

FREQUENTLY ASKED QUESTIONS IN DIVORCE

Here are questions Mari has been asked many times, so she shares her answers with you below.

What happens after we reach an agreement in mediation?

There's a lot to be done after mediation, and even though you need to review your financial agreement with an accountant and we file your marital settlement agreement, you will never have to appear in court.

After you disclose all your assets, debts, income and expenses, and come to agreement about the division of marital property, child and spousal support (if applicable), etc., your mediator will prepare all the court forms and marital settlement agreement (or stipulated judgment) in draft for you to review . You should have the opportunity to review these in mediation with clarification between you and your spouse and the mediator. Once you are clear about what choices you have made and why you have made them, it is important for you to make an appointment with an independent attorney if you wish to review the financial agreements and the Marital Settlement. Your independent attorney is there to make sure that you understand what you have done and to make sure it is fair under the circumstances.

Your mediator is supposed to be neutral and cannot represent either one of you- so even if your mediator is an attorney and he/she gives you legal education (provides you codes and cases and helps you understand), he/she should not advise you as would your attorney advocate. If your mediator did a quality job, you will have a great understanding of your rights and obligations before you bring the paperwork to independent counsel for review. You will be able to explain why you agreed to certain provisions and demonstrate your understanding. You should hire an attorney for review which should only take a few hours at most- and you should look for an attorney that supports settlement. Some unscrupulous lawyers will try and tear apart your hard work to take the case to court. Select a family law lawyer who understands your concerns, but is willing to suggest language to make sure you are getting your interests met.

Also you should review your financial agreement with an accountant of your choice who is familiar with family law issues and tax. There are many tax ramifications in divorce with respect to spousal support, tax filing status, joint property held for a period of time after divorce, business issues, etc. Once you review the agreements with your advisors and hear any concerns, you will provide any such issues to your mediator who will facilitate discussions with you and your spouse or with the attorneys and accountants to amend any language if need be. Then, when

all concerns are satisfied, the mediator will prepare all the forms in final- you will not need to physically go to court ever. The mediator will file all the appropriate documents on your behalf and provide you copies of all the paperwork for your file. You won't have to see a judge, sit on a witness stand, or air anything in public.

Your marital settlement agreement and certain forms must be filed with the court, but you won't have to appear. If you have an attorney/mediator who is especially concerned about protecting your privacy, you may file a public marital settlement agreement as to critical non- financial issues (but you must provide certain financial information for support), and prepare and sign a private stipulation/ marital settlement as to all your financial assets and debts distribution to protect your privacy. Once you reach an agreement in mediation it will be a relief, and you will avoid the costs and stress of a litigated battle. Reaching agreement will give you peace of mind and help heal the hurts from past. What a relief!

Bird Nesting: an Interesting Child-Custody Arrangement

"Bird nesting" is when the children stay in the family residence and the parents move in and out according to the child-custody agreement. For bird nesting to work, however, several conditions must be in place.

What is "Bird Nesting" – and How Does it Work During and After Divorce?

Essentially, "bird nesting" is when the children "get" the house. Both parents move out of the family home and establish their own, separate residences. The children stay in the family residence, and the parents move in and out according to the child custody agreement. It can work under certain circumstances, and it is a child-centric custody option that may minimize the disruption caused by the children moving back and forth, says Mari J. Frank, an divorce lawyer and mediator from Orange County, CA who has had family-law clients choose this unusual child custody option.

"If the parents are working very collaboratively, this may provide a greater sense of stability because they do not have to move from one parent's residence to the other's or be uprooted at all; it is the parents who do the moving around," she says. For bird nesting to work, however, Frank says that several conditions must be in place. "You must have the financial resources to support three residences. But more than that, you must remember that you will have to work out an agreement with your spouse as to all the chores in the home. Since that can be another source of conflict, from my experience, it works best if you have a live-in housekeeper to help do the laundry, keep the home in order, do the shopping, take the kids to appointments, etc. This again is costly, and may not meet your needs."

"Even if you have the wealth to support this, just imagine how challenging it is for mom and dad to move in and out of the home and work full time!" Frank exclaims. "What if mom or dad forgets something they need at the 'bird nest' house? Can they just stop by during the other parent's custody? What about when one of the parents decides to marry again? How does that impact the situation? Although on first blush, and maybe when the parents first separate, this may seem like a viable option, the truth is that most parents divorcing need to establish separate residences and new lives, and they want to "cut the cord" with the other. Although it is never easy, the children will adjust to having a bedroom at both parent's homes with clothes, books, toys, computer, etc.

"To make it easier on the parents and the children, all the research studies find that children do adjust better when the parents live in close proximity to each other. You and your spouse should try to live within a mile or two of each other. That way, the kids can still go to the same school, ride bicycles back and forth, and it's easier for parents to jump in the car with the children to pick

up the homework project they forgot on the way to school. The parents can also more conveniently and quickly exchange custody, and spend more quality time with the children. Remember, to Bird Nest effectively, you need to have the funds, and more than that, you need to be able to set forth positive communication and agreements with your ex-spouse. It is most likely to work if you are developing a “Bird Nesting” agreement in mediation because you will focus on problem solving, and in your joint sessions you can tweak the agreement as needs change.”

“However, the reality is that if you could effectively communicate and negotiate with your spouse, you would probably not be dissolving the marriage. On a short term basis, if you have a ‘tight’ bird nesting agreement with sufficient funds, household help, and cooperation, bird nesting may be a transitional custody approach to help your kids take incremental steps in the process to become accustomed to being on a schedule with each parent separately. Be aware of the challenges, and plan for a time when the children will progress to the stage of spending time at mom’s house and dad’s house.”

Transform Post-Divorce Grief: Choosing an Effective Dissolution Process

This divorce article looks at choosing an effective dissolution process to transform your post-divorce grief, by Mari J. Frank, divorce lawyer and mediator.

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. You will be able to take your post-divorce grief and channel it into something healing.

“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 Post-Divorce Grief Through the Divorce Process

Believing that this life change is a “blessing in disguise” may not be easy at first. You may feel as though you are living 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 post-divorce grief and the long process that entails the dissolution 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 are 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 still advocate on behalf of their clients. With opposing counsel and experts in session, you are not free to express your feelings privately. You are disempowered since you are not engaged in your own bargaining. Although the fear and anxiety of going to court is reduced, the escalating costs of having both parties meeting together with their respective lawyers and the multiple [experts](#) in numerous joint negotiation sessions can be prohibitive. The intention of [the collaborative process](#) is to reduce the antagonism, which reduces the anger stage of post-divorce grief; however, it does not always provide a complete trusting environment of privacy and openness. Because your spouse’s lawyer and other advocates are present, you may not be confident enough to reveal deep concerns and may not always have the power to create your own solutions to achieve acceptance.

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 soothes the process during post-divorce grief.

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.

What happens after we reach an agreement in mediation?

As soon as you and your spouse make that final agreement your mediator can begin working on the paperwork that will ultimately result in the end of your marriage and the beginning of a new stage of life.

What happens after we reach an agreement in mediation?

An agreement in mediation occurs after a series of meetings in which you and your spouse have provided full disclosure of your assets, [debts](#), and income, and have collaborated with your mediator to divide your marital property and set forth solutions for child and spousal support (if those are at issue). Once this happens, your mediator (usually an attorney) will prepare all the court required paperwork. This will include completing the court forms, writing the Marital Settlement Agreement or Stipulation for Judgment, and perhaps preparing an Inter-spousal Transfer Deed and Preliminary Change of Ownership Form for the county in which you live, in order to the transfer the family home to one of the spouses as separate property. Your mediator may also compose letters on your behalf in order to roll-over IRA accounts from one spouse to another or prepare Qualified Domestic Relations Orders to divide Pensions or help you complete forms to Roll-Over portions of a 401 K Plan to an Individual Retirement Account in the name of the other spouse.

All the [documents](#) and letters should be prepared in draft by your mediator for you to review with a consulting attorney to make sure that the agreement is fair and that you are very comfortable signing the documents. Your mediator, even if he/she is an attorney acts as a neutral to help you understand your rights and obligations under the law, however, he/she must not be your individual advocate. The mediator is neutral and has a duty to help you both get a fair agreement under the laws of your state. And your mediator has an ethical duty to advise you to review your financial agreements with an accountant to clarify any tax issues and an independent attorney to review the issues with you to make sure you are protected. You are not required to get a final review with another attorney, but your mediator is required under rule of professional conduct to advise you to get independent advice before signing your final dissolution paperwork.

Then, when all concerns are satisfied, the mediator will prepare all the forms in final- you will not need to physically go to court ever. The mediator will file all the appropriate documents on your behalf and provide you copies of all the paperwork for your file. You won't have to see a judge, sit on a witness stand, or air anything in public.

Your [marital settlement agreement](#) and certain forms must be filed with the court, but you won't have to appear. If you have an attorney/mediator who is especially concerned about protecting your privacy, you may file a public marital settlement agreement as to critical non- financial

issues (but you must provide certain financial information for support), and prepare and sign a private stipulation/ marital settlement as to all your financial assets and debts distribution to protect your privacy. Once you reach an agreement in mediation it will be a relief, and you will avoid the costs and stress of a litigated battle. Reaching agreement will give you peace of mind and help heal the hurts from past. What a relief!

