

### **DIVORCE IS GOVERNED BY STATE LAW**

Divorce is determined by STATE law, so regulations can vary from State to State. Before filing for a divorce, verify you meet the State residency requirements.



If you plan to use an attorney, be sure they are licensed in the State where you seek the divorce.

### **COMMENCING A DIVORCE ACTION**

A divorce is started with a "Summons with Notice" or "Summons and Complaint" and is based on a cause of action. There is a Plaintiff and a Defendant. The Plaintiff is the person who brings the action, and the other party is the Defendant. In New York State, only the state Supreme Court handles divorce cases, and New York State has an excellent website to guide people through the process.

<https://nycourts.gov/courthelp/family/divorce.shtml>

### **GROUND FOR DIVORCE**

In New York State, a divorce action can be brought for any of the following seven reasons:

**1. Irretrievable breakdown in relationship for a period of at least 6 months**

This ground is usually called a no-fault divorce. To use this ground, the marriage must be over for at least 6 months, and all economic issues, including debt, how the marital property be divided, and custody and support of the children, have been settled.

**2. Cruel and inhuman treatment**

To use this ground, the Judge will be looking for specific acts of cruelty that happened in the last five years. It is not enough that you and your spouse had arguments or did not get along. The cruelty must rise to the level that the Plaintiff is physically or mentally in danger, and it is unsafe or improper for the Plaintiff to continue living with the Defendant.

**3. Abandonment**

To use this ground, the spouse must have abandoned the Plaintiff for at least one year or more. Two examples of abandonment: where the spouse physically leaves the home without any intention of returning or where the spouse refuses to have sex with the other spouse; this is called "constructive abandonment."

**4. Imprisonment**

To use this ground, the spouse must have been in prison for 3 or more years in a row. The spouse must have been put into prison after the marriage began. The Plaintiff can use this ground while the spouse is in prison or up to 5 years after the spouse was released from prison.

**5. Adultery**

To use this ground, the Plaintiff must show that the spouse committed adultery during the

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marriage. This ground can be hard to prove because evidence from someone besides the Plaintiff and spouse is needed.

#### 6. **Divorce after a legal separation agreement**

To use this ground, the Plaintiff and Defendant sign and file a valid separation agreement and live apart for one year. The separation agreement must have specific requirements included to be valid.

#### 7. **Divorce after a judgment of separation**

This ground is used sparingly. To use this ground, the Supreme Court draws up a judgment of separation, and the married couple lives apart for one year.

### **WHAT IS AN UNCONTESTED DIVORCE?**

An uncontested divorce is one in which the two spouses have no disagreements on any aspect of the divorce case, including division of property debt allocation, maintenance, custody, and child support. Since there are no issues to be settled, there is no need to litigate them in Court, and there is a procedure for self-filing and getting divorced without an attorney. Uncontested divorces have been allowed in New York State since 2010.

### **IN A CONTESTED DIVORCE, WHAT ISSUES DOES THE COURT RESOLVE?**

In a contested divorce, the Court will decide:

1. Division of Property
2. Spousal Support Maintenance – aka Alimony
3. Child Custody
4. Child Support

Divorce is NOT about determining who did wrong to whom or assessing damages based on any perceived wrongdoing. The only exception would be if one party willfully squandered marital resources.

### **Division of Property**

States adopt one of two methods for dividing property:

- **Community Property** States include Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. In these States, the law considers any property acquired during the marriage to be jointly owned by each spouse, and in a divorce, it is divided equally. Community Property states
- **Equitable Distribution** – The other 41 states use "equitable distribution" to divide assets and liabilities in divorce. With Equitable Distribution, courts try to achieve a fair allocation of property based on a list of factors or guidelines set forth by state law. However, "fair" does not necessarily mean 50/50. Instead, the Court considers a variety of factors, including:
  - the duration of the marriage
  - each spouse's health
  - the need for the parent with [custody](#) to live in the family home and use or own its effects
  - the pension, health insurance, and inheritance rights either spouse will lose as a result of the divorce, valued as of the date of the divorce
  - whether the Court has awarded Alimony
  - whether either spouse has an equitable claim to marital property to which that spouse does not have the title, based on that spouse's contribution of labor, money, or efforts as a spouse, parent, wage earner, or homemaker, including contributions to the other spouse's earning potential (by, example, working to put the other spouse through school)
  - the liquid or non-liquid character of all marital property
  - the probable future financial circumstances of each spouse
  - if the marital property includes a component or interest in a business, corporation, or profession, the difficulty of valuing that interest and whether it would be desirable for that interest to be retained intact, free from claims or interference by the other spouse
  - the tax consequences to each spouse
  - whether either spouse has wastefully dissipated marital assets
  - whether either spouse has transferred or encumbered marital property in contemplation of divorce without fair consideration, and
  - any other factor the Court expressly finds to be a just and proper consideration.

