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Massachusetts Divorce Mediation FAQs

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Massachusetts Divorce Mediation Frequently Asked Questions (FAQs)

Below, please find answers to frequently asked questions about divorce mediation in Massachusetts.

Need a Massachusetts Divorce or Family Law Mediator?

Do you [need a mediator](#) for your divorce or family law case? Our statutory [mediators](#) are experienced family law professionals who have resolved hundreds of divorce and family law cases across Massachusetts over the last twenty years. If you need a mediator for your Massachusetts divorce or family law case, please call us at (781) 253-2049. We provide virtual [mediation services](#) via Zoom.

Does my divorce mediator need to understand tax law?

Not every divorce involves significant tax issues. Moreover, many mediation participants are capable of understanding basic tax issues, such as [child tax credits](#), that can arise in a divorce. More challenging tax issues include the [tax deductibility of alimony](#), transfers from retirement accounts using [Qualified Domestic Relations Orders \(QDROs\)](#), couples owing back taxes, [529 college savings accounts](#), how long divorcing spouses in Massachusetts can file “joint” tax returns, and tax issues concerning the [marital home](#). It’s important to recognize that even the most [tax-aware divorce mediator](#) generally cannot

provide specific tax advice to divorce participants. For this reason, it often makes sense for mediation participants to consult with an outside tax expert, either individually or together, before finalizing their divorce agreement. (Similarly, a [tax-aware mediation coach](#) can often assist a participant with specific tax issues.)

However, a tax-aware mediator can play an important role in spotting and avoiding tax issues that can arise in the divorce context, as well as drafting divorce agreement provisions that effectuate the tax goals articulated by the participants. For a more complete rundown on tax-aware mediation, check out Kim Keyes' blog, [Tax Reform and Divorce: Is Your Divorce Mediator Tax-Aware?](#)

[How do divorce mediators handle alimony cases?](#)

Alimony often presents challenges for divorcing couples, particularly after a long-term marriage. Like any other divorce issue, however, alimony is well suited to resolution through mediation. Before entering mediation, participants are encouraged to perform some basic research on how the [amount and duration alimony are calculated](#) in Massachusetts, or whichever state the divorce will take place in. Mediation often provides favorable pathways for alimony disputes by encouraging [creative alimony solutions](#), such as full and partial alimony buyouts. For a more complete review of how alimony fits into divorce mediation, check out Kim Keyes' blog, [Divorce Mediation Keeps Alimony Focus on the Future](#).

[What goals should I set before my divorce mediation?](#)

In the context of divorce mediation, it's important to recognize the [four core divorce issues](#) that may be present in your mediation: (1.) child custody and parenting time, (2.) child support, (3.) alimony and (4.) the division of assets. Some divorces feature a few additional issues, while many divorces include only one or two of the listed issues. [Prior to entering mediation](#), participants should spend some time researching outcomes for divorce cases. For example, participants should make an effort to understand how [child support](#) and [alimony](#) are calculated in

Massachusetts, and *when courts order shared physical custody*. With respect to assets, consider the length of the marriage and nature of the assets in question, such as the *marital home*. The best mediation negotiators enter the process with a set of clear goals, while remaining open to identifying the areas in which they are *willing to make sacrifices*, while updating and *prioritizing their goals* as the mediation process unfolds. For a detailed review of setting goals in divorce mediation, check out Nicole Levy's blog, **The Importance of Defining Your Goals Before Divorce Mediation**.

How do I negotiate my divorce through mediation?

South Shore Divorce Mediation offers *mediation coaching* for individuals engaged in mediation who seek guidance during the negotiation process. For individuals proceeding without a coach, *preparing to negotiate involves identifying clear goals* for mediation, *conducting research and gathering knowledge* on legal and financial issues, *approaching the negotiation patiently*, and continually revising and *re-focusing on your goals* to ensure you obtain an optimal outcome. For a more comprehensive rundown on preparing for mediation, check out Carmela Miraglia's blog, **Four Negotiating Tips for Divorce Mediation**.

How can I understand legal issues in my divorce mediation?

One of the primary challenges for participants who enter mediation without an attorney is recognizing, articulating and negotiating legal issues. Mediation participants regularly seek out experienced divorce attorneys to mediate their divorce. Using an experienced attorney as a mediator is especially helpful when it comes to drafting a reliable Separation Agreement that reflects the intent of the participants in appropriate and enforceable terms. However, the mediator is not acting as an attorney for either participant and cannot provide legal advice during mediation sessions. Mediation coaches often fill in the gap on legal arguments by assisting clients in identifying and advocating their positions in the face of legal issues. For a rundown on

how mediation coaches help with legal issues, check out Kim Keyes' blog, [How Basic Legal Arguments Can Help Non-Lawyers in Divorce Mediation](#).

