

Mediation Information Kit

Prepared by



Suggestion:

- 1) Sit down with your spouse and review this material together or send a copy to your spouse so you can review the same information. Then discuss if Mediation is an option.
- 2) Finally schedule a free half hour consultation with the mediator to learn more.**

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WHAT IS MEDIATION?

Mediation is the process of resolving a conflict by letting a neutral third party facilitate the negotiations so that both parties receive a desirable agreement. Mediation is an effective alternative to court ordered settlements that give you both more control while saving you both time and money.

During Mediation you both meet with the mediator together to frame the issues and negotiate a suitable resolution. The mediator will establish some ground rules to keep the sessions civil and productive. You will all work together to frame up the mutual issues. Mutual issues are issues that have an impact on both parties, such as how will we parent the children after divorce, how will we fairly divide our marital assets? The mediator will help you both establish budgets and determine what it will cost to live apart. The mediator will also help fairly divide marital assets, setup a parenting plan, decide spousal support, and establish child support as appropriate. All decisions will be made by both of you as to the outcomes of these issues. In fact, many creative solutions can be explored in Mediation but nothing is binding until you both agree. Either party can walk away at any point without compromising their legal rights.

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The most significant improvement over traditional court settlements is that in Mediation you, the disputants, control the settlement. The mediator only helps frame the issues and organize discussion and negotiations until all issues are resolved to the satisfaction of both sides. The mediator cannot control any part of the end settlement, only the process it takes to get there. Traditional litigated disputes place the disputants in adversarial roles where both struggle to “win”. The battling tends to be driven by the emotions and trying to triumph over the other or at a very minimum try to avoid receiving an undesirable settlement.

Mediation permits both sides to build a creative solution that meets their needs personally and as a parent. This is the best possible outcome when children are involved.



WHAT ARE THE BENEFITS OF MEDIATION?

Because Mediation is focused on resolving issues to the satisfaction of both sides there are numerous benefits for both sides.

- **Avoid forced settlements.** Settlements forced by the court usually tend to be less ideal for parties that could have otherwise worked together to find a more ideal solution.
- **Find creative solutions.** Litigation in the courts is not the place to discover creative solutions that provide the best benefits to all involved, including the children. In Mediation flexible parenting schedules and financial arrangements can be agreed to.
- **Preserve disputants relationship.** Similar to any conflict the relationship between combatants is rarely improved by the battle. Usually both sides leave feeling they can never trust the other side and that any respect that was there is gone. In addition the children are always exposed to negativity that can only do them harm. It is not surprising that disputants who leave mediation have gathered valuable communication and negotiation skills that can actually improve conflictive relationships, which is good for the children as well as the parents.
- **Mediation is private and confidential.** The fact that you are seeing a mediator is confidential to any outside parties. The substance of your discussions in Mediation are also confidential and cannot be shared. Therefore, creative solutions can be discussed without obligating either party to any unfavorable terms. One party cannot use any discussions that occurred in Mediation against the other at a later date. For example, "She said she would give up the house if I gave her half my pension!" won't obligate the wife in this example to do (or not do for that matter) any such thing. Many alternatives will be discussed and some rejected until a joint solution is found that is a win/win for both parties.
- **Disputants control the settlement.** Both of you control how the different issues will be resolved. Both will agree how the marital assets will be divided, how the parenting plan will be written, etc. This way one side can't assert any power in the Mediation to force the other side to take a settlement they don't wish to. In Mediation, both agree, or there is no agreement.
- **Both sides save time and money.** The mediator works for both of you and the fee is divided so end up paying for far less time. In traditional litigation both sides pay attorneys and because everyone is fighting for himself or herself more billable time is spent going back and forth. In Mediation we become a team working together to solve your mutual problems with mutual solutions that tend to provide greater benefit with far less expense.
- **Mediation is usually less emotionally draining.** During Mediation it is expected that both sides have full disclosure so neither side should worry about how much the pension plan is really worth, for example. All assets in question are appraised so that both sides share the same level of information about what is being negotiated. Mediation is a forward focusing, solution oriented process. You won't spend much time at all discussing who did what and why. You will be discussing how to move forward. This keeps a lot of the emotion away from the sessions. Also both sides agree to treat the other side with respect by agreeing to the ground rules at the beginning. Ground rules are simple agreements to not interrupt the other when they are speaking for example, no derogatory names, and of course no hurting each other, the mediator or the mediator's office. Seriously, if someone can't abide by the ground rules the mediator will conclude the Mediation.

