

SURVIVING YOUR DIVORCE:

TIPS AND SUGGESTIONS

GETTING STARTED

FINANCIAL DISCLOSURE AND BUDGETING

YOUR DEPOSITION

MEDIATION AND SETTLEMENT

DIVIDING THE MARITAL ESTATE

CUSTODY

AFTER THE DIVORCE

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FINDING A GOOD ATTORNEY

If you have decided to get a divorce, one of your first steps should be to find a good lawyer. Even if you have not made the final decision yet, you will benefit from getting some initial advice and information. An initial conference with an attorney will help you understand the divorce process, the cost, possible outcomes, and things you should do and not do to protect yourself.

If your spouse has already engaged a lawyer, you should get one too. One attorney cannot represent both parties to a divorce even when you and your spouse have agreed on everything. Although it is sometimes possible to handle a divorce without an attorney, representing yourself is not advisable when your spouse has an attorney and you may not want to agree to everything they want.

You may have used an attorney in the past for some other purpose (a will, traffic violation, tax question, to incorporate your business, etc.). You probably do not want to hire this person to handle your divorce. You want to find an attorney who focuses his or her practice on family law, someone who handles a significant number of divorces every year. An attorney you have used in the past may be a good source of a referral to a family law lawyer, however. Other sources for referrals include:

- Friends and relatives who have been divorced.
- Divorce support groups.
- Your city, county, and state bar associations.
- The American Academy of Matrimonial Lawyers (www.aaml.org).
- Martindale Hubbell Law Directory, which is available at libraries or online at www.martindale.com.

Another way to find the names of prospective family law attorneys or to learn about attorneys who have been recommended to you is the Internet. Many attorneys have websites that provide a great deal of information about their practices and experience. Go to the About me/us page and read the attorney's biography. Often you can get the answers to some key questions that will reveal the skill level of the attorney such as:

- How long the attorney has been in practice.
- Whether he or she does family law exclusively, devotes a substantial portion of his or her practice to family law, or just takes the occasional case.
- Whether he or she has won any awards or distinctions in the family law area.
- Whether he or she belongs to any family law associations and takes a leadership role in the family law bar.
- Whether he or she teaches or trains other family law lawyers.
- Whether he or she is certified as a family law specialist by the state bar association. (Not all state bar association's offer certification).
- Whether he or she is a Fellow in the American Academy of Matrimonial Lawyers (a distinction that shows a high level of skill).
- Whether he or she is rated AV by Martindale-Hubbell, the highest rating available for skill and ethical integrity.

After you have some names and have checked out the attorney's websites, schedule initial consultations with the most promising. The initial consultation is typically free. You may want to ask the following questions if you have not already found the answers on the attorney's website:

- How long have you been in practice?
- What proportion of your practice is devoted to family law? How many divorces have you handled in the past 6 months?
- How often do you represent the wife? The husband?
- How many cases have you handled that involve [specific issues in your case: high assets/complex finances; suspected hidden assets/illegal activity; a family business; a professional practice; bankruptcy; tax issues; high conflict between parties; contested custody; substance abuse; domestic violence]?
- Will you be handling my case exclusively or will other attorneys at your firm also be working on my case? If so, who are they and can I meet them?
- What is your general philosophy on divorce cases? What proportion of your cases do you resolve through settlement and what proportion through trial?
- How will I be billed, hourly or by the case? What is your rate? Will I be charged a different rate for court appearances? How often will I be billed? What charges, other than your time, am I responsible for? Do you require an initial retainer and, if so, what is the amount? Will you ask me to sign a retainer agreement that spells all this out?
- What are your office hours? What are the best times and ways to reach you? How can I contact you after hours with regard to an emergency? How long does it typically take you to respond to a client?
- If you are not comfortable with any of the attorney's answers, do not hesitate to interview another attorney until you find one with whom you are comfortable.