What should I consider when choosing a mediator in California?

You want a mediator who is communicative, experienced, and will bring the two of you to the end of your marriage with professionalism.

If you wish to have a fair, trusting, private and safe process in which you are apprised of your rights and obligations, you have the opportunity to speak your concerns, you receive all the information and documents you need to make good informed legal decisions, you feel that your feelings are legitimized, and you feel comfortable that your financial, emotional, and privacy needs are satisfied, you may wish to ask the following questions when choosing a divorce mediation professional:

- Does the mediator have extensive experience and training?
- Does the mediator have family law background to provide you the legal education that you must have to make critical decisions about your life?
- What is the reputation of the mediator? Are there referrals from trusted persons and entities?
- Does the mediator have training in psychology so that he/she can effectively understand the underlying issues and deflect the conflict?
- Will the mediator give you and your spouse a free consultation by phone to answer your questions about the process before you begin to give you a chance to see if the professional is a good match for you both?
- Does the mediator provide you a roadmap of the steps of the process so that you will be guided to resolution in a secure yet fully informed manner?
- Is the mediator a good listener? Are you comfortable speaking your concerns and revealing important issues to this person? Do you trust that this person will be evenhanded with both parties and respect your privacy?
- Has the mediator made it clear about confidentiality, disclosures, fiduciary duty, and ground rules? Is the mediator organized? Will you both receive written follow up summaries with tasks to perform for meetings, and will you have an agenda for each meeting so you are prepared and don't waste time and money?
- Will you have the opportunity to bring up any issue that is bothering you to add to the agendas? Will you feel safe in meetings knowing that the mediator is gentle yet powerful and will not allow verbal (nor physical) attacks or hurtful approaches?
- If an emergency arises between you and your spouse at any time, can you count on the mediator to intervene at your request and set up a conference call to immediately help resolve the critical issue and reduce the conflict?

- Are you assured that you will jointly be apprised of all issues that affect you and your dissolution and have the opportunity to review anything you wish at any time with the counsel of your choice?
- Is your mediator an expert facilitator and negotiator who can empower you both to problem-solve solutions that meet both of your needs within the realm of California divorce law?

If you answer yes to these questions above, you have probably made a good selection for a mediator and will build a trusting relationship that will help you successfully arrive at a mutually satisfying Marital Settlement.

Managing the Anger of Divorce

Since anger is really unresolved hurt without an outlet for healthy expression, repressed hostility causes an escalation of conflict. As a result, the legitimate suffering that both parties experience in marital discord often transforms into a stressful, expensive courtroom battle.

*If you are patient in one moment of anger, you will escape a hundred days of sorrow.”
– Chinese proverb*

It's a fact: escalating anger causes much of the sorrow of divorce. You have the right to be upset — but how can you deal effectively with the ire in divorce? First, it's important to realize that anger is a natural emotion, like an alarm meant to protect you from further hurt. Even the most agreeable people have legitimate feelings of hostility in divorce. Why? Because your expectations, dreams, and hopes about your life with your spouse are dissolving with the divorce, and that is painful. Your wrath grows out of the feelings of disappointment of perceived wrongs by your “worse” half.

Since anger is really unresolved hurt without an outlet for healthy expression, repressed hostility causes an escalation of conflict. As a result, the legitimate suffering that both parties experience in marital discord often transforms into a stressful, expensive, “bloody” courtroom battle. The litigated divorce provides a costly forum for acting out destructive animosity.

Mediation, a dynamic alternative to litigation, is a facilitated negotiation. Successful mediation de-escalates the hostility, focusing on problem solving instead of arguing positions. The mediator sifts out blame and helps the parties discover mutually acceptable solutions. Due to the intensity of the emotions — and the complexity of the legal issues — during divorce, the parties need a qualified neutral attorney/mediator to educate them about family-law issues. This process empowers both parties to make informed decisions about their children and their finances.

The expert mediator facilitates the transformation of conflict into “solutioneering” and teaches the parties how to manage their own anger. It's a process that builds trust and guarantees satisfying results. Handling your own anger effectively is a challenge at any time, but it is an especially important accomplishment during the heat of divorce.

Whether you are in litigation or mediation, it will be to your financial and emotional advantage to understand how to control your frustrations. You can achieve greater financial benefits, save yourself from stress, and “win” more of what you want if you can communicate effectively with your spouse.

For a long time, you and your spouse have pushed each other's "buttons" and reacted to conflict by fighting, fleeing, submitting, or freezing. When you repress anger, you feel diminished, yet if you meet hostility with aggression, it fans the flame, which may lead to violence. There are better options.

Our goal is to consciously respond — not instinctively react. If your spouse gets you mad, you have lost control of yourself. As Elizabeth Kenny once said, "He who angers you, conquers you."

When we allow our anger to rule our reasoning, we lose our ability to make reliable decisions. We lose our sense of self, our thinking becomes impaired, and we "lose it." That's when we make "the greatest speeches we'll ever regret!" We voluntarily give away our power when we delegate the authority to anger to rule our reason.

Try the following proven strategy anytime your spouse (or children, boss, or anyone else) attacks your ideas, actions, or beliefs. To help you remember this 10-step strategy, you may find the acronym HARD LOVING helpful and apropos.

The Hard Loving Strategy to Deflect Conflict

1. **Halt**

Halt: Stop yourself from reacting — don't say anything. Listen, don't express negative emotions, and consciously breathe slowly. If you react in anger, you will invite more hostility.

2. **Anger control**

Anger is a negative emotion that you can actually feel in your body. Immediately direct your mind to your physical sensations. Some typical reactions are dryness in the throat, tightness in the neck, knife in the solar plexus, etc. Take a moment to close your eyes (focus), and imagine your spouse saying something that "pushes your buttons." Identify your physical reaction to the verbal battle. Once you recognize your body's auto-reply to verbal pain, you gain the key to override its power over you.

3. **Reverse reaction**

You can consciously reverse this auto-reaction through your awareness. For example, if you sense a knife in your solar plexus when you're feeling accused, gently "remove the weapon." "Drink" refreshing water for your dry throat. Deliberately take calm slow breaths as you make this reversal until you are calm and centered. You still have not said a single word to the 'attacker'. With practice, this gentle dissolving of your auto-reaction to conflict will take only a split second. Once your body is tranquil, you will regain your composure.

4. **Disengage**

Now that you have detached physically, you are ready to disengage mentally. Focus on the issue, not the person's words or behavior. Separate the person from the problem. Just because your spouse says something offensive doesn't mean it is true or you have to accept it as a fact. His/her perceptions are just thoughts. You don't have to be defensive or convince him/her otherwise. Release any need to prove you are right: from your perspective, you are right. Disengage from the tornado of hostility and the storm will stop. If you don't engage, the fight has ended. When you let go, you disable your "opponent." He/she cannot control you if you don't get upset. In essence, you win control, since the other person has succumbed to his/her own anger.

5. **Listen effectively**
Listen to every word without resistance. (This doesn't mean you agree!) Don't think of your response. Listening demonstrates a willingness to understand, which promotes a reciprocal receptivity. Non-contentious listening deflects hostility and gives you powerful information to resolve the real issues.
6. **Openly mirror**
Restate, in a calm, neutral tone, the essence of what was said. For example: "You stated that you were angry because you felt I spent too much money on the children." Or: "You are concerned that you will have to live in an unacceptable place because of the divorce." By mirroring what the other person said, you have not agreed — you are merely demonstrating your understanding of what you heard.
7. **Voice open-ended questions**
Follow up a mirrored statement with an open-ended question, such as: "What do you think is an appropriate amount to spend for the children? Please clarify." Information questions are simple but formidable. Pose clarifying questions like: "What do you mean?" "How will that work?" "When can you do that?" "Can you tell me more about your proposal?" and "What is the basis for your reasoning?" These types of questions open the door to mutual understanding and problem-solving.
8. **Imagine solutions**
Upon hearing responses from the open-ended questions, the parties can shift to the brainstorming stage of proposing various options for settlement. Both spouses need to share:
 - a) what they believe would be fair under the circumstances;
 - b) what they really need — and the basis for their suggested solution to the conflict;and
 - c) what would resolve the issues for everyone so that both parties and others involved would be able to accept the decisions agreed upon.
9. **Non-aggression**
No matter how aggressive the other person may become, stay calm, keep breathing slowly, and listen without engaging in anger. You may have to keep repeating steps one to four throughout the discussion.
10. **Go away**
If you find that the other person cannot act appropriately, remove yourself with dignity before you get hooked into their frustration. Leave the situation (or calmly get off the phone), allowing the other party to reconvene without groveling. You will have to deal with your spouse in the future, so release your anger before you speak again. Then start from step nine, and revive the problem-solving stage. Take a time-out, if necessary, to make sure you both manage your own hostility.

Anger is a tough feeling to understand, but it's important to remember that you are not alone. Sometimes, you may believe you are furious at your spouse, but the problem is similar to an issue that you had with a parent when you were a child. Our emotions of challenging relationships need to be analyzed so we can learn important life lessons. Emotional counseling during divorce is a helpful way to clarify which issues belong to you and which are really dilemmas for your spouse. You are only responsible for 50% of the problems in your marriage — no more, no less.

