

7 TIPS TO TAKE YOU FROM SEPARATION THROUGH DIVORCE USING MEDIATION

A PRACTICAL GUIDE



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In recent decades, mediation has become the preferred method of dispute resolution. In family law cases, it has become the norm. It is quicker, cheaper and less complicated than any other way to resolve your issues. Most importantly, it lets you control the process and the outcome. In working together with your spouse or partner you will create an agreement that can be creative, that you agree with and is more likely to be honored by the other side. But many clients wonder how to get from a situation where you cannot agree on seemingly anything to mediation and then resolution. Below are some tips.

1. UNDERSTAND WHAT MEDIATION IS AND HOW IT DIFFERS FROM OTHER DIVORCE PROCESSES, PARTICULARLY COLLABORATIVE LAW AND LITIGATION.



If you are married and seeking to separate from your spouse and eventually divorce or co-habiting and want to separate from your partner, you must determine who will live where, how to divide your assets and your liabilities, and who will pay for what. If children are involved, whether parties are married or unmarried, straight or gay, they will have to decide how to share access, decision-making and child support. If you are in one of these situations, the question is how the decision made, not whether it will be made.



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The first step is to educate yourself on your options to get you from where you are to where you want to end up. If any of your goals are to separate, determine custody arrangements, develop a separation or marital settlement agreement, or to obtain a divorce, then your primary options are:

- ***Each party may hire his or her own litigation attorney***

Each attorney only represents one party, and in the traditional model, one files a complaint, the other files an answer to the complaint, both serve expensive, burdensome and time consuming discovery, and eventually after each side has spent vast amounts of money (easily into five figures) the lawyers negotiate, with or without a mediator, and 95-97% of the time the case settles.

- ***A newer model, called Collaborative Law, has recently emerged***

Virtually all family law cases settle—about 95-97% of the time. So within the last few decades, some lawyers (such as Bob Baum) have been specially trained to serve as negotiation counsel through a process called “Collaborative Law.” The reasoning is that it is better to have a highly skilled negotiator on your side than a litigator whose trial skills are unlikely to be used and whose negotiation skills may not be up to par. In collaborative law, each party hires a specially trained collaborative lawyer to actively assist in the negotiations between the parties. The two lawyers and clients, and usually “divorce coaches” and sometimes a divorce financial planner and/or child specialists meet to craft a solution. In the collaborative law process, each party hires his or her own attorney with both attorneys working “collaboratively” with the parties to obtain the best outcome possible—a “win-win” outcome. Because of the expense, this process is used, mostly in highly contentious cases, where the parties cannot communicate directly or when one party does not feel that mediation is appropriate.

- ***Mediation—the fastest, least expensive way to achieve your goals***

The Author has over 30 years of litigation, negotiation, collaborative law and mediation experience, so he can attest that mediation is the most cost-effective, fastest way to achieve your goals. In mediation the trained neutral stays neutral throughout, unlike in the litigation or Collaborative Law models. Both parties work with one skilled mediator or sometimes co-mediators who guides you through the process, finding creative solutions with the goal of placing the final decisions in a legally binding agreement. Please remember, that the mediator can provide neutral or clear-cut legal information, but he cannot provide legal or strategic advice that would favor one party over the other. It is common, once a separation agreement is crafted for each party to consult with a separate attorney to ensure that his/her best interests are protected.

The difference between the choices above is time, money and the emotional toll that each process exacts. Remember, at any point in the mediation or collaborative law process you can change your mind and go with one of the other options. However, once you start litigation, unless the other side agrees, it may be too late to stop that process.



3. YOU HAVE CHOSEN MEDIATION AS YOUR PREFERRED METHOD OF DISPUTE RESOLUTION. NOW WHAT? COMMUNICATE THAT IDEA WITH YOUR PARTNER.

