

Divorce Mediation

One alternative to the litigated divorce is the mediated divorce. It has its advantages, and its drawbacks. Mediation offers a neutral approach to handling your divorce and offers a more private, self-controlled, and usually more affordable means by which to handle your case. Unfortunately, many mediated cases get knocked off track early on – or worse – one party repudiates a mediated agreement (after all the time, money, and hard work went into it) after learning a little law from a friend, relative, or lawyer.

In a mediated divorce, both parties usually work with a single, neutral, mediator. The mediator helps the parties reach an agreement. Mediated settlements are not imposed on parties by attorneys or judges, but rather are drafted by the parties themselves (the mediator does the typing, the parties dictate the language). In sum, you will not be handed a preformed, boilerplate, settlement that may be unacceptable – you will craft your own agreement in your own words. More important, because of the slower, more personable, more focused approach afforded by mediation, you will be able to address emotional and psychological issues that the court system simply cannot even begin to approach. For example, Illinois law prohibits judges from considering "marital misconduct" in divorce cases. A mediated settlement, however, can accommodate apologies and amends and lay the groundwork for a stable, healthy, separated future. Studies show that settlement agreements reached through mediation are **much** more likely to be honored by both parties, to be modified when necessary without conflict, and to reduce future conflict than orders imposed by a judge.

Most divorce mediators these days are not lawyers – they are trained mediators and usually do not hold a law license. Care should be taken to ensure that comments made in mediation are rendered confidential and may not later be made part of the public record. This, and other, safeguards can really make the stress of a divorce a little less intense with the benefit of privacy and security of your family's personal issues.

Another benefit of mediation is that all statements made during the course of (properly initiated) private mediation cannot later be used against either party if the couple decides to terminate mediation and instead take their case to court.

Mediation offers a way for you and your spouse to control the divorce proceedings on your own terms and at your own pace. You are not bound by court dates nor court orders. This can save a lot of time, money, and reduce the stress of either not being ready to go to court – or the opposite, wanting to proceed at a much quicker pace, but unable because the court system is too busy and too slow. Because private mediation takes place outside the reach of the court system, it usually helps everyone maintain a more peaceful home life – and that is a tremendous benefit to the children.

The Downside to Mediation: Mediation has one big drawback. Most mediators are not attorneys and do not offer legal advice or even legal information – they focus on the emotional and psychological aspects of the case in helping the parties reach their agreement. Most divorcing couples don't consult an attorney along with the mediator – they wait until the agreement is done before they check with an attorney to see if it will protect them the way they hope. Think about it:

- you're making what are probably the biggest financial decisions of your life
- you're dealing with the most powerful emotional and psychological issues that you'll probably ever have to face
- you're expected to create a binding agreement addressing all issues that will affect you and your children for the rest of your life and
- **you're working without a net.**

Most divorcing parties do not consult an attorney before or during their mediation. Instead, they work out their "agreement" in detail and then ask an attorney to review it. As the attorney identifies problems with the proposed settlement, each subsequent discussion becomes more and more likely to de-rail the entire process.

That's where collaborative law comes in.

This article was written by the law office of Cowell Taradash, P.C., whose attorneys are familiar with the latest court decisions, recent changes in the law and even the tendencies of many judges. We can help. Contact us at 866.987.6723 or info@illinoisdivorce.com.