns about power imbalances, however, tend to worry less about cases where the problem has been identified than a scenario where a mediator is oblivious to it. While each mediator's methods of searching for both subtle and overt power imbalances may be different, a good mediator will take the time to inquire about potential imbalances and formulate a plan to compensate for them.

There are cases in which mediation is inappropriate, of course. Most mediators agree that if there is active and continuing violence, or a fear of violence, mediation is inappropriate — but all stress that each case must be individually assessed, and broad generalizations cannot be applied.

Legal fears

Even though the final agreement is subject to lawyers' approval, there is still a danger of your ex-partner not making a full disclosure of assets. But such concerns are rare, and, since mediation can

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Is Mediation for YOU?

Divorce mediation allows you to make your own decisions about the future.

THE mediation process requires two individuals willing to look past their emotions and, in a spirit of cooperation, find the best solution for their unique situation. Mediation isn't a magic pill — it can't turn a terrible situation into a good one — but it can create a future everyone can live with.

For mediation to succeed, there must be some communication between you and your spouse, or at least a willingness to focus on the issues rather than on your emotions. You both must be willing to make concessions, and at times compromise, in order to find a workable solution.

Both parties must understand that everything discussed at the mediation table is to be in the best interests of the family. If both of you are committed to resolving your conflicts, the rewards can outweigh the effort required to talk and compromise.

Studies have shown that mediation is the way of the future. While statistics vary, couples are generally more willing to comply with a solution they have drawn up themselves, and mediation can also provide a sense of closure to a relationship gone sour.

Mediation gives people an opportunity to deal with their emotions; it allows them to talk about their feelings and feel validated. You can't get this type of interaction in the court system: it's not a therapeutic process. All it does is put you on the stand to give evidence. Judges are interested only in facts — not in your personal feelings.

In addition, divorce mediation is an opportunity to get closure for the relationship. It can be a time to express remorse and say your goodbyes.

Separating Emotions from Issues

During mediation, your emotions have to take a backseat to the tangible issues. Which spouse will stay in the family home? Who will be paying the bills? And who will support whom, and for how long? If one or both of you isn't sufficiently in control of your anger or your sadness, maintaining focus on the issues may be too difficult. For some, keeping emotional issues off the mediation table is impossible.

At the beginning, it's very critical for a couple to meet face-to-face with the mediator, in order to establish each party's issues. This helps a mediator ascertain what stage you and your spouse are at in your relationship and your emotions. It also helps you decide if you're ready for mediation, or if you need marriage counseling or therapy first. Many people who undergo mediation are in denial about their relationship ending, since emotional issues can get in the way.

For most people, emotion is part of the mediation process, and if they're in denial that their relationship is ending, mediation can be difficult. Many people are angry about their situation and become emotional during the mediation process. But if the anger is easy to manage and identify, then mediation may be possible.

“You vs. Me”

The process of divorce is one of the most difficult times in life, and finding the energy to work towards a mutually cooperative agreement is sometimes impossible. A legal solution, worked out between a judge and lawyers, may seem easier.

Mediation avoids the “you vs. me” polarization of the court system because the divorce agreement is worked out and mutually agreed upon by both spouses, who are working from the same side of the table. Mediation focuses more on solutions and the future.

Mediation is not intended to bring you and your spouse back together. The process of mediation helps draw up a blueprint for living apart; the mediator's job is to help each of you get on with your lives as separate individuals.

In many cases, one spouse is dominant and the other passive. A good mediator will be aware of power imbalances and can compensate for them, evening out the weight of power on each side and promoting discussion. It's essential for a good mediator to handle clients' emotions at their worst without getting intimidated themselves.

Mediation is generally not an option in cases where there's a history of child or spousal abuse. The abusive spouse may have intimidated his or her spouse into mediation, and the abused spouse may fear recriminations or reprisal after the process ends. A mediator should ask: “Are you here on your own free will?”

or “Has there been hitting or hurting in your marriage?”

A joint interview is very difficult when abuse is involved, because the abused spouse obviously can’t speak freely. That’s why one-on-one sessions offer more freedom and more information than joint interviews. But there are cases where “shuttle mediation” can be useful: the mediator could work with both spouses at different times, or they could sit in two different rooms at the mediator’s office, and the mediator could walk back and forth, communicating with each spouse individually.

Benefits of Mediation

Mediation can have a number of unforeseen positive benefits, including:

- It costs less than going through a lengthy divorce trial.
- Because the mediated agreement has been created to suit your family’s needs, you may find it easier to accept and respect than one that has been dictated to you by a judge.
- Mediation often teaches couples new communication techniques that can help them avoid future difficulties.
- As time goes by, your situation may change. Should you need to change the contract, you already have an established framework for communication in place.
- More can come from mediation than just a divorce agreement. Creative solutions are much easier to achieve because there’s more freedom.
- Statute laws limit court decisions.

With mediation, the rewards — monetary, emotional, and psychological — can often outweigh the time, effort, and concessions necessary to make an agreement possible. If your hope is to find a peaceful future with your soon-to-be-ex spouse, the trick is finding a mediation solution that works for you.

Finding a Mediator

Don’t look for a mediator in the Yellow Pages if you can possibly avoid it. Since it’s an unregulated field of expertise, people who call themselves “mediators” can have widely different

levels of formal training, experience, and expertise.

A good place to begin your search is the Association for Conflict Resolution (ACR). The ACR is a professional organization dedicated to enhancing the practice of conflict resolution, including mediation.

Another place to look is the family court system: many courts provide mediation services to help families resolve custody and visitation disputes. Mediators also work in private practice. Your lawyer may be able to recommend a mediator, as can friends, family, or co-workers who have used mediation. But remember that mediation skills may be a separate thing from a person’s education may have. Look for someone who’s a good listener as well as adaptable. Avoid someone who’s rigid.

Before you settle on a mediator, be prepared to ask questions, such as:

- Does the mediator belong to any professional organizations for mediators?
- What kind of training has the person had in mediation? A skilled mediator should have a good working knowledge of family law, psychology, and negotiation techniques.
- How long has the person been a mediator?
- What kinds of mediation does he or she handle?
- How much will it cost?
- How long will it take?

Are You a Good Candidate?

You may be an ideal candidate for mediation. Here’s a short checklist to find out.

Positive signs:

- Are you in control of your emotions?
- Are you and your spouse on speaking terms?
- Are you willing to take responsibility for creating and honoring your agreement?

Negative signs:

- Is there a history of physical or mental abuse to yourself or your

children?

- Is there a significant power or financial imbalance in your marriage?
- Are you interested in a fair and peaceful solution, or would you rather just nail that rotten so-and-so to the wall?

