



Divorce Mediation

“A Guide for Couples in Divorce”

Wotitzky Mediation Center, LLC

June 2013

Volume 1, Issue 1

YOUR SOLUTION FOR DISPUTE RESOLUTION

Wotitzky Mediation is a full service dispute resolution firm serving the Suncoast of Florida from Tampa South to Naples and Marco Island. Our home base and main office is located in Historic Punta Gorda between Tampa and Naples. Services we provide include mediation, arbitration and neutral evaluation involving commercial disputes and family matters. We actively engage in Online Dispute Resolution.

Table of Contents

Introduction	4
Mediation vs. Litigation	6
No Fault Divorce	7
Childrens Issues.....	9
A. Change of Circumstances	9
B. Child Support	9
C. How Child Support is Paid	10
D. Expense for Medical Ins. and College	10
E. Income Tax Exemption for the Children	10
F. Relocation	11
G. Parenting Class	12
Spousal Support	13
Equitable Distribution	15
Services	17
Contact Us	18

IMPORTANT INFORMATION

1. In all Florida divorce cases in which there are minor children, both parents are required to attend a four hour parenting class. If you have minor children, ask us for information as to where these classes are held.
2. This office does not prepare quitclaim deeds, Qualified Domestic Relations Orders (QDROs) or other legal documents other than the documents directly related to the divorce.
3. You must keep us informed of any changes in addresses and telephone numbers.

All rights reserved. This GUIDE may not be reproduced in whole or in part by any means without prior written consent.

June 2013

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is distributed with the understanding that the publisher and author are not engaged in rendering legal, accounting or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

*From a Declaration of Principles jointly adopted
by a Committee of the American Bar Association
and a Committee of Publishers*

INTRODUCTION

This GUIDE is produced and published as an aid to couples who are engaged in voluntary divorce mediation before either party has entered into the court process. The parties frequently engage in this process without the participation of attorneys.

In the mediation process, mediators do not serve the same purpose as attorneys. This is true even if your mediator is an attorney. A mediator does not represent either side.

The main objective of mediation is to reach an agreement that is acceptable to both parties. However, mediation clients often do want to have a general understanding of the laws which guide the court in making decisions. This GUIDE will provide you with an overview of some of those principles of law. The following CAUTION is offered:

1. The legal principles presented in this GUIDE are not to be relied upon as being all of the law for any particular subject. Further, facts in your particular case may impact upon whether or not or how the particular principle of law would apply in your case.
2. The law is really a set of rules that the court should, but doesn't always follow in the event that you don't reach agreement. In mediation, you have much more flexibility to structure agreements than the court does. You are not always bound by the rules of law that the court should follow. Therefore, when you read this GUIDE you should not draw any conclusions about any particular issue based upon the presentation of principles. Your mediator will suggest solutions to you that may not be evident from a reading of these principles.

When you reach agreement, the mediator with your help will prepare a Mediated Marital Settlement Agreement reflecting all of the agreements that you have reached.

When signed, it is binding upon both parties. **Having an attorney review any final settlement before signing is advisable.**

This GUIDE will also provide you with other information which may help you through the mediation process. However, you should rely upon your mediator for specific guidance.

MEDIATION VS. LITIGATION

Television has provided the public with graphic insight into how our court system works. It is an adversarial process. Attorneys representing each side zealously advocate for their clients position. In short, trials and posturing for trial creates more acrimony and discourages the sanctity of family. The hostile courtroom environment is the battleground for the war between the parties.

Divorce cases are tried in the same adversarial process. It pits one party against the other and hostility between the spouses is increased. It is a dehumanizing experience for the parties, neither of whom is usually happy with the result. The financial and emotional cost is enormous. Children reside with angry and unhappy parents over the long duration of the divorce. As with any trial, it should not occur and if it must, it should be as a last resort.

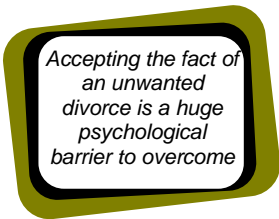
Terminating a marriage, in any process, is an emotional experience for most people. Mediation makes more sense and has proven to be a more effective means of dealing with the complicated issues of the dissolution of a marriage. The final decisions affecting your life will be made by you, with the help of a trained expert.

The success of this effort will depend, in large part, upon your determination to deal seriously with each issue. For the moment, battle is set aside while solutions are sought. It is a time to consider not only your own point of view, but look at a proposed solution from your spouse's point of view. It is not a process that either spouse can use to punish the other.

When there are children in the marriage, it becomes more urgent that there be a peaceful resolution. Besides avoiding a courthouse confrontation, mediation will help you to work more cooperatively together in the future when dealing with issues involving the lives of your children.

