

How to Get Divorced Without Going Broke or Going Crazy



In a happier world, most marriages would be full of mutual love, respect, and competent communication – and they would last until death intervened. In the USA at this time, about half of marriages end in divorce.[1]

Divorces happen.[2]

When it comes to divorce, some people need an attorney who is a fighter and some people need an attorney who is a good negotiator. Others need nothing more than a little advice from an attorney; they can do their own negotiating with the help of a certified family mediator.

What If This Is Really Happening in Your Life?

Imagine that you and your spouse have reached the point where you know divorce is inevitable. Maybe you tried couples counseling first, but it did not work. Maybe one spouse doesn't even want the divorce, but it is going to happen anyway. Now what? Are you going to give thousands and thousands of dollars to attorneys to help you fight with each other, or are you going to try to keep damage to a minimum?

There is so much to think about. Right around the time of separation, if a couple has minor children, they will need to decide what to do about custody, visitation, short-term spousal support, and child support. At some point, the couple will also need to decide what to do about property distribution and long-term spousal support.

For some couples, mediation is the best approach.

Mediators & Mediation

A Mediator is an expert in facilitating negotiations. A mediator can help people stay calm or regain enough composure to negotiate constructively, speak up about what matters to them, hear what matters to the other party, brainstorm ways to resolve issues, and develop agreements.

When you are looking for a mediator to help you resolve family issues, look for a Certified Family Mediator. Most states have training and mentorship programs a person must complete to earn certification. Certification is evidence that a mediator has had training in family law, has worked with a mentor, and has enough experience to be trusted. In this profession, as in any other, degrees of competence vary and areas of specialization vary, but anyone certified by the state you live in should be competent.

A professional family mediator will ordinarily advise each party to confer with an attorney so that they know their rights, responsibilities, and risks, and they know what outcome they can reasonably expect. Then, in a private and confidential setting, the mediator will help the parties work out the terms of their separation and/or their divorce.

With a little education, many couples can resolve several questions on their own. For example, it may be obvious to one couple that the kids should spend one week living at mom's house and the next week living at dad's house. This works for them logistically because they live relatively close to each other and they reside in the same school district. They also share the view that the kids love and need both parents. For another couple, it may be obvious that their child should continue to live with the parent who has been the primary caregiver for the child's whole life. It may be equally obvious that the child should also spend time with the other parent at least twice a week so that the bond with the noncustodial parent remains strong.

I often advise clients to work out the easy issues on their own and then use mediation sessions to discuss the things that are more difficult to discuss or to resolve.

The mediator's role is to help the parties communicate what matters to each and why, hear what matters to the other party and why, focus on one issue at a time, brainstorm ideas about how they could resolve issues, and negotiate constructively to develop a plan that each party can agree to. The parties – not a stranger in a black robe – make the decisions about how to restructure their family and divide their assets and debts. They are working together to develop their plan, so they are building a good foundation for co-parenting during the years to come. It is their plan, so they are likely to follow through and do what they agreed to do. Compliance with court orders is less reliable.

Major Benefits

The major benefits with mediation involve time, money, and sanity.

Time to Resolution

Mediation is usually much faster than litigation. Couples often resolve all issues in just two to five mediation sessions over the course of two to eight weeks. They can finalize their agreement about the terms of their separation and their future divorce with notarized signatures even before one moves out of the marital home.

Litigation involves more steps: Someone files a petition. A copy must be properly served to the other party and then the court sets a date for a first hearing. If the court has two hundred other cases already in the system, weeks or even months may pass before the first hearing happens. To prepare for the first hearing, the lawyers demand written answers to formal interrogatories and require the parties to produce relevant documents. The first hearing is usually a short one at which the judge may issue a temporary order about custody, visitation, and/or support. One party may file an appeal about the temporary order, and there will be another hearing. After more months go by, if the parties have not worked out a settlement, there may be a trial at which a judge is willing to listen to evidence and arguments for 3 to 8 hours (or many more in a highly contentious case). This hearing may produce a "final" order about some or all issues.

Again, one or both parties may file an appeal. If any issues remain unresolved, there may be another hearing weeks or months later.

When I got divorced, one of us filed the first petition in June but our first hearing was in November. I lost count of how many interim hearings and settlement conferences we had. We had our final divorce hearing eighteen months after filing the case and then we waited weeks for the divorce order. *Litigation was slow and painful.*

Cost

Many mediators charge much lower hourly fees than attorneys do. Better yet, the work gets done in far fewer hours. This usually means the couple gets to keep much more of their wealth somewhere in the family. Litigated divorces often take more than a year, and each party may pay anywhere from twenty thousand to one hundred thousand dollars to his or her attorney. Many ex-couples can develop a mediated parenting plan (custody, visitation, etc.) and property settlement agreement in two to four weeks at a cost under \$1500. I know of one couple with three minor children who did all of it for only \$420.

Emotions

For many people, separation and divorce involve intense waves of grief, rage, anxiety, and pain. Litigation is a hostile process, so it often makes people more angry, more frightened, more defensive, and more depressed. When divorcing, some people remain very angry, so mediation does not always feel cooperative, but at least mediation does not add fuel to the fire. Sometimes mediation includes elements that contribute to gradual emotional healing.

A lawyer's job is to advocate for his or her client's interests. Consequently, in a litigated divorce, there may be no one representing the child's (or children's) best interests. A family mediator is required to stay neutral between the parents but is allowed to help them think about how the plans they are making will affect their children.