Seek quality individual therapy for yourself and, if you and your spouse are in agreement, try marital counseling to work on your joint issues. If you are beyond the point of marriage therapy, interview qualified attorney/mediators who have the skills to help you to resolve the legal issues of the divorce and decrease the hostility between you. With an innovative, holistic approach,

you'll be able to "heal" the conflict so that you both can release the hurt, forgive one another, and move on with your lives, productively, to find new, healthy relationships.

Do women do worse in mediation than in the traditional process?

I've heard that women always do worse in mediation than in the traditional process (each side hiring a lawyer). How can I be sure I will get my fair share in mediation?

Do women do worse in mediation than in the traditional process?

Although our culture is changing, there are many women who have not had formal training or practice in negotiation in the business world, so they may believe that they will be railroaded into a result that they won't like. In reality, most women get a much better result in mediation than in court. In litigation, the majority of family-law judges are men, and there are often complaints of bias against women as they are perceived as too emotional. This is also changing, but in court, the judge makes the decision and you and your spouse give up your ability to negotiate your own settlement to meet your needs.

In mediation, you have a neutral professional who will work to empower both parties to make good decisions based on their rights and obligations. The mediator – unlike a judge – has no power to decide for you. Instead, it's the mediator's duty to make sure that both parties are heard (even the emotions) and that the agreements are fair. In other words, your mediator will help you negotiate a fair result. A seasoned mediator will not let your spouse bully you, hide assets, or force you into an agreement that you don't want to sign. You may attend mediation with an attorney to help you, but to save money, you may both attend mediation without counsel – however, you'll be advised to review any and all agreements with the attorney of your choice to make sure you're getting your fair share. You always have the power to refuse a proposal and offer counter-proposals until the two of you agree.

The goal of mediation is to deflect [conflict](#) and help you both to find mutually satisfying solutions. You won't be forced to cave into your spouse's demands in mediation. The beauty of mediation is that it is a confidential, private, voluntary process where you can take time to be heard. If at any time you feel uncomfortable, you can discuss this with your mediator, or you can discuss a different approach with independent counsel. You have nothing to lose in mediation – you can only gain since you have the power to say no.

Should We Mediate Our Prenuptial Agreement? What Are The Benefits?

Whenever you have separate property prior to marriage, or children and an estate from a previous marriage, it is wise to sign a premarital agreement. When you are about to be married, you are in love, and you don't want to think about divorce. But the truth is you do need to protect your separate property if you were to die or divorce and wish to make sure your children from a previous marriage are protected. Also, if you end the marriage, you will avoid fights about what is yours and what belongs to your spouse. The happiest and most positive way to enter a marriage is through honest, open, transparent, clear, loving expectations and good communication.

If you use an attorney-mediator to write your premarital agreement, you will be meeting together with a neutral with whom you can share your desires, concerns, and proposals for the agreement and be apprised of the law and your rights. It is wise to visit your financial advisor or CPA and make sure you have a complete list of your property and financial concerns. You will be asked to bring a list of your assets and debts and your trust or will documents (or be advised to consider your estate with an estate planning advisor) so that you will address all the critical issues. In mediation you will engage in a private, confidential, process to discuss all your concerns without an adversarial approach. Once your mediator prepares a draft of your agreement, you will have the opportunity to review it with independent counsel to make sure that you have gotten an independent opinion before you sign. Falling in love in a euphoric experience, so why should you taint that loving feeling with an adversarial approach? Mediating your premarital is a process of creating solutions to concerns in a positive, respectful and trusting environment.

Good Advice for Making Divorce Mediation Successful?

We're interested in trying mediation to resolve our divorce-related issues. What are some tips for a successful divorce mediation?

Mari Frank, a family lawyer and mediator in Laguna, answers:

Wise couples recognize that mediating their divorce will save time and money, and maintain their privacy. Also, because this is a collaborative approach, an experienced mediator will help the parties to focus, deflect conflict, and work together to resolve issues fairly. For couples with children, the peaceful approach of mediation soothes the emotions and allows the parties to co-parent. But to be successful in mediation, the parties must commit to:

- Disclose all assets, debts and income without a subpoena
- Fulfill their obligations as to ascertaining the real values of all assets and debts
- Be honest and forthright — knowing that the sessions are confidential
- Complete the tasks the mediator assigns to each party in a timely manner (e.g., obtain bank statements)
- Fulfill their fiduciary duty to maintain property and divulge all information about any business opportunities etc.

For the mediation to be successful, the mediator must commit to:

- Being neutral and respectful to both parties
- Providing legal education to the parties (codes and cases) and encourage the parties to review all agreements prior to signing with independent counsel
- Setting forth reasonable tasks and following up to make sure the tasks are performed by both parties
- Serving as a guide for the parties and helping them to navigate the legal system without having to go to court
- Deflecting conflict between the parties so that they can focus on issues
- Help the parties to release the blame and guilt and move to forgiveness so that they can reach a fair settlement.

WATCH: Why should divorcing couples first consider mediation?

The three top reasons to consider divorce mediation over litigation, or even over collaborative family law processes, are what may be described as the “three C’s” — Confidentiality, Control, and Cost-Cutting, as follows:

Confidentiality and privacy: Your signed confidentiality agreement in mediation will allow you to keep all of your private information about your children, your personal issues, your property, and your [finances](#) out of the public court records. During litigation, and when engaging in collaborative law process, all of your private sensitive issues are revealed to people who you may not know. Most of what you consider private facts becomes part of the public record for complete strangers to view. Most importantly, in [mediation](#), you don’t have to air your personal matters in a public court (with a court reporter taking notes) or in front of numerous people with whom you are not well acquainted and don’t trust. Your mediation will take place in a private room with a trusted mediator, who signs a commitment to guard all your confidences within the confines of the safe haven of your sessions.

Control: Do you really want to give the control over the decisions about your life and your children’s lives to a judge, an arbitrator, or others who don’t know you, your needs, or your desires? Delegating authority to a judge or another person to decide important issues about your property, your finances, and your children puts your future at great risk. During the mediation process, you have control over your destiny. You receive legal education and workable options to inform you as to the law, with regard to your own circumstances, so that you and your spouse come up with ways to agree to the best decisions which fit your mutual needs. Your mediator empowers you through facilitated [negotiations](#) to create *your own* solutions (that are not imposed upon you) that are paramount for you, your children, and your ex-spouse.

Cost-Cutting: Although your experienced attorney-mediator may charge an hourly rate that is comparable to what an individual divorce attorney would charge *each* of you, in mediation, you’re *sharing* (normally proportional to income) in the expenses. Additionally, since you are meeting together (rather than separately) and providing documents *without* subpoenas and extensive time-consuming discovery, you eliminate the huge expense of back-and-forth calls and correspondence between [lawyers](#), brief-writing, and costly court hearings. And because you’re always meeting together with a transparent agenda, you’re saving in time off from work, eliminating negative energy, and avoiding the emotional distress of appearing before strangers who will make judgments about you. You will be required to provide the same critical documents that would be required in litigation, but you will exchange these sensitive documents in a very safe environment with a minimal cost of reproduction and disclosure only to those who need to

know. In mediation, you'll save a tremendous amount of money, and why shouldn't you? You need to preserve your hard-earned funds for your life after divorce. The decision is yours. Do you want to expend your cash reserve in a contentious courtroom battle — or would you rather engage in a private, confidential problem-solving process in which you will use your funds constructively to create a mutually satisfying [agreement](#) for you and your spouse?

My husband says we'll save a lot of money using the collaborative approach because we will share a lawyer. Is that really how collaborative law works?

The intention of collaborative law, as with mediation, is to provide an alternative to an adversarial court battle, but the parties *cannot* share a lawyer in collaborative law. If you wish to engage in a Collaborative Divorce, you must *each* find a collaboratively trained divorce attorney who is willing to sign an agreement that if the case does not settle, he or she will not represent you in a court battle. There must be a signed Collaborative Agreement. If a lawyer tells you he or she can work “collaboratively” with your spouse’s attorney, without the risks and rewards of the Collaborative Participation contract, it is not truly a collaborative matter. Such a lawyer may be more concerned with preserving his or her opportunity to earn fees in litigation, and this may be an impediment to the success of the process.

Collaborative law may be less expensive than a court trial, but it is usually not inexpensive. Each spouse must hire his or her own collaborative lawyer who will attend meetings with the other spouse and his/her attorney. The parties may each hire forensic accountants, appraisers, child-custody evaluators, vocational evaluators, or whatever else is needed to address the issues. Although this process is meant to promote settlement, with all of the meetings and the stream of experts, it can become very expensive. The advantage to this process as compared with litigation is that the discussions are held in private, but discovery takes place and information may come out that would make the process less private and confidential than mediation.

Mediation, however, usually involves one attorney-mediator who facilitates the proceedings, educating the parties as to their rights and obligations, deflecting the conflict, and preparing the documentation. There is only one attorney/mediator who does not represent either party, but acts as a neutral to help the parties arrive at a fair agreement under the law.