Florida law now requires that in all divorces in which there are children, the parents are ordered to take a four-hour parenting class prior to the granting of the divorce. Your mediator will discuss the requirement with you and give you information as to where these classes are held. First, determine the audience of the booklet. This could be anyone who might benefit from the products or services it contains. Next, establish how much time and money you can spend on your booklet. These factors will help determine the length of the booklet and how frequently you publish it. If your booklet is acting as a catalog of products or services, it's recommended that you publish at least quarterly so that your booklet is considered a consistent source of information. Your customers or employees will look forward to its arrival.

No Fault Divorce



The “no fault” concept of divorce has existed in Florida and most other states for many years. Yet it is widely misunderstood. Here is how it operates in Florida.

If you or your spouse have been a resident of Florida for at least six months and you believe that your marriage is “irretrievably broken”, you will be granted a divorce. It does not require your spouse’s consent, signature or approval. It doesn’t make any difference if the cause of the failure of the marriage was yours. The law no longer concerns itself with the question of fault or grounds in determining whether or not to grant a divorce. If you believe that the marriage cannot be saved, the court will grant the divorce, whether your spouse shares that opinion or not. The result is that there are very few contested divorces in Florida in which the issue is whether or not to grant a divorce. It will be granted in almost every case.

“Contested” divorces refer to those cases in which the parties have not reached agreement on issues such as distribution of property, alimony, children and all of the issues involving the rights and

obligations of the parties resulting from the dissolution of the marriage.

For the spouse who is abruptly confronted with the prospect of a divorce, understanding this concept will dispel any illusions or hope that you will be able to resist the granting of the divorce. Certainly, if your spouse is willing to do so, seeking help to preserve the marriage should be explored. If the spouse seeking the divorce persists in his or her desire for a divorce, the court will grant it.

Accepting the fact of an unwanted divorce is a huge psychological barrier to overcome. As long as it persists, it is difficult to direct attention to rational discussion of the issues of the dissolution.

Continued denial will force one party and then the other to retain the services of a divorce attorney. Once the battle begins, costs and hostility will increase and your ability to control the outcome will diminish.

If you are the spouse that is facing an unwanted divorce, it is important that you begin to take the steps that are necessary for you to regain control of your life.

A few words of caution: You will be subject to much misinformation from well-meaning friends and relatives. They will reinforce your feelings of anger directed at your spouse. Such advice may be comforting for the moment, but it will not help you to put the problem into perspective. Your first objective should be to get real help in dealing with the very emotional aspect of this crisis in your life. Seeking the help of a psychologist is probably the best course of action. The assistance of clergy or support groups may also help. Don't dwell on the causes for the failure of the marriage. The courts really don't care about who was at fault, and such self-evaluation or condemnation of your spouse will not help you. The "Why me" syndrome should yield to a determination to deal with the issues that will help you to get on with life. Mediation is the best process to help you do so.

ISSUES DEALING WITH CHILDREN

The good news is that the old custody laws have yielded to shared parental responsibility. Your mediator will discuss with you the full range of flexible solutions that are available to you. Under this concept both parents continue to share in both the responsibility and the enjoyment of their children. You will have the opportunity to jointly make major decisions affecting your children's lives.



A. CHANGE OF CIRCUMSTANCES

The question is often asked “If we reach agreement on all issues dealing with children and we enter into a binding settlement agreement, can any of those provisions be changed in the future, even after a divorce is granted”?

The terms of a divorce which deal with children are always subject to change (modification) in the future. Suppose your child is three years old. How can you both project today all of the changes of circumstances that will occur over the next 15 years? The answer is you can't. Therefore, the terms of the divorce are always subject to change based upon change of circumstances occurring at that time. Modification (change) of the divorce judgment can come about by both parties agreeing to the change. If they cannot agree, the court will, upon petition by either party, consider the request for a change.

B. CHILD SUPPORT

Child support is now established with reference to statutory guidelines which base child support upon the net income of both parents, as well as other factors.

Suppose the income of either or both parents changes in the future. Can the amount of the child support be changed accordingly? Yes. Remember that all provisions with reference to children are modifiable (subject to change).

C. HOW CHILD SUPPORT IS PAID

In mediation, you can agree upon the manner in which child support is paid. Essentially, there are three methods available:

1. Direct payment from one parent to the other.
2. Payments made through the courthouse or depository.
3. A payroll deduction plan

Your mediator will discuss the implications of each choice.

D. EXPENSES FOR MEDICAL INSURANCE, COLLEGE EDUCATION

All of these topics are subject to agreement between you and your spouse. The mediator will discuss each of them with you and help you to reach an agreement as to how these expenses will be provided for.

E. INCOME TAX EXEMPTION FOR THE CHILDREN

Unless the parties agree otherwise, the parent with whom the children have their primary place of residence (spend a majority of their time) declares the children as an exemption on his or her tax return. However, here is another opportunity for special arrangements to be agreed upon that may benefit both parties. Speak to your mediator about how the exemption can be arranged between the spouses.