[What is the Co-Worker Rule and how does it work in divorce mediation?](#)

The Co-Worker Rule is a simple rule of thumb for mediation participants who are struggling to set aside their anger or difficult history with their spouse. The rule states that spouses should seek to interact and communicate like co-workers in a professional environment instead of like former spouses. Although it sounds simple, divorcing spouses often find it difficult to create appropriate boundaries after so many years of sharing their unfiltered thoughts with one another. The Co-Worker Rule provides a simple standard of conduct that most individuals can understand and attempt to observe. For more information, check out Kim Keyes' blog, [Setting Boundaries During Divorce: The Co-Worker Rule](#).

[How can my spouse and/or I overcome negative emotions in our mediation?](#)

In many divorce mediations, one or both participants' inability to move past their negative emotions is a primary impediment to reaching resolution. A spouse's anger can undermine the negotiation process, and participants are often required to process negative emotions during the process in order to succeed. Luckily, divorce mediators use a variety of techniques to translate negative emotions into more productive, settlement-positive motivations during the mediation process. For details, check out Nicole Levy's blog, [Overcoming Negative Emotions in the Mediation Process](#).

[How long does it take to mediate a divorce?](#)

The duration of the mediation process varies based on factors including the substantive issues that participants agree or disagree on, the relationship dynamics between participants, each spouse's motivation and engagement level, and the complexity surrounding family income and assets. For a complete rundown on the factors

effecting the length of divorce mediation, check out Nicole Levy's blog, [How Long Will My Divorce Mediation Take to Complete?](#)

[When should I start the mediation process?](#)

Mediation is far more flexible than litigation, which requires at least one party to file a Complaint for Divorce (or modification or contempt, etc.) in order to commence the process. It often works best to initiate mediation before either party starts litigation, but parties routinely enter mediation midway through litigation with great success. For more coverage surrounding mediation timing, check out [Carmela Miraglia's blog, When Should You Start the Divorce Mediation Process?](#)

[How can I find a good mediator?](#)

Check out Nicole's blog, "[Tips for Finding the Right Divorce Mediator for Your Family](#)", for a nice overview of this subject.

Finding a divorce mediator that works for both you and your spouse by encouraging fruitful discussion and advancing agreement is a big factor in the outcome of a mediated divorce. Unfortunately, mediators cannot simply be ranked by effectiveness: A divorce mediator who works perfectly for one couple might be inadequate for another. This makes finding a "good" divorce mediator difficult.

At South Shore Divorce Mediation, we offer our mediation clients options. We have separate offices in Hingham and Cape Cod (E. Sandwich), offering clients geographic options. Plus, our mediators have different skills, personalities, and abilities that we [try to describe on their mediator profile pages](#).

We are always happy to answer questions from potential mediation clients who are trying to determine which mediator will be the best fit for their divorce. Call our main office at **(781) 253-2049** or email us at info@madivorcemediators.com and we will do our best to help!

[Should I see my own lawyer during the mediation process?](#)

Having an attorney as a mediation coach is often helpful during mediation. Our mediators encourage spouses to work with mediation-friendly attorneys while a mediation is ongoing. We also offering *mediation coaching* services to clients who are engaged in mediation with another mediator. Mediation-friendly attorneys who act as mediation coaches *can often play a positive role in mediation* by offering their client the type of direct and candid legal advice that a mediator – who is acting as an impartial third party – cannot offer to either spouse. Moreover, *if a complaint for divorce has already been filed*, spouses can take a break from litigation to try mediation – and continue to take advice from their attorneys during the process.

Whether you should use a mediation coach depends on the specific circumstances of your case.

One of the strengths of the divorce mediation process is that there are no attorneys at the mediation sessions to push you or your spouse to try to get more out of the divorce. Without lawyers advocating on your behalf inside the room, you and your spouse are in a far better position to come to a mutually beneficial resolution that you can both live with over the long term, rather than one that strongly favors one spouse or the other.

However, it can often help to use an attorney as a mediation coach who coaches you on negotiating strategy and tactics, advised you about the law, and helps you prepare and review financial documents and proposed agreements.

Sometimes one spouse has an upper hand in the bargaining process. This might result from the spouse's intimate knowledge of the law, a better understanding of finances, or simply a strong (or overbearing) personality. Having a mediation coach to guide you through the mediation process can be very helpful. Indeed, many spouses who go through the divorce mediation process find that having a mediation coach is a great way to hone their negotiation abilities, set goals and

develop discussion plans, and build confidence that can make a big difference during the mediation sessions.