### **WHAT OTHER FACTORS ARE CONSIDERED WHEN DIVIDING PROPERTY?**

All Courts distinguish between "Marital Property" and "Separate Property." In most states, only marital property is divided, and spouses get to keep their separate property

### **WHAT IS MARITAL PROPERTY?**

Marital property includes all property acquired by either or both spouses during the marriage, regardless of who bought it.

Examples of marital property include:

- what each spouse earned during the marriage
- the property was purchased with either spouse's earned income
- the property the couple purchased while married (such as a house or car)
- the retirement benefits each spouse earned during the marriage, and
- the appreciation of marital property while the couple was married.

### **WHAT IS SEPARATE PROPERTY?**

- Property either spouse acquired before marriage,
- Property either spouse received individually as an inheritance or gift, except the other spouse
- Compensation for personal injuries to either spouse.
- Any property characterized as separate property in a valid prenuptial agreement or other written contract, and
- Property acquired from the proceeds or appreciation in the value of the separate property unless that appreciation is partly due to the efforts or contributions of the other spouse. (N.Y. Dom. Rel. § 236 (B)(d).)

Courts do not divide separate property when a couple divorces. Instead, each spouse gets to keep their separate property except to the extent that the other spouse contributed to the property's increase in value.

### **WILL A BUSINESS BE VALUED AND DIVIDED IF ONLY ONE SPOUSE OWNS IT?**

In general, if during the marriage, one spouse built their business or professional practice or gained enhanced earning capacity because they went to school and improved their skills, got a professional license, educational degree, or new profession, then the Business or Professional Practice is considered "Marital Property" and the Court will value it and make an appropriate division by awarding the actual business or practice to the spouse running it, and award the other spouse other property to make up the difference.

### **HOW IS MARITAL PROPERTY DIVIDED IN A COMMUNITY PROPERTY STATE?**

If couples cannot agree on how to divide marital assets, the Judge will determine whether each piece of property or debt belongs in the "marital" or "separate" categories and will then divide the estate using the above-listed factors.

### **WILL THE COURT HONOR A PRENUPTIAL AGREEMENT?**

If the couple signed a [prenuptial agreement](#) before the wedding, the Court must adhere to the provisions in the contract.

### **Maintenance = Alimony = Spousal Support**

Maintenance, Alimony, and spousal support are the same things. While most states use the term "alimony," in New York, it is called "maintenance."

Maintenance is a payment from one spouse to the other and is deemed appropriate when there is a significant disparity in income between the two spouses filing for divorce.

The general rule is that if the higher-earning spouse makes more than 2/3 of the family income, there will likely be a maintenance order. The purpose of maintenance is to assist the lower-income spouse in becoming financially independent.

There are three types of Maintenance in New York, and the only difference is timing:

- Spousal support – maintenance paid before the divorce action is filed.
- Temporary or *Pendente Lite* Maintenance - maintenance paid after the divorce action was started but before the divorce was finalized
- Post-Divorce Maintenance – maintenance after the couple is divorced.

Maintenance is always paid by the higher-earning spouse, regardless of whether it is a husband or the wife, based on a formula.

### **WHAT IS THE FORMULA TO CALCULATE MAINTENANCE IN NEW YORK STATE?**

In New York, Maintenance is Calculated Pursuant to a Formula for couples with a net income of up to \$ 183,000 (as of 2003). The Court is given more leeway for couples with a larger income in determining an appropriate amount.