An “exemption” is not the same as a “deduction”. Child support is not deductible to the payer, nor taxable income to the recipient.

F. RELOCATION

According to Florida Statute 61.13001(1)(e), relocation "means a change in the location of the principal residence of a parent or other person from his or her principal place of residence at the time of the last order establishing or modifying time-sharing, or at the time of filing the pending action to establish or modify time-sharing. The change of location must be at least 50 miles from that residence, and for at least 60 consecutive days not including a temporary absence from the principal residence for purposes of vacation, education, or the provision of health care for the child." In essence, this means that if you are seeking to move with your children, and there is a pending or closed case which already decided timesharing matters, you must comply with the relocation statute. There are two ways which you may do so. First, if the parents both agree to the relocation, they can enter into a written agreement which provides three key elements: (1) the parent who is not relocating gives express consent; (2) the agreement contains a timesharing schedule to be used after the relocation; and (3) the agreement addresses travel expenses to be paid by the parties. The second option comes into play when the party who is not moving refuses to consent to the move. In this case, the parent seeking relocation must file a document called a Petition to Relocate.

G. PARENTING CLASS

Parents filing for dissolution in the State of Florida must attend a four hour parenting class. You will be given information as to dates and locations where this class is held upon reaching settlement.

TIME-SHARING GUIDELINES (See Parenting Plan Guidelines PDF)

61.30 Child support guidelines; retroactive child support.

(1)(a) The child support guideline amount as determined by this section presumptively establishes the amount the trier of fact shall order as child support in an initial proceeding for such support or in a proceeding for modification of an existing order for such support, whether the proceeding arises under this or another chapter. The trier of fact may order payment of child support which varies, plus or minus 5%, from the guideline amount, after considering all relevant factors, including the needs of the child or children, age, station in life, standard of living, and the financial status and ability of each parent. The trier of fact may order payment of child support in an amount which varies more than 5% from such guideline amount only upon a written finding explaining why ordering payment of such guideline amount would be unjust or inappropriate. Notwithstanding the variance limitations of this section, the trial of fact shall order payment of child support which varies from the guideline amount as provided in paragraph (1)(b) whenever any of the children are required by court order or mediation agreement to spend a substantial amount of with either parent. This requirement applies to any living arrangement, whether temporary or permanent.

Alimony – Spousal Support

No other subject raises the hackles of the parties more than the subject of alimony. It is support for your spouse. Alimony may be ordered to be paid by a husband or a wife depending upon the circumstances. Unlike child support, there is no chart to determine if alimony should be provided and, if so, the type of alimony and amount.

The court, in considering whether or not alimony should be awarded considers a number of factors. Some of those considerations are (1) the length of the marriage, (2) the standard of living of the parties during the marriage, (3) the need of a spouse to receive spousal support, (4) the ability of the paying spouse to provide that support, (5) the health and age of the parties, (6) the earning capacity of the parties and (7) any other factors, the consideration of which would contribute to a fair determination of the issue.

They are really common sense criteria. The determination of whether or not alimony in any form is appropriate in any given case varies with the facts in the particular case. Alimony is not used to punish a spouse for wrongful conduct.

When alimony is appropriate, it can be structured to fit the needs of the parties.

For purposes of determining alimony, there is a rebuttable presumption that a short-term marriage is a marriage having a duration of less than 7 years, a moderate-term marriage is a marriage having a duration of greater than 7 years but less than 17 years, and long-term marriage is a marriage having a duration of 17 years or greater. The length of a marriage is the period of time from the date of marriage until the date of filing of an action for dissolution of marriage.

Bridge-the-gap alimony may be awarded to assist a party by providing support to allow the party to make a transition from being married to being single. Bridge-the-gap alimony is designed to assist a party with legitimate identifiable short-term needs, and the length of an award may not exceed 2 years. An award of bridge-the-gap alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. An award of bridge-the-gap alimony shall not be modifiable in amount or duration.

Rehabilitative alimony may be awarded to assist a party in establishing the capacity for self-support through either: 1. The redevelopment of previous skills or credentials; or 2. The acquisition of education, training, or work experience necessary to develop appropriate employment skills or credentials. In order to award rehabilitative alimony, there must be a specific and defined rehabilitative plan which shall be included as a part of any order awarding rehabilitative alimony. An award of rehabilitative alimony may be modified or terminated in accordance with s. 61.14 based upon a substantial change in circumstances, upon noncompliance with the rehabilitative plan, or upon completion of the rehabilitative plan.