When Mediation Works

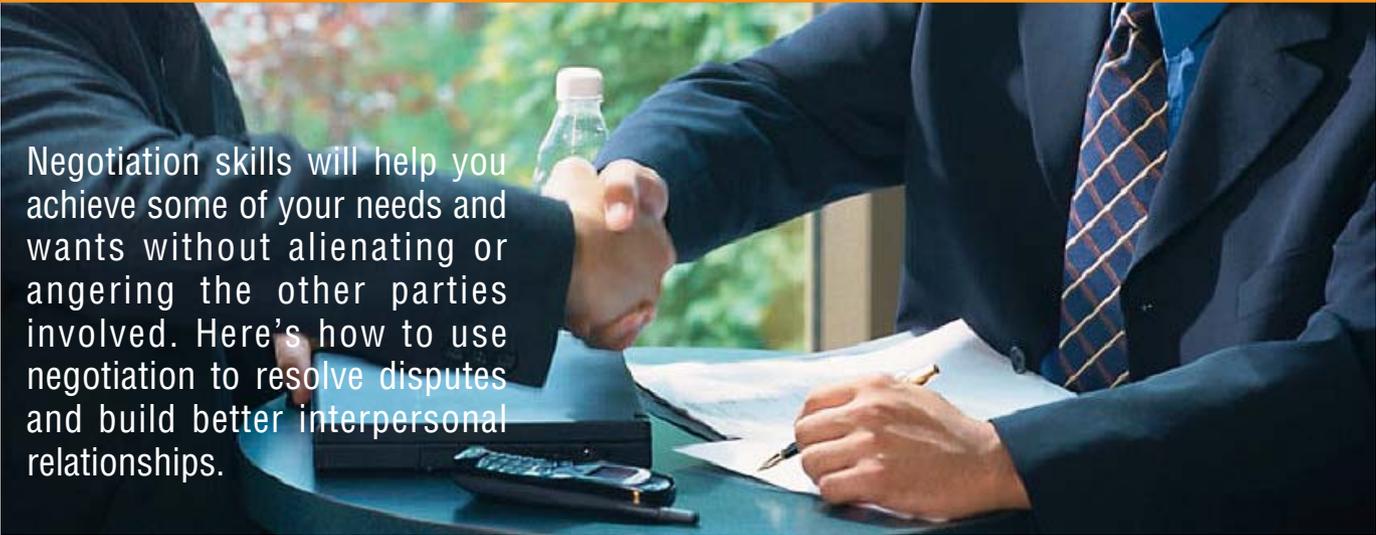
Beth and John separated after four years of marriage. John had no idea the marriage was in trouble and was still in “separation shock” at their first appointment with the mediator. Because she had been thinking about divorce for some time, Beth was much more prepared to deal with the issues of the separation agreement than John. His emotional state was like a ship lost at sea — from depression to hostility, anxiety to denial — while Beth was ready to face mediation and move on with her life.

When the mediation process began, the two were very much in opposing corners. Through the mediation process, and with the help of an outside therapist, John came to realize his marriage was over and nothing he could say or do would bring Beth back to him. Initially, John felt betrayed: he thought he had fulfilled his role as a husband, and mediation gave him a chance to voice these views. This chance to “work through” his thoughts and feelings about his separation from Beth — to speak his mind and express some of his emotions — was very therapeutic. Beth realized John had tried to be a good father and husband, but this realization wasn’t enough to save their marriage. In the end, he and Beth parted on amicable terms.

Mediation was effective for Beth and John because it offered each of them the opportunity to understand the other’s perspective. Counseling could not salvage their marriage, but mediation has shown them how to live peaceful lives apart. ■

Gary Campbell and Meg Mathur are former Contributing Editors to Divorce Magazine.

A Fair Negotiation



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 build better interpersonal relationships.

WE'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 an inability to stand against the more powerful personality’s demands.

Adversarial litigation is a costly, damaging process that often results in at least one party getting shafted: the adversarial “win-lose” contest inevitably results in bitterness and dissatisfaction for somebody. 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 mudslinging 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 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 is not to right past wrongs or to keep the other person quiet: it's to achieve a fair resolution for both. 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

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

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

generosity. Listen to the other party's needs and concerns, but don't let them completely override your own. Be firm if you know for sure 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 more 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 still trying to get the better of the other.

A Better Outcome

There are many benefits to bargaining instead of arguing or fighting to the

costs — and wind up with an outcome that's fair, pleasing, and the result of your own empowerment.

Master the negotiation, and you will be assured success in many 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. ■

Jeffrey Cottrill is the Managing Editor of Divorce Magazine.

Choosing an Effective Resolution Process to Transform Grief

A mediator's perspective on choosing a divorce process.

By Mari J. Frank, Esq. CIPP



“The truth is that our finest moments are most likely to occur when we are feeling deeply uncomfortable, unhappy, or unfulfilled. For it is only in such moments, propelled by our discomfort, that we are likely to step out of our ruts and start searching for different ways or truer answers.” *Scott Peck*

Transforming grief through the divorce process

There is no doubt that divorce is uncomfortable. But if you stay conscious, focus on positive, affirming thoughts, and choose a constructive legal process for the dissolution, it will propel you to growth, new insights, and greater happiness.

Believing that this life change is a “blessing in disguise” may not be easy at first. You may feel as though you are liv-

ing in a separate reality. While your friends and colleagues are engaged in routine daily activities, you may be experiencing mental turmoil. This is typical of individuals on the divorce journey.

To move beyond the anguish in divorce, you'll need to take charge of your healing and engage in a legal course of action to attain a fair resolution of your marital issues. Although the wave of emotions can be overwhelming, consider this a time of renewal or renovation of

the aspects of your life that haven't been working.

You'll encounter many mood swings and conflicting feelings as you go through the grieving process. Elisabeth Kübler-Ross, a pioneer in grieving research, first described the cycles below. You will vacillate back and forth among the various stages of grief — it's not a straight line to acceptance and recovery!

The stages of grief:

- **Denial, Shock, Avoidance:** “This isn't really happening; we can work it out; this is just a mid-life crisis; I know she/he will come back, so I will just wait.”
- **Anger, Resentment, Blaming:** “How could you do this to me/us? You are the one who causes all the problems; this is so unfair; I can't take your actions anymore! You are always complaining.”
- **Bargaining, Disempowerment:** “If you stay, I will stop drinking/seeing other people/spending recklessly, etc; I'll change and we can get back together; I can only stay if you...”
- **Depression, Guilt, Anxiety, Fear:** “It's all my fault — I was a terrible spouse; I can't go on without her/him; I can't stop crying; how can I live alone? How will I manage? How will I care for the kids?”
- **Acceptance, Recovery, Renewal:** “It's finally time to move on with life; I see that we aren't going to get back together; I have to forgive myself and her/him to be happy; the past is gone and I look forward to being free. We did the best we could and now we can accept what is.”

Although some degree of grieving is inevitable in separation and divorce,

your mindful and deliberate response to those feelings is your choice. Be aware of your thoughts, seek quiet time, express inner feelings with journal writing, ask for positive emotional and spiritual support, eat healthy, exercise, limit alcohol intake, move your mind off the pain, and focus on this as an opportunity for renewal. Life challenges are transformative lessons. How well you cope will also depend on the decisions you make concerning your legal issues. The alternative legal forums each have emotional and financial ramifications.

The anger stage intensified

Litigation and arbitration are adversarial processes that facilitate anger, blame, and guilt in divorce. Your lawyer acts as a fervent advocate on your behalf against your spouse's legal counsel. The parties confront issues as opponents, not as problem-solvers. The hostile nature of court proceedings forces parties to linger in the anger/resentment stage of grieving. If one party wishes to engage in an antagonistic manner (to act out the pain and anger), the other spouse will be forced to rival the opposition. The aggression escalates, the costs spiral out of control, and the grieving process is protracted. Although a majority of litigation cases do settle, this normally happens after the parties have struggled and are emotionally and financially depleted. The courtroom battle and the aftermath delay the emotional and financial healing.