It is true that mediation is also a collaborative process — but collaborative law is not mediation. Mediation is normally less expensive than collaborative law; there usually are not so many attorneys and experts involved in the meetings. The parties may attend mediation with their divorce attorney/mediator without independent counsel present if they wish to save funds. Normally, if forensic accountants, appraisers, or other experts are needed, the parties agree to use a neutral expert to give them a range of values to negotiate in mediation. The mediator prepares the court documents and a public marital settlement agreement for the court — leaving out many of the financial and sensitive data. Often an experienced mediator prepares a detailed private marital agreement with the more sensitive data to protect the privacy and confidentiality of the proceedings. All agreements are enforceable in court.

Because mediation is a voluntary process in which the parties arrive at agreements, there is no reason to argue anything in court, so the mediator usually files all without the parties having to appear in court. The necessary papers omitting the sensitive information is filed with the court in order to enter a judgment. Of course, the parties have the opportunity and are encouraged to review any final settlements before filing with independent counsel, to make sure they get legal advice as to their informed decisions and to assure that the mediator has facilitated a fair agreement.

I want to mediate my divorce, but my spouse refuses. What can I do?

I want to mediate my divorce, but my spouse refuses. What can I do?

Bitterness and anger often accompany divorce. You both had great expectations for a loving relationship at your wedding, and now that you've "lost that loving feeling", both of you are hurt, disappointed, and frustrated and may blame your spouse for all that went wrong — whether or not you initiated the dissolution.

If either of you allows your anger to rule your reasoning and you each hire a gladiator/attorney to act out your hostility, you will escalate the conflict and spend a fortune in the battle, and the emotional costs for you both will be enormous (and even worse for your children, no matter what their age).

Because there is little trust between divorcing parties in family law, it's important to engage an experienced neutral divorce attorney-mediator to explain the divorce mediation process to *both* of you. Bitterness may cause your spouse to reject any of your suggestions, so provide objective information about the process and its advantages by directing him to articles about mediation at www.DivorceMagazine.com. Ask a qualified attorney-mediator to give you a joint complimentary phone consultation to explain the process to assure you both that you will get a fair agreement based on divorce law.

Let your spouse know that you only want what is fair. Be willing to say that you are 50% responsible for the problems in the marriage and you apologize for your part. Learn to deal with your spouse's anger by not engaging in verbal matches. Get counseling yourself and learn how to deflect conflict. When you interview divorce mediators, ask them how they will reframe issues so that the anger is dealt with appropriately and both parties will feel heard and understood.

Your spouse may consider divorce mediation when he understands the tremendous advantages. There is a *great* cost saving because you meet together with one neutral attorney who facilitates resolution and files all the court paperwork (of course you are advised to have independent counsel and a CPA review your final settlement before you sign to assure your comfort with the result). The process is meant to de-escalate the conflict so that you can work out mutually acceptable, positive solutions without increased pain. You will keep your personal and financial information confidential, instead of airing "dirty laundry" in the *public* court files. You'll be more likely to get a fair result because you will have a neutral professional to balance the power and focus on your mutual interests. Most people want privacy, security, less stress, and monetary savings — even angry bitter spouses.

Do I and my spouse need to be in the same room if we go the mediation route for our divorce?

Although mediation doesn't require you and your spouse to be in the same room, there is a sense of privacy that can and should be appreciated that results from it.

Although it is best for both of you to be in the same room for mediation, if you absolutely are uncomfortable, you should discuss this with your mediator. Most of the time, it is best to meet together; however, occasional private sessions are appropriate. If there has been domestic violence, then of course you may feel frightened and under those circumstances you may wish to make special arrangements. Video mediation make this situation much more comfortable.

However, if it is just “uncomfortable” to be around him/her, then perhaps if you try a joint session with both of you in the same room virtual room you may feel differently. Here are the advantages of being in mediation together in the same room: or in a zoom room. It is private, there are no court reporters, no public records, the process is confidential, and you may wish to be heard by your spouse with the assistance of a neutral to be supportive of your right to speak.

You will hopefully choose an experienced neutral professional to make sure that there is a fair and balanced process where each of you can be heard without interruption or intimidation. The mediator is your facilitator to make sure that neither party bull-dozes the other. If you are not in the same room, you will be wondering what accusations may be said about you by the other party – you won't know what is said and won't know how to respond or rehabilitate what may have been said. You will be more trusting of the mediation process if all is fully disclosed in an open trusting environment.

Be assured that if you must speak to the mediator alone (perhaps to share a particular issue such as a health problem, a new significant other, possible allegations of the other hiding money, etc), you have the right to ask for a caucus, which is a private time with the mediator without your spouse present. A caucus may be on the phone or in person. It is a time when you may speak to the mediator about something that you are concerned about revealing in front of your spouse. A caucus is an ethical element of mediation. Once the mediator hears your concerns, he/she may (with your permission) bring up the issue in a very calm and neutral manner to resolve the issue and help you to get your interests and needs met. If there are only caucuses, the parties are less trusting of what is happening in the other room. The goal of mediation is to build trust and empower the parties come to a mutually agreeable settlement. Because mediation is consensual and meant to meet the needs of the parties, if, after you try a joint session, it is not working for you, discuss creative options with the mediator who should accommodate your concerns.

My spouse is irresponsible with money and credit and I am very careful. With the divorce will I be saddled with his debts?

Review all of your credit reports so that before your divorce is finalized you know where you stand and have made steps to separate yourself financially from your spouse.

This is a very important issue in every dissolution. First, make sure that you and your spouse get current copies of your credit reports. You may obtain all three credit bureau reports (Experian, Equifax and TransUnion) at no cost once a year at www.annualcreditreport.com (quickest to download), or by phoning 1-877-322-8228. They will be sent in two weeks by mail.

If you are in mediation, ask the mediator to have you exchange copies with your spouse since you each will have different reports. You must see what is on all reports. If you have separate attorneys, ask your attorney to stipulate to an exchange of the reports, or else you will need to subpoena them from your spouse. If you don't see what is on those reports, it may cause many credit problems after the divorce..

Once you review all reports, you will need to meet with your attorney/mediator or your lawyers to determine how the debts on the reports will be divided. The debts incurred during the marriage are joint debts. The debts created before marriage, or after the date of separation, should be determined to be separate debts, and it should be clarified which spouse is responsible for each debt.

Many marital debts arise from a contract that you both signed (for example, a mortgage, an auto loan, or joint credit cards). While you are separated, your spouse may incur new debts before you are divorced. Remember that even if you divide joint debts, a lender will hold you responsible if your spouse doesn't pay because you signed the agreement as well. If you are careful by clearly establishing in writing which party will assume which debts, you should be able to protect yourself.

Your Separation Agreement and Marital Settlement Agreement, Stipulation, or Judgment must clearly define how you are dividing the debts, and specify the debt (include at the least the last five digits of the account and the name of the creditor). Also, state in writing that the spouse taking such debts is assuming the debts as his or her "sole and separate property," that each spouse will be responsible only for those debts assigned, and that each spouse shall "hold the other harmless" for any liability for those debts.

In California, under Family Code §916, following dissolution of a marriage a non-debtor spouse is only liable for debts incurred by the former spouse during their marriage if the debt is assigned

to the non-debtor spouse by the judgment of dissolution. Spouses in California are protected under Family Code §916 once a marriage is dissolved and the division of community property is explicit. Thereafter, if a dissolution judgment does not assign you a particular debt, and a debt collector attempts to collect that debt assumed by your former spouse, you must notify the debt collector in writing and provide a copy of that portion of your judgment that relieves you of any liability for the debt. That debt collector should cease to attempt any further collection, and if he or she continues pursuit, he or she may be in violation of the Fair Debt Collection Practices Act.

How do I help the mediation process to move quickly through my divorce?

Preparation is at the heart of these steps, and readying yourself is a sure way of guaranteeing a successful agreement out of mediation.

Mediation is a collaborative process in which you as the client have the power to speed up the process depending upon how you conduct yourself. Below are tips to help the mediation process to move quickly and smoothly.

How do I help the mediation process to move quickly through my divorce?

- **Dedicate yourself to problem-solving during your mediation session.** Although your emotions may be high, acting out anger and hurt will only delay resolving the issues and extend the process. Instead, seek counseling and prepare yourself mentally before each session to be calm and issue-oriented.
- **Make a list after each meeting of what you must do before attending the next session.** Your mediator, as your guide, should inform you of what you must do before each meeting. Ask for an agenda and the expectations and objectives of the meeting.
- **Be prepared for each session.** Your mediator will ask you to bring in financial and legal documents, lists, proposed custody schedules, and other items for the meetings. Be sure to make copies for the mediator and your spouse and be ready to discuss the issues in an organized manner. You have a fiduciary duty to disclose all income, assets, debts, business opportunities, and everything financial. To help the mediation process to move quickly, be prepared. The quicker you can accomplish resolution.
- **Make a commitment to discuss the issues of divorce only with the mediator present, in session or by phone.** When parties discuss the difficult and painful issues outside of the mediator's presence, there is a tendency for one party to pressure the other party. There is no balance of power or neutral to create an atmosphere of fairness. It's easy to become adversarial and escalate the conflict. When emotions get out of control, the process is delayed by having to work through the anger to reestablish trust. Negotiating with the mediator present will deflect the conflict, and the process will move forward instead of backward.
- **Stay positive and Create Mutually Satisfying Agreements.** Unlike litigation which focuses on blame, arguments, and getting a one-sided win, when you are in mediation, you have the opportunity to propose creative solutions for settlement which benefit both you and your spouse. If you [focus on creative solutions](#) which will be *mutually* satisfying to both parties, you'll arrive at a fair and committed agreement effectively, efficiently, and quickly.