INFORMATION TO BRING TO YOUR FIRST MEETING

Once you have signed on as a client, your attorney will need some basic initial information from you. You can save some time if you gather this information in advance and bring it with you to your first meeting. Typically, your attorney will need the following:

ABOUT YOU

- Name, address, email, phone numbers, and Social Security number.
- Date and location of your birth
- How long you have lived in the state and county
- Name, address, and phone number of a relative or close friend
- Name and address of your employer
- Length of employment
- Job description
- Gross and net pay
- Work hours

- Education completed, degrees and licenses earned
- Times previously married
- Date divorced
- Support obligations and custody arrangements from prior marriages
- Your current state of health and physician's contact information
- Addresses where you have lived for the past five years

ABOUT YOUR SPOUSE

- Name, address, phone number, and Social Security number
- Date and location of birth
- How long a resident of the state and county
- Name and address of employer
- Length of employment
- Job description
- Gross and net pay
- Work hours
- Education completed, degrees and licenses earned
- Times previously married
- Dates divorced
- Support obligations and custody arrangements from prior marriages
- Current state of health and physician's contact information

ABOUT YOUR CHILDREN

- Names, dates of birth, social security numbers
- Special needs of any of the children
- In whose physical custody the children are now and since when

ABOUT THE MARRIAGE

- Date of marriage
- Whether you and your spouse have a prenuptial agreement
- A copy of the agreement
- Date on which you were served with divorce papers
- Copies of any divorce papers you have received

WORKING WITH YOUR ATTORNEY

Once you have retained an attorney, you want to establish a good working relationship with him or her. The key-stone to a successful attorney-client relationship is trust. Trust is built on a foundation of communication and information. In working with your lawyer, consider the following ideas.

- 1. Be candid.** Your lawyer will be delving into some very personal areas you might feel reluctant to discuss. Do not be afraid or embarrassed to be totally truthful and candid with your lawyer about what has gone on in your life. Many times, things that you might feel are extremely important have no legal significance whatsoever. Telling your lawyer the whole truth enables him or her to represent you better, and often will help alleviate concerns you might have. It also eliminates the possibility of your spouse's lawyer "surprising" you and your lawyer and gaining an unwarranted tactical advantage. Do not ever hesitate to tell your lawyer the truth, in the same fashion you would tell your doctor of any physical issues you are experiencing. Anything you tell your attorney must be held in the strictest confidence with the exception of credible threats to harm another person.
- 2. Ask questions.** This is your divorce, and very likely, unknown territory for you. You will probably receive lots of advice, solicited and unsolicited, from friends, neighbors, family, co-workers and others who have either been through a divorce, or know someone who has. While these folks mean well, they are often misinformed about what the law provides. There are many common myths about divorce that have no bearing in law or in fact. Tell your lawyer what you have been told and what you are concerned about. Family law encompasses a variety of legal disciplines, complexities and nuances. You can't be expected to know or appreciate all of them, but your lawyer can. He or she should be able to give you direct, understandable answers to your questions, even if the information might be different than you expected.
- 3. Get organized.** During the divorce, your lawyer will ask you to provide certain information and documents as part of the process known as "discovery." Get a head start on this obligation by gathering and organizing your important documents, such as tax returns, bank statements, retirement account records, life insurance policies, and the like. This can often seem like a waste of your time, particularly when your spouse "already has all that information." Whether he or she does or does not is beside the point; the law requires you to disclose what you know and what you have. Also, remember that if you have information or documents that are requested by your spouse's lawyer and you do not disclose them, you might be barred from using them for your own benefit. Discovery is often a time consuming process, but an important one. The more thorough and organized you are, the less time you will need to spend on discovery, and when you save time, you save money.
- 4. Use your attorney's services wisely.** You can save money, and control the costs of your divorce by using your lawyer's services wisely. Remember, you are paying for your attorney's time, including time he or she spends on the phone talking to you. Call only when you have something important to discuss. Organize your thoughts and write down your questions before you call, so you can be sure to discuss all of your questions in one phone call. Educate yourself about the basics of divorce law by reading your attorney's website and books and articles on divorce so that you don't need to take up your attorney's time with requests for general information. Use office staff and paralegals to make appointments, answer routine questions, such as when your next court date might be, to confirm receipt of a document or other information, and for assistance with discovery. Use email to communicate

with your lawyer; it enables him or her to get an answer to your inquiry quicker and more efficiently, and avoids the delays experienced by “telephone tag.” Don’t assume that your lawyer has received a copy of letters or legal papers that are mailed to or served on you. Notify your lawyer as soon as you received these documents and make a copy for him or her.

- 5. Rely on your lawyer for legal matters.** Rely on a therapist or friends and family for emotional guidance and support. While your lawyer is experienced in family law litigation, and is accustomed to dealing with people in distress, he or she is not a therapist. Your lawyer should be able to assist you in dealing with some of the normal emotional distress and personal difficulties you will experience going through this process. For more complicated issues, your lawyer can refer you to other professionals trained to deal with people in emotional distress. However, for the routine types of emotional upset that are engendered in every divorce, it is likely far more cost effective for you to discuss your feelings and concerns with family and friends when you need a sympathetic ear.