HOW DOES MEDIATION WORK?

Mediation starts with a joint half hour consultation where both sides meet with the mediator. This is done to set both sides on a level playing field with the mediator and to prevent either side feeling like the other has developed a rapport with the mediator giving them an advantage during the negotiations. Subsequent sessions frame the issues, brainstorm solutions, negotiations and finally document agreement.

| Session | | Objectives |
|------------------------------------|---|--|
| Free Half Hour Consultation | | <ul style="list-style-type: none"> • Describe the process of mediation • Review the expectations and outcomes of working together • Review the Agreement to Mediate and the Fee • Schedule first session |
| Step One | First Session (2 hour sessions) | <ul style="list-style-type: none"> • Gain commitment to mediate • Set Ground Rules • Define high level issues • Complete Net Worth and Budget worksheets |
| Step Two | Usually completed in one session or less (2 hour sessions) | <ul style="list-style-type: none"> • Identify interests of both sides • Clearly identify issues |
| Step Three | Usually completed in one session or less (2 hour sessions) | <ul style="list-style-type: none"> • Brainstorm solutions • Generate options |
| Step Four | Usually completed in one session (2 hour sessions) | <ul style="list-style-type: none"> • Negotiate alternatives • Final agreement on settlement • Document Agreement |



Illustrative: typical mediation process

Most agreements are reached with an average of 2 to 4 sessions. The complexity of the issues and the ability of you both to work together to find solutions can impact the number of sessions required to reach agreement. Typically the mediator spends some hours outside of sessions to prepare documents which are charged at the hourly rate.

The two hours sessions are scheduled weekly.

FREQUENTLY ASKED QUESTIONS

Q: Is the mediator a lawyer who can tell us our legal position on matters in our case?

A: The mediator is trained to resolve disputes and equally represent you both. The mediator is not a lawyer, nor can the mediator apply the law to your individual situations. By nature giving legal advice to one side breaks the neutrality of the mediation as it cannot be guaranteed that equally powerfully legal advice can be given to the other party to keep it even.



Q: How much will mediation cost me?

A: The mediator charges no fee during your initial half hour consultation. In an effort to make Mediation affordable to everyone who needs it, Family Synergy Mediations fee is split between the parties. The mediator works for both of you. This makes Mediation more affordable than you might think.

Family Synergy Mediation does not charge a retainer so you only pay for the time you schedule with the mediator.



Q: If I agree in mediation that I would be willing to give up the house and we later go to court can my statement be used against me and cost me the house?

A: The short answer is no. During Mediation many possible alternatives will be discussed and none are binding until you both agree and have the documents drafted in a legally binding document and filed with the court.



Q: Everything discussed in mediation is completely confidential then?

A: Everything is confidential in that the mediator cannot share the substance of Mediation with anyone else. Of course if anyone suggests they are going to hurt themselves, others or break the law the mediator is required by law to alert the authorities.



Q: If we start mediation and then wish to quit have I lost any of my legal rights?

A: No. Either party can terminate Mediation at any time. It is completely voluntary. When Mediation is terminated neither party has surrendered any legal rights by starting Mediation. Either party is free to drop the dispute, or escalate to litigation at any time without compromising any of their rights.



Q: Do we still need lawyers if use mediation?

A: You are both encouraged to seek legal counsel to make sure your rights are legally protected. Mediation is a process of reaching agreement on the issues. Legal counsel is useful to make sure that language of agreement is memorialized properly in the legally binding documents. At the conclusion of Mediation all agreements will be documented in a Memorandum of Understanding that each can take to their respective attorneys for review.



Q: How can I be sure my spouse will provide complete and accurate information during mediation such as on our marital assets?

A: Mediation relies on full disclosure from both sides. It is not a matter of *IF* a party will divulge information but *HOW*. It can be done voluntarily during Mediation or by the order of the court. Not sharing information is NOT an option either in Mediation or in court. The party who attempts to hide asset or other information during Mediation will be treated the same by the courts as anyone else who falsifies information provided to the court.