My husband and I have been living together because we cannot sell our house.

6 steps to emotional and financial coexistence with your spouse as you move forward through divorce.

“My husband and I have been living together during our separation because we cannot sell our house nor afford two properties. How can we make our situation better?”

I assume you mean emotionally better as well as financially workable. In order to avoid the “War of the Roses”, consider the following:

1. Stay out of adversarial litigation, which will make living together unbearable. Consider Collaborative Divorce, in which you each hire attorneys who commit to settlement instead of a battle, or mediation, in which you jointly hire a neutral attorney/mediator to facilitate problem-solving and a peaceful resolution.
2. Create a family budget of your commingled income and joint bank accounts. Use online banking to help you determine what your family expenses are, and then set up expenses that each of you need (hair salon, clothing, classes, etc.). Once you have addressed the mandatory expenses, you can also allocate equal amounts of “discretionary funds” if there is any money left over each month. Commit to your budget, and you will deflect conflict.
3. Don’t start dating while you are living together. If you already have someone new, be discreet — but be honest. Cool the relationship until you move out.
4. Prepare a written commitment to each other to refrain from accusations; disparagement (especially in front of the kids); and harassment by e-mail, phone, etc. Your mediator or family counselor can help you set up a mutually respectful behavioral agreement to help you set forth boundaries.
5. Sleep in separate rooms and be respectful of each other’s physical boundaries.
6. Create a co-parenting schedule and cooperative parenting agreement for both parents to share in the care and responsibility of the kids and the chores of the home.

Specific written agreements regarding who will do what, when, and how, and a commitment to be respectful of each other, will foster a more positive home-sharing experience. Who knows — with a commitment to be respectful, you may find that the divorce won’t even be necessary!

What are the most important attributes of an effective divorce mediator?

WATCH VIDEO FAQ

An effective mediator wears many hats. One of the hats is that of an educator. If you have an attorney-mediator, they can educate you about divorce law. It's very important that you understand family law so that you can make informed decisions in [divorce mediation](#) that are in line with the law, that you know you're going to get a fair agreement and one that a court would sanction, and that you can have a [settlement agreement](#) that the court will accept. Another thing a mediator needs to be an educator about is conflict deflection. Obviously, when you get into a divorce situation, conflict, sadness, and problems have arisen.

Another attribute that's very important is that your mediator knows how to deal with you emotionally. It's very helpful that you have a mediator who has the psychological background and who has had that training, so that when you have those moments when there's a lot of pain, that person will be not only sympathetic and empathetic but also empower you, so that both parties feel that they're getting a fair resolution and feel understood and legitimized.

And finally, you need someone who really has experience, because if they don't have experience, they're not going to know how to get you through this process. You need someone to guide you to the safe harbor of a resolution that's fair to both of you, so that both of you feel good about yourselves and you can go on with your lives in a very positive manner and [co-parent](#) if you need to, and still be friends as you move on with your lives.

WATCH: What is the difference between confidentiality and privacy, and why is it important?

It's a great question, regarding the difference between confidentiality and privacy.

Most people think that when they go to court, they have confidentiality. And they *do* have confidentiality with their attorney — in other words, you have the attorney-client privilege that whatever you tell your [attorney](#), they can't tell anyone else unless you authorize them. And it's the same thing with your mediator: you do definitely have confidentiality. But you have one thing in [mediation](#) that you don't have in litigation, and that is privacy. By privacy, I mean the right to control the information that's disseminated about you.

When you go to court, anything that's filed with the court is not confidential. You cannot seal the record of all of your confidences as you'd like to. So whatever you file in court can become a public record. So your finances, your income, and often what you pay in child and [spousal support](#) can become a public record (even in mediation), but in mediation you have so much more that you can keep confidential about things that happen between you and your spouse that would not be confidential if put into the pleadings. So that is a real beauty and an extra added value of mediation that you won't get in any kind of public forum such as a court.

And even if you settle with two attorneys, you still don't have that privacy, because you still have the documents that were filed in a public record. In mediation, you file a settlement agreement, and you can have a private [settlement agreement](#) and a public settlement agreement protecting all the things that you're concerned about that you don't want people to know. So you have confidentiality *and* privacy.

WATCH: As a mediation professor, tell us what is most important in the process.

The real beauty of divorce [mediation](#) is confidentiality. And confidentiality leads to trust. If you're in a trusting environment, you're much more likely to be able to [negotiate](#) a fair solution to all the issues of your marriage.

In family law litigation, there is no trust: you won't be able to trust your ex-spouse, and it's sad, but it's true. You also can't trust what's going to happen with the other side, or what the judge or arbitrator will do, when you're in litigation. In divorce mediation, however, you can trust because it's confidential, and you can say what you want to say without it ever being used against you. Additionally, you can trust the mediator, because the mediator is neutral and wants to make sure that both of you get a satisfying solution. So the best part of divorce mediation is trust and [confidentiality](#).

“My lawyer tells me I’m eligible for spousal support, but I feel so guilty about my affair that I’m not sure I want to take money from my husband. What should I do?”

Guilt is self-anger — it is also the opposite of *blame*. First, recognize that when a spouse has an affair, it is because the marriage is not working. Of course, it would have been healthier for both of you if you had tried counseling before you engaged with a new partner. Or if you wanted to be with someone else, it would have felt less like a betrayal to the marriage if you had moved out of the home and separated before dating. The truth is that you cannot change the past, but you must deal with reality.

California and Florida and other states have established no-fault divorce. You don’t lose legal rights because you had an affair. You must seek what is fair to you and your spouse under family law — and deal with the emotional issues separately from the financial issues. Apologize to your husband for what he perceives as a betrayal. Take responsibility for what happened, but also know that you are only 50% at fault for the problems in the marriage.

If you are involved in litigation — or even better, mediation — and your consulting counsel and mediator discuss spousal support with you and explain your rights, don’t let your guilt get in the way. The law is very clear that if you have a *need* and your spouse is *able* to pay, and the facts show that you are eligible (to live at the marital standard, especially in a long-term marriage of more than ten years), you need to be realistic. That also means to be fair to both yourself and your spouse. Get some emotional counseling and don’t accept your spouse’s blame and attacks. Tell your spouse that you intend to pursue a career that will enable you to support yourself, as soon as possible considering the factors (i.e. your age, your health, your need to care for small children, etc.).

Educate yourself as to the spousal-support guidelines for your situation. Be realistic about your ability to move on financially after divorce. Don’t depend on your new significant other to take care of you financially. If you are mediating your divorce, you can work on ways to heal the hurt and reduce blame and guilt, by negotiating a mutually agreeable temporary support that will help you take small steps that can be adjusted easily and cost-effectively. But whether you are in litigation, collaboration, or mediation, if you refuse to accept spousal support when it is advised, you may feel guilty now — but it will turn to blame when you have difficulty making ends meet and your spouse has his own new relationship! Don’t be foolish; listen to logic, not your emotionally charged guilt.

Negotiating Your Relationship

Learn how to negotiate the challenges in your relationship, if you want to stay together and not be miserable. This article guides you through strategies for negotiating change.

Are you contemplating divorce? Have you been considering reconciliation during the divorce proceeding? How will you approach a new relationship with the opposite sex? For your relationship to work, you must recognize what your own needs are and understand the perceptions and concerns of your partner.

Most of us didn't have the best role models for an effective relationship. We haven't had classes on building harmonious relationships in our schools. In order to establish a truthful, intimate, and fulfilling relationship between yourself and someone you care about, you must negotiate a mutual gain in the important issues of your life. The following strategy will give you the tools to build the golden bridge of a loving relationship.

When there's a problem in any relationship, you have only four choices to consider:

1. Change yourself
2. Negotiate for change
3. Leave the relationship
4. Stay and be miserable

We often forget that if we're unhappy, it is a choice we are making. If you choose not to be miserable, you have three choices left. Before you end a relationship that once was happy, you need to remember that you are 50% responsible for the problems — no more and no less. So it is important for your own growth to work on yourself. If you work on yourself and do not engage in a negotiation for change — you lose the opportunity to collaborate and grow together. When you negotiate for change successfully, you make an agreement with your partner to change yourself by taking actions that you believe are fair and appropriate for you. You each can make a commitment to yourself and your partner. So it is important to problem-solve together, and not to agree to anything that feels uncomfortable. You must take responsibility to respond honestly and make your discomfort known to your partner when you cannot agree. It is critical to brainstorm solutions and create several options as proposals. A “take it or leave it” attitude will get you nowhere. Your willingness to jointly discuss alternatives for an agreement will lead you to a mutual gain.

Love can be rekindled when expectations are shared, and there is an attitude of being willing to listen to each other's interests and concerns.

If you agree to negotiate for change, the following proven strategy will be your guide.

Your Strategy for Negotiating Change

1. Each of you individually will take time by yourself to write out honest, genuine, answers on the “Assessment” form at the end of this article.