The formula involves making two calculations, and whichever manner results in a **lesser** amount, that is, the amount paid for maintenance. The two calculations are as follows:

#### Calculation #1

- Gross Income, minus specific taxes = Net Income. *For this calculation, taxes include Social Security, Medicare, and local tax but exclude federal or State taxes.*
- The higher-earning spouse's net income is multiplied by 30% (if no children) or 20% if there are children = A
- The lower-income spouse's net income is multiplied by 20% (if no children), or 25% of these are children = B
- Maintenance under calculation #1 is A minus B = C

#### Calculation #2

- Gross Income, minus specific taxes = Net Income. *For purposes of this calculation, taxes include Social Security, Medicare, and local tax, but exclude federal or State taxes.*
- The Net Income of both parties is added together = D
- This combined Net Income is multiplied by 40% = E
- The lower-earning spouse's net income = B
- Maintenance under calculation #2 is D minus B = E

**Maintenance is the LOWER amount of either C or E.**

**EXAMPLE OF HOW MAINTENANCE IS CALCULATED**

	<b>NO CHILDREN</b>		<b>CHILDREN</b>	
	Spouse #1	Spouse #2	Spouse #1	Spouse #2
Gross Income	\$ 114,482	\$ 57,241	\$ 114,482	\$ 57,241
Social Security Tax	\$ 7,098	\$ 3,549	\$ 7,098	\$ 3,549
Medicare Tax	\$ 1,660	\$ 830	\$ 1,660	\$ 830
New York City Tax	\$ 5,724	\$ 2,862	\$ 5,724	\$ 2,862
Deductible Taxes	\$ 14,482	\$ 7,241	\$ 14,482	\$ 7,241
<b>NET INCOME</b>	\$ 100,000	\$ 50,000	\$ 100,000	\$ 50,000
Factor	30%	20%	20%	25%
Computed Amount	\$ 30,000	\$ 10,000	\$ 20,000	\$ 12,500

**CALCULATION #1**

Higher Earning	A	\$ 30,000	A	\$ 20,000
Less Lower Earning	B	\$ (10,000)	B	\$ (12,500)
<u>Maintenance</u>	C	<u>\$ 20,000</u>	C	<u>\$ 7,500</u>

**CALCULATION #2**

Total Net Income	D	\$ 150,000	D	\$ 150,000
Factor		40%		40%
	E	\$ 60,000	E	\$ 60,000
Less Lower Earning	B	\$ 50,000	B	\$ 50,000
<u>Maintenance</u>	G	<u>\$ 10,000</u>	G	<u>\$ 10,000</u>

**MAINTENANCE WOULD  
BE THE LESSER OF:**

**\$ 10,000**

**\$ 7,500**

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#### FOR HOW LONG IN MAINTENANCE PAID?

The length of time maintenance will be required to be paid is based on the length of the marriage.

Marriage Length	Years of Maintenance	Maintenance might be awarded for	
		Low End	High End
0-5 year	15-30% marriage duration	0	2 years
6-10 year	15-30% marriage duration	1.5 years	3 years
11-15 year	15-30% marriage duration	3 years	6 years
16-20 year	30-40% marriage duration	5 years	8 years
21-25 year	35-50% marriage duration	8 years	12 years
26-30 year	35-50% marriage duration	10 years	15 years
31-35	35-50% marriage duration	11 years	18 years

*This information is from various internet sources and is a rough guideline.*

Going back about thirty years ago Alimony was often awarded for life or until the receiver reached retirement age. In general, the period over Alimony is paid is now shortened.

#### WHAT OTHER FACTORS GO INTO DETERMINING MAINTENANCE PAYMENTS?

A Court may decide to adjust Net Income up or down depending on circumstances. They might increase one party's net income if they were receiving non-taxable benefits from their employment, ongoing gifts received from family members, or if one person is purposefully under-employed.

The Court may also take into consideration the ages, health, contributions to the marriage, differences in earning capacities of the divorcing parties. The Court has a lot of discretion in making maintenance awards to help achieve what they deem is "fair."

Divorcing parties often litigate these matters and run up thousands of dollars in legal bills. It is thus best to back-of-the-napkin calculation to see what the guidelines would provide maintenance, and weigh it against what is the best-case likely outcome, and decide if the risk and cost to litigate is worth it.

#### HOW IS MAINTENANCE TREATED FOR TAXES?

Before 2019, for income tax purposes, maintenance paid was a deductible expense, and maintenance received was taxable income.

In 2019 the Federal Tax Code changed so that awards made from that year forward are no longer deductible nor included in income. Consequently, some states have changed their formulas to account for the change in the tax code, but so far, New York has yet to make a change.

## **Child Support**

Child Support must be paid by the non-custodial spouse to the custodial spouse.

In all states, Child Support is required until the child is 18, but in many states the requirement continues longer provided the child is not supporting themselves (emancipated).