Can our mediator represent either of us an attorney in a divorce proceeding or give us legal advice after the mediation is over?

No. The mediator's role in a divorce mediation is as a neutral third party who urges spouses to listen to each other's needs, creatively craft solutions that are mutually beneficial, and compromise in ways that ensure everyone's future success and well-being. Directly representing either you or your spouse during the mediation would destroy this neutrality. (It might also violate the Massachusetts Rules of Professional Conduct, which impose a duty of loyalty and a duty to avoid conflicts of interest on attorneys.)

The mediator's inability to legally represent either party extends past the ending of the mediation sessions. Because these sessions are kept confidential in order to facilitate the negotiation process, it would be improper for the mediator – who has inside knowledge of those discussions – to then give you legal advice after the mediation has wrapped up.

In contrast, a [mediation coach](#) is an attorney who can assist you during the mediation process by offering coaching as you work with the mediator. Your mediation coach can represent you in divorce litigation if the mediation process breaks down.

How can we mediate if we have a contentious relationship or if my spouse intimidates me?

Divorce mediation can still work, [even when parties have a contentious relationship](#).

Mediating a contentious divorce is certainly more difficult compared to a relationship that is amicable. However, that does not mean that mediation is impossible, or even that mediation is not still the best option. When parties get along and agree on most subjects, divorce is

easy. A divorce with challenging issues – including the relationship between the spouses – still needs to be completed, and mediation can still work, despite a difficult relationship.

Many divorces happen precisely because the relationship between spouses has become too contentious to continue. Mediation can still be an excellent way to resolve the disputes because it provides both spouses an opportunity to discuss their respective futures in a setting that will deescalate the tension. The mediators at South Shore Divorce Mediation are generally quite skilled at keeping sessions calm and productive, and minimizing whatever tension there might be between spouses. Of course, none of this is fool-proof. If spouses cannot tolerate being in each other's presence, or if one spouse is so scared or intimidated by the other spouse that he or she is unable to meaningfully participate in mediation, then the process breaks down.

Mediators often encounter imposing or domineering spouses who try to pressure the opposing spouses in a variety of ways. While there are situations where this becomes too overbearing for the mediation process to be productive, mediators have a variety of tools for circumventing the cycle of conflict and bringing both parties to the table to discuss their future in a fruitful, thoughtful, and civil manner that is beneficial to both sides.

Are mediated divorces better for children than litigated divorces?

While every situation is different, mediated divorces are generally better for the children involved than if the divorce goes through litigation.

Mediated divorces provide an opportunity for the parents of a child to come up with parenting plans that are uniquely suited for the child's well-being and for the ability and resources of each parent. These are often far better suited for the child's needs than those that are determined by a divorce court judge, who only sees the dynamics of your family from an outsider's perspective, and only for a short period of time.

Perhaps more importantly, though, mediated divorces avoid much of the adversarial nature that is the hallmark of a litigated divorce. The kind of conflict that often comes during litigation frequently leads to stress and tension in the personal lives of the spouses who are separating, and this has a negative impact on the children in the family. Even worse, many litigated divorces involve children being called on to provide testimony through court-appointed investigators such as Guardian ad Litem. Even if it does not occur in open court, a child's testimony can have a great deal of influence on issues surrounding child custody and child support, and children, even young ones, apprehend the seriousness of the situation, which can be incredibly stressful for them.

What happens if we cannot reach a divorce agreement during mediation?

While mediation is a good way to resolve a divorce, it is by no means a guaranteed success. Sometimes mediated divorces break down, leaving divorcing spouses without a completed divorce agreement to take to court to finalize their separation. When this happens, there are three paths that you can go down: Litigation, try another mediation, or independent negotiation. Alternately, sometimes spouses benefit by simply taking a break from mediation, then returning several months later after heads have cleared.

The most common path to take *after an unsuccessful mediation process is litigation*. Mediation typically helps resolve the *relatively uncontested issues* in your divorce at the outset. This leaves the *more contentious divorce issues* to be wrestled with, and this can feel so overwhelming that the mediation process might not seem up to the challenge. This is when many spouses opt-out of the mediation process for the more traditional divorce trial, where they believe a judge will break the logjam by deciding difficult issues on behalf of the spouses.

Some divorcing spouses leave one mediation process for another. This can happen when one spouse has become disillusioned with the mediator, often because they think the mediator is biased or is not

listening, or is not moving quickly enough. Because mediation is totally voluntary, either spouse can end the process at any time.