Use the worksheet entitled “Self-Assessment of your Needs” to help each of you figure out what your basic needs are — and how you’ll go about meeting those needs. You must address these issues from your point of view — not blaming the other person for what you do not get. Take a few days to think about these needs and write out your answers from your heart. Make an agreement to meet at a quiet place without interruptions to discuss and share your answers. If your interactions are volatile, agree to meet with a counselor or mediator who will facilitate these negotiations. Make sure you are comfortable with the third party, so you will allow yourself to speak honestly and be vulnerable. It is much less costly to hire a third party mediator than pay the price of a hostile divorce! Remember, if you’ve tried to understand each other’s needs and your negotiations still fail, it may be time for each of you to assess the other choices. If divorce is inevitable, the conflict will be de-escalated after this process. No matter what, this process, if done appropriately, will help you clarify your issues, your needs, and your understanding of your partner.

2. Once you appear at the meeting place, start discussing those areas of concern that are the least inflammatory first to ensure success.

Make an agreement to listen carefully to your partner without anger, judgment, or interruption. When your partner has finished, repeat back what was said as closely as possible. You may ask open-ended questions such as: “What would you like from me? Why do you feel that way? Tell me more about that.” Don’t start negotiating until the other partner is heard. Only ask clarifying questions at this point. Repeat the process with the other partner, repeating and asking clarifying questions. *No judgment, no put-downs: just effective listening and clarifying!*

3. After both of you have actively listened to each other and clarified perceptions and misconceptions, it’s time to brainstorm options for meeting each other’s needs.

Write down on a piece of paper together (or a flip chart) all possible solutions. Do not judge — keep adding options until you have exhausted your creativity.

4. Then go through each option and tell each other what would work for you, and what part of a proposal is uncomfortable.

Be clear about your discomfort. Do not get angry — take deep breaths and slowly explain your feelings without attacking your partner. For example, A husband wants to make love more often

before he goes to sleep. His wife tells him that she also wants more intimacy, but she is very tired at night. She is willing to get up earlier in the morning and make love when she's more alert and the children are asleep. They agree to try this for two weeks, clarifying rendezvous arrangements.

5. Once you are both comfortable with a proposal, commit to trying it as an interim agreement for a couple of weeks.

Follow-up by meeting in two weeks to assess and share feedback. Calendar a specific time and place. The process needs to continue as you each grow and change. You'll need to be honest enough to say what works for you and what does not — without blaming the other person. Separate the person from the problem.

Self-assessment of your needs: What does each of you want from your relationship?

1. Physical Needs

These could include cuddling, romance, sex, helping each other with work, chores, exercise, movement, entertaining, entertainment. Think about your own physical needs, and list them below.

A. What does the wife want?

B. What does the husband want?

INTERIM AGREEMENT

2. Emotional Needs

These could include intimacy; sharing feelings; giving each other moral support; respecting each other's opinions and desires; willingness to disagree without anger, guilt, or blame. This category could also include issues with the children, other relatives, and other third parties.

A. What does the wife want?

B. What does the husband want?

INTERIM AGREEMENT

3. Financial Needs

These could include spending styles, financial responsibility, what is our view of money, savings goals, what does money mean to us, household expenses, vacations, sharing of responsibility, economic choices.

A. What does the wife want?

B. What does the husband want?

INTERIM AGREEMENT

4. Spiritual, Religious, Moral Needs

These could include mutual respect for values, devotion, supporting each other's faith, spiritually growing, morally growing.

A. What does the wife want?

B. What does the husband want?

INTERIM AGREEMENT

THIS AGREEMENT WILL BE IN EFFECT AS OF THE DATE IT IS SIGNED. WE AGREE TO MEET AGAIN ON _____ TO DISCUSS HOW THE AGREEMENT IS WORKING AND FOLLOW THE SAME PROCEDURES FOR FOLLOW-UP AS IN THE FIRST NEGOTIATION.

HUSBAND _____ WIFE _____
DATE _____ DATE _____.

Peaceful Divorce

See how mediation can help you decrease the financial and emotional burdens of litigation during the divorcing process. This article holds the most important tips on making your divorce more peaceful.

Mediation can help you minimize the financial and emotional costs of divorce — despite the hurt, anger, and lack of trust that usually accompanies the breakdown of a marriage. Here are some of the most important keys to creating a peaceful divorce.

“We must pursue peaceful ends through peaceful means.”

— Martin Luther King Jr.

How is it possible to have a peaceful divorce when there is so much hurt, anger, and lack of trust? With the heartache of ending a marriage, how can you avoid the tremendous stress, pain, conflict escalation, and financial devastation of a courtroom battle? The key is to find a mediator whom you both can trust to educate you in the negotiation process and to facilitate collaboration to resolve the conflict and create a satisfying settlement.

Effective Mediation Promotes Peace

“It isn’t enough to talk about peace. One must believe in it. And it isn’t enough to believe in it. One must work at it.”

— Eleanor Roosevelt

For both of you to feel comfortable in divorce mediation, you must have faith that the process will be fair and that your rights will be protected. You need to trust that your mediator has the negotiation skills, legal expertise, conflict management tools, sensitivity, and problem-solving ability to help you reach a mutually satisfying agreement in a peaceful way.

Here’s what to ask when interviewing a mediator:

- Is the mediator an attorney with legal and mediation training? Will he/she educate both of you as to your legal rights and responsibilities before you begin to negotiate the issues so that you will make informed decisions?
- As a neutral third party, your attorney-mediator shouldn’t give either of you legal advice, but will he/she explore legal options with both of you?
- Will the attorney-mediator prepare all the court documents and agreements, and give you the opportunity to review and receive advice from independent counsel before you sign?
- If the mediator is not also a lawyer, does he/she recommend that each of you retain a lawyer to inform you of your legal rights and obligations and to review all agreements before final signing of

the settlement? Is he/she qualified to prepare the legal documents and agreements? If not, who will do so?

- Will you maintain control, so that you only sign when you are satisfied?
- To build trust, will your mediation sessions always include your spouse? Will you be allowed, however, to have an individual caucus by phone with your mediator if there is a sensitive issue to discuss?
- Will you and your spouse receive summary letters after each session documenting interim agreements?
- Will you be given clear tasks to perform to move forward in a timely manner?
- Will the mediator work at your pace to reduce stress?
- Does the mediator meet with you in a peaceful atmosphere? Is he or she serene and composed?
- How will the mediator make you feel comfortable?
- Will he or she enforce positive ground rules that require respectful behavior (i.e., no interrupting, no accusing, no yelling, etc.) so that both parties feel safe and secure?
- Does the mediator have you sign a confidentiality agreement to protect your privacy?
- Will the mediator balance the power so that one of you doesn't feel controlled or bullied by the other? What approach will the mediator use to empower you when you are fearful of asking for what you want?
- How will he/she deflect conflict and keep both of you focused on problem-solving instead of arguing?
- How will the mediator help both of you to honor your interim commitments as you move through the process?
- What will the mediator do to make sure that both parties fully disclose all issues and financial documents so that property can be divided fairly and support calculated correctly?
- How will the mediator deal with the intense emotions that are revealed in session? Will he/she listen effectively and help the parties to express their feelings to clear the air so that negotiations are enhanced and forgiveness can take place?
- How will the mediator deal with difficult issues that you don't understand, such as stock options, business evaluations, and retirement issues? Will he/she arrange for you to jointly agree to use neutral experts to assist you in making wise decisions?
- What tools does the mediator use to guide the parties to co-parent effectively?
- How does the mediator resolve emotionally charged child custody issues?
- What processes will the mediator use to help heal the family pain?

Once you have interviewed and chosen a mediator with whom both of are comfortable, you'll need to do some "peace" work yourself to prepare for the process. A skilled mediator will encourage you to take steps to ensure your serenity and success.

Creating Peace Within Yourself

"It is understanding that gives us the ability to have peace. When we understand the other fellow's viewpoint, and he understands ours, then we can sit down and work out our differences."

— Harry S. Truman

Work on your own serenity. Get help understanding your emotions. Reading self-help books on relationships is helpful; however, the feedback and reflection you receive from a family therapist may be more productive. Your feelings of hurt, loss, and disappointment are legitimate, and how you process those emotions will have a great impact on the peacefulness of your divorce and your life right now.

Empower yourself with information about your legal rights. Reading *Divorce Magazine* and visiting www.DivorceMagazine.com, www.nolopress.com, other divorce-related Internet sites, and the legal section of your favorite bookstore or library will give you additional knowledge. Being well-informed enables you to ask good questions and feel more confident. Consider an appointment with a family law attorney to give you advice as independent counsel — just make sure that this attorney supports the mediation process.

Nurture yourself. Take care of your body, mind, and spirit. Divorce is a stressful transition that can feel overwhelming at times. Get spiritual counseling. Make time for meditation and prayer. Exercise, walk, run, or swim. Use other activities to relieve the stress in your body. Long baths, a massage, nature hikes, and inspirational literature will nourish you. Be kind and gentle with yourself — you deserve it!