In New York Child Support is required to age 21; in New Jersey it can be up to age 23; in Connecticut it is to age 19 if the child is still in high school. Due to these differences, it is critical to check the state law.

### **CHILD SUPPORT HAS TWO COMPONENTS**

In most states, there are two components of child support.

- Basic Child Support - meant to cover housing, food and clothing.
- Add-Ons – for health insurance, unreimbursed medical expenses, and often extra-curricular activities (private lessons, camps, educational programs, etc.) that were part of the child's pre-divorce routine.

### **WHAT IS THE FORMULA FOR CHILD SUPPORT?**

Similar to Maintenance, Basic Child Support is based on a formula. However, this formula, besides calculating Net Income, considers the number of children in the family.

In New York, for families with a combined Net Income of \$163,000 (for 2023), the formula requires computing for each spouse their Net Income and then doing a calculation based on the number of children in the family.

The formula is as follows.

**Gross Income, minus some taxes = Net Income. *For this calculation, taxes include Social Security, Medicare, and local tax but exclude federal or State taxes.***

- The amount of Basic Child Support is the family's Net Income multiplied by a percentage; the percentage is based on the number of children in the house:

1	Child	17%
2	Children	25%
3	Children	29%
4	Children	31%
5	Children	35% or more



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- However, Basic Child Support is then allocated between the parents based on their pro-rata share of the family Net Income. The non-custodial parent will pay their share to the custodial parent.

If a spouse is going to receive maintenance, that income is added to the receivers Net income and deducted from the payer's Net Income for purposes of allocating Child Support.

In New York The Court allows a "self-support reserve." Thus, if the non-custodial parent's net income, minus their share of child support, drops below \$ 19,683 (in 2023) they may be able to pay less in Basic Child Support than the formula indicates.

EXAMPLE

	Spouse #1 Non-Custodial	Spouse #2 Custodial	
Gross Income	\$ 114,482	\$ 57,241	\$ 171,723

Social Security Tax	\$ 7,098	\$ 3,549	\$ 10,647
Medicare Tax	\$ 1,660	\$ 830	\$ 2,490
New York City Tax	\$ 5,724	\$ 2,862	\$ 8,586
Deductible Taxes	\$ 14,482	\$ 7,241	\$ 21,723

NET INCOME	\$ 100,000	\$ 50,000	\$ 150,000
Maintenance	\$ (7,500)	\$ 7,500	
Net Income after Maintenance Adjustment	\$ 92,500	\$ 57,500	\$ 150,000
Pro-rata amount of Net Income	62%	38%	100%

**CALCULATION OF CHILD SUPPORT**

Household Net Income		\$ 150,000
Percentage for two children		25%
<b>TOTAL CHILD SUPPORT</b>		<b>\$ 37,500</b>

Pro-rata amount of Net Income	62%	38%	100%
Child Support allocation	\$ 23,125	\$ 14,375	\$ 37,500

<b>Child Support to be paid by the non-custodial parent to the custodial parent</b>	<b>\$ 23,125</b>
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RESOURCE: <https://www.childsupport.ny.gov/dcse/pdfs/CSSA.pdf>

### HOW ARE ADD-ONS TREATED

Add-on expenses would be divided by the Pro-Rata amount of each party's Net Income. For example, if the children had \$10,000 in extra-curricular activities, the Non-Custodial spouse would pay \$6,200, and the Custodial Spouse would pay \$3,800.

### Child Custody

Custody is the legal responsibility for a child's care. There are two types of custody:

- **Physical custody or residency** (also called "primary placement") describes where the child lives primarily. Courts use phrases like "visitation" or "secondary placement" to describe the parenting time for the other parent.

However, as children age, it is not uncommon for them to want to spend more time living with the secondary placement parent. Divorcing couples should realize that even if they hammer out agreements among themselves, they might need to adjust when the child is old enough to voice their opinion.

- **Legal custody** provides for decision-making power over things like education and health care. There are two types of legal custody.
  - Sole custody means that one parent can decide about the child. The non-custodial parent may have the right to receive medical or educational information, but he/she does not make the decisions.
  - Joint custody means that two parents (and sometimes other caregivers) share the authority to make decisions about the child. With joint custody, the parents must communicate well enough to inform each other of the child's needs and make decisions together.

### WHAT ARE TYPICAL VISITATION RIGHTS IN NEW YORK?

A parent who is not married can also file for "visitation rights." In New York, a minimum visitation schedule will give a noncustodial parent (parent without primary physical custody) a few hours one weeknight per week and overnight visits every other weekend. A judge may award a noncustodial parent more visitation, but not less. Additional time is set for summer and holiday visits.