Finally, some spouses elect to try resolving their issues on their own, independently of the courts or any mediators. This can happen when the mediation process goes so smoothly that the spouses become confident in their ability to resolve their own differences without a referee between them.

Regardless of what happens after a mediation process that did not produce a finalized divorce agreement, the mediation itself was not necessarily unsuccessful. Even incomplete [mediations often narrow down the issues that still a resolution](#), moving you towards the divorce agreement that you and your spouse are looking for.

[What if we can't agree on all the issues in divorce mediation?](#)

Even if you and your spouse are unable to come to a satisfactory agreement on all of the issues during mediation, any progress made during mediation can help immensely if you [choose to take your divorce to court](#). In short, mediation tends to be less expensive than litigation, so any issue that you are able to resolve through mediation is one less that will have to handle in court.

In fact, this is one of the greatest strengths of mediation: By working collaboratively with your spouse, you can [narrow down the issues for litigation to solve](#), saving time, money, and lots of stress. It is important to note, however, that the burden lies with the spouses and attorneys to preserve the agreements reached during the mediation process. Under Massachusetts law, a mediator cannot be forced to testify in a litigated divorce, and all of the information and statements made during mediation are confidential and inadmissible in Court.

[Is divorce mediation appropriate for same-sex couples?](#)

Yes. Same-sex marriage has been [legal in Massachusetts for well over a decade](#). All of our mediators have handled same-sex divorces in the

mediation or litigation context, and while some of the dynamics of same-sex divorces can differ from opposite-sex divorce, these differences are generally minor.

Where same-sex marriage was legalized in Massachusetts in 2004, our courts have had more exposure to same-sex divorce than most states. Special concerns can arise in same-sex divorces involving children, where many same-sex couples rely on adoption or in vitro fertilization to have children, resulting in legal issues that are not present in natural birth contexts. At the same time, many of the special issues arising out of differences in state and federal law have been resolved or mitigated since the Supreme Court legalized same-sex marriage across the United States. Although some unique challenges remain for divorcing same-sex couples, experienced mediators are well-equipped to address these issues as they arise.

Are there some cases that should not go through mediation?

The short answer is yes, there are some cases that are not well-suited for mediation. However, it is important not to jump to conclusions about where mediation is more flexible and adept than many people give it credit for.

There are three main classes of cases that are unsuitable for mediation: (1.) Extremely contentious cases in which a history of abuse or imbalanced power dynamics prevents one spouse from effectively advocating for him or herself, even with the aid of a mediator. (2.) Complex financial cases in which one spouse lacks the training, knowledge or acumen to evaluate the financial issues in the case, and (3.) cases in which one or both spouses fail to show a good-faith commitment to the mediation process by providing accurate information or records, or by failing to negotiate honestly.

If you are worried that your divorce will be too complex for mediation, bear in mind that outside experts like accountants, real estate appraisers, and even investigators can be brought into a divorce mediation to help, just as such outside experts can play a role in

divorce litigation. These professionals can provide the special knowledge it takes to adequately resolve your divorce in mediation. Moreover, many spouses address complex financial issues in a mediation by hiring a mediation-friendly attorney as a Mediation Coach. Such attorneys are trained to analyze complex financial issues in a divorce and can provide invaluable aid to spouses who are trying to understand a family's finances.

If you are worried that you and your spouse are *too adversarial for mediation to work*, you might have more cause for concern. Divorce mediation is based on mutual respect, trust, and communication. If you do not think that your spouse will play fair or if you do not trust your spouse, then mediation might not be your best option. The same goes for if your spouse has been abusive in the past and you are concerned for your safety. If you are worried that your spouse has special knowledge – for example, he or she is a divorce attorney – or too much of the bargaining power in your relationship for mediation to work, though, it is important to remember that some of these issues can be addressed through the use of a Mediation Coach, and that mediators are trained to see these problems and account for them in ways that does not let one spouse overpower the other.

What are the issues that mediation can handle?

Because it is simply another way of resolving any disputes that you might have with your spouse as you pursue a divorce, *divorce mediation is designed to handle any of the issues* that might come up in your case. This includes problems that are often easy to settle as well as the ones that are typically far more difficult, including *child custody and parenting time*, how to *divide marital assets*, as well as *child support and alimony*. In addition, mediation is frequently used to *resolve post-divorce issues* that would otherwise result in the filing of a Complaint for Modification or Complaints for Contempt. Mediation is even a *highly effective method for preparing prenuptial agreements*. Indeed, family mediation is not limited to divorce at all. Unmarried parents who would otherwise litigate child custody and child support

issues in Probate and Family Court often find the same success in mediation as divorcing spouses.