Communication between you and your partner has broken down or been a struggle as of late (and maybe longer). How are you to communicate with them? Communication between you and partner up until now has most likely been about how to fix or improve your situation. Now that you have decided to move on, a conversation about how to best move both of your lives into the future may not be as difficult as you think. Explain to him or her what mediation is. If you have chosen a mediator, encourage your partner to call the potential mediator to allay any concerns and to find out about the process. You might also show him or her the mediator's website. Once you have succeeded in presenting your idea for mediation, most often the other side will agree. After that, most couples that come to their first mediation session find that the process was less painful emotionally and financially than they expected it to be, and continue with it until an agreement is reached. A skilled mediator will guide you through the process, minimizing the negotiation's adversarial nature while maximizing your chances of success.

2. PREPARE AS IF YOU ARE GOING TO UNDERTAKE ONE OF THE MOST IMPORTANT DISCUSSIONS OF YOUR LIFE – WHICH IT IS.

It is important to know your needs and wants before you begin mediation. Needs are what you really must get into the settlement. Wants are what are on your wish list—where you may want to start, but understand that you need to be flexible. Neither party will get everything he or she wants. Being able to sort out needs from wants is very important to a successful negotiation.

To lay the foundation for the child portion of the mediation, here are some topics to think about. Write down some of your thoughts in advance and gather information:



*Legal Custody

Matters involving the long term health, education and welfare of your child.

- Are there any foreseeable issues in which you and the other party are likely to disagree?
- If yes, is it in the best interest of the child for you to have sole legal custody or joint legal custody with you as the final decision-maker?
- If not, is there any reason to argue against joint legal custody?



*Physical Custody, a/k/a Child Access

- The most important question is, what schedule is in the best interest of the child?
- First, think about the regular, school year schedule. Some examples are:
 - *50/50, such as every other week, or 2/2/5/5 (e.g. Monday/Tuesday one parent, Wednesday/Thursday the other and alternate Friday through Monday morning)*
 - *60/40 or 65/35*
 - *Every other weekend and maybe a mid-week overnight or dinner*

There are many other options:

- Think about the summer schedule. This schedule may or may not be the same as the school year schedule. It may actually be the reverse of the school year schedule.
- Then think of what holiday schedule would be in your child's best interest. Think about what holidays you have and don't have off. Consider the other parent's holiday schedule. Some dates to consider are:
 - *Mother's Day/Father's Day*
 - *Children's birthdays*
 - *Parent's birthdays*
 - *The Monday holidays - Labor Day, Memorial Day, Martin Luther King Day and President's Day*
 - *Christmas/New Years and the winter break period*
 - *Easter and the Spring break*
 - *Other religious holidays such as Rosh Hashanah, Yom Kippur, Diwali, Kwanzaa*
 - *Thanksgiving - a one meal deal, the entire weekend or something else.*
 - *School closings, e.g. teacher professional days, Election Day, snow days (who is responsible)*



*Gather Financial Information

- For day-to-day living decisions, prepare a budget. A good template is the one used throughout the Maryland Court system, which can be found at: <http://www.mdcourts.gov/family/forms/dr31.pdf>
- If you are considering requesting or having to pay alimony, or if you have minor children, then your budget is important so that you can see what you need/can afford to pay.
- Even if your case is not an alimony or child support case preparing a budget may help you decide how and where you can afford to live.

*Gather Property Information

Put together a list of your major physical assets—house, cars, time-shares, boats, furniture. Include on the list the value of property, any loans against the property, when the loans are due, and how the property is titled.

- If you believe the property is non-marital, e.g. it is pre-marital or gifted just to you, note that on the list.
- Maryland is an equitable property state, which means that your property is to be divided fairly, based on numerous factors. “Equitable” property division does not necessarily mean equally, although oftentimes that is the result. At mediation, you have a chance to discuss why the property should be divided a certain way—equally or otherwise.

***Put Together a List of Debt.** List any loans and credit card debt and how they are titled.

- Joint debt is debt you are both co-signers of, such as joint credit cards. Generally you are both legally obligated to pay joint debt.
- Marital debt has a specific, narrow legal meaning in Maryland. It is debt accumulated to acquire marital property. So credit card debt accumulated on one person’s credit card to buy food or go on vacation is not considered marital debt.