Collaborative Divorce

Collaborative lawyers represent the spouses and attempt to deflect the anger, resentments, and blame, but they must advocate on behalf of each of their clients. With opposing counsel and various experts in session, you may not feel comfortable to express your private and sensitive feelings and concerns. You might also feel less control over the discussion of your needs with the various participants at the table. You may feel disempowered if you are not actively engaged in your own bargaining but must speak through your lawyer in the process. An advantage of this process is that the fear and anxiety of going to court is reduced; however, the continuing expenditure of having both parties meeting

Although some degree of grieving is inevitable in separation and divorce, your mindful and deliberate response to those feelings is YOUR CHOICE.

together with their respective lawyers and multiple experts in numerous joint negotiation sessions can be cost-prohibitive for many couples.

Mediation: an empowering, private, and trusting environment

Mediation often involves an experienced lawyer/mediator who is usually trained in the psychological aspects of divorce. Your mediator empowers you and your spouse by educating you as to your rights and obligations and facilitates negotiations. A confidentiality agreement assures you of privacy — no accusations or offers made in mediation can ever be used against you in court, and the neutral can never be called to testify in court to hurt either party. In this private process, you are encouraged to express pain and feelings in safety. The mediator helps you understand the stages of divorce, deflects the conflict, and intercedes if one party blames the other. It educates and empowers you to make informed legal decisions, and it helps you to find solutions so you can release any resentment allowing you to co-parent if you have children. The anxiety and fear of losing in court is gone, guilt and blame are averted, and you focus on fairness and acceptance. In mediation, you experience all of the emotional stages of divorce, as in any other process; however, the difference is that you are educated and enlightened to be conscious about these feelings allowing you to move through the grief more quickly. Although the mediator must file a judgment with the court — just as in litigation and Collaborative Divorce — the costs, accusations, sensitive financial information, and other confidential issues of the marriage are never revealed to anyone except your spouse and your mediator. In mediation, you are more likely to move past blame and guilt to gently and confidently arrive at acceptance, recovery, and renewal.

Mediation fosters cooperation, understanding, sensitivity, privacy, educated decisions, and mutually acceptable solutions, which soothe the grieving process.

Make conscious decisions to promote healing and growth

If you're considering divorce, or even if you're in the midst of it, consider the emotional stages of divorce and the legal approach you have chosen. Does that process help you to move beyond the anger and resentment, release your anxiety and fear, and move toward renewal? If you are ready to nurture yourself and strengthen your emotional processes to move beyond the pain, consider which approach is best for you. Ask your lawyer or mediator what to expect during dissolution procedures. How will anger, resentment, and blame be handled? Will there be a focus on mutual respect and dignity? Will the process be private and confidential, so you can share intimate and important secrets? Will there be a mutually satisfying settlement at the end, and how will that happen? Don't let your negative emotions direct you to engage in a process that will prolong your pain and grieving. ■

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To read about the benefits of mediation from a judge's point of view, visit divorcemag.com/articles/Mediation/benefits-of-divorce-mediation.html.

To read more about selecting the right dispute resolution process, visit divorcemag.com/articles/Mediation/resolutionprocess.html.



The Divorce Process

A basic guide to the legal process behind ending your marriage.

By Jeffrey Cottrill

NO two divorces are exactly alike. Every marital breakup has unique legal, financial, and/or parenting issues that require their own resolution strategies. But every divorce undergoes the same general journey from initiation to closure. Whether you and your spouse make this journey cheaper and faster is up to you, but the destination is always the same: from shared to separate lives.

Here's a basic primer of how the divorce process works in the United States and Canada. Bear in mind, however, that I'm not a legal professional. You'll want to speak to a family lawyer to find out how the options vary in your state or province, as well as how your own situation affects the process.

Temporary orders and filing the divorce papers

One of the first things you and your spouse have to do after you separate is to get a "temporary order" or agreement. This is extremely important, because it could set the precedent for your final divorce settlement. A temporary order/agreement establishes quick decisions about the children, property, bank accounts, and other issues that may be important between the separation and

the final outcome. For example, if one spouse moves out of the home and the other has no income, how will the latter feed the kids and pay the bills? For more information about temporary orders, visit www.divorcemag.com/articles/Financial_Planning/getting_prepared_temp_orders.html.

You should hire a divorce lawyer and/or mediator, and financial advisor, as soon as possible. You'll set your temporary order/agreement in a brief, relatively informal hearing before a judge — so prepare a complete list of what you want to request in advance. Among items you can request: temporary custody and visitation arrangements; a restraining order so your spouse won't contact you; child or spousal support; and/or who gets the car and house.

Next, you or your spouse files a petition, application, or complaint for divorce with your local family court. The person who files, or plaintiff, serves a Summons upon the other spouse stating that they want a divorce and what they are seeking in terms of property, child custody, support, etc. The other spouse, or defendant, must answer the Summons and, if they wish, can make their own claim.

Check DivorceMagazine.com for information on the grounds for divorce in your state or province. Most states and all Canadian provinces, however, don't require fault as a prerequisite — so you don't have to justify filing by accusing your spouse of wrongdoing.

Collecting information and discovery

Once you've hired your divorce lawyer, you must gather all relevant information for your lawyer's perusal:

- Full names, addresses, phone numbers, and Social Security or Social Insurance numbers of you, your spouse, and your children;
- The date of marriage, date of cohabitation, county or region where the wedding occurred, the wife's maiden name, and any information about prior marriages of either spouse (including the names and prior names of ex-spouses);
- A copy of your premarital agreement (or other domestic contract) and information about any prior legal proceedings, separations, or marital counseling during the marriage;
- All available financial data, including: income-tax returns from the past several years; a recent pay slip; the

major assets and liabilities of both you and your spouse; budget worksheets; insurance policies; credit-card statements; wills; and any credit or mortgage applications.

Unless you create a separation agreement, your lawyer will use this as a starting point for the discovery process. The lawyer gets as much specific information about the marriage as possible, to work out the financial and children's issues fairly. Most of discovery involves financial matters, for which your lawyer needs specific, accurate details. From the value of items you bought during the marriage to stocks, pensions, and revenue from a business, you and your professionals (e.g. lawyers, mediators, financial planners, accountants, appraisers, etc.) have to retrieve documentation of every dollar value — including that of premarital assets. For articles on preparing for a deposition and separation agreement, visit www.divorcemag.com/articles/Divorce_Settlement_Preparation.

Contested vs. uncontested divorce

There are two general types of divorce. If you and your spouse can't agree on the divorce terms — or if one of you doesn't want the divorce — it's a contested divorce, and a judge will

decide the outcome if you can't come to agreement on your own. In an uncontested divorce, both of you agree on how to divide your assets and debts, who gets custody and pays child support, and whether one spouse needs to pay spousal support to the other. Obviously, an uncontested divorce will be faster and simpler. But even a divorce that starts with major disagreements can be worked out if you choose to make it that way, and the majority of cases do settle.

If you're in the United States, ask your lawyer if you're eligible for a "summary" divorce. This is a simpler and faster divorce process which involves less paperwork, fewer court appearances, and less time in negotiation. However, this will only work if your marriage was relatively short and if you have no children, little property, and no intention to seek spousal support. In Canada, the closest would be an uncontested divorce or a joint application.

Motions

If you need to readjust certain arrangements during the divorce process — such as custody, visitation, or support — you can initiate this by filing a motion with the court. Next, a short hearing takes place in which the

lawyers representing you and your spouse present their cases before the judge. In most cases, only the lawyers are permitted to speak; however, if you are going the Do-It-Yourself route in your divorce (a path that's only recommended for very simple divorce cases), you will be able to represent yourself in this hearing. Once the judge makes a decision on the matter, the regular process continues as before.

Litigation or negotiation?