Q: I have not usually handled the money. Will I be at a disadvantage during the mediation when we negotiate the division of our marital assets?

A: No. The mediator will work to ensure that *BOTH* sides have the complete and same information to make fair decisions. For example, if one spouse has an expensive collection that they claim on the net worth worksheets as having a low value the mediator may order a professional and independent appraisal be completed of the collection to determine their fair value. This way both will know the fair value of the collection when negotiating the division of assets.



Q: How successful is mediation?

A: Generally Mediation results in satisfactory agreement 75-90% of the time. Of course the circumstances of the conflict vary the results. For example court-referred cases can have a different success rate than cases initiated by the spouses themselves. To make matters more confusing a final written agreement does not always have to result for disputants to consider Mediation successful. Some work through the framing of the issues and take their disagreement back into their hands to work it out, grateful for Mediation for helping frame the underlying issues for them to solve.



Q: Is the agreement reached in mediation more durable than agreements imposed by the courts?

A: Typically, yes. Mediated settlements are shown to last longer than court ordered settlements and require fewer modifications in court. Mediated agreements are three times less likely to be taken back to court. Because Mediated agreements represent what is acceptable to both sides the agreement tends to meet the needs of the parties and no revision is needed in court. Also Mediated agreements are usually more

comprehensive and creative and are tailored to the needs of the disputants. This is reflected in a surveyed satisfaction rate that is higher by 30% over court ordered settlements. Also, litigants pay on average 133% more than their Mediation counterparts.



Q: I believe mediation can help, but my spouse still wishes to go to court. Can mediation still help me somehow?

A: Mediation is strictly voluntary and both sides have to participate of their own free will. Because we are working together to find win/win solutions the process will not work if either side doesn't engage fully in the process.

Sometimes, however, individuals have a false perception that their best interests are served by litigating. In some cases this is true. For example, if the other disputant is completely unreasonable and cannot be negotiated with, the court is in a better position to examine the case and impose a solution whether the parties agree with it or not.

Usually, it is in both parties best interest to find a win/win agreement as they can spend the time coming to a creative agreement that the courts don't have the time to accommodate.



Q: My spouse and I aren't sure if we are ready to get divorced, can mediation help us determine how we should proceed with our marriage?

A: Mediation is a process to reach agreement and move forward after you have decided to end your marriage. Emotional issues and issues about the past are best left to emotional specialists like Therapists and Psychologists. They are better equipped to assist you both in saving your marriage or deciding if you should move ahead with a divorce.

The mediator will only focus on the substance of the divorce and how to reach agreement so both sides can move forward.



Q: Where exactly are the Family Synergy Mediation offices located?

A: Family Synergy Mediation offices are located at:

South Denver (Near Belleview and I-25 in DTC)

4610 South Ulster Street
Suite 150
Denver, CO 80237

From I-25 and Belleview:

- 1) Head East on Belleview
- 2) Turn Left (North) on Ulster
- 3) First driveway past Union (sign out front has BEA on it)
- 4) Parking is free. We are on the first floor in Suite 150



WHAT DO WE DO NEXT?

Before calling the mediator:

- 1) Send this information kit to your spouse for review.
- 2) Discuss using Mediation. Focus on resolving matters and how you would both like things to be in the future instead of exploring the issues of the past.
- 3) Decide which one should call the mediator to setup the initial meeting. Determine several times over the next week or two when you both could be available to meet with the mediator for the ½ hour consultation so the person calling can give the times to the mediator.

Calling the mediator:

- 1) Provide the basic nature of the dispute. The mediator will ask you the questions that need to be answered to get the right level of information at this stage.
- 2) Provide the mediator with the dates and times when you both are available.

After calling the mediator:

- 1) The mediator can draft an introduction letter with the scheduled date/time for both of you to come in. The letter will be sent to both parties and contain the exact same information.
- 2) As you are waiting for the scheduled meeting, think about what your issues are during the divorce. Think about what you might be willing to do to in order to help resolve the conflict. Remove the emotion from your thinking and come to mediation prepared to discuss what you interested in seeing happen and what you are prepared to give to help reach agreement.

You can share this information kit by referring your spouse to our website at www.myfamilymediation.com and click on the Mediation Information Kit link on the homepage.

Contact the Mediator at:

info@myfamilymediation.com

(303) 725-1007

