

## Virginia Divorce Mediation FAQs

By Ayme Pointer

There is a wonderful option to taking your divorce to court; it's called mediation.

What is the price for taking your entire divorce through the court system? Of course, the first answer is – it depends. Even so, after the custody battle, psychiatric evaluations, Guardian Ad Litem, expert witnesses, investigators, depositions, certified divorce financial analysts, real estate appraisals, pension funds experts, and, let's not forget, the attorney fees, the financial burden for a divorce just may leave you with not much change to spare. The cost of an average divorce is somewhere in the ballpark of between \$27,000 and \$70,000, whereas the average mediated divorce settles for around \$4000. This is a huge cost savings, not to mention a bit of a relief in terms of time saved and rescued emotional bandwidth. One thing is for sure, the more that you and your partner can resolve together the less you will spend on attorneys, discovery, and legal fees.

### What is mediation?

Mediation is a voluntary alternative to litigation. It is a collaborative and individualized process through which a neutral party helps individuals articulate interests, exchange ideas, and create a jointly acceptable resolution to a dispute. Mediation works best for individuals who wish to maintain control over their decision-making authority, settle without going to court, and who are willing to commit to a good faith effort to reaching a resolution. When looking for a good mediation company, seek one that prescribes to the core guiding principles of confidentiality, collaborative contribution, and voluntary participation while providing a fair, safe, and balanced process.

### How long is the mediation process?

While mediation is not as formal as going to court, the mediation process is more methodical than most people realize. With this being the case, a typical mediated dispute will usually reach a workable solution after a day of working together. In situations involving multiple parties however, you can expect the time spent mediating to increase proportionately with the number of individuals introduced to the process. As a general rule of thumb, add at least a half of a day of mediation time for each additional party. Major and complex corporate-level disputes involving significant amounts of money, complex contracts, or merging corporations may last several days or more.

Divorce mediation, where resolution is the centered driving force of the session and the couple has good faith intentions to settle all of the issues, generally

requires more than a few mediation sessions spread over several weeks or months. Ultimately, the individuals involved in mediation control the length of the mediation.

### What comes out of the mediation process?

In mediation, the fundamental outcome is resolution; a resolution created and tailored by the individuals. Most mediation does end in complete settlement, if not a good portion of the issues put to rest.

When agreement is reached, the individuals leave the mediated session with written documentation summarizing the decisions made. In some cases, this document is signed by the parties and put forward as a contract. The parties may want to consider taking all artifacts resulting from a mediated session to their respective lawyers, if lawyers are hired, for review before signatures. Once the summary is agreed to, a legally binding contract is created and signed by both parties.

If no agreement is reached during mediation, the mediator reviews progress made during the time spent together and advises every one of their options, such as meeting again later, going to arbitration, or going to court.

### Does mediation work?

Mediation works as much as the parties involved are willing to work in good faith toward a mutually satisfying resolution. Not to say the mediation process is not hard work but a good facilitator can help manage the process and emotions to make it as uncomplicated as humanly possible. Two points to remember: 1) Many times the mere presence of a mediator changes the course of a conflict and 2) (as some people may not believe) it is possible to reach a mutually satisfying resolution in times of anger, resentment, and fear.

Mediation has been found to be an effective option to litigation for resolving disputes in approximately 75% of all cases ... read this as saving you time and money. Another component to cost and time savings is that the mediation process is immediate-solution focused. Individuals don't have to spend the time determining truth, fact, or blame, they spend the time determining the 'now what's the best course of action'?

Let's take the cost savings one step further. Mediation is a win-win in terms of cost. In mediation, there are no extemporaneous costs, such as expert testimony or investigation fees, extensive photocopying, witness preparation costs, or dragging your attorney to court for the 20<sup>th</sup> time. Moreover, individuals typically share mediation fees thus reducing the costs incurred by each side.

Mediated agreements have a higher compliance rate since individuals are more likely to comply with a solution to which they created and agreed. In mediation, the individuals are able to individualize the resolution to meet their needs rather than being constrained by the limited options available in court.