Commit to ending the cycle of blame, guilt, and resentment. Recognize that you and your spouse did the best you could with the tools you had. You both made mistakes and had failed expectations. Each of you was only 50% responsible for the problems in your marriage. Don't focus on what your spouse did or didn't do. Focus on the present, and how you can be fair to yourself, your children, and your spouse. The greatest gift you can give to yourself is peace of mind. Your serenity will also be calming for your children and support your desire for a peaceful divorce.

“Peace does not dwell in outward things, but within the soul.”

— Francis Fenelon

How to Negotiate a Successful Relationship Agreement

Are you thinking of leaving your spouse and possibly wanting a divorce? First learn the strategies of recognizing your own wants in life and discovering your partner's to strengthen your bond and work towards a happy marriage.

Are you contemplating divorce? Have you been considering reconciliation during the divorce proceeding? How will you approach a new relationship with the opposite sex? For your relationship to work, you must recognize what your own needs are and understand the perceptions and concerns of your partner.

Most of us didn't have the best role models for an effective relationship. We haven't had classes on building harmonious relationships in our schools. In order to establish a truthful, intimate, and fulfilling relationship between yourself and someone you care about, you must negotiate a mutual gain in the important issues of your life. The following strategy will give you the tools to build the golden bridge of a loving relationship.

When there's a problem in any relationship, you have only four choices to consider:

1. Change yourself
2. Negotiate for change
3. Leave the relationship
4. Stay and be miserable

We often forget that if we're unhappy, it is a choice we are making. If you choose not to be miserable, you have three choices left. Before you end a relationship that once was happy, you need to remember that you are 50% responsible for the problems — no more and no less. So it is important for your own growth to work on yourself. If you work on yourself and do not engage in negotiation for change — you lose the opportunity to collaborate and grow together. When you negotiate for change successfully, you make an agreement with your partner to change yourself by taking actions that you believe are fair and appropriate for you. You each can make a commitment to yourself and your partner. So it is important to problem-solve together, and not to agree to anything that feels uncomfortable. You must take responsibility to respond honestly and make your discomfort known to your partner when you cannot agree. It is critical to brainstorm solutions and create several options as proposals. A "take it or leave it" attitude will get you nowhere. Your willingness to jointly discuss alternatives for agreement will lead you to a mutual gain.

Love can be rekindled when expectations are shared, and there is an attitude of being willing to listen to each other's interests and concerns.

If you agree to negotiate for change, the following proven strategy will be your guide.

Your Strategy for Negotiating Change

1. Each of you individually will take time by yourself to write out honest, genuine, answers on the “Assessment” form at the end of this article.

Use the worksheet entitled “Self-Assessment of your Needs” to help each of you figure out what your basic needs are — and how you’ll go about meeting those needs. You must address these issues from your point of view — not blaming the other person for what you do not get. Take a few days to think about these needs and write out your answers from your heart. Make an agreement to meet at a quiet place without interruptions to discuss and share your answers. If your interactions are volatile, agree to meet with a counselor or mediator who will facilitate these negotiations. Make sure you are comfortable with the third party, so you will allow yourself to speak honestly and be vulnerable. It is much less costly to hire a third party mediator than pay the price of a hostile divorce! Remember, if you’ve tried to understand each other’s needs and your negotiations still fail, it may be time for each of you to assess the other choices. If divorce is inevitable, the conflict will be de-escalated after this process. No matter what, this process, if done appropriately, will help you clarify your issues, your needs, and your understanding of your partner.

2. Once you appear at the meeting place, start discussing those areas of concern that are least inflammatory first to insure success.

Make an agreement to listen carefully to your partner without anger, judgment, or interruption. When your partner has finished, repeat back what was said as closely as possible. You may ask open-ended questions such as: “What would you like from me? Why do you feel that way? Tell me more about that.” Don’t start negotiating until the other partner is heard. Only ask clarifying questions at this point. Repeat the process with the other partner, repeating and asking clarifying questions. *No judgment, no put-downs: just effective listening and clarifying!*

3. After both of you have actively listened to each other and clarified perceptions and misconceptions, it’s time to brainstorm options for meeting each other’s needs.

Write down on a piece of paper together (or a flip chart) all possible solutions. Do not judge — keep adding options until you have exhausted your creativity.

4. Then go through each option and tell each other what would work for you, and what part of a proposal is uncomfortable.

Be clear about your discomfort. Do not get angry — take deep breaths and slowly explain your feelings without attacking your partner. For example: A husband wants to make love more often before he goes to sleep. His wife tells him that she also wants more intimacy, but she is very tired at night. She is willing to get up earlier in the morning and make love when she's more alert and the children are asleep. They agree to try this for two weeks, clarifying rendezvous arrangements.

5. Once you are both comfortable with a proposal, commit to trying it as an interim agreement for a couple of weeks.

Follow-up by meeting in two weeks to assess and share feedback. Calendar a specific time and place. The process needs to continue as you each grow and change. You'll need to be honest enough to say what works for you and what does not — without blaming the other person. Separate the person from the problem.

Self-assessment of your needs: What does each of you want from your relationship?

1. Physical Needs

These could include cuddling, romance, sex, helping each other with work, chores, exercise, movement, entertaining, entertainment. Think about your own physical needs, and list them below.

A. What does the wife want?

B. What does the husband want?

INTERIM AGREEMENT

2. Emotional Needs

These could include intimacy; sharing feelings; giving each other moral support; respecting each other's opinions and desires; willingness to disagree without anger, guilt, or blame. This category could also include issues with the children, other relatives and other third parties.

A. What does the wife want?

B. What does the husband want?

INTERIM AGREEMENT

3. Financial Needs

These could include spending styles, financial responsibility, what is our view of money, savings goals, what does money mean to us, household expenses, vacations, sharing of responsibility, economic choices.

A. What does the wife want?

B. What does the husband want?

4. Spiritual, Religious, Moral Needs

These could include mutual respect for values, devotion, supporting each other's faith, spiritually growing, morally growing.

A. What does the wife want?

B. What does the husband want?

INTERIM AGREEMENT

THIS AGREEMENT WILL BE IN EFFECT AS OF THE DATE IT IS SIGNED. WE AGREE TO MEET AGAIN ON _____ TO DISCUSS HOW THE AGREEMENT IS WORKING AND FOLLOW THE SAME PROCEDURES FOR FOLLOW-UP AS IN THE FIRST NEGOTIATION.

HUSBAND _____ WIFE _____ DATE _____
_____ DATE _____.

Given that my soon to be ex-spouse and I fight so much, is it possible to mediate our divorce?

Just because you and your spouse don't get along doesn't eliminate divorce mediation as an option. A mediator can help the two of you to communicate with one another, a better alternative to the contentious nature of litigation.

Most people going through a divorce are not getting along — that's why they are dissolving the marriage — and yes, they fight. That doesn't mean that they cannot mediate. And in fact, if they litigate, it will cost them more money and more pain, because their attorneys do the fighting for them (on the phone and in court). An experienced mediator knows how to deflect conflict and re-focus the parties on their needs and interests rather than their rigid positions. The qualified mediator will balance the parties, empower both parties to be heard as to their concerns, facilitate the problem solving, and brainstorm solutions that will be mutually satisfying. Divorcing couples are in pain — they are uncomfortable with the conflict — and that is why they want out of the marriage. Family-law litigation only increases the distrust and fosters arguing. The divorce attorneys must argue to a judge to try and win what you want. In divorce mediation, an effective mediator will stop you from arguing with each other, and re-direct the discussion to focus on why you have the position that you do, help you implement a plan to help both sides to get what they really want, within the bounds of the law without the intense acrimony. If you want to work out solutions to move on in your life with less stress, find an experienced mediator who will give you and your spouse the tools to get what you need without fighting. You'll focus on solutions instead of battles!

Should I hire a forensic accountant to assist my lawyer during my divorce?

I'm not certain my lawyer has a good handle on the financial aspects of my divorce. My spouse owns a business and has property, but I'm not convinced I'm getting my fair share. What should I do?

I'm not certain my lawyer has a good handle on the financial aspects of my divorce. My spouse owns a business and has property, but I'm not convinced I'm getting my fair share. Should I hire a forensic accountant to assist my lawyer during my divorce? What should I do?

Should I hire a forensic accountant to assist my lawyer during my divorce?

Since your spouse owns a business and has property, it is critical to employ a forensic accountant (CPA) who has extensive family law experience for the business, as well as a certified real estate appraiser since there is real property involved. Your attorney should be able to recommend qualified experts. If you and your spouse each hire your own experts, there will be great expense and time used up.

In California, even if your attorney has dealt with business valuations before, and you are concerned about spending money, you need to have an expert in the field to analyze your marital portion of the business including good will. He/she must determine a cash flow analysis to help you find out your spouse's true monthly income in case child and/or spousal support are at issue. When a person owns his/her own business, there are many perks (car payments, country club membership, meals, etc.) which needed to be added to the actual salary taken.

In order to minimize the costs and stress of using experts in a divorce, you would save marital assets and decrease the conflict if you and your spouse used neutral experts in [mediation](#), or if your attorneys can help both spouses to agree to use one neutral expert for each valuation (one certified appraiser or forensic accountant). You will need to make it clear to the agreed-upon evaluator that he/she is not representing either side, but is to meet with both of you at once, hear your issues and concerns, and make a fair analysis based on objective standards which are approved by the court in your jurisdiction. Both of you should feel comfortable with your expert. If one or the other party pays for the expert's services, it should be clear in writing to all experts that the report is to give a non-biased evaluation.