Both parents are entitled to regular and consistent visitation with their children. Even where one parent has a history of substance or domestic abuse, a judge usually won't cut off a parent's visitation rights entirely.

When a judge is concerned about a child's safety in the abusive parent's care, a judge can order supervised visits. Supervised visitation may take place at an agency or under the supervision of a mutually agreed-upon third party.

### WHAT FACTORS ARE CONSIDERED TO DETERMINE "IN A CHILD'S BEST INTEREST"?

Whether parents reach their own or argue about custody until trial, a judge won't approve a custody agreement unless it serves the child's best interests.

A judge must evaluate the family's overall circumstances to determine what kind of custody arrangement best meets a child's needs. Specifically, a judge may evaluate the following factors:

- each parent's relationship with the child
- the child's relationship with siblings and extended family members
- the child's ties to school, home, and the community
- each parent's role in caring for the child
- the child's special needs, if any,
- each parent's age, physical and [mental health](#)
- the parents' [geographical proximity](#) (when evaluating joint custody arrangements)
- each parent's stability
- each parent's willingness to foster a relationship between the child and the other parent
- either parent's history of [domestic abuse](#), and
- any other factor relevant to the child's well-being.

Notably, a [parent's gender is not relevant to a custody decision](#). Either parent can "win" custody, regardless of gender, by showing to a judge that he or she is the most suited to serving the child's educational, social, physical, and emotional needs. A parent with a history of domestic violence will have a major burden to overcome to obtain joint or full custody in New York.

### CAN CUSTODY ISSUES BE MODIFIED?

Custody orders last until a child turns 18, is emancipated, or the custody order is modified. A parent's or a child's circumstances might change over time. Either parent can file a request with the court to modify custody. However, a judge won't consider a custody modification unless there is a material change in circumstances that substantially affects the child's best interests.

A judge may schedule a court hearing to review evidence justifying the custody modification. Normal life happenings like the birth of a new baby or a parent's remarriage won't automatically justify a change in custody.

Instead, major changes such as a parent's cancer diagnosis, an [international relocation](#), or a child's sudden failing grades might warrant a custody change. Ultimately, a child's needs—not a parent's circumstances—will determine if a custody modification is warranted.

**More Questions**

**CAN MAINTENANCE OR CHILD SUPPORT ORDERS CHANGE?**

Yes, if there has been a substantial change in either party's financial circumstances since the support was ordered, the Court will reconsider earlier decisions.

The practical issue is that the onus is on the party seeking the change to come up with documentation to support the change, and they must front the legal costs to bring an action. The backlog of family court cases often means a reconsideration request will take a long time and can be expensive.

**DO YOU NEED AN ATTORNEY TO GET DIVORCED?**

In most states, there is a mechanism for individuals to file themselves for divorce.

In New York State, this is possible if a "No-Fault" divorce means that the parties agree to all terms regarding Property Division, Maintenance, Child Support, and Child Custody. Several Court fees must be paid (Estimated at \$500), and paperwork must be signed and notarized. It is almost always better for a couple to agree on the above issues and avoid litigation.

**WHAT SHOULD YOU EXPECT IF YOU HIRE AN ATTORNEY?**

If the divorcing parties cannot agree, it is typical for individuals to hire a "family law" attorney to "protect their interests."

The attorney will try to "sell" their services in an initial meeting. They will put their best foot forward to convince you that by hiring them, you will get a better settlement than if you go it on your own.

If you decide to hire them, anticipate they will give you a "retainer agreement" to sign and request a deposit (typically \$5,000.) before working on your case.

Then the attorney will track the time spent on your case and invoice at their hourly rate. Family Law attorneys typically bill \$400-\$600 an hour in the New York metropolitan area. Therefore, upfront you should ask:

- What is the attorney's hourly billable rate?
- What other individuals will work on your case, i.e. junior associates, paralegals, and what is their rate?
- What are the Court fees and Disbursements you will be charged?
- Do they offer a flat fee option?

Be aware that once the retainer is "used up," you must either pay your attorney's invoices or agree that the invoices will be paid when assets are liquidated. Discussing payment upfront will help reduce the surprises and stress of divorce.

**A trap many divorcing couples fall into is ignoring the mounting legal bills and assuming that the other spouse will end up paying their legal fees – this is rarely the case.**

Courts usually make parties pay their attorney from the property division.