***Pull Together Documentation of the Above.** In addition, gather:

- At least the last two year’s tax returns and all attachments including W-2 and 1099 statements.
- Last three pay stubs
- Credit report (which you can get for free)
- Most current and end of year retirement account statements
- Employee benefits brochure
- Life insurance policies
- Current and end of year bank account statements
- Current and end of year investment account statements
- If you provide health insurance for your children, get specific information from your employer about how much additional it costs to ensure the children over what an individual policy would cost for you.

While gathering that information may be a pain, remember that knowledge is king. The best decisions are informed decisions.



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4. THINK ABOUT WHAT SCENARIO IS IN THE BEST INTEREST OF THE CHILDREN IN REGARDS TO SPENDING TIME WITH THEM.



If you have minor children, decide what legal custody (i.e., decisions about the long term, not day to day issues) and access scenario would suit your children best. Don't concern yourself with what your spouse wants. It is the mediator's job to find creative solutions that everyone can live with. If you and your spouse agree on an access schedule, bring your ideas to mediation. If you cannot agree, then bring your choices with you to mediation. A skilled and experienced mediator can get you from where you both are now, to a place that will satisfy all parties involved and most importantly, be the best outcome for your children.

5. TRY TO SETTLE AS MUCH AS YOU CAN BEFORE COMING TO MEDIATION—IT SAVES YOU TIME AND MONEY, DON'T STRESS ABOUT NOT BEING ABLE TO RESOLVE ANYTHING—THAT'S WHY I AM HERE.



It is common that couples may have not discussed the terms of any potential agreement. They may currently agree on some of the issues that they need to decide upon but are stuck on other issues.

If you can, attempt to discuss some or all of the topics listed below and see where each of you stand. This is not a complete list, only a starting point. The more you can decide upon before mediation, the less time it will take.



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- If still living together, when one party will move out
- Marital Home – sell, buy-out, “use and possession”
- Child custody: legal and physical
- Division of assets (retirement accounts and personal property, such as automobiles and/or real property)
- Alimony
- Child support
- Division of liabilities (mortgage(s), loans)

6. FOCUS ON THE FUTURE, NOT THE PAST.

Staying focused on where you want to head after your separation and potential divorce is the key secret in expending the least amount of emotional energy as you go through this process. It is common and easy to think about all the things that have brought you to this point in your life. You are about to begin a new chapter in your life's story and it is all unknown. The unknown is often scary and uncertain. There is likely to be resentment towards your partner. The only feelings you have towards him or her are tied to the past, a past that is tied to failure and disappointment. Resist going to that place.

Think about where you want to be. What are your goals for the near future? Where would you like to see yourself in a year? In five years? Your goal is not to say “my husband/wife has put me in a bad situation and now I must struggle in the future.” Your goal is to say “in a year, I want to be focused on the joy that is my children, I want to look forward to coming home to a calm home that brings me peace, I want to plan a family vacation” and comfortable thoughts to keep you focused and help get you to an outcome you are comfortable with.



7. DETERMINE YOUR PRIORITIES.

Again, it is easy to dwell in the past and live in the stress that is your current situation. You live it day in and day out. Take a few minutes and prioritize your goals. Here are a few areas to consider:

- *Coming out of your separation and divorce with ability to communicate with your spouse or partner*
- *Can you be financially independent without alimony*
- *Creating a child access schedule that is in your child's the best interest*
- *Legal custody—have you had arguments about your child's education, health or welfare before? If not, how likely are these issues to cause disagreements in the future?*
- *Staying in your home versus selling it*
- *Your retirement benefits- share them or keep them and possibly buy out your spouse's interest*
- *Financial considerations such a dividing up joint bank accounts and credit cards.*

Conclusion

Mediation is not the only way to separate and divorce, but it is the least expensive way (both financially and emotionally) to go through the process with your family's best interests at heart. It is the best way to stay focused on the future and give yourself an opportunity to heal. In the end, a skilled mediator like Bob Baum will get you through to the other end of the tunnel you are about to go through saving you time, money and emotional expense.

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