

# How to prepare for divorce mediation

*By Trey Yates*

Many family law courts in Texas, including those in the greater Houston area, have adopted a mandatory *mediation* requirement for divorce in an attempt to resolve issues in dispute without the expense of a trial. Some courts even require the parties to attend mediation prior to a hearing on *temporary orders*. The general exceptions to this are if there has been domestic abuse, or if an attorney files a motion and schedules a hearing to convince the judge that this particular case is not appropriate for mediation.



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.

Generally, each couple and their respective attorneys select a neutral, third party as a mediator. He or she may be an attorney, a mental-health professional or other professional who has been trained in mediation techniques, divorce law and conflict resolution. There is usually an hourly cost for the mediator's services, which is typically split between the couple.

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. I advise my clients to work with me and our office staff before a mediation date is set so you go into mediation well prepared, informed and understand how the process works. Here are some tips on how to approach your first mediation session.

- 1. Bring all pertinent documents.** Identify, gather and have in your possession proof of income for both parties (w2 forms); three years of income tax returns; all bank statements; current statements on 401(k), IRA and other investment accounts; credit reports for both parties; credit card and car loan statements, and any documents showing other outstanding debts; a current mortgage statement; valuation of any real estate holdings; appraisals of expensive collections and any closely held business. If children are involved, you will likely need a parenting plan as well. Many attorneys, myself included, typically gather, verify and share all this information with both parties during the "discovery process;" we then go to mediation with all or most of these items listed on a spread sheet.
- 2. Gain a general understanding of family law and how mediation works.** Spend some time with your attorney asking questions about the divorce process and mediation, what your strategy should be and what you can expect. Each divorce is unique. It is likely that you will need at least a second session, or maybe more in order to finalize your settlement. Identify and

discuss your priorities with your attorney to understand how the law works and if it makes sense. If children are involved, put their needs first as much as possible. Enter the process with an open mind and be prepared to potentially explore alternatives.

**3. Strive to have a good attitude and plan to pack your patience.** It is usually unproductive to spar with your spouse, or react negatively to insults and accusations. However, don't allow yourself to be rushed, pushed or controlled, either. If you need time to think about a proposed solution, say so. If you need time to crunch the numbers, ask for more time. If you would like to consult with another expert in the financial field, or even a child therapist, you can always schedule another mediation session after doing so. Don't have a major meltdown over a minor issue. Focus on your interests, but try not get stuck on a particular position. Look for areas where you can let go and not dig in. It might help to pause and look at the big picture from time-to-time throughout the process.

*If you have questions about mediation or the divorce process, contact our office for a consultation at 713-932-7177.*

## **Five common myths about divorce finances in Texas**

*By Patricia Barrett, CFP, CDFIA*

### **1. Myth: Marital assets are always divided 50/50.**

**Fact: Texas divorce law does not support the common belief of splitting marital assets 50/50.**

The State of Texas requires a "just and equitable" division of property. A 50/50 settlement is rarely appropriate and should never be implemented without expert advice and ideally, using an analysis of the situation by a Certified Divorce Financial Analyst. The division of marital assets in a divorce should take into account the need for one spouse to receive sufficient assets to provide support considering the much higher earnings of the other party.



### **2. Myth: There is no alimony in Texas.**

**Fact: There is a form of alimony in Texas.**

Court-ordered, spousal support, what most people call alimony, is very limited in Texas. It is referred to as *spousal maintenance*, and a spouse must meet strict requirements to qualify. Be prepared to provide a detailed, projected post-divorce budget that demonstrates a clear monetary need if you plan to apply for spousal maintenance. And, prove that you are unable to work and earn a modest income.

However, one may be able to negotiate **contractual alimony** from a spouse that goes beyond what the law allows. A Certified Divorce Financial Analyst can assist in the preparation of this budget. Sometimes the higher earning spouse receives more assets as an offset in exchange for providing spousal maintenance.