### WHAT SHOULD I PREPARE TO SHARE WITH THE ATTORNEY ON AN INITIAL MEETING?

To get value from an initial meeting, bring a:

- **Personal Financial Statement (PFS)** of your family's resources, listing assets and liabilities. Indicate on the PFS any property you believe is "separate" and thus not subject to equitable distribution and the type of proof that exists to support the claim of separate property.
- **A synopsis of your family's total income** - Thus for the last three years, the total income on 1040 tax return line 9, with a breakdown of how much you provided and how much came from your spouse. If you believe that the tax return does not accurately reflect your total income because one party has "off-the-books income" or benefits, they should be mentioned along with the annual value.
- **A synopsis of your family's expenses** that establishes your family's lifestyle. This would include housing, food, transportation, child care and educational expenses, taxes, insurance, savings, investments, and debt repayment.
- Your desires regarding child custody – and what makes practical sense for residential and legal custody.
- And ...be prepared to discuss **the "marital home"** if it is used to raise children. Courts often try to preserve the custodial parent's ability to stay in the marital home to continue raising the children.

Once you have given the above information to the attorney, ask them for their opinion on how the division of property, payment of maintenance, and child support will be resolved and where they believe their skills as a negotiator can help to put you in a better position.

Ultimately if you proceed with litigation, the Court will want to know in detail the above information. To get the information in a unified manner, Courts use a form called a "**Case Information Statement.**" Both spouses must complete the form and submit it to the Court.

Preparation of the CIS is a critical step in the divorce process. Attorneys often assist their clients with the preparation, but that increases billable hours. It is best if each person reviews and tries to complete the form independently.

One of the most important steps to prepare yourself for a divorce is to gather your financial records - tax returns, bank and credit card statements for at least the past two years because you will need that information to complete the CIS. Then, try to fill out the CIS on your own, note any questions you have and ask your attorney.

CIS Forms for local states:

New York: <https://www.nycourts.gov/forms/matrimonial/networth.pdf>

New Jersey: [https://www.njcourts.gov/sites/default/files/forms/10482\\_fam\\_cis\\_2.pdf](https://www.njcourts.gov/sites/default/files/forms/10482_fam_cis_2.pdf)

Connecticut: <https://www.jud.ct.gov/webforms/forms/FM006-SHORT.pdf>

### WHAT IS DIVORCE MEDIATION?

An alternative to hiring an attorney is to use the services of a divorce mediator, a trained specialist familiar with local divorce laws who can help the parties negotiate a settlement agreement. The pros and cons of using a mediator are best explained here.

#### The Pros of Divorce Mediation

- **Help Navigating the Issues and Court Paperwork**
- **More Control Over the Outcome** – *with the goal being that the spouses have more opportunity to sit face to face and discuss issues*
- **Faster Resolution of Your Divorce** – *as fewer parties are involved*
- **Significant Cost Savings** – *only one mediator is paid rather than two attorneys*
- **Control Over Your Schedule** – *because you schedule the appointments which work for you, and do not spend endless hours waiting in a Courtroom.*
- **A Good Start to Your Post-Divorce Relationship and Co-parenting**

#### The Cons of Divorce Mediation

- **You Won't Have Someone Negotiating for You**
- **Mediation Is More Expensive Than Do-It-Yourself Divorce**
- **Mediation Isn't Suitable for Couples With an Imbalance of Power** – and if one spouse has already hired an attorney, it makes sense for both parties to have representation.

### WHAT IS COLLABORATIVE DIVORCE?

A Collaborative Divorce is one in which both parties have their own attorney, but both spouses and their attorneys sign a "no court" agreement that says you'll all work together to settle the case, and if you can't, the attorneys will withdraw from the before it goes to Court. This requires both parties to find new attorneys and start over, so it's a powerful incentive to reach an agreement. Collaborative divorces are usually more expensive than mediated divorces, as two attorneys are involved, but they are less costly than a litigated divorce involving the Court.

### WHAT IS A DIVORCE SETTLEMENT AGREEMENT?

When the issues of property division, maintenance, child support, and child custody are resolved, they are put in a written agreement that both parties sign, called the "Settlement Agreement."

The Settlement Agreement is then submitted to the Court for judicial review. A Court wants to know that the agreement terms are fair to both parties. If there are unresolved issues, the Court will decide them. After the Court accepts the Settlement Agreement, they typically issue a Judgement of Divorce, which incorporates the terms of the Settlement Agreement.