In fact, any domestic relations issue that can be handled in Probate and Family Court can also be resolved in mediation. This is because litigation and mediation are simply two different methods of resolving disputes. What the dispute is about does not matter – only the path to an answer changes.

How can mediation produce a fair result?

By encourage each spouse to negotiate for their individual interests, while encouraging respect and dialogue when considering the other spouse's needs and desires, divorce mediation is often the best way for separating spouses to reach a fair and mutually beneficial resolution in their divorce.

The mediation sessions that are the backbone of the mediation process let each spouse decide what is best for them and how they want to pursue it. At the same time, by placing the spouses in the position of direct negotiation, mediating spouses tend to have a better appreciation for the specific compromises and tradeoffs that were required to make a final agreement. This enables each spouse to prioritize the outcomes they seek from the divorce process that will let them move on and adapt to life after the divorce has become final.

Attorneys play a crucial role in the family law system. However, one byproduct of attorney involvement in an adversarial system is leverage. It is the attorney's job to identify and exploit the weaknesses and fears of an opposing party. Thus, attorney-negotiated agreements often include elements of dominance and submission, in which one spouse has submitted to the will of the other spouse out of fear, rather than compromise. These power dynamics can lead to less outcomes than mediation, in which leverage takes a back seat to compromise.

A secondary feature of attorney involvement is that attorneys invariably have a very clear picture in their minds of what constitutes a

“fair” outcome in a given divorce. Indeed, it is the attorney’s job to explain to a spouse what a fair outcome would be for the client, and most attorneys do this job well. However, what sometimes gets lost in the attorney analysis are the true feelings and desires of the client-spouse, which can be overshadowed by the strong, confident voice of an attorney who thinks he or she knows best. The attorney may dig in and fight on an issue the spouse does not truly consider important. Conversely, the attorney may dismiss issues the spouse feels are extremely important because the attorney’s perspective differs.

Without the presence of attorneys during mediation sessions, the voices of each spouse tends to rings true with respect to a spouse’s deeply-held interests, needs, and concerns for their future well-being, giving the spouses an unfiltered opportunity to articulate what matters most. Additionally, the presence of the mediator during these sessions reduces the power dynamics that can result in pressure and leverage while ensuring that there is no undue influence or imbalance in bargaining power that could result in an unconscionable result. Together, the unique opportunity that mediation provides for spouses to speak and be heard in a controlled environment increases the likelihood of a fair outcome for both spouses.

How is mediation different from litigation?

*While divorce mediation and divorce litigation are both dispute resolution methods, they achieve their **results through very different methods.***

*On the one hand, litigation focuses on providing justice to the right party. Because obtaining justice assumes that one spouse in the divorce is “right” and the other spouse is “wrong,” litigation relies on attorneys making arguments to a judge. Where an attorney’s sole loyalty flows to his or client, the result is an **adversarial process which focuses on exposing the weaknesses of the other party.***

*Divorce mediation, on the other hand, is a **flexible and voluntary process that focuses on finding common solutions by capitalizing on***

each spouse's individual and collective strengths. Mediation looks past the idea that one spouse is "right" and the other is "wrong." Instead, mediation focuses on *common goals and interests* that spouses continue to share, even after their marriage has eroded, with a focus on how both spouses can best move on after the separation becomes finalized. This gives mediation a forward-thinking, amicable, and cooperative attitude that can help you and your spouse find the resolution that helps everyone.

How is mediation different from arbitration?

Divorce mediation and divorce arbitration are different methods of dispute resolution or ways of resolving the issues that arise when you and your spouse decide to pursue a divorce.

In divorce arbitration, spouses essentially hire a private judge to resolve their divorce. (Indeed, a great many arbitrators are quite literally retired judges.) The main advantage of arbitration is control over the schedule and litigation process when spouses know they are destined for a contested trial. Within the court system, it is common for spouses to wait years for a trial to take place, and delays are common. With an arbitrator, spouses guarantee the availability of their "judge", and in many instances, end up spending less money than they would in a trial in court, even after paying the arbitrator's fee.

Of course, arbitrating one's case is really the opposite of settling. The arbitrator's hearing might be less formal than a real trial, but the reality is that an arbitration is essentially a trial, with lawyers, evidence in witnesses all behaving in similar ways as they would in a trial. Moreover, the increased flexibility comes with a price: an arbitration result, called the "award," is nearly impossible to appeal.