**3. Myth: Every asset of a divorcing couple is divided equally between the spouses in a divorce.**

**Fact: For an equitable divorce to occur, marital assets should be divided based on the unique needs of each couple's situation.**

There are no specific laws that require courts to equally divide each marital asset. In fact, there are many ways to "slice and dice" marital assets in a divorce. I often tell clients that a dollar invested in a 401(k) is not equal to the value of a dollar in home equity. Funds invested in retirement plans offer the potential for growth and cannot be withdrawn before a certain age. The potential for home equity assets to grow depends largely on the marketplace and often, the economy. Also, homeownership comes with related costs of maintenance, repairs, utilities and property taxes. Each marital asset should be examined carefully in light of each recipient's financial situation and goals. Once assets are "valued," they are tallied for each spouse, and then divided, often with "offsets" which balance the division of assets according to each situation.

**4. Myth: The assessed value put on a home by your local property tax authority is a reliable measure of its value.**

**Fact: Divorcing couples would be wise to secure a home appraisal from a reputable, licensed professional.**

Your municipal property tax authority is not a reliable source in determining your home's market value. In addition, homeowners are often pretty far off base in guesstimating the value of their own property. Especially if they have invested heavily in repairs and upgrades and expect to get this investment back when they sell. In family law cases, it is preferred that divorcing couples get property appraised by a qualified appraisal company. If the appraisal comes back and one spouse disagrees with the number, get a second appraisal from a different company and meet in the middle. If they mutually agree to do so, Couples may also get a market valuation from an experienced realtor in the neighborhood who will calculate its market value based on similar comparables in the that have recently sold in the area.

**5. Myth: "I can nail him if he has a girlfriend."**

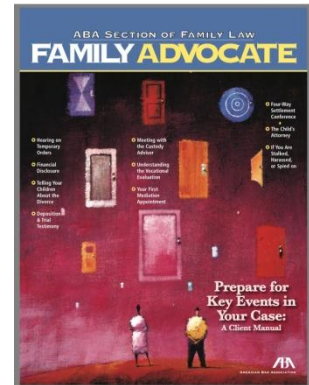
**Fact: Not likely, most of the time.**

While there seems to be an endless appetite for news stories about infidelity involving celebrities or those in positions of power, in most cases divorce courts couldn't care less if your spouse is having an affair. This is because in states with no-fault divorce laws such as Texas - - which allow people to divorce without having to document specific reasons the marriage went south -- courts aren't looking for blame.

So affairs and other disasters of the heart may not matter much. With that said, the case could be impacted on some level, if the judge assigned to your divorce has strong attitudes one way or another about such things. (Although less than 10 percent of divorce cases are decided by a judge). Also, if the spouse having the affair wants to keep it quiet, a larger settlement may be possible, but not probable. Now, if the offending spouse is "wasting" a significant portion of community assets on a new love and you can produce proof in the way of receipts to that effect, there are laws against such activity, but only up to recovering your share of those assets. *For more information on any of the topics above, contact me at pb@lifetimeplanning.cc.*

## [Free guidebook download](#)

When couples begin the divorce process, it is common for them to feel overwhelmed, confused, lost in legal system jargon, and headed for an unknown destination seemingly out of their control. That is a difficult spot to be in for most competent adults who are accustomed to making their own decisions and dictating their own lives. This manual, entitled [Prepare for key events in your case](#) is published by the American Bar Association Section of Family Law and was written to help those going through divorce to better understand what to expect from the divorce process. Because each participant in a divorce must be fully awake and actively engaged, this manual provides basic explanations and is designed to enhance the lawyer-client relationship.



**Divorce Happens.**

**The Guide to Good Divorce Seminar**

**Saturday, September 22, 2018**  
**8:30 a.m. - 2 p.m.**  
The Houstonian Hotel, Club & Spa  
111 N. Post Oak Lane, Houston, TX 77024

Join other women and discover the keys to unlocking your next best life! For details on seminars, upcoming workshops and other events, visit [www.GuideToGoodDivorce.com](http://www.GuideToGoodDivorce.com) or call 713-932-7177.

*The Guide to*  
**GOOD DIVORCE**  
SM

*Unlock the door to your next best life.*