**DIVORCE BEST PRACTICES**

1. **REQUEST YOUR SPOUSE'S SETTLEMENT PROPOSAL AND COMPARE IT TO THE FORMULAS OFFERED BY THE COURT BEFORE COMMENTING.** In most strategic discussions, it is best to solicit an offer from the other party. Remember, only four issues will be decided: property division, maintenance, child custody, and child support. Try to get your spouse to commit to an initial position on these items AND resist the temptation to comment on whether or not it is fair. Digest the information and compare it to what the Court will award based on the facts. Later you can respond with a counter-proposal, but speaking too quickly about what you want in negotiations is usually a wrong first step.
2. **FOCUS ON THE SETTLEMENT – DO NOT ALLOW EMOTIONS TO TAKE OVER**  
Divorce is a business transaction that optimizes settlement and custody/parenting time. Do what is financially in your best interest, not what is most punitive to your spouse.
3. **PERSONAL PROPERTY- FOCUS ON SENTIMENTAL VALUE** - Stuff can all be replaced. Focus on only those items of sincere, sentimental value. Ask your spouse what items are important to them to keep; *knowing* what they want can be a helpful bargaining tool for you to get the items you seek.
4. **REMAIN CONSCIOUS OF LEGAL FEES** - Battling spouses often ignore that their actions ring up legal fees. Giving in or compromising is often more cost-effective than continuing the fight.
5. **REMEMBER THAT THEY ARE "OUR" CHILDREN, NOT "MY" CHILDREN** - *Barring abusive behavior, having both parents serve a meaningful and active role is always in the children's best interest.* Do everything possible to support your spouse's post-divorce involvement with the children, especially if you will be the custodial parent.
6. **KEEP FRIENDS AND FAMILY OUT OF THE DISCUSSIONS.** Well-meaning family members will want to support you during this difficult time. It is also understandable that you will need to vent to others. However, keeping your friends and family out of settlement discussions regarding the four is best.
7. **BE TRUTHFUL WITH YOUR ATTORNEY AND LISTEN TO THEIR ADVICE.** If you choose to hire an attorney, you need to lay out all the facts and be honest so that they can protect you or get in front of a situation that could damage your case. Your attorney should not be caught off guard in court or settlement negotiations. Also, listen to their advice on how to move towards settlement expeditiously. Do not allow emotions to cloud your judgment. If you find yourself using the terms "I would never agree to that," – reconsider. Let your attorney help guide you and prevent you from making rash decisions that might cause significant harm to you financially or in a custody fight.
8. **PLAN FOR LIFE AFTER DIVORCE**  
The fact is that after the divorce, both parties will have fewer resources. Plan for how you will manage when the divorce is over. Think about ways to increase your income. Prioritize what you want to spend your money on. Recognize that you will often experience a downgrade in what you can afford.

**AND**

- Do Not Disclose Confidential Information to Others.
- Do Not Hide/Destroy Property or Documents.
- Do Not Incur Unusual Debts/Liabilities.
- **Do Not Belittle Your Spouse to Other People, Especially the Children.**

## MONEY 101 EDUCATION

### 10.41 Divorce – Division of Assets, Spousal Maintenance, Child Custody, Child Support

#### **RESOURCES**

[https://ww2.nycourts.gov/divorce/info\\_faqs.shtml](https://ww2.nycourts.gov/divorce/info_faqs.shtml)

<https://store.nolo.com/products/divorce-and-child-custody>

<https://www.divorcenet.com/resources/new-york-child-custody-laws.html>

<https://www.divorcenet.com/resources/pros-and-cons-of-divorce-mediation.html>

<https://snapdivorce.com/how-to-calculate-child-support-in-new-york/>

<https://www.tullylegal.com/resources/articles/what-are-the-requirements-for-prenuptial-agreements-in-new-york/>

<https://www.thewrightlawyers.com/practice-areas/divorce/guide/divorce-guide-chapter-6>

<https://www.dhirschberglaw.com/blog/2020/october/how-does-separate-property-become-commingled-/>

<https://offitkurman.com/blog/2022/05/16/avoid-the-common-mistake-of-commingling-assets/>

<https://www.ricafortelaw.com/blog/spousal-disinheritance-under-new-york-laws.cfm>

<https://www.toddzimmerlaw.com/top-10-divorce-mistakes/>