In any event, what is most important to understand when comparing arbitration to mediation is this: arbitration amounts to a private trial, while mediation process is designed entirely to avoid the trial process. An arbitrator listens to evidence and arguments and decides issues for the divorcing spouses. For attorneys and clients, preparing for an

arbitration hearing is nearly identical to preparing for a trial in court. In contrast, mediation generally avoids the direct involvement of lawyers, and focuses on direct negotiation between the spouses. Instead of deciding issues for the spouses, a mediator facilitates agreement between the spouses directly.

For spouses who are absolutely certain that they will never agree, an arbitrator is good option for breaking the logjam and making the tough decision. For spouses who want to avoid trial (or a close facsimile of trial), mediation generally represents the more cooperative, less expensive and less stressful option.

Are divorce agreements created through mediation legally binding?

Yes, a divorce agreement that is the result of the divorce mediation process is just as legally binding as an agreement hashed out by attorneys during litigation (or ordered by a judge after trial). Indeed, one might say that the whole point of the mediation process is to produce an enforceable, legally binding agreement that can be filed with the court as an enforceable contract. Once made, a Separation Agreement solidifies the rights and obligations of you and your spouse in the divorce. If you think your spouse is not upholding their end of the bargain, you can bring it to the attention of the court through a Complaint for Contempt.

However, one of the great benefits of divorce mediation is that resulting agreement tend to be violated less frequently than agreements that are the product of litigation. This tends to be true because both spouses have more control over the completed agreement through the mediation process than spouses who reach agreement through the coercive pressure of litigation. Mediated agreements tend to fall more precisely in line with the future needs and interests of spouses, avoid many of the resentments and frustrations with the litigation process that can motivate violations. Additionally, because both spouses contribute to a mediated agreement, former spouses often take a measure of pride in

authorship, with results in better compliance with the agreement's terms.

Will the mediator meet separately with each of us during the sessions?

During a mediation session, it is not unusual for a mediator to split the spouses and meet with each spouse separately, provided each spouse agrees to this arrangement. Speaking separately with each spouse helps the mediator better understand each spouse's separate concerns, worries, and goals. Spouses often have their guard up in the presence of the other spouse, and separate meetings between each spouse and the mediator allows the mediator to aid each spouse in communicating in a manner that facilitates cooperation instead of conflict.

It is important, however, to address the elephant in the room when it comes to individual meetings during the divorce mediation process: The core value of a good mediator is their neutrality. Good mediators do not use individual meetings to favor one spouse over the other or to provide important information to one, but not the other spouse. Because it is precisely this neutrality that makes mediation such a good tool for resolving a divorce, successful mediators take impartiality extremely seriously, and do not put their neutrality into jeopardy.

Because maintaining impartiality is paramount, many mediators will limit their individual meetings with a spouse to scheduled mediation sessions where each spouse is physically present in an adjoining room. While couples sometimes agree that each spouse may meet with the mediator on his or her own, outside of the context of a scheduled session, these arrangements must be handled carefully to ensure that each spouse maintains trust in the process.

Can you have someone else with you during the mediation sessions?

It may be possible to include third parties in a mediation, but it is important to resolve the groundworks for the involvement of outside individuals before inviting them to mediation sessions. In particular,

outside experts such as financial experts or child therapists can aid the mediation process by presenting their expertise for both parties. (It should be noted, of course, that such third party specialists often need to be paid for their time.)

Mediation that includes each party's use of a *mediation-friendly attorney can also be productive*, so long as the spouses, mediator and attorneys all agree to appropriate ground rules before meeting in person. In general, however, divorce mediation thrives on separating spouses talking candidly and honestly with one another, which is typically easier with only the spouses and mediator in attendance. If both spouses bring an attorney to the mediation sessions, the lawyers have an invariable tendency to dominate the conversation (we make this observation with affection, given that our mediators are *themselves lawyers*). Perhaps most importantly, the direct involvement of attorneys greatly inflates the price of mediation.

It is important to distinguish between the direct involvement of attorneys in the mediation process and the far less direct involvement of lawyers as Mediation Coaches. An attorney acting as a Mediation Coach does not attend mediation session; he or she assists a spouse with the mediation process from the outside, offering advice on negotiations and specific legal issues. Most mediators encourage spouses to use mediation-friendly attorneys as Mediation Coaches, as these attorneys can provide legal advice and undivided loyalty to a spouse in a manner that a neutral mediator cannot.

What happens if my spouse doesn't follow our mediated agreement?

