

# Role of Financial Advisors in Divorce Mediation

Mediation is quickly becoming a popular method to handle the disagreements associated with divorce. When conducted by a skilled mediator, the divorcing parties can often obtain agreement on property settlement and custody issues in less time, and at a fraction of the cost of traditional attorney-led litigation.

Mediators can come from many disciplines, the most common are from the social services field or are lawyers. Regardless of the background of the mediator, there are interesting ground rules that they must follow. Their job is to enable the parties to arrive at their own agreement, regardless of the terms of that agreement. It is not their job, and in some states, they are specifically prohibited from offering professional advice as to whether the agreement is financially sound and fair to both parties, or even legally enforceable. Here in Colorado, even if the mediator is an attorney, he or she is still prohibited from offering legal advice during the mediation process.

Often in mediation, one party is vastly more informed as to the financial aspects of the marriage than the other party. This disparity can put one party at a significant disadvantage in a process where they are allowed to reach a legal agreement, but not necessarily an informed one. Even when clients are encouraged to have any mediated agreement reviewed by their own attorney, it is often impractical to go back to the table and start all over again. In my practice, I have developed two services to address this issue.

## **Financial Orientation**

First, I offer a Financial Orientation service whereby one spouse will engage me on an hourly basis to review the couple's financial situation and educate the client on what I see as the most relevant issues to understand in their divorce. While I scrupulously avoid offering any legal advice, I can assist my clients in building a basic balance sheet and cash-flow model and understanding the tax and cash-flow characteristics of the couple's assets, liabilities, and income streams.

Part of the process is to lay out for them the short- and long-range implications of selling, keeping, or splitting specific assets as part of their settlement. I am also able, and expected, to offer my professional advice as to the financial merits of various decisions. This enables my clients to participate more fully as advocates for their own interests in the mediation process. Often, when a tentative agreement is reached, I will also evaluate it in terms of future cash flows and the effects on our client's net worth. My clients feel that this process enables them to level the playing field enough to be comfortable with the mediation process.

Local mediators have become aware of my work and I now regularly receive referrals from them. They typically send me clients who need help in understanding the

cash-flow implications of creating and maintaining two households on the same income as pre-divorce. Often, one spouse becomes fixated on a specific asset (usually the woman wanting the house, or the husband wanting the investment accounts or the retirement plans) to the point where the whole process bogs down. My work in creating realistic cash-flow scenarios can help clients understand the new financial realities that must be incorporated into their divorce settlement.

### **Facilitated Financial Negotiation**

The second service my offer is something we call Facilitated Financial Negotiation. This is appropriate for a divorcing couple where both want to be fair but realize that they don't understand the financial issues well enough to make informed decisions.

I meet with them as a couple and review their inventory of assets, liabilities, and income streams. I inform them as to the issues involved with the valuation of various types of assets, understanding the tax implications of transfer, selling or keeping specific assets either before or pursuant to divorce, and insurance or estate-planning issues that they should address.

These meetings often take several hours, and I deliver an action summary in a few days' time that summarizes our discussion as well as my comments, as appropriate. I do not provide legal or specific tax advice outside my role as a Certified Financial Planner, but I do alert them as to issues where they should seek legal or accounting advice prior to a settlement.

In most cases, the couple can come to a general agreement during our meeting, subject to further confirmation and clarification of a few specific issues. This prepares them for a quick and effective mediation process.

### **It's All About the Money**

My experience in working with divorcing couples is that, once the custody issues are resolved, it is all about the money! The mediation process, even though superior in many respects to litigation, often stalls due to one or both of the parties feeling inadequate in evaluating the financial aspects of divorce. I have found helping clients to work through this logjam to be a rewarding part of my practice.