Outcomes

With mediation, you and your ex-partner also have more control over the outcome. Nothing goes into your written agreement unless both parties authorize its inclusion. The result may not be a jubilant win-win that sends everyone home happy, but it will be a plan that both parties think is workable and acceptable. There is no stranger in a black robe telling you how to run your family.

Mediation versus Litigation at a Glance

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	<u>MEDIATION</u>	<u>LITIGATION</u>	<u>BENEFITS OF MEDIATION:</u>
TIME	days or weeks	months or years	Resolve issues quickly.
MONEY	usually \$300 - \$1,500	usually \$20,000 - \$80,000	You keep most of your wealth where you and your kids can use it.
EMOTIONS	keep distress to a minimum	hostility, anxiety, depression, misery	less need for therapy; better co-parenting
POWER	You decide.	A judge tells you what to do.	A better plan for your family.

Other Considerations

Even though mediation saves time, money, and sanity in big ways, it is not the best process for every couple. An obvious example of a case that would not be appropriate for mediation is one that involves an ongoing threat of domestic violence. The abuser may have the power to intimidate the other party into agreeing to a plan that does not meet his or her needs adequately. An attorney is needed to defend the abused party's interests.

Mediation may not be appropriate if one spouse emotionally checked out of the marriage a long time ago and the other is surprised by the demand for divorce and is still coping with feelings of grief for the loss of the partner, the marriage, or the family unit. Some people can make informed decisions despite emotional chaos, while others are so overwhelmed by emotions that they need an attorney to represent their interests.

If one party is so impaired by their abuse of alcohol or other drugs that he or she cannot make rational decisions, the case may not be appropriate for mediation. The same applies if an untreated mental illness impairs one party's ability to make good decisions or to stand up for himself or herself. Finally, if one party is highly manipulative, the other party may need an attorney to protect his or her interests.

Mediation will not work if one party refuses to participate in good faith. If someone is so angry that he or she wants to spend \$50,000 or \$100,000 punishing an ex-partner, that person is not likely to let mediation succeed.

Finally, if the parties are each convinced that the judge will see everything their way, they may need to live through one or two costly court hearings. When their expectations become more realistic, they may be ready for mediation. The usual outcome of litigation is that both parties feel as if they have lost, despite the large sums of money they paid their attorneys in hopes of winning.

Fortunately for the parties and their children, many couples are able to use mediation to develop written agreements about custody, visitation, spousal support, child support,

and property distribution. I have read that many divorcing couples file *pro se*^[3], which suggests that many are making good use of mediation services. Many more couples could probably benefit from family mediation if only they knew the profession existed. Tell your friends!

If Mediation is Not for You

If you conclude that mediation is not appropriate for your situation, you have choices about how to use an attorney's services:

You are allowed to pay an attorney for advice and then speak for yourself in the court room. Parents with limited financial resources often take this path when they need the court to rule on custody, visitation, and/or support.

You can interview a few attorneys and retain one to negotiate on your behalf. In this scenario, the goal from the beginning is for your lawyer and your spouse's lawyer to negotiate an acceptable settlement of your case. The approach is inherently somewhat adversarial because the attorneys represent competing interests, but the approach is also somewhat cooperative because the lawyers are trying to help the parties resolve issues and agree on the terms of their divorce.

If your ex-partner is a bully who is determined to push for an outcome that you believe would be unfair to you and/or detrimental to your children and he or she is unwilling to compromise, then you may need to retain a lawyer who specializes in fighting like a tiger. A fairly low percentage of divorce cases actually go to trial, but if that is where you are headed you will need a vigorous advocate. Litigation is ugly and expensive but sometimes necessary.

Thinking it Through

Listed in order from least expensive to most expensive, the ways to work out the terms of your divorce are:

- mediation, possibly with some advice from attorneys along the way
- getting advice from attorneys but speaking for yourself in court
- hiring lawyers to negotiate an acceptable settlement
- adversarial litigation with the expectation of going to trial

If the various approaches were listed from most cooperative to most adversarial and coercive, the middle two would trade places.

You might be wondering whether this article is biased because I am a certified family mediator. In my case, the causality actually goes in the other direction: I became a professional family mediator because I experienced how long and ugly adversarial litigation is during my own divorce. I saw the damage it did to my children and to me. If there is a chance that mediation might help an ex-couple resolve at least some of their issues, I highly recommend that the parties try the process. Whatever does not get resolved in mediation can later be addressed in court.

Timing

You can participate in mediation before or after anyone files anything in court and so initiates the litigation process. Between the date of filing and the date of your first or second court hearing, you may resolve all or most issues through mediation. In most cases it is best to get some advice from an attorney even if you expect to resolve everything through mediation.

	CDC FastStats – Marriage and Divorce, 2009 Data
1.	<ul style="list-style-type: none">• Marriage rate: 6.8 per 1,000 total population• Divorce rate: 3.4 per 1,000 population
2.	To keep the discussion simple, I wrote about getting divorced. Much of the same information applies to unwed parents as well.
3.	Pro Se Divorce Pro Se divorce litigation means you are representing yourself in your divorce case, without an attorney.

This article is for informational purposes only. Nothing here should be construed as legal advice. The author, Virginia Colin, is a Professional Family Mediator certified by the Virginia Supreme Court. She is not an attorney or a therapist. For a free consultation about whether family mediation would be helpful for you, contact her at mediatorQ@gmail.com or 703 864 2101.