If your divorce is contested, you and your spouse must decide how to resolve your divorce. Will you fight it out through adversarial litigation, or can you set aside personal feelings long enough to negotiate outside of court? If you want to avoid the "divorce from hell", Alternative Dispute Resolution (ADR) methods, such as arbitration, mediation, and Collaborative Divorce, have become popular means of settling divorce in a cooperative environment with reduced stress and expense. Some states have made mediation compulsory in the divorce process.

Talk to your lawyer (and your spouse) about the different options. For more information on divorce mediation, go to www.divorcemag.com/articles/Mediation; for information on Collaborative Divorce, please go to www.divorcemag.com/articles/Collaborative_Law.

Trial

If you and your spouse just can't agree, then your case goes to trial. Divorce trials can take many months or even years, and they're never pleasant.

Generally, you and your spouse each tell your respective side of the story before the judge (and the public). You take the stand, and your own lawyer asks you questions that prompt you to explain your side — and then your spouse's lawyer has the option of cross-examining you or challenging the validity of your perspective. The same goes for both sides' witnesses (both personal and professional): each of you dukes it out through conflicting



Will you fight it out through adversarial litigation, or can you set aside your personal feelings long enough to negotiate? Alternative Dispute Resolution methods have become popular means of settling divorce.

testimony and attempts to make your respective case look more believable. Finally, the judge — a stranger who only knows you through what he or she has seen in court — weighs all the evidence and makes all the final decisions.

The issues

Money and property:

Who gets what? What items and accounts legitimately belong to you? Who should keep the marital home? Who gets which car? How about the cottage? The family business? The pets?

Many states classify property owned by the spouses as “marital” or “separate” — the latter meaning that the property belonged to one spouse before marriage or was a gift to one spouse. The goal of property division is “equitable distribution” — meaning an even division of assets and debts. If you negotiate asset division with your spouse directly, be clear about which items are high priorities to you and which ones you would be willing to let go.

The more financially complicated your divorce, the longer this will take, and you’ll likely need an accountant, a business valuator, a Certified Divorce Financial Analyst, a Financial Divorce Specialist, or a financial planner to make sense of all the assets involved. For more helpful articles, go to www.divorcemag.com/articles/Financial_Planning.

Child and spousal support:

Often referred to as “alimony” or “maintenance”, spousal support is a

monthly amount of money that a financially advantaged divorcee can be ordered (or agree) to pay their ex-spouse, to help maintain a lifestyle to which the latter has become accustomed. Ask your lawyer whether you’re eligible for spousal support — and if so, don’t be afraid to take it. The purpose of spousal support is not to punish your ex but to maintain your lifestyle.

Child support is what a non-custodial parent regularly pays to the custodial parent in order to support the children from the marriage. This way, both parents can financially contribute to bringing up the children, even if one isn’t present on a regular basis. For more helpful articles, go to www.divorcemag.com/articles/Child_Support.

Child custody and visitation:

One of the most important decisions is where and with whom the children will live. Is joint custody in their best interests, or should they live with one parent full-time with regular visits with the other? Unless your spouse is abusive, both of you should work together to create an agreement in which you both get a fair share in raising your children. Custody battles in court are usually full of character slurs and accusations that are emotionally traumatic for you — and more so for the children. For more helpful articles, go to www.divorcemag.com/articles/Child_Custody.

The waiting period

There is usually a set minimum waiting period between the divorce petition and the final decree. Even if your

process is very quick, the waiting period must elapse before the judge officially grants the divorce. Lengths vary between states, but the average waiting period is about six months.

The divorce judgment

After all the issues have been decided (either by you and your spouse or by a judge), a court clerk reviews all the papers and sends them to the judge. When the judge signs a document that officially ends the marriage (a Divorce Judgment Order or a Divorce Decree), you are legally divorced — and free to remarry if you choose.

The divorce process is complicated, and this brief summary doesn’t touch on what an emotional rollercoaster ride a divorce is. It’s a wrenching experience that can cost a lot of money and upset your lifestyle in profound ways; it can also damage your children’s psychological growth if you and your spouse don’t consider their well being and act in a way that supports an amicable divorce. But once it’s done, you’re free to start over — so the sooner you get to the end, the better for all involved. Talk to the necessary divorce professionals (family lawyers, divorce mediators, Certified Divorce Financial Analysts, accountants, therapists, etc.) to find out how to make your divorce process as quick and painless as possible. ■

Jeffrey Cottrill is the Managing Editor of Divorce Magazine.

For more articles, and a more in-depth explanation of each of the subjects covered in the divorce process, visit www.divorcemag.com/articles/Separation_Divorce_Process.

For helpful tips on how best to work with your divorce lawyer, visit www.divorcemag.com/articles/Divorce_Lawyers.

Getting Settled

By Nancy Kurn, CPA, JD, LLM, MBA, CDFIA™

What you need to know before creating a settlement agreement.



YOU'VE sat down with your spouse and hammered out what you think is a pretty great settlement: you get to keep all of the property you really wanted, and your ex gets stuck with all of the debt. But whether or not that agreement will hold up in court depends on a number of factors, including how it is worded, whether or not there was full financial disclosure by both parties, and possibly whether both parties had independent legal counsel.

That being said, you should make every effort to negotiate your settlement agreement rather than fight over every item in court. Such agreements have several benefits over a judge's ruling, including: they take less time; they reduce the financial and emotional costs; and the parties are more likely to abide by the terms of the agreement.

If you're able to put aside your emotions and focus on the issues at hand, your chances of negotiating a settlement are extremely high. A courtroom is simply not the right venue to express your

feelings of anger or loss, so find a counselor or a support group to help you work through your emotions so you can be as clear-headed and as practical as possible during negotiations with your spouse. Some couples will be able to settle all issues; others will be able to settle some issues and have to litigate the rest.

This article will cover property issues only; your settlement agreement will need to thoroughly address spousal or child support as well as custody and visitation issues. As always, you should consult with your lawyer and/or mediator to make certain your best interests, and those of your family, are protected.

Your settlement agreement should be very comprehensive — particularly with regard to how the property is divided. Once you sign an agreement regarding property division, it cannot be changed unless both of you agree to the changes or unless there is some legal basis, such as fraud, for setting aside the agreement. It's up to you to make sure that your lawyer doesn't leave any assets out of

your settlement agreement (unless it's something that you're going to litigate in court).

You don't necessarily have to list every single personal possession in your settlement agreement, but you should list personal items that are important to you. You should also list financial assets, including retirement assets and real estate.

Your agreement should state who gets each asset or how the asset or the proceeds from its sale will be divided. Let's take a look at the most common categories.

Financial Assets

Financial assets include cash, savings accounts, checking accounts, Certificates of Deposit, money-market accounts, stocks, bonds, Real Estate Investment Trusts (REIT), mutual funds, and savings bonds. These assets may be more important to the non-working or lower-income-earning spouse. He or she may need to use these

assets to cover some of his or her living expenses.

Retirement Assets

Not all assets have the same tax consequences; retirement assets are generally before-tax assets. This means that in order to access the money, you have to pay income tax on any distributions you receive. In some cases, you may also have to pay a penalty on the distribution in addition to any income tax that you pay. For example: Mary suggested to Gus, “You keep your retirement assets, valued at \$100,000, and I’ll take the money-market account, valued at \$100,000.” Gus agreed because it was an equal division of the assets. However, when Gus retires in 2009, he will pay tax on the distributions. So if Gus paid tax at a rate of 25%, then he would end up with only \$75,000 versus the \$100,000 that Mary received.