### What does the mediator do?

Mediators bring skills, tools, ethical standards, vision, and humanity to the interaction between individuals. A mediator is a neutral party who clarifies conversations, identifies issues, tests the merits of positions, and assists the individuals with moving toward common ground. A mediator focuses on the underlying interests of the parties, defines complaints, problems, and disputes, discovers options and solutions, manages the resolution process in a 'win-win' manner, facilitates mutually agreeable settlements, and records agreement.

A mediator does not render decisions or decide the outcome, act as a witness or talk to anyone about the case, or judge the value of the person or position or who is right or wrong.

### What's in it for me?

The results of the mediation process are solutions that are personally relevant to you and that are more likely to survive over time. You are going to save money. On average, mediation is 60% less expensive than litigation. You are going to save time. It may take months and sometimes years to resolve a disagreement in court, mediation can be paced according to the parties' needs and schedule. You are going to have the opportunity to resolve your dispute with dignity, confidentiality, and flexibility. You are going to be participating in a process that is responsive, private, and sensitive. You are going to create a solution that is unique to your situation. And when it matters, you can preserve a relationship that may have otherwise been stressed to ruin.

### Do I need a lawyer in mediation?

Most individuals seeking mediation are trying to work together to solve their problem, not trying to convince a judge of the validity or legal soundness of each point of view. Because mediation rules are few and straightforward, lawyers are not usually present during mediation and you need not be represented by an attorney to participate in mediation.

If your case involves substantial property or legal rights, however, you may want to consult with a lawyer before the mediation to discuss the legal consequences

of possible settlement terms. You may also want to make a lawyer's approval a condition of any agreement reached.

A lawyer can be used to review the agreement for enforceability, clarity, and precision. A lawyer can also provide you with guidance and legal counsel and file appropriate paperwork with the court. Even if your mediator is a lawyer, the mediator is not acting as a lawyer during mediation and cannot legally represent either individual at any point in the divorce.

Just keep in mind that the mediator cannot provide legal advice to either individual. If you already have an attorney, or you intend to hire one, you may want to consider legal consultation before mediation.

### Is mediation legally binding?

Participation in the mediation process is absolutely voluntary, however in many Judicial Systems across the United States the mutually agreed to and signed resolution is binding and legally enforceable by virtue the intended execution of the agreement reached between the individuals.

Any agreement you reach may be filed with the court. The court generally reviews the agreement to assure that it conforms to the standards that have been established, such as the child support guidelines and, where it doesn't, what special circumstances exist. If your dispute is not filed in court, the agreement is usually considered to be a contract. Depending on the nature of the agreement and the dispute, if there is a breach of the contract, you might be able to file a claim with the court.

### Can my divorce be mediated?

Absolutely. A divorce can be mediated quite nicely and comfortably. Most mediated divorces result in resolved separation agreements, decided custody and visitation issues, divided assets and property, documented divorce terms and conditions, and so much more. While in some cases the entire divorce may not be completely mediated to a resolution, a vast majority of the contention can be resolved to a mutually satisfactory agreement and the remaining issues are then brought before a judge to decide. Even partially resolved divorces save months, even years, of court battling.

### What else can be mediated?

Many civil, non-criminal, non-punitive, disputes can be mediated. If it's an issue, it can be mediated. If it's a dispute, it can be mediated. Because mediation helps individuals' safely and fairly surface concerns, wants, and needs, any situation

where two parties want resolution can be moved toward agreement through mediation. Common mediation services are family conflict, parent and child relationship, elder care decisions, separation, divorce, child custody and visitation agreement, landlord and tenant disagreement, consumer complaints, homeowner's issues, victim and offender agreement to name a few.

### What is the risk of mediation?

The risks of mediation are very few. Because mediation is voluntary, either party or the mediator can call a halt to the process at any time. Neither party is pressured or coerced into accepting any agreement they don't support. Mediation is a private process, not open to the public. You will be asked to sign a confidentiality agreement before beginning mediation and the mediator is bound by law to keep confidential what is discussed in mediation.

### What happens if mediation doesn't work?

No individual is forced to accept a solution that does not meet his interests and needs. The individuals should understand that the mediation goal is to create a solution that comes as close as possible to a "win-win" agreement, while recognizing that individuals don't receive everything on their wish list. If no resolution is reached, the individuals may still go to court to resolve their disagreement.