You are always advised to get independent advice with the accountant of your choice to review any report. You and your spouse should agree ahead of time that any report will serve as an advisory opinion. This gives you a little leeway to negotiate, and if you fail to agree, it provides a

strong leverage for the court to make a determination. Using a neutral professional could save you thousands of dollars and hundreds of hours of stress and court time.

How can I maintain confidentiality and financial privacy in my divorce?

Mediation or collaborative divorce or both methods of ending your marriage which will keep your financial and personal information behind closed doors.

In most states when you file documents in a divorce, they become public record for all to see. Some states allow you to black out your social security number to protect you from identity theft, but that is about all. But if you are careful, you can protect your sensitive information from public display. High profile people and celebrities do everything that they can to keep their “dirty laundry” and finances out of the courts and public eye. They usually agree to settle outside of court, either by using attorneys who commit that they will not force the issue to litigation or for an effective and less costly procedure, they’ll use divorce mediation.

Although both parties must file the specific court forms dealing with child and spousal support (alimony in some states) and the divorce decree, it is not necessary for them to list all of their marital property in the court documents. In divorce mediation, or in collaboration, the parties will protect their privacy, their identity, and their specific financial identifiers by entering into a confidential marital settlement agreement. You have a fiduciary duty to disclose all financial documents to each other when divorcing, but you don’t have a duty to disclose everything to the general public. In mediation or collaborative process you may sign a pre-confidentiality agreement to keep confidences and finances secure by guarding information, such as the tax returns, and financial statements out of court files. In mediation, private arbitration or negotiation, you may avoid depositions and discovery that could be used in a trial setting. Both parties may be represented by counsel or share one neutral attorney/mediator. In mediation, they should have their documents reviewed confidentially by independent counsel before signing any agreement to make sure they are protected. Upon settlement, sensitive information is kept out of the courts files and out of the public settlement agreement. A private agreement is maintained by the parties and is enforceable in court as well.

Be sure to tell your attorney or mediator about your privacy and identity theft concerns before you hire him. Ask him how your financial information and personal information will be kept out of the court records. Settle the case as quickly as possible and get an agreement from all of the parties that instead of entering a stipulated judgment, you will resolve the case with a private settlement agreement, and file a simple public settlement agreement in the court file

Should I change my name back to my maiden name?

Anger at your spouse may cause you to want to change your name, but this requires filing paperwork with the authorities and may be more trouble than you thought.

Many women want to change their name back to their maiden name. Think this through carefully. If you have children in school, it can be very confusing and uncomfortable for them and their teachers if their mother suddenly has a new name. If you had a short-term marriage, and no children, or grown children, it is usually very easy to change your name as part of the divorce. In fact, many states have a box to check on the court forms indicating that the divorcing wife will return to her maiden or former name. If you change your name pursuant to the divorce there is usually no extra cost and no extra burden.

If you want to change your name because you are angry with the spouse that you are divorcing, go beyond the anger and think of the ramifications. If it will be detrimental to your career (you are known well as a businesswoman with this name) or it will hurt your children, then consider those issues. Also, it will be very important to change your name with the credit-reporting agencies, social security, the IRS, the state tax authorities, your professional associations, etc. If the change will not hurt you or anyone else, and it is a name you like, go ahead in change it; if you didn't like your maiden name, this may be a time to create your new "stage" name.

My spouse and I are about to divorce and I'm concerned that the divorce ...

Kill two birds with one stone by protecting your business and simplifying your divorce process by opting for mediation. This will keep your business out of the public eye, while allowing you to make decisions alongside your spouse instead of promoting con

“My spouse and I are about to divorce and I'm concerned that the divorce process is going to disrupt my business. What can I do to protect myself from interference from her and her lawyer?”

Whether the business you manage and own is marital property, community property, or your separate property you have a fiduciary duty to disclose information about that business and its value to your wife's attorney and the court. If you owned the business prior to the marriage and had a pre-marital agreement that your spouse had no ownership and that any increase in value would be yours only, it is likely your separate property, a court could order that no valuation need be made. If you started the business before marriage, but worked in that business while married and there was no pre-marital agreement, it is likely that your spouse has an interest in its increased value during the marriage.

So you would need to get a forensic accountant to value to determine separate verses community interest. Your wife would have the right to get her own forensic accountant to value it and so would you (very costly). Additionally, if you started the business after the date of marriage, it is marital property and considered community property in states like California. You would of course be required to value the business for property division purposes. Additionally, since child and spousal support are based on income, the forensic accountant will need to determine what your actual controllable cash flow really is to see what is available for support.

What a business owner decides to take as salary is not what is going to determine support since the owner could take a low salary and utilize excess profit in many ways which a court would deem to be eligible for income.

If you are in a litigated or adversarial process for divorce you can expect extreme disruption of your business. Your wife's lawyer and her forensic accountant have a right to subpoena a great deal of documents, ask you to answer written questions, depose you and others at work. It takes a great deal of your time and the time of your employees. Additionally there is no privacy, no confidentiality of those financial files. This could be embarrassing to you, your business and hurt your reputation. Much of this information is shared with the court and could become available to those who see the public file. It is not wise to litigate when you have a business. You could also ask for court orders that your ex-spouse not come to the office, not call the office, etc, but she has a right to know the finances. Trying to keep things secret to protect the business will only inflame the situation and cause further conflict.

In order to protect the financial privacy and security of your business and keep the disruption to a minimum — your best bet is to engage in a confidential mediation process for the divorce. Although you still have a duty to disclose all to your spouse, her consulting counsel, an agreed upon forensic accountant and the mediator, the general public doesn't need to know your business or finances. And the court doesn't have to invade your livelihood.

If you are in a collaborative private mediation, you still have a fiduciary duty to disclose the same information and documents, but if you do it voluntarily by agreement, you can save on costs, time, aggravation and disruption. You will deflect the conflict and save a great deal of money. Even better, instead of both spouses hiring sparring accountants — you can agree to hire a mutually acceptable neutral forensic accountant who will give a fair range of value of the business and determine the cash flow. That analysis will be used to negotiate a final valuation and quickly determine support issues. By using a neutral accountant, you drastically reduce costs, reduce tension, limit

excess delays, and decrease disruption in the business- since only one accountant is making demands and visits. You can keep your finances out of the public eye.

Instead of escalating the conflict with restraining orders against your spouse or her against you from doing your business, your mediator will facilitate the problem solving so that all of the issues regarding your business and the daily workings and “boundaries” can be addressed in a civil manner. Both parties will be encouraged to keep the business going to flourish since it benefits you both. The greater the income the greater the ability for the business to help support the family and move on peacefully and prosperously.

If a divorce involves complex issues, can you use a mediator?

Mediation is not just an option when dealing with complex divorce cases, it's the informed choice. Working with a mediator alongside your spouse can allow you to resolve issues more quickly, and in a way that benefits everyone involved.

Movie stars and wealthy people with numerous houses, myriad businesses, and extensive assets know that their complicated divorce issues will best be settled through a mediator, and not through a battle in the public eye. If your divorce involves complex issues, the better off you are to resolve the issues in divorce mediation.

If a divorce involves complex issues, can you use a mediator?

In the divorce mediation process, the parties can agree to use neutral experts to help them to simplify the issues. For example, the parties often agree to use one forensic accountant (to value the business, determine the cash-flow analysis, and help with the issues of stock options, 401Ks, and business valuation), appraisers, actuaries, business evaluators, etc. These experts provide a report based on fully disclosed information. The mediator requires complete disclosure without formal discovery. The issues can be presented for the parties to clarify and ask questions (with or without independent counsel present), so that the complex issues are made much more understandable in a less formal setting where the rules of evidence are relaxed, the strict judicial procedures are not required, and there are fewer time constraints.

Divorce mediation allows for complete disclosure yet *complete* privacy. Because of First Amendment Rights, courts will now refuse to seal documents or keep issues out of public record. The fear for many disputants (now with all of the documents being electronically scanned) is that hackers can get into the system, and some courts are putting private information online and making it easily accessible to third parties.

Litigation often makes complex issues even more complicated in that the subpoenas that divorce lawyers issue in litigation use are far broader than what would actually be necessary for use in an agreed-upon expert setting. Formal Discovery often requires more information than actually is needed. The costs increase tremendously, and often the vast information may make it easy to miss the heart of the matter when reviewing numerous irrelevant documents. The process can be streamlined when the neutral expert looks through documents and determines what is necessary for him or her to review rather than just subpoenaing every paper possible.

When the parties agree in mediation to use a neutral expert, there is less confusion because there are no conflicting exaggerations from opposing experts. Instead, the agreed-upon expert, knowing that he or she is hired by both parties, has a duty to be as objective as possible. Just as

in any other case, the mediator, family-law attorneys, and clients will do what they can to get the most qualified expert to help the parties reach a truly satisfying agreement. Clients using opposing reports and fighting the information battle often “can’t see the forest for the trees” to get to the main issues of valuation and fair distribution of assets.

The more complex the issues, the more likely they will be resolved quickly, cooperatively, and effectively using the problem-solving approach in the divorce mediation process.