In the U.S., there are many different types of retirement assets, including defined benefit plans, defined contribution plans, IRAs, and Roth IRAs. It is important that you determine how defined benefit plans, such as pensions, will be divided between you and your spouse. This is generally spelled out as a percentage of the retirement benefit at the time of the divorce. It is also imperative for the agreement to state if the employee’s spouse will be entitled to survivor’s benefits if the employee dies. It is important to make sure that the non-employee in fact qualifies for survivor benefits; otherwise, he or she may be better off with another asset.

take the percentage that is awarded and roll it over to an IRA or perhaps maintain it as a separate account in the same plan. The agreement should specify the percentage that you and your spouse will receive.

IRAs or Roth IRAs are also easily divisible. Remember that distributions from Roth IRAs will generally not be taxed, while distributions from IRAs will generally be taxed. As a result, \$10,000 from a Roth IRA is probably a better asset than \$10,000 from an IRA.

In Canada, there are two basic types of pension plans: “Defined Contribution Plans” and “Defined Benefit Plans”. The first type defines who is to make the contributions to fund the plan, how much they are to contribute, and when they are to make the contributions. The second will also specify who is to make what contributions, how much they are to contribute, and when. However, a defined benefit pension plan will also have a formula for determining the amount of annual pension that the member has earned. It is the projection of these future pension payments (which are not at all related to the amount of contributions that have been made) that must be valued.

Depending on the type of plan and which province you live in, a portion of the pension (usually the portion accumulated during your marriage) may be subject to division like any other family asset. If one or both spouses have Registered Retirement Savings Plans (RRSPs), the portion accumulated

for each person. Not all pension plans permit division of the pensions. In any case, it is still important to have the pension valued properly: dividing one pension into two is not a way to avoid the cost of a valuation (or to avoid arguing over which value is the right value for the pension).

Federal government pensions qualify for division under the Pension Benefits Division Act (PBDA). This Act provides that the member may transfer a portion of the value of the pension to a retirement vehicle for the spouse. This is known as the Maximum Transferable Amount (MTA).

The Canada Pension Plan (CPP) recognizes that married persons, common-law couples, and same-sex partners share in the building of their assets and entitlements, including their CPP credits. When a relationship ends, CPP credits built up by the individuals during the time they lived together can be combined and then divided equally between them by means of “credit splitting”. As a result, the person with fewer credits — that would normally be the lower income earner — receives some credits earned by the other — normally the higher income earner — so that they both have the same number of credits accumulated during the marriage or other relationship.

You should be aware that there is more than one way to value a pension; if the amounts are significant, you should consider having an expert valuation done.

Employee Benefits

In addition to retirement plans, many employers provide other fringe benefits and incentives to their employees. These benefits include year-end bonuses, accrued vacation time, accrued sick time, health insurance, life insurance, disability insurance, expense accounts, stock options, and more unusual benefits such as Phantom Stock, Stock Appreciation Rights, and Restricted Stock.

Some of these benefits may be included in your list of assets; other benefits may be included as income, and some may not be included at all.

Make every effort to negotiate your settlement agreement rather than fight over every item in court.

Defined contribution plans include 401(k) plans, profit-sharing plans, simple IRAs, and other types of contributory plans. Generally, these can be divided today, and the non-employee spouse can

during marriage will also be subject to division.

Some people will want to divide the pension into two separate pensions: one

Determining if a benefit should be treated as a marital asset, income, or nothing at all can be very subjective. Different jurisdictions and judges may view the benefits differently. As a rule of thumb, if the benefit is guaranteed, then it should be included as an asset or as income. A year-end bonus could arguably be an asset, an income item, or nothing at all if it is not guaranteed. For example: Barbara and Jeremy were married for 15 years. Jeremy, the employee-spouse, received a bonus every year. Barbara could certainly make a reasonable argument that it is an asset or income for purposes of calculating child support and alimony. Vested stock options would also be an asset; with the changes in the market, they may not have any value, while unvested stock options, on the other hand, may not be an asset.

Personal Property

List your personal possessions, particularly those that are important to you,

and note how they are going to be divided. This would include big-ticket items, such as cars, boats, and motor homes, as well as items such as jewelry, furniture, photos, and personal papers.

Keep the value of these assets in perspective — and recognize when it’s time to give up the fight. We’ve all heard of those cases where parties spend thousands of dollars fighting over an asset that’s worth less than \$100.

Each spouse should keep copies of joint tax returns. We recommend that you keep at least the past five years; in addition, you will need records to calculate the cost basis for any assets that you keep.

Real Estate

Real estate includes your marital home and any other homes, vacation properties, timeshares, and rental properties — commercial and residential —

as well as any business property. The properties should be listed, and the settlement agreement should address how they are going to be divided.

If the property is going to be sold, the following issues need to be addressed:

- Who is going to pay the expenses until the property is sold?
- How will the proceeds be divided?
- If one spouse pays the expenses, will he or she be reimbursed, from the proceeds, before they are divided?

Debts

Generally, the person who takes the property will be expected to pay the mortgage or debt related to the property. Does this mean that the other spouse has no financial obligation for a joint debt? Absolutely not. Unless the spouse who takes the property refinances the mortgage, both spouses will still be obligated to pay the debt.

The divorce decree cannot terminate your financial obligation to your creditor. For example, Bob and Amy are dividing their assets as shown in “Table One”.

After the divorce, Bob would be liable for the car payment and Amy would be liable for the mortgage. If either failed to make these payments, the other spouse would still be liable. But if Amy or Bob refinance after the divorce, the other spouse will no longer be liable for the debt.

Requiring the other spouse to refinance after the divorce is something that should be put in the settlement agreement. They could, for instance, allow a certain time period to refinance. If they do not refinance or do not qualify to refinance, then the asset could be sold and the loan could be paid off with the proceeds from the sale.

If only one spouse is obligated on the debt during the marriage, then the other spouse cannot be held liable. This occurs most frequently with credit-card debt. However, if you have a credit card that is a joint debt, then just like the mortgage, if one spouse is responsible for paying the joint credit-card debt pursuant

TABLE ONE:	Equity	Value	Bob	Amy
Cash and Checking		\$13,000	\$13,000	
Mutual Funds		\$17,000	\$17,000	
Amy’s Car		\$ 5,000		\$ 5,000
Bob’s Car	\$25,000			
Debt on Bob’s Car	(\$10,000)			
Car Equity		\$15,000	\$15,000	
Home	\$200,000			
Mortgage	(\$160,000)			
Home Equity		\$40,000		\$40,000
Total Value		\$90,000	\$45,000	\$45,000

TABLE TWO:	Value	Mike	Julie
Home (Equity)	\$ 40,000		\$ 40,000
Cash and Checking	\$ 3,000		\$ 3,000
Mutual Funds	\$ 7,000		\$ 7,000
Mike’s Business	\$150,000	\$150,000	
Total Value	\$200,000	\$150,000	\$ 50,000
Property Settlement Note		(\$50,000)	\$ 50,000
Revised Total		\$100,000	\$100,000

to the terms of the settlement agreement, this does not mean that the other spouse is no longer responsible for the debt. Unfortunately, both spouses will remain liable to the creditor.

If one spouse refuses to pay, then the other spouse will have to pay off the debt. If you can afford it, paying off credit-card debt with liquid assets is the best way to deal with unsecured debt.

Closely Held Business

A closely held business can be in the form of a sole proprietorship, corporation, general or limited partnership, or limited liability company. Before one spouse agrees to take a business interest, he or she has to make sure there are no restrictions on owning the interest. There could be legal or contractual restrictions on which spouse could own the business interest.

