

Design Your Own Divorce

By Geri Carter, LMHC, Family Mediator

Why Mediation?

An attorney friend of mine recently told me that he was embarrassed by how easy it is to get a divorce. No truer words were spoken. What many couples don't realize is that divorce is 85% emotional and 15% legal. The emotional component is, by far, harder to work out than the legal issues.

Couples can go from an unhappy marriage to a miserable divorce, unless they get over the emotional turmoil that accompanies the divorce process. This makes divorce a mental health issue. Couples have to be able to cooperate and do in the divorce what they were not able to do in the marriage. Sometimes, no longer living together and realizing that future happiness is at stake, couples will decide to meet the challenge and cooperate. Only then are they willing to come together and design their own divorce allowing them to have more control over their lives.

I know this because I am a family mediator who helps couples resolve their difference in an inexpensive and reasonable manner. I have helped countless couples through the divorce process in a way that is, for the most part, friendly, easy, fair, inexpensive, peaceful and mentally healthy. The use of lawyers is kept at a minimum. Many times the more litigation is used, the less control couples have over their money, their children, their lives, and their schedules. If a divorce goes to trial, a judge, who spends little time with either party and who is only given a brief impression of each person, will make a quick decision regarding children, money, schedules, and a couple's future.

Smart couples understand this, and will make a commitment to work on the emotional component of the divorce before or during the mediation process. This means that the person who decided to leave needs to work through the guilt and anxiety associated with leaving a marriage. At the same time, the person who was left has the psychological work of removing his or her partner from the quality world and getting over the anger, hurt, and bruised ego of being left. Most of all, the couple has to resolve to no longer fight and no longer wish to win. In short, they need to free each other and give up trying to control the other person. Instead they need to cooperate and come up with a solution that allows them to live happy lives. For couples like these, peaceful mediation is the only logical choice.

What is the cost of mediation?

Mediation is a drastically less expensive way to divorce than using a traditional lawyer. Costhelper.com says that the average cost of a contested divorce (where both parties are highly emotional and hire attorneys to duke it out) could easily cost \$50,000 or more. An uncontested divorce (where one attorney is involved) could still cost up to \$25,000. In a contested divorce no one wins, or ever leaves the courtroom feeling like the process was fair. And this is correct: It is not fair. One attorney, after the trial was over (not before) said, “you are naïve to think that there is justice in the legal process (family law), there is no justice.” Thinking that one is going to win, get even, or make the other person pay, leads to a life of misery and expensive legal fees.

Instead, when mediation is used, one needs to have the attitude of cutting his or her losses, giving the other party a way out—both emotionally and financially--and doing what is necessary to start a new life. The average cost of my mediation is \$1,500.

What is The Process?

First, a couple usually hears about my service word of mouth from past clients who have been through the mediation process or from a referral from another therapist who has often coached and taught the couple to give up bitterness and resentment and to move into acceptance and cooperation.

Second, the couple meets for a consult, and the mediation process is fully explained. I help them to see that they have the freedom to “design their own divorce” within reason and, of course, within a few legal restraints. What the state of Florida requires is simple: the parties must be residents of Florida for at least 6 months before filing the petition, a marital separation agreement must be designed and signed, and financial affidavits (which I supply) must be completed. Additionally, if children are involved, a solid parenting plan must be designed, a child support calculation will be done and both parties must participate in a court approved parenting class. That is the 15% legal part. It really is that easy.

Third, the couple starts hashing out the details of their divorce. No two mediated divorces look the same. It really is up to the couple on how they want to split their financial assets and debts and how they want to handle the children.

Negotiating the emotional component of the divorce is the trickiest part of the mediation, and is two fold. First, it is to make sure that the couple practices good mental health. This means that while they are in the process of going their separate ways, they quit trying to control the other. This requires them to be respectful in negotiating the details with me. Some of my ground rules are no criticizing, blaming, bringing up the past (Florida is a 50/50 no-fault state, it doesn't matter what went on in the marriage) no

name calling or yelling. If the couple can't do this, then I'll split them up (called caucus), so they can take a time out from each other. **If they find that they cannot sit down and work out the details of their divorce, then what they want is a good fight.** In that case, they can still hire an attorney. The ironic thing is that they will still have to mediate, even with attorneys, but they will be paying each attorney as well as the attorney mediator. For low-end attorneys this would cost around \$700.00 an hour. Note, this is per hour!

The other part of the mediation is to make sure that each party is heard and the process is fair. I am especially tuned into the quiet party, making sure that their desires are aired.

Once the details of the divorce are decided, the typing of the documents begins. This process takes one to two hours depending on the size of the agreement. Mediations including minor children take longer because there are naturally more details to attend to when we are dealing with the very real human lives of children. Also, more prosperous clients' divorces take longer to type because of the greater number of assets such as real estate, stocks, IRA's, and "toys".

When the typing is completed, the couple returns to the office to go over it with a fine-toothed comb. We read it word for word, making sure that what is written is what both parties expressed during the "hashing out of the details". If both parties are in agreement, then they sign, and the document becomes a legal and binding contract. If one of the parties is not in agreement, we renegotiate until there is satisfaction. No one signs anything they don't agree with, and nothing is final and legal until the separation agreement is signed.

Finally, when the couple has reached an agreement, someone—either a lawyer or non-lawyer has to file the petition for dissolution of marriage at the courthouse. This starts the process of obtaining a date on the court docket so that a judge can finalize the divorce. As stated above, Florida couples are required to file notarized financial affidavits. If minor children are involved, couples are required to take a court approved parenting class and provide proof of taking this course. These ingredients also need to be filed at the courthouse before a divorce can be granted.

It is easy to see that Mediation is the logical choice for savvy couples today—especially in this hard-hit economy. It is peaceful, mentally healthy, cheap, friendly and easy. Caution, though, it is not for everyone. If you like spending your hard earned money (for many couples this means spending the equity in their homes, savings, retirement, and children's college), on fighting and defeating you're soon to be ex, and if you like worrying about how to stick it to the other, hire an attorney!

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