A valid divorce agreement that is the result of the divorce mediation process is legally binding in all the same ways as an agreement that is the product of litigation. Accordingly, once a mediated divorce agreement has been finalized and approved by a judge, a spouse who fails to comply with the terms of the agreement may be subject to a contempt action. The contempt powers of Probate and Family Court

judges are broad, and violations can result in anything from financial sanctions to the loss of parenting time to incarceration.

However, enforcement problems tend to be rarer for divorce agreements that are the result of mediation compared to agreements that are the product of litigation. This is because mediated divorce agreements represent terms that both spouses agreed upon cooperatively, during the mediation process, while litigated agreements often arise out of coercive pressure that arises from the adversarial nature of a contested divorce.

Will our mediated divorce agreement be enforceable?

Divorce agreements that are made through the mediation process are just as enforceable as agreements that are the product of litigation, or judgments entered by a judge after trial.

Throughout the mediation process, the mediator's goal is to craft a well-written divorce agreement that is free of ambiguity or uncertainty. In this regard, a mediated Separation Agreement is no different from an agreement prepared by attorneys through litigation. The only difference between a mediated Separation Agreement, and one prepared by attorneys during litigation, is the methodology employed in reaching resolution. In either instance, the agreement is incorporated in the Judgment of a Divorce and becomes enforceable as a court order thereafter.

Will the mediator come to court with you if you need to make an appearance?

Because divorce mediation is conducted outside of the courtroom between you and your spouse, there is often only one single court appearance that needs to be made over the course of the entire divorce – i.e. when the divorce papers need to be filed with the court. If parties each want the mediator to attend the hearing, this can generally be arranged, with certain limitations. For example, spouses must remember that even if their mediator is a divorce attorney, the mediator would not be acting as an attorney for either party (or both)

at the hearing, and would not give legal advice. Moreover, most mediators will be very reluctant to appear as a witness before a judge, even in an uncontested hearing, where the work product of a mediation is barred from disclosure in any court proceeding.

In rare occasions, spouses currently going through a divorce mediation may need to make a court appearance for matters related to their divorce. For example, the tension in divorce is so high that it leads one spouse to file a restraining order against the other, or child custody needs prove to be contentious enough that a temporary court order becomes necessary to prevent a situation from escalating. In these instances, [Massachusetts law protects mediators](#) from being served with subpoenas or from otherwise being compelled to testify on behalf of one or both spouses.

[How do divorce documents get filed after mediation is complete?](#)

In Massachusetts, even divorces that are completely resolved through the mediation process must to be filed in court to be effective. If a mediated divorce agreement is not filed in court, it will not be enforced as a divorce.

If your mediator is an attorney, you can generally rely on him or her to help you prepare a Joint Petition for Divorce, as well as supporting forms and filing instructions. Mistakes in the filing process can raise legal implications down the road, so preparing and filing a petition properly is crucial. The mediators at South Shore Divorce Mediation are all [experienced divorce attorneys](#).

If your mediator is not an attorney, a greater burden may fall on you and your spouse to file the property documents with the court. In Massachusetts, the proper documents to file [depend on the nature of your divorce](#). Divorces featuring children under the age 18 require spouses to file additional documents, and attend the [Parent Education Class](#) prior to an agreement being finalized.

[Who prepares the divorce agreement in a mediation?](#)

You and your spouse, with the help of the mediator.

Mediation is meant to be a wholly collaborative process that allows you, your spouse, and the mediator each play a role in crafting a divorce agreement that is fair, equitable and legally binding. You and your spouse provide all of the “raw materials” for the divorce agreement. Meanwhile, the mediator guides you into productive conversations that are meant to draw out key facts and flesh out potential roadblocks that could become a source of conflict in the years ahead. The facts teased out by the mediator fuel more solutions for you and your spouse as all of the potential conflicts that are foreseeable for your post-divorce life are identified and discussed. Finally, the mediator helps you and your spouse articulates you have made within the context of a Separation Agreement that can withstand scrutiny.

Where decisions have been made by you and your spouse in an atmosphere that promotes creative conflict resolution and cooperation, it is important that the divorce agreement be fair and reasonable towards you and your spouse. In general, Separation Agreements that are the product of cooperative negotiations are subject to fewer violations, and better stand the test of time than judgments or agreements that are the product of years of litigation.

All that said, the reality is that many spouses who are engaged in mediation obtain assistance from mediation-friendly attorneys who act as [Mediation Coaches](#). Although Mediation Coaches do not attend sessions or interact with the mediator or other spouse, they often play an important role in the crafting of a final Separation Agreement. Unlike the mediator, who must maintain neutrality at all times, an attorney acting as Mediation Coach is loyal only to his or her client. Mediation-friendly attorneys acting this role understand how to educate their clients, so that clients become more effective mediation participants, leading to clearer goals and outcomes.