If the business, for instance, is a professional corporation, as defined by state or provincial law, then one spouse may be legally restricted from maintaining an ownership interest. For instance, if Joe is a physician and Barb is an accountant, in many states or provinces, only Joe could own his medical practice and only Barb could own her accountancy practice. Another restriction may exist if there is a liquor license or taxicab medallion that is only transferable with government approval.

A “buy-sell” agreement is an example of a contractual restriction that may preclude a transfer to a spouse. If the “non-owner” spouse is awarded the business interest in the divorce, then the spouse may be forced to sell the business interest at a substantial discount. For example: Joe owns 25% of a business that has a total value of \$100,000; his share is valued at \$25,000. If the buy-sell agreement requires Barb to sell her interest at 50% of the value, and if she were awarded the stock in the divorce, she would be required to sell her interest for \$12,500.

Property Settlement Note

A property settlement note is generally used to equalize the assets. For instance, Mike and Julie have the

following assets (shown in “Table Two” on the previous page).

To equalize the division of assets, Mike should pay Julie an additional \$50,000. This can be structured as a note payable to Julie in the amount of \$50,000 at an agreed-upon interest rate. If Mike and Julie agree that the note would be payable over five years at a 5% interest rate, then the annual principal and interest payments would be \$11,549.

A property settlement note has some significant drawbacks, however, including:

- If the agreement isn’t followed, it becomes another issue to fight over.
- What happens if Mike doesn’t pay?
- Should Mike pay interest on the note?
- If the note is unsecured, it would probably be discharged in bankruptcy.
- What happens if Mike dies or becomes disabled before the note is paid in full?

Life Insurance

Some life-insurance policies have cash value. This means that the owner could borrow money from the policy or trade the promise to pay a future sum at death for the current cash value, less any costs or charges.

Other policies, such as term insurance, have no cash value. Term insurance may still be valuable, though, particularly if the insured person is now uninsurable.

The settlement agreement should address who will own the existing life insurance policies. Naming an ex-spouse or child as the irrevocable beneficiary of a group policy is minimally effective, since the designation can be changed unilaterally by the employee when the carrier changes, or indeed at any other time. If the non-insured spouse is supposed to be the beneficiary, then the best way to protect his or her interest is to have the non-insured spouse own the policy. Using the above example, if Mike owns a policy and is the insured, and they agree that Julie should be the beneficiary, then he should transfer ownership of the policy to Julie. She should verify that she is the beneficiary of the

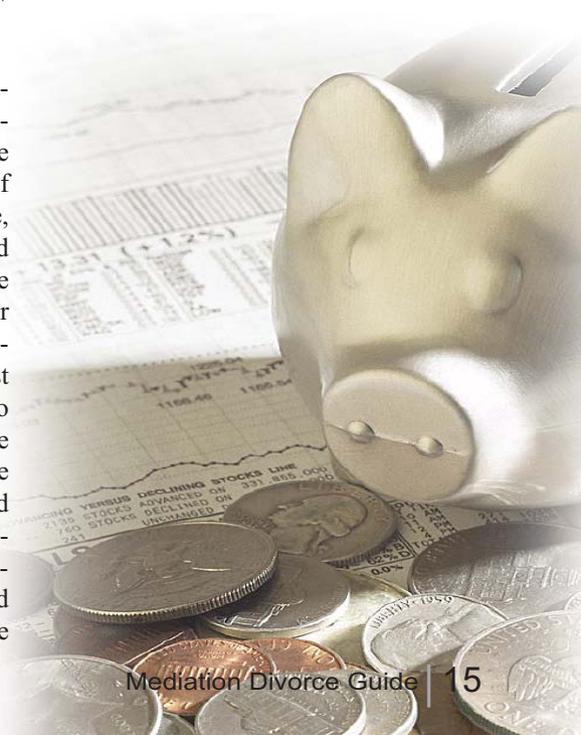
policy. They can structure it so that he pays her the premiums as alimony. That way, she can be sure that the payments are made and that she remains the beneficiary. Otherwise, she is at risk if he lets the policy lapse or changes the beneficiary.

Other Assets

Some other assets to address in the settlement agreement include: Frequent Flyer Miles, lottery winnings or other prize winnings, club dues and annual membership fees, inheritance and gifts, and trusts naming one spouse as a current beneficiary.

Keep in mind the assets listed here are not by any means exhaustive; you and your spouse may have assets in addition to those listed in this article. They can make a huge difference in your post-divorce life, so take the time to list them carefully and discuss them fully before you settle things, once and for all. ■

Nancy Kurn is the Director of Educational Services for the Institute for Divorce Financial Analysts (IDFA) — the premier national organization dedicated to the certification, education, and promotion of the use of financial professionals in the divorce arena. For more information about how a Certified Divorce Financial Analyst (CDFA) can help with the financial aspects of your divorce, call (800) 875-1760, or visit www.InstituteDFA.com.





Managing ANGER

By Jane Nahirny

ANGER 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, all the while maintaining an ongoing (bitter) relationship with him/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

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.

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 venue to vent your anger is a bad idea for a couple of key reasons: it's the wrong venue, and it's very expensive (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 because of 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 now 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 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-

When someone pushes one of your buttons, your response is going to be way out of proportion to the offense.

management group, where you can share your story and help yourself and others move to a position of growth and development.

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. And be sure to choose your battles carefully. 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, 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.

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 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 this person 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 something in what they're saying. If your ex is yelling at you, you can choose to think he/she's a jerk and start yelling back, or you can "dig for the gold" in what he/she's 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. ■

Jane Nahirny is the former Editorial Director of Divorce Magazine.



The Art of Negotiation

How to reach an agreement that's both acceptable and affordable.

By Marjorie L. Engel and Diana D. Gould

THERE'S a common pattern to all negotiations: a cycle of initial contact, planning (research, goals, strategies, and tactics), and one or more negotiating sessions that lead to a signed agreement, complete with provisions to ensure its implementation.

There are two basic components to any divorce negotiation: what is affordable and what is personally acceptable. The objective is to find a reasonable and legally acceptable balance between them.

Your first experience in negotiating starts with your own lawyer. The two of you must work together until you achieve a meeting of the minds so that what you want can be spelled out in the first draft of the separation agreement. When you're ready for the first negotiating session with your spouse and the other lawyer, how will you approach it?

Thinking logically

When women use accepted business logic in preparing for a divorce, they may be perceived as ruthless, calculating, and manipulative. When men use accepted business logic in preparing for a divorce, they are usually perceived as being practical, logical, and direct. Regardless of clichés and biases, the reality is that organized and rational thinking is

a must for both men and women if spouses are going to create a mutually satisfactory separation agreement in our family court system.

Be concrete in your ideas and remain open to reason. Ask questions until you're satisfied about your spouse's basis for reasoning. Be prepared to answer questions that clarify the integrity of your position. Be as tough as you want where a problem needs resolution, but be soft on the people involved.

If you haven't already done so, you need to analyze and formulate your objectives in order to actively participate in your own future. You must gather together the facts about what you have, what you want now, and what you wish to accomplish by the time you've changed the marriage vow "I do" to the divorce disclaimer "I don't anymore."

The sooner you learn to put yourself into your spouse's shoes and ask, "What would I do if I were you?", the sooner you'll be ready to arrive at a mutually acceptable separation agreement.

Entering negotiations

Bargaining for the future welfare of yourself and your family is no picnic. Here's a collection of tips offered by some divorcing couples that will walk

you through the process. They refer to both the personal and the practical sides of negotiating.