ESTABLISHING GOALS FOR YOUR DIVORCE

Once you have decided to divorce, you need to work with your lawyer to establish short and long term goals. You may not be mentally or emotionally ready to do this at your first meeting. It might take several meetings to come to an understanding of what you want from the divorce.

You may not have thought much beyond tonight's dinner when you first go to see a lawyer, so establishing goals might seem like a Herculean task, particularly if you were blind-sided by the divorce. Establishing goals is an important part of the process of your emotional recovery, and it lays the groundwork for your participation in your case.

Think about the following issues, and put down on paper your thoughts so you can begin to develop your goals:

CHILDREN

Think about what type of parenting time and division of parenting obligations will best serve your children and fit into your lives. If you have not been the primary caregiver, consider carefully whether you want to seek and are prepared to accept that responsibility after the divorce. Do not pursue physical custody mere to secure a negotiating advantage over your spouse on economic matters. Seriously consider mediation, negotiation and alternate dispute resolution as methods of achieving a resolution to custody disputes so that you and your spouse can retain some control over how your children will be raised, and the terms upon which that will happen.

CHILD SUPPORT AND ALIMONY

If you are the higher earning spouse, you will need to plan for your child support and alimony obligations. You will need to start gathering financial information to assess your obligations and establish realistic economic goals for your post divorce life. Your attorney will review the law with you and explain how much you should expect to pay. If you will be the recipient of support or alimony, you need to focus on your needs for housing, child care, and other essentials so that budget planning can begin. You will need to assess whether you can and should reenter the work force. Consider where you want to be six months and six years from now, and why.

MARITAL RESIDENCE

For many folks, the home is a visceral issue that leads to conflict. Often both spouses want the home, but neither can afford to keep it. Frequently, the home is really an albatross that needs to be let go.

If you think you may want to continue to live in the marital home after the divorce, ask yourself why and whether remaining is a realistic goal. Can you afford to "buy out" your spouse's interest? Does it make sense to "buy out" your spouse if you plan to stay in the home for a short-period? If the plan is to stay in the house for less than five years, it might make more sense to sell the house now, so that the other spouse participates in the costs of sale. Can you afford to pay the mortgage, taxes, and upkeep on your post-divorce budget? Is suitable alternative housing available for a more affordable price? Does it make sense to spend half of your monthly budget keeping the house, when suitable housing is available in the same school district at half the cost?

RETIREMENT BENEFITS

Nearly everyone these days who is employed has some form of retirement benefit. Think ahead to your golden years. It may be very important to you to retain an interest in your spouse's retirement plans, especially if you are unlikely to secure sufficient retirement benefits you're your own employment due to your age or employment realities. On the other hand, an interest in your spouse's retirement plan might be something you can afford to give up if you are young, or have or expect to have adequate retirement benefits from your own employment. You may prefer to waive your interest in your spouse's retirement plan in exchange for other assets.

PROPERTY DISTRIBUTION

Identify the assets that you wish to retain and prioritize them in order of importance to you. Do not "over-value" assets to which you have a sentimental or emotional attachment that is far outweighed by their economic value. You will need an objective and realistic assessment of the value of the marital assets to be able to use an asset's value as a bargaining chip in negotiating a settlement. Assets that are difficult to value (like family businesses, for example) or of high value (some art and antiques) may require a professional appraisal.

Remember: few people own assets that are so valuable that they can't be replaced, and nearly everyone believes that what they own is more valuable than it really is. Your assets need to be valued by what they would sell for, not by what it would cost to replace them. Think about what you would get if you put an item on the curb and solicited an offer for purchase. You don't want to run up your legal fees arguing over an asset that is worth little. Emotionalism, positioning, anger, and principle must take a second seat to reality of the cost of litigation.

EVERY GOAL HAS A COST

Every goal you want to achieve has a cost. Think of each goal in terms of its economic and/or emotional cost. Many people have a laundry list of items they "need" or wrongs that need to be righted, often because the curbside advice received from friends and family have set up unrealistic expectations.

Do a cost-benefit analysis for each asset you want. Here's one way to look at it. It probably takes four to five hours of preparation for every hour an attorney spends in court. Figure out how much it would cost you to go to court over an item that you want. You could end up spending \$2000 in fees to recover a \$50 item. Is it really that important?