Durational alimony may be awarded when permanent periodic alimony is inappropriate. The purpose of durational alimony is to provide a party with economic assistance for a set period of time following a marriage of short or moderate duration or following a marriage of long duration if there is no ongoing need for support on a permanent basis. An award of durational alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. The amount of an award of durational alimony may be modified or terminated based upon a substantial change in circumstances in accordance with s. 61.14. However, the length of an award of durational alimony may not be modified except under exceptional circumstances and may not exceed the length of the marriage.

Permanent alimony may be awarded to provide for the needs and necessities of life as they were established during the marriage of the parties for a party who lacks the financial ability to meet his or her needs and necessities of life following a dissolution of marriage.

Permanent alimony may be awarded following a marriage of long duration if such an award is appropriate upon consideration of the pertinent factors, following a marriage of moderate duration if such an award is appropriate based upon clear and convincing evidence after consideration of the pertinent factors, or following a marriage of short duration if there are written findings of exceptional circumstances. In awarding permanent alimony, the court shall include a finding that no other form of alimony is fair and reasonable under the circumstances of the parties. An award of permanent alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. An award may be modified or terminated based upon a substantial change in circumstances or upon the existence of a supportive relationship in accordance with s. 61.14.

Unlike child support, alimony may have income tax implications. Depending upon the kind of alimony and how it is structured, it may be tax deductible to the payer and taxable income to the recipient.

Like child support, it may be modifiable (changed) in the future, based upon substantial change in circumstances.

When alimony is waived, it can never again be asked for.

You will have more flexibility in mediation dealing with the question of alimony than you would have in court.

Equitable Distribution

The court distributes the assets and debts of the marriage pursuant to an “equitable distribution” statute. Generally, these incidents of the marriage are divided equally between the spouses. Which spouse holds “title” to an asset is not the controlling factor. If the asset or debt was acquired during the marriage, it is a marital asset or debt, with some exceptions. For example, an inheritance is generally not a marital asset. However, an inherited asset or even an asset owned by one of the spouses prior to the marriage can take

on the character of a marital asset depending upon the particular facts in the case.

The resolution of these matters are handled much more effectively in mediation than they are in court. Typically, the marital home is a marital asset. There are many alternatives that can be considered in dealing with this asset. You can virtually agree to anything that is acceptable to both of you. Your mediator will work with you on these distributions and suggest ways to accomplish the distribution in a fashion that will accommodate your circumstances.

Marital assets may include stocks, bonds, real estate, motor vehicles, boats, aircraft, Individual Retirement Accounts (IRAs), pension and retirement plans, and an interest in a business owned by one of the spouses.

Debts are also a part of the plan of distribution. As to debts to which both of you were legally obligated, including mortgages, automobile and credit cards, both spouses will remain legally liable to the creditor even if the agreement that you reach or a court order requires one spouse to be solely responsible for repayment. Creditors do not readily release one party from the obligation.

The agreement that you enter into must be based upon full disclosure of the financial affairs by each spouse to the other. The Florida Supreme Court has issued rules which prohibit the waiver of financial disclosure. Therefore, you will each be expected to fill out detailed financial affidavits that will be sworn too and made a part of the divorce file at the courthouse. Material misrepresentations or material omissions on these forms can result in disastrous consequences for the untruthful party long after the divorce is granted.

When you reach agreement, a detailed Mediated Marital Settlement Agreement will be prepared with your help. A draft of the Agreement will be provided for your review and review by your attorney or other professional.

A MARITAL SETTLEMENT AGREEMENT, when entered into freely and voluntarily, and with full disclosure by each party to the other, binds the parties to the terms of the AGREEMENT. It will be submitted to the judge at the time of the final hearing for dissolution of marriage, and if it has been entered into properly, the AGREEMENT will be made a part of the FINAL JUDGMENT OF DISSOLUTION OF MARRIAGE (Divorce) and become a Court Order.

Because the MARITAL SETTLEMENT AGREEMENT is an important legal document, it should be reviewed by an attorney before you sign it.

Divorce Mediation Services

UNCONTESTED DIVORCE MEDIATION WITHOUT ATTORNEYS

Your choice of mediation services from Mediated Marital Settlement Agreements to All the documents you need to file for an uncontested divorce.

Price: FREE initial consultation. CALL for a Quote.

CONTESTED DIVORCE MEDIATION

Mediation of a litigated case is one that has been filed with the court and the parties are represented by counsel. The parties may also be self-represented.

Price: Is based on a sliding scale and is dependent upon the joint gross income of the parties. Go to www.wotitzkymediation.com to download our current Rate Card and to review our Policies and Procedures.

Contact us:

Wotitzky Mediation Center, LLC

Serving the Suncoast of Florida from Tampa South to Naples and Marco Island

Primary Office: 407 East Marion Avenue, Ste. 103
Punta Gorda, FL 33950

Telephone: 941-575-9666

FAX: 941-575-8591

Mobile: 941-626-1500

Email: Hal@WotitzkyMediation.com

Web: www.wotitzkymediation.com