- Request that negotiations be held where the atmosphere is quiet and professional.
- Be prompt in attendance.
- Dress the way that will make you feel the most comfortable for the setting of the meeting.
- Make sure you have a written agenda from your lawyer.
- Be prepared to take notes and check off each item as it is completed.
- Be sure to have copies of whatever documents you have been asked to bring.
- Sit tall and use direct eye contact as much as you can. Body language "speaks loudly".
- Speak in your normal tone of voice. (You're not on stage, even though you may feel like it.)
- Listen quietly and patiently to what is being said.
- Make sure that you have equal opportunity to voice your opinions or disagreement.
- Try to stay in the first person when you speak. (Present all of your feelings, facts, and observations in the "I" mode, for example, "I think we ought to..." and "I defend this issue on the basis that...")
- Try not to be defensive about your ideas and be open to advice — even

constructive criticism.

- Refuse to discuss business and personal matters in the same conversation.
- Don't succumb to pressure for an immediate response. (Request a minute to think, or a "time-out", to discuss the matter with your lawyer.)
- Never be forced into a decision — even if it's one that your lawyer approves. (If you aren't sure, table the issue so that you have time to review your material and to think.)
- When you need to release the tension/frustration/irritation that builds up during negotiating sessions, take a couple of deep breaths from the diaphragm and let them out slowly.

The bargaining table

Everything is negotiable, and anything can be used as a tool for negotiations. Go to the bargaining table prepared for promises to be exchanged and deals to be closed.

It's not a matter of simply putting a value on everything when you are work-

When you reach a stalemate, the lawyers should be able to provide information about how a similar situation has been previously handled within the judicial community where your case is being processed.

The bargaining table is only used to resolve previously undecided issues. As you reach agreement on each issue, consider that topic closed. Agreements never come together if you keep rehashing what was supposedly already settled (in fact, they're more likely to fall apart). Every agreement must adapt to new circumstances or information, but too many new issues late in the game cast doubt on the good faith of what was previously settled.

Avoiding a free-for-all

Divorce negotiations can be traumatic. In addition to the business at hand, it's very easy to get trapped into old emotional patterns when your spouse begins to act in predictable ways. Either one of you can become overly defensive or hostile.

lawyers to summarize the situation. If new issues come to light through an emotional outburst, they will require discussion and verification. Then a decision can be made about how this new information will affect the developing agreement.

When to be reasonable

Not all divorces are adversarial. Not all agreements are structured from long and bitter disagreements over who gets what. Just because you're getting a divorce doesn't mean you can't continue to work together.

Be open to brainstorming. If you're at an impasse or seem to be totally deadlocked, you can always flip a coin. Seriously, the very idea that you have only a 50-50 chance of "winning" usually revives the interest in negotiating. If the other side won't negotiate, don't attack his or her position — look behind it to try to determine the motivation for the refusal to negotiate.

Six deadly obstacles to negotiation

The deadly sins can never be seen or imagined more clearly than in the process of divorce. When any of the negative patterns of a marriage are brought to the negotiating table, the battle will be long and difficult.

- Greed will make any reasonable financial negotiation impossible.
- Anger will waste time and energy.
- Lust will fire up old memories that might get in the way.
- Jealousy will get you nowhere — it's not your relationship anymore.
- Pride causes stalemates.
- Fear is perhaps the greatest sin of all.

Fear can be the worst enemy of good negotiation: fear of rejection and loss of position, property, or place in the community. There are also the fears of loneliness and of having to start all over again; of personal and financial hardship; and of not being able to handle all that is ahead. The more dependent you have been upon your spouse —

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The sooner you learn to put yourself into your spouse's shoes and ask "What would I do if I were you?", the sooner you'll be ready to arrive at a mutually acceptable separation agreement.

ing out what you want or what you're willing to give in a separation agreement. The bargaining process requires setting three different basic values:

- The least you would be willing to give or give up.
- The most you would be willing to give or give up.
- The bottom line you would be willing to agree upon.

Divorcing couples tend to think in terms of things they want (assets) and frequently forget about what they don't want (liabilities). Remember: ownership of items such as debts, a bad piece of property, and lawyer's fees must also be negotiated.

How do you respond to threats or defuse anger? What happens if the meeting starts to get ugly?

When you and your lawyer discussed your divorce files, especially the profiles and information on extenuating circumstances, you anticipated the danger points and prepared suitable ways of coping. However, when both spouses are wound up, something totally innocuous can trigger an outrageous response. How can it be dealt with right then and there?

First of all, there should be a time-out to cool down the emotions before returning to the facts. Then allow your

Parenting Pitfalls

Here are some of the most common warning signs that you need help before your children become casualties of your divorce.

By Elissa P. Benedek, M.D. and Catherine F. Brown, M.Ed.



THE process of separation and divorce sets up an almost impossible situation for parents. At the same time that they need time out for themselves — to deal with the emotions and stress accompanying the loss of their marriage and to decide a new course of action — their children have the greatest need for reliability and assurances of love. Absorbed in their own problems, parents may become less affectionate with their children or fail to discipline them consistently. The more parents pull back to regroup after a divorce, however, the more fiercely children show their need for attention. When both parents and children have lost their emotional equilibrium, they exacerbate each other's problems.

The keys to breaking this cycle are for parents to:

- take control of their lives
- create a nurturing, predictable environment for the children
- learn to deal with the children authoritatively

- be aware of some of the problems that divorced parents commonly encounter (as described later in this article).

Common Problems

When a husband and wife first separate and divorce, they experience the gamut of emotions from sadness, anxiety, guilt, shame, and shock to elation over believing that all their problems are now solved. The spouse who didn't want the divorce may feel worthless and unlovable; the spouse who wanted the divorce may have second thoughts. There is no one order for these emotions; each may come and go again and again.

It's vitally important that parents overcome these reactions and, for the children's well-being, learn how to handle the stresses brought about by the divorce. The children's adjustment is directly linked to the adjustment of the parents.

Adult Regression

Children sometimes behave in ways typical of an earlier stage in their development in reaction to their parents' separation and divorce. In the same way, a keenly unwanted or brutal divorce has the potential for throwing an adult back into an earlier stage of development or leading to behavior that is unusual for that person. Some adults may go so far as to become helpless, depending on others — including their children — to take care of them.

Role Reversal

After a divorce, some parents experience a specific type of regression in which they become too dependent on one or more of their children. In essence, a role reversal takes place in which the children become the parents' caretakers, confidants, and counselors. These parents are most often troubled, depressed, and lonely; they are unwilling or unable to take responsibility for themselves. Sometimes, they are alcoholics or drug-addicted. The result is a form of mental bondage and skewed development in the child and a faulty sense of reality in the adult. In its most destructive (but thankfully rare) variant, some adults go so far as to commit incest, using the child as a replacement for the lost marital partner. More commonly, they have the child sleep with them to alleviate their loneliness.

The temptation to become too dependent on your children is always there if you don't have another adult to whom you can turn when you need advice or just someone to talk to. Although there's nothing wrong with soliciting your children's opinions in matters that concern them (in fact, doing so helps build their

sense of responsibility and family commitment), avoid relying on them for advice that affects only you or that should be offered only by adults. For example, it's all right to ask your children to help pick out the family's new car, but you should not ask them whether you should date someone you just met at work.

Overburdened vs. Idle

For many harried, overworked single parents, it's sometimes all too easy to fall into a routine in which they depend on an older child to care for younger siblings, or assign chores that require an unrealistic degree of responsibility.