DEALING WITH YOUR SPOUSE

Divorce litigation is emotionally charged because of the long personal history you have with your soon to be former spouse. When children are involved, an already emotionally charged atmosphere is even more volatile. As a result, even the most innocuous or insignificant of circumstances can spiral out of control on a moment's notice. Remember at all times that what you say, and what you do, and how you react to your spouse if seen or heard by your children will have a life-long impact on them, and on their future relationships, with you, your spouse and others. Now is the time to vow to do the right thing, whether or not your spouse chooses to do so.

Now is the time to shift the paradigm of your relationship with your spouse from friends and lovers to business associates. The "business" is the successful rearing of your children and the successful negotiation of a satisfactory arrangement to end your relationship as spouses. Treat your spouse as you would a business associate or co-worker whom you might not like, but with whom you must work.

When emotions flare, back off, walk away and allow time for things to settle down. Save your sarcasm, cynicism and biting humor for stories you can tell your friends. Maintain as your mantra: this is just business now. You will be happier both in the short and long run, and your children will remember you for it later in their lives as well.

Use your lawyers as buffers to reduce friction. On topics that you don't agree on and that provoke fights ask your spouse to consult his or her lawyer and tell your spouse you will do the same.

Your spouse may feel animosity toward your lawyer and attempt to undermine your confidence in him or her. Believe what your lawyer tells you and not what your spouse says.

Be especially skeptical when your spouse tells you what the law is or what his or her lawyer has said. Don't fall for threats and posturing. Don't believe your spouse if he or she tells you, "My lawyer says I'm going to get everything and you are entitled to nothing." Or "I'll get custody and make sure you never see the kids again."

Do not negotiate the terms of your settlement with your spouse without your lawyer's knowledge. And do not make any agreements or sign any documents without talking to your lawyer first.

Maintain a post office box for the duration of your case so that your attorney can send you mail that has no chance of being intercepted by your spouse. And do not keep letters from your attorney or other paperwork from your divorce in your marital residence or anyplace where it can be found and read by your spouse.

INITIAL TO-DO LIST

Because divorce is essentially a business transaction, much of the work of a divorce involves separating your and your spouse's finances and assets. Hopefully you and your spouse can agree through much of that process. Either way, you will want to begin with these steps:

LIQUID FUNDS

1. **If you don't have one, open a separate checking account.** You can do so with a small amount. What is important is that you have this account, not how much is in it. You need your own financial system.
2. **Set aside some cash in a safe place.** Sometimes in divorces the bank accounts and credit cards are frozen.
3. **Come to agreement with your spouse on how handle the joint bank accounts.** Usually the best course is to close the joint bank accounts and split the cash in them.
4. **Close your joint credit card accounts and obtain a credit card in your own name.** Any debt on the joint card can be transferred to the individual cards. Alternatively, you can tell your credit card company that no new charges can be made on the joint card. Watch your credit report to make sure that your spouse does not obtain a new joint card (or apply for a joint loan).

SAVINGS

5. **Freeze all your joint investment accounts so cash cannot be withdrawn and loans cannot be placed against them.** Obtain statements for all the accounts.
6. **If your spouse has a retirement account, ask the retirement plan administrator for its current statement and a copy of the plan description.**

PERSONAL

7. **Make a detailed list of all the property in your home.** Append photos of the more valuable items, enabling the date stamp on your camera before shooting.
8. **To ensure privacy of your communications, rent a post office box and open a new email account.**
9. **Change the passwords for your ATM cards, bank accounts, online stores, social networks, and email accounts.** Ask your spouse to return the duplicate key to your car.

CAREER

10. **If you have a job, tell your boss you are going through a divorce.** Offer to make up the hours you will miss.
11. **If you don't have one, begin making plans to obtain a job.** Update your resume, research job prospects, and begin applying for interviews.
12. **If you depend upon your spouse's health insurance, investigate the cost and availability of continuing its coverage.** Compare separately obtained insurance.

RECORDS

13. **Gather and organize information about you own and owe.** You will need financial statements, tax returns, bank statements, insurance policies, and investment account statements. See below for a list
14. **Start thinking about which assets you want to keep and which you are willing to give up.** See for some guidance on initial goal setting.
15. **Write for your attorney a concise narrative about your marriage,** and include the date you began living together, the date you got married, your children's birth dates, any previous separations, when various assets were acquired, and separate property either your or your spouse inherited or brought with you to the marriage.