[How can I prepare for a mediation session?](#)

Being prepared for a mediation session is the best ways to make sure it goes smoothly. If you are not prepared for a session, it can prolong the mediation process and increase [costs over time](#). A lack of preparation can also frustrate your spouse and could increase stress levels. If being unprepared becomes a habit, the mediation process can sputter, making the others stakeholders doubt the non-performing individual's commitment.

Typically, a mediator will finish every session with a summary of what was accomplished and what will be covered in the next session. This often includes a checklist of information and documents that you will need to provide in the next session – basically a homework assignment for the next session. While this often proves helpful for subsequent sessions, it will not help you prepare for your first session.

For your first mediation session, it is often helpful to have a complete [list of the assets that you own](#) (or you think you might own). This includes bank accounts and retirement funds, real estate, vehicles, and valuable personal belongings, as well as anything else that might be valuable, plus all of your outstanding debts. Financial records relating to you or your spouse's income are also helpful, as is a list of your recurring expenses. School records [relating to your children](#), or specific [child-related costs](#), can also be helpful. Together, these records can give all involved a sense of a couple's current lifestyle and flag potential conflicts or sources of discussion to be ironed out during the subsequent mediation sessions.

Finally, it is helpful to reflect on your goals for the future before the first mediation session begins. Having an idea of the outcomes you are seeking after the divorce is complete can help you negotiate more effectively and helps the mediator prioritize issues.

When is the best time to start mediation?

The best time to start mediation is whenever you and your spouse each [feel ready to start mediation](#). This can come at any point during the divorce process. You can start going to mediation before you and

your spouse have finalized your decision to separate. Or you can pursue mediation *after filing a Complaint for Divorce*. The key is that both spouses needed to be ready. Many former spouses *mediate post-divorce issues after the divorce is finalized*.

In general, spouses who start mediation early on in their divorce tend to find that they get better results from the process. When spouses attend mediation sessions early, they can identify which issues are going to be contentious from the outset and can work to find mutually satisfactory resolutions before either spouse becomes too emotional or entrenched. If there is already animosity between the spouses when mediation starts, it can make it more difficult for the mediation process to move things forward in a productive way.

What is the role of each party during the mediation process?

During divorce mediation, there are three individuals involved: two spouses and a mediator.

The role of each spouse in divorce mediation is to negotiate fairly and calmly, and be ready to listen and accept solutions that he or she might not have come up with on his or her own. This cooperative attitude is the backbone of the mediation process, and if one spouse fails to cooperate, mediation becomes far more difficult to accomplish successfully. This is why it is so important for each spouse to take their role as a negotiator seriously, and to give the process a chance to produce results.

As for the mediator, his or her role is varied, with mediators frequently *customizing their approach* depending on the needs of the spouses in the divorce mediation. One of the main roles of a mediator is as a referee or observer of the discussion. By acting as a neutral third party, the mediator serves as the meeting organizer – bringing both spouses into the conversation and moving it along productively – and communication facilitator. However, the mediator also serves to educate the spouses of the issues that should be resolved, and whether

their proposed solutions overlook or adequately solve problems that often come up during and in the years following a divorce.

Finally, part of a mediator's role is to use their experience and knowledge of the divorce process to inject practical wisdom into the divorce at issue by asking pointed questions, using solutions from prior mediations as examples, and sometimes even by serving as devil's advocate to challenge a potentially weak proposal for the purpose of making it stronger.

Is there anything that a mediator cannot do during the mediation process?

Because the mediator is a neutral third party whose role is to help the parties come to their own agreement, mediators cannot make decisions about the divorce on behalf of either spouse or help one spouse at the expense of the other. This includes giving legal advice during the mediation. Additionally, the mediator cannot require a spouse to take a specific action, like agree to a proposed solution or even be present at one of the mediation sessions, by placing sanctions or other penalties on the non-performing spouse.

These limitations gives the divorce mediation process its hard-earned reputation for flexibility and fairness. By having a mediator who can only facilitate, not dictate, how negotiations progress, mediation allows the spouses to develop their own solutions to their own unique situation.

Will you have to appear in court after your mediation?

It depends on the type of case. For a divorce, you will have to appear in court once, so the judge can review your mediated agreement to ensure that it is fair and reasonable. When an agreement and all the requisite paperwork is submitted as an uncontested Joint