Although it's not unreasonable for single parents to expect their children to carry some of the weight of household duties, such responsibilities should be assigned with certain limits:

- The chores should be appropriate to the child's age.
- Generally, children under the age of ten should not be left unsupervised.
- Older children should not be given total responsibility for the care of younger brothers and sisters. They are siblings – not substitute parents.
- Chores should not interfere with schoolwork or sleep, or preclude time with friends. Schoolwork is a child's most important job, and an active social life is a necessary ingredient of healthy development.

Instead of overburdening their children, some parents go too far towards the other end of the responsibility scale. To assuage their guilt over the divorce, these parents exclude the children from household tasks and try to do everything themselves. Or they may use such faulty reasoning as "I had to do too many chores when I was a kid. I don't want to put my kid through that." Such selfless intentions

are unrealistic from the parent's point of view and do a disservice to the child. Being assigned and expected to carry out age-appropriate tasks creates a sense of accomplishment and self-discipline in children. It's a training ground for handling increasingly more difficult demands that will be placed on them by school, other institutions to which they belong, and eventually, paying jobs.

Studies have shown that children with divorced parents reap unanticipated benefits from assuming a greater amount of responsibility at a young age. Many of these children report that they have a greater sense of strength, independence, and capability as a result of their experiences in a post-divorce family. They are clearly proud of themselves and of their ability to assist their parents at a time when the family's future was seriously jeopardized. Children whose parents are divorced — like all children — need to feel needed; thus, parents should not try to protect their children from the vagaries of everyday life. The danger comes when the children are robbed of their childhoods, forced to grow up far before they're ready. They can never recapture those years.

Isolation vs. Activity

In the immediate aftermath of divorce, many people follow one of two patterns: they either isolate themselves from others or pursue an overly- hectic social life.

People who choose isolation may do so for many reasons: they may not be able to afford a babysitter, or they may feel guilty about leaving their children with a sitter after being away from them at work all day. Although their motivations are different, both types of parents may come to resent their children.

Some parents, however, use their work and/or their children as a handy excuse for avoiding interaction with others. They may still be sad and upset about the divorce — unable to put it behind them and take the first few shaky steps to reestablish their lives. They show no interest in dating, and may deny having sexual feelings.

Some people, overwhelmed by depression, may feel unable to make the effort to meet new people or take on new challenges. Such behavior often fosters over-dependence on the children, since they become the parent's only focus in life. What will become of such a parent when the children break away and establish their own lives? In its worst form, isolation may lead to severe depression and other psychological problems.

At the other end of the social spectrum are those parents who are any place but home. With a full schedule of night classes, church activities, outings with friends or dates, these parents leave their children with a round of babysitters and relatives (including the children's other parent). Some may go so far as to replace the former spouse with a serious new love interest before they are emotionally ready, or they frenetically engage in indiscriminate dating and sexual relationships. Sometimes, such parents are (subconsciously or not) trying to blot out the fact that they even have children, who are reminders of their failed marriage or a responsibility they wish they didn't have.

Obviously, the children suffer greatly by missing out on the consistent parenting and love they need, particularly in the first few months after their parents' divorce. Children's distress is compounded by the antics of an out-of-control parent and, not surprisingly, they often come to mirror that behavior back to the parent.

Moving On

In the first months to a year after separation and divorce, your life can be in a state of upheaval. When the dust finally

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The temptation to become too dependent on your children is always there if you don't have another adult to whom you can turn when you need advice.

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be abandoned in favor of a trial at any time, any apparent dishonesty can be dealt with in the old-fashioned manner. Besides, as with domestic violence cases, if you don't trust your ex in the first place, you're unlikely to seek a negotiated settlement.

Final thoughts

Mediation offers many significant advantages to the traditional divorce process. It can save time and money, and allow two people who have decided they no longer wish to share all of their lives to negotiate how they will cooperate, and how they will work out the details of living apart. Although there are some concerns — the lack of government regulation and the possibility of an unrecognized power imbalance leading to an unfair agreement — generally speaking, mediation can let you and your soon-to-be-ex make arrangements that can live with today and in the future. If nothing else, alternative dispute resolution is an alternative worth investigating. ■

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For more articles on divorce mediation, visit www.divorcemag.com/articles/Mediation.

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begins to settle, however, there is the business of building a new life.

Your first task in this reconstruction is to put your failed marriage behind you and deal with any residual feelings of grief, anger, or guilt. In addition, you need to realize that your role as spouse is separate from your role as parent. Although your marriage has ended, your parenting relationship goes on.

That the children come to terms with the divorce has important consequences — not just in the period following the divorce but in their adult years as well. Children with divorced parents sometimes rush into relationships for which they are ill-prepared in an effort to prove they are lovable and to fight their fear

of rejection. If they see that you can recover from such a devastating trauma, such reactions in their adult lives may be avoided.

Attaining an inner peace about your divorce partly depends on the quality of the relationship you and your ex-spouse are able to build as co-parents. If seeing or thinking about your ex-spouse is emotionally charged for you, you may need to monitor your attitudes and behavior towards your ex in front of your children. Remember, although the two of you were unable to continue your marital relationship, this has nothing to do with the right or ability of each of you to be a good parent to your children. ■

This article has been edited and excerpted from How to Help Your Child Overcome Your Divorce by Elissa P. Benedek, M.D. and Catherine F. Brown, M.Ed. Dr. Benedek is leading child psychiatrist and forensic expert. www.newmarketpress.com/title.asp?id=531

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financially, personally, or emotionally — the deeper the roots of fear. The fear of negotiating with a spouse who is more powerful, more prestigious, or more “important” than you creates problems, particularly if the spouse is well-connected or has a prominent family.

Under these circumstances, sitting down at a bargaining table seems like risky business. When there are significant emotional or practical inequities, you must do whatever you can to change the expected patterns of your position. Use all available resources: books, counseling, and so forth. If you can avoid succumbing to predictable old ways and if you have a lawyer who isn't easily impressed or intimidated, you'll be able to balance the pressures against you by using strategies that are different from those expected from you.

Whatever the obstacles, the basic rule is to understand what options exist for both of you. Insist upon realistic

objectives. Focus on the problems, not the person. Try to find a different approach to the same problem; reframing a seemingly insoluble problem may solve it.

It's not necessarily all the things you know that will help you during negotiations; it's what you can think of at the right moment to back your issues and arguments. This is where your files of prepared information can be invaluable.

Recognizing coercive tactics

What's fair and what's unfair in divorce? What does it mean to step over the bounds of common decency? What kind of tactics are allowable? What one spouse considers good strategy might be seen as deceptive to the other, depending upon the motives of negotiation.

An early step in predicting what your negotiations will be like is to try to recognize the tactics being used. If your divorce is adversarial, you're likely to face tactics designed to wear you down such as:

- Deliberate deceptions
- Misrepresentation of facts
- Less-than-full disclosure
- Psychological warfare
- Stressful situations
- Personal attacks
- Silent treatment
- Withholding money or children
- Playing on spouse's sense of guilt
- Body language
- Black-hat/white-hat designations
- Threats
- Dependency and helplessness
- Positional pressures
- Refusal to negotiate
- Unreasonable demands
- Escalating demands
- Calculating delays ■

This article has been edited and excerpted from The Divorce Decisions Workbook: A Planning and Action Guide by Marjorie L. Engel and Diana D. Gould. Designed to help individuals prepare in advance for every phase of the divorce process.

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