

Guide to Good Divorce Enewsletter Summer 2013

Mediation and divorce in Texas

By Trey Yates

Increasingly, couples seeking divorce are using alternative dispute resolution (ADR) methods to resolve issues in divorce proceedings. Mediation is probably the most common type of ADR option used in divorce cases today. While not advisable in all cases, this approach can work well when divorcing couples are on equal footing, want to plan for the future and want to play a role in developing the settlement agreement that will get them there.

Many family law courts in Texas, including those in the greater Houston area, have adopted a mandatory mediation requirement in an attempt to resolve divorce settlement issues without the expense of a trial. Some courts even require parties to attend a mediation session prior to a hearing on temporary orders.

Mediation can be quite useful in divorce cases, and offers couples the opportunity to save time, reduce costs, maintain privacy, preserve their dignity, resolve disagreements and if necessary, have better control of their future relationship, especially if minor children are involved.

Mediation is also difficult and demanding. Divorcing couples who use mediation must gather and share information, agree to set goals, negotiate, compromise, and abide by the results. Generally, each spouse and their attorneys select a third party as a mediator. He or she may be an attorney (but is not allowed to give legal advice), a mental-health professional or other professional who has been trained in ADR techniques, divorce law and conflict resolution. Unlike judges, a mediator has no decision-making authority, but strives to help the parties identify issues to be resolved and develop options that satisfy them both.

The mediation session itself can be structured to fit each case, but typically each spouse and his or her attorney are seated in separate rooms and the mediator shuttles back-and-forth with offers and counter offers as they work toward a settlement. Each spouse may also have financial or other experts present during the mediation process.

In most cases, at the end of each mediation session, the mediator will draft a memorandum of understanding which reflects the participants' tentative agreement. This document will be sent

to each party and the attorneys for review, revision and/or additions. Until the memorandum is signed by both parties, neither participant is bound by it. At the conclusion of all mediations sessions and revisions, a final memorandum, or Mediated Settlement Agreement (MSA), will be drafted and sent to both sides for final review and signing. Once signed, it will be submitted to the court for processing and approval.

Mediation requires that both spouses be committed to full and fair disclosure, and are willing to communicate openly. They must also engage in the process in good faith. If domestic violence, substance abuse, mental or emotional incapacitation is present, mediation may not be the best option. Mediation is not a place to coerce a partner or get around the law. Both spouses should feel they have equal bargaining power. Neither spouse should be domineering or controlling over the other; for example, when one party has little or no information about the family finances.

When it is successful, mediation provides an elegant way for divorcing couples to resolve issues and find a way to move forward with grace and dignity.

In the next issue, Trey will discuss arbitration, another ADR option divorcing couples may want to consider with regard to divorce. For more information about ADR options, visit [Guide to Good Divorce](#) or www.treyyateslaw.com.

Hidden assets in a divorce may be just clicks away

By Patricia Barrett, CFP, CDFIA

Over the years, I am often asked to help divorcing individuals track down potential assets of their spouses during a divorce. It is always an arduous job, sifting through files of paper records to find irregularities during discovery -- pouring over piles of bank statements, credit cards bills, tax records and lots of paper receipts. In the past, I have had to rely primarily on traditional tools of the trade and experience to sniff out hidden monies, property or businesses strewn along a paper trail. Thanks to improving technology and online resources, this part of my job has gotten easier.

Today, we have new tools that allow us to apply our experience using computer and online technologies. This enables us to do our jobs a lot faster. Spouses who think they're being clever forget one thing: electronic and online activity leaves traces. Experts say many people believe

they have permanently deleted email, Facebook posts, files or other communication, when they haven't.

Often, uncovering mischief or lies just takes basic electronic detective work. Free public databases, such as those tracking real estate deals, often provide information on lying spouses. For example, one of my client's husband had disclosed 11 rental properties as community assets. However, with online resources, we were able to locate two additional properties not on his list.

Tax returns provide a wealth of information for the trained eye. I have found offshore accounts, partnership interests, and bank and brokerage accounts previously unknown by the other spouse. In one of my client cases, I found that the husband had essentially "stashed" \$80,000 with the IRS in overpayments that he could have pulled out after the divorce was final.

Another area that I thoroughly review and investigate are paystubs and other employee records that may reveal undisclosed company benefits. "Restoration" plans may be overlooked by the spouse and attorneys who typically focus on 401(k) and pension benefits. If an executive earns above \$255,000 annually, the IRS rules (2013) state he or she must stop contributing to a qualified plan -- 401(k). However, that executive may have an option to contribute to a "restoration" or "top hat" plan which may go unnoticed. Legally, these funds are still considered community property that must be included in the list of marital assets.

Spouses are also doing basic detective work themselves by browsing online social network sites, and the history of the family computer, where they are finding things like visits to bank websites where the couple doesn't have an account. Many online searches on Google, LinkedIn and Facebook are legal.

I do advise clients to be aware of laws that make hacking into a smartphone, secretly installing GPS on a spouse's car, or installing keystroke monitors on someone's computer potentially illegal. Depending on the state and the details surrounding how the data is acquired, there are still gray areas about what practices are acceptable.

Remember, the best defense in these matters is a good offense. As a married spouse, you have a legal right to know all the details of your community property and finances, and should always strive to understand what is going on in this area. Knowledge truly is power, after all!

Conquer worry with the bare necessities

By Melissa Nickelson, Life Coach

Remember the song from *The Jungle Book*? “Look for the bare necessities, the simple bare necessities. Forget about your worries and your strife ...”

This is a children’s song, yet it is so true. How many times do we worry about something we have no control over? Or something that’s just not that important? You can only control yourself and how you react to situations. So, maybe you need to take a “time out” and think about what the problem really is.

Ask yourself a few questions. Is it something you can help with? Do you need to do anything about it? Is it really that important? Can you just let it go?

As a society, we typically think we are supposed to fix problems. Problems need answers, but often times, we overcomplicate the issue...or it isn’t our problem to fix.

As a parent, I always want to help “fix” my children’s issues or problems. Yet, what do they learn if I do everything for them or always protect them?

When faced with a problem you’re worrying about or think you need to fix, try pausing first. If you were to wait, would the problem seem so monumental in an hour? After you pause, think about the issue again. If it truly needs fixing, THEN work on a solution and get creative with ideas, solutions or a game plan.

If it doesn’t need to be fixed or it’s not your problem to fix (or nothing can be done about it at the moment), the best remedy is to simply let it go. If that seems impossible, ask yourself: How does it help to worry? The answer: it doesn’t!

I have learned so much by the mistakes and experiences in my life. And one of the things I’ve learned (the hard way) is that you have to let things go that you have no control over. Boy, is that hard! Yet it’s essential if we want to be happy.

I say, let’s get back to the bare necessities. Handle things that really need to be handled. There is a difference between react and respond. Often, we simply need to respond and not react. If no response is necessary or appropriate, what if you simply let it go?

Let’s change our thought pattern on this and go back to the basics. Instead of worrying...Look for the bare necessities, the simple bare necessities. Forget about your worries and your strife.

When you do this, you are choosing to be happy!