FINANCIAL DISCLOSURE AND BUDGETING

After your initial meeting with your divorce lawyer, he or she will probably send you off with some homework. One of the first steps in settling any divorce is called financial disclosure. Financial disclosure means that you and your spouse must reveal to each other all of your assets and liabilities. Full financial disclosure by both parties is necessary to determine the value and extent of the marital estate so the parties have a basis for negotiating a division of assets and liabilities. Financial disclosure is also necessary so that each spouse can develop a post-divorce budget that will reveal each party's need for or ability to pay the other child support and spousal support (alimony).

Complete disclosure is essential because:

- Some courts impose penalties on a spouse who hides an asset. For example, they may provide that any hidden asset may be given to the innocent spouse in its entirety if it is discovered after the divorce.
- Trust and credibility are important. A negotiated settlement requires a minimum level of trust between the parties. The discovery of hidden assets during the course of a divorce will minimize the chances of a peaceful resolution. In addition, a judge who learns that the reason he is listening to a couple argue about table lamps is that one party tried to hide assets may have very little sympathy for that party.

DOCUMENT CHECKLISTS

Below is a basic list of documents your lawyer will likely ask you to provide. You can speed your case along by gathering as many of these documents as you can, since many of them may be required from you in the immediate future and it may take some time to obtain them. By providing your family law attorney with the information and document requested below, you will save time and money and will assist them in the preparation of pleadings and documents required in your case.

Your attorney may ask you to provide additional documents depending on your particular situation.

- Your last two pay stubs.
- Last month's utility bills.
- Receipts of household repairs or replacements.
- Last auto loan statement(s) and auto title(s).
- Medical/dental/optical bills or quotes or statements for expected expenses.
- Bills for children's school fees, books etc.
- Last statement of any credit card currently in use.
- Most recent savings account statement.
- Last month's checking statement.
- Certificates of deposit.
- Most recent money market account statement.
- Most current statement for stocks, bonds, and investment accounts.

- Last month's mortgage statement for marital home.
- Mortgage release if mortgage paid off.
- Closing package from purchase/refi of real estate.
- Last month's home equity line or loan statement.
- All documents relating to secondary, vacation residence and/or timeshare.
- All documents relating to vacant land.
- All documents relating to any business interests (tax returns, financial statement, and the like)
- Life insurance policy statements
- Most current statement for all retirement accounts, pension plans, IRA's, 401(k) plans
- Federal and state tax returns for last 3 years
- Pleadings from any lawsuits against you or your spouse
- Any appraisals of property, such as jewelry, antiques, art, and collectibles
- Certificates of authenticity

You may not have access to all of these documents. Provide what you can and tell your attorney which documents are in your spouse's possession. Your attorney will have various ways of obtaining these documents from your spouse or third parties through the discovery process if necessary.

YOUR DEPOSITION

Your spouse's lawyer may want to take your deposition. Although depositions are not taken in every case, they are taken in many cases to expand on economic information, opinions, and other matters.

You and your lawyer will discuss whether he or she needs to take your spouse's deposition. Taking a deposition involves expenses that might not be warranted given the facts of your case. Generally, if your spouse's attorney wishes to take your deposition, your attorney will take your spouse's deposition.

If you are being deposed, you will be put under oath and asked questions by your spouse's attorney. A court reporter will be present to record your testimony. And your lawyer will be there to object to improper questions. The deposition will probably take place in a conference room at the office of your attorney or your spouse's attorney.

WHY YOUR SPOUSE'S LAWYER TAKES YOUR DEPOSITION

Your spouse's lawyer will take your deposition to:

- Test your mettle under pressure;
- Probe the truth and accuracy of your testimony;
- Assess whether you will make a good or poor witness;
- Lock in your testimony so that doubt can be cast on your truthfulness if you change your testimony later.

WHAT YOU WILL BE QUESTIONED ABOUT

If you are deposed as part of your divorce case, the lawyer taking the deposition will likely inquire into the following areas:

- Your personal information (name, age, date of birth, address etc.)
- Your health
- Information about children (school, health, special needs, activities etc.)
- Current living situation
- Breakdown of marriage
- Educational background
- Current employment and employment history
- Compensation and benefits
- Real and personal property
- Bank accounts, investments, and retirement accounts
- The family business
- Budget and lifestyle
- Child custody concerns
- Bad behavior

THE 10 TIPS FOR TESTIFYING

Here are ten simple rules you can follow to be a “winning witness.”

1. **Tell the truth.** Simply put, there is no greater damage you can do to your case than by not telling the truth. No matter how damaging you might think the truth to be, it is never as damaging as a falsehood.
2. **If you make a mistake, correct it.** No one has immediate and completely accurate recollection of every fact or conversation. If you are confronted with a document or some prior statement that conflicts with your testimony, do not be afraid to say “I made a mistake.”
3. **Be yourself.** Do not attempt to portray yourself as someone you are not. A lack of sincerity on your part is almost as devastating to your case as not telling the truth.
4. **Short answers are the best answers.** The best answers to any question are: Yes, No, I don't know, I don't remember. Answer the questions asked in as few words as possible to be truthful. The more you talk, the more you will be asked. Keep it short; less in this case is more helpful to you!
5. **Listen to the question.** Let the questioner complete his or her question before answering. First of all, the court reporter can only take down what one person is saying at a time. If you are talking over the question, the reporter will have a more difficult time. Also, you might think you know the question being asked, but find out it is not what you thought, and your answer will look odd and out of place.

6. **Be sure you understand the question.** All lawyers will eventually ask a question that makes little sense in English or otherwise. Lawyers also tend to use words you might not know, or use language that is tortured or difficult to comprehend. Never be afraid to say “Could you repeat that, I don’t understand your question.” Never answer a question you don’t understand.
7. **Don’t guess or estimate.** Unless you are asked to do so, never guess or estimate in an answer. If you know the answer in approximate terms, i.e., “How much is in your checking account today?” be sure to say “I’m guessing” or “approximately,” in your answer.
8. **Do not volunteer anything! Most folks naturally want to be helpful.** This is neither the time nor place to be a volunteer. The more you volunteer, the more trouble you will find yourself in, particularly if you offer answers that you aren’t really sure of in your desire to appear “helpful” to opposing counsel. Similarly, avoid offering excuses or explanations, which only lead to more questions. You are there to answer questions, only. Excuses and explanations are my job.
9. **Do not debate or argue with opposing counsel.** It is also a natural inclination for you to want to convince your spouse’s lawyer of why you are right and he or she is wrong. These attempts will uniformly be unsuccessful, and only generate more questions. Being argumentative or confrontational with opposing counsel will similarly lead to nothing positive, and, in a courtroom, will only annoy the judge.
10. **Answer the question.** Do not attempt to analyze why you are being asked this question, or what the next question will be, or what you will be asked in ten minutes. Answer the question asked, as if it were the first, last and only question you will be asked.

If you follow these simple suggestions, you can have a positive influence on the outcome of your case.

MEDIATION AND SETTLEMENT NEGOTIATIONS

REASONS TO SETTLE

Why do you want to settle your divorce rather than have a trial? Here are 6 good reasons:

1. To avoid the cost of a trial—the cost in dollars, the cost in time, and the emotional toll that cannot be quantified in dollars and cents.
2. To have control over the outcome. A settlement can give you some control over the outcome of your divorce and allow you to move forward knowing that you, and not a stranger, decided how your life would proceed after your divorce.
3. To have certainty about the outcome. If you go to trial, you never know how the judge will decide your case. The judge’s decision may please neither of you.
4. To increase the chances that you and your spouse will abide by the settlement. People who are actively involved in the settlement of their divorce are far more likely to abide by the terms they have agreed upon.

5. To avoid a costly return to court for post-divorce litigation. People who have assumed a significant role in their divorce settlement are more invested in achieving successful, non-confrontational outcomes, than those who have had their future imposed on them by the court.
6. To foster a good post divorce working relationship for co-parenting your children. Even though your marriage is over, you and your former spouse will be forever linked by your children. A “scorched earth” approach to the divorce will only poison the deep well that you two will draw from for the rest of your lives.

HOW DOES MEDIATION WORK?

Mediation is a method for resolving a dispute without a court trial. Mediation can be a good way to reach a divorce settlement.

In many jurisdictions, mediation is a mandatory first step in all disputes involving custody and visitation. Sometimes, mediation is used to address economic issues, but this usually is done by agreement of the parties, not by rule or court order.

Mediation is conducted by a mediator who is often an attorney or therapist with expertise in family law and who has taken a training course to become certified as a mediator. In some jurisdictions, only the parties and the mediator attend the mediation sessions. In others, the divorce attorneys are actively involved. Witnesses will not testify.

Two crucial factors you must understand about mediation

1. First, the goal of mediation is not necessarily to reach the same outcome that a judge would reach after a trial. Rather, the goal of mediation is to get the two parties to agree. This means the mediator is certain to do some coaxing to get the parties to reach an accord. Usually, the mediator will determine which of the two parties is more pliant, and then attempt to move that party toward the other party's position to reach an agreement.
2. Second, the weaker of the two parties will be disadvantaged, unless he or she is well prepared for a battle of wills. Well before the mediation process begins, you and your divorce lawyer must have a goal-setting conversation. You must determine where the line in the sand is going to be drawn. What items are negotiable and what (ideally, relatively few) items are non-negotiable.

Embarking upon mediation without a clear set of goals is like jumping in your car and driving aimlessly, turning or not, depending on the whim of the moment. You won't get anywhere unless you have some idea of where you wish to go before you start. And, even if you do arrive somewhere, it likely won't be at the destination you were hoping for.

You and your divorce lawyer should agree on strategies for handling the mediator's attempts to push you on your non-negotiable topics. For example, mediators are trained to bounce off non-negotiable issues, and return to and attack them from different points and perspectives. You need to be prepared to deal with that approach. Often, you can say, “I won't do that, but I will do...” and deflect the conversation back to a topic on which you are willing to give ground.

A certain level of flexibility is critical. A hard-line approach, without some indication of a willingness to deal on other issues, is the surest and quickest way to an unsuccessful end to the mediation process. Successful mediation is most often achieved by parties who are prepared to convince their spouse and the mediator that there is no room to negotiate on a particular issue, while holding open the door to agreement on other issues.

MEDIATION CAN BE USEFUL EVEN WHEN IT DOESN'T WORK

Some issues might not be so easily deflected, and often no compromise is possible. In such cases, mediation can still generate useful agreements on topics that are not in dispute, thereby reducing the number of issues that will actually need to be litigated. Many times, mediated agreements can save the court and the divorce lawyers time, and save you money by delineating the areas of agreement that the parties have reached. Plus, once the parties see, in writing, the breadth of disputes they have resolved in this fashion, further settlement negotiations often can produce the agreement that escaped them during the mediation process.

PREPARING FOR SETTLEMENT NEGOTIATIONS

Nearly every divorce case will involve a settlement conference. The conference may be an informal meeting between you, your spouse, and your attorneys, or a more formal conference involving a judge.

FIVE KEYS TO SUCCESS

- 1. Be prepared.** Before any settlement conference takes place, you should meet with your divorce attorney and develop a set of settlement goals and strategies for achieving your goals. Remember, this is your divorce, not your lawyer's. The divorce lawyer's role is to give advice, not to make decisions. You must live with the outcome and, therefore, you ultimately must decide if the case settles or proceeds to trial. Before the settlement conference, you must have a candid discussion with your divorce attorney about the possible outcomes — good and bad — and the parameters and costs that can be expected should the case go to trial.
- 2. Maintain control.** Control comes from maintaining a business-like demeanor, and treating the conference like a business meeting. Screaming, using crude or vulgar language, slamming doors, making threats and other such histrionics will not result in the successful negotiation of a divorce settlement. Control of negotiations does not ever come from being the loudest, most obnoxious bully in the room.
- 3. Allow for initial venting.** Sometimes, before real settlement negotiations can begin, your soon-to-be-ex-spouse needs an opportunity to vent his or her hurt, anger and frustration. Human emotions play a huge role in divorce litigation, and different individuals respond to the emotional trauma of a divorce in different ways. If your spouse is feeling particularly aggrieved, allowing him or her to clear the air may be necessary before fruitful negotiations can begin. Similarly, if opposing counsel is determined to play the role of tough lawyer, it may be necessary to sit through some initial bluster before negotiations really can begin. Keep in mind that it is unlikely that your spouse or his or her lawyer would have accepted the invitation to a settlement conference simply to lob verbal grenades. That could have been achieved much cheaper via email.
- 4. Follow your plan.** Once the preliminaries are over, you and your divorce lawyer can begin negotiations (in line with the reasonable expectations you discussed before the conference and in a strategic, business-like manner). Here is one strategy your lawyer may follow for maintaining control of the negotiations:

Can we agree on... ?

Our position on that issue is...

Now let's discuss contested issues.

Tell me your position; here's ours.

Reach for a compromise.

Offer to concede, in exchange for concessions.

List the agreements, point by point, to confirm agreement.

- 5 Take a break.** Not every settlement conference ends successfully. Some will conclude with an agreement to disagree, and to take the case to the next stage of litigation. Many cases will take more than one settlement conference to achieve success. Starting with mutual acknowledgement of something you have agreed on will get the ball rolling and usually enable you and your divorce lawyer to say, "We've made significant progress here. Let's take some time to think about these few matters we're stuck on."

Likewise, if it appears that continuing negotiations are not going to be fruitful—for instance, if tempers are rising and the time between concessions is growing—your divorce lawyer might suggest a break so that everyone can regroup and consider the remaining contested issues.

Your divorce lawyer might say something like: "We need time to consider your proposal, as it is not currently something we can agree upon. We need to consider whether we're just better off taking the case to trial. We don't want to do that, but right now we can't accept your position. Let's schedule another conference and talk next week." A statement like this will keep the negotiations alive, but will close the session for the day. More importantly, it will let your spouse and his or her lawyer know that you are open to settlement, but not shying away from trial, if necessary. This, perhaps, is the most effective way of getting the other side to blink: making them think that, even knowing the time and expense involved in a trial, you might just decide to roll the dice, rather than accept their proposal or compromise further.

POST-DIVORCE TO DO LIST

After your divorce is final, there will be a number of tasks for you and your attorney to perform. Here is a checklist of some of the most common. Not all of them will necessarily apply to you.

REAL ESTATE:

- Have deeds prepared and executed if real estate is to change ownership pursuant to your settlement agreement, or the court's order.
- Apply for refinancing or attend to other real estate lien issues if necessary.
- If transferring property to your spouse, get the lender to release you from further obligation in connection with an assumed lien or mortgage indebtedness.
- Change names the accounts for utility bills, cable, satellite providers, and so forth, as necessary.
- Notify landlords regarding the termination of tenancies, or transfer of rights.
- Remove personal property from your former marital residence, storage facilities, or other places.
- Notify property/homeowner's associations of change in membership.
- Contact cemeteries/memorial park management regarding transfer of ownership of burial plots or crypts.
- Contact time share management regarding transfer of ownership, division and assignment of accumulated points or rights, and responsibility for future assessments.
- Notify home equity line of credit lenders of change in authorized users of line.

PERSONAL PROPERTY, DEBTS AND MISCELLANEOUS:

- Change driver's license information (name, address) as needed.
- Sign over vehicle titles and registration, register with DMV.
- Have transfer tax forms prepared applicable.
- Transfer bank checking and savings accounts, prepare new signature cards for banks on retained or transferred accounts.
- Contact bank to close and divide accounts as needed.
- Contact investment account agents to determine documents needed to divide and transfer accounts as contemplated by your settlement agreement or divorce judgment.
- Contact your life insurance agent to change beneficiary designations as necessitated by your separation agreement or divorce judgment.
- Change contact information and beneficiaries with Human Resources at place of employment.
- Contact account agents for non-qualified retirement accounts to arrange for transfers contemplated by your settlement agreement or divorce judgment.
- Contact credit card companies to close or transfer accounts as contemplated by judgment or agreement.
- Notify local vendors providing credit (i.e., grocery stores, medical/dental providers, local pharmacies, farm service accounts, etc.) of change in authorizations to incur debt or charge goods and services.
- Return/exchange family heirlooms to party or family of origin.

- Notify state or private college fund investment account providers of restrictions, transfers and limitations.
- Notify banks or investment institutions of restrictions on transfers, withdrawals, or distributions contained in the divorce judgment or agreement.
- Notify school authorities, medical/health providers and sponsors of extracurricular activities of pertinent provisions affecting parties' rights to access information or decision making authority regarding the children.

LEGAL:

- Arrange to update/amend your will, trust agreements, and other testamentary documents necessitated by divorce.
- If you are the trustor of any trusts, arrange for amendment of the trust documents, and particularly, trustee and beneficiary designations that are necessitated by agreement or judgment.
- Arrange for an attorney to prepare a life insurance trust for child support or alimony if contemplated by your agreement.
- Arrange for an attorney to prepare a Qualified Medical Child Support Order (QMCSO) for submittal to health insurance provider; copy employer of providing party.
- Arrange for an attorney to prepare a notice of withholding of child support/alimony to your employer if you are to pay child support through wage withholding.
- Prepare, sign and file final joint tax returns if contemplated by your judgment or agreement.
- Secure executed IRS form 8332 for claiming of child or children as exemptions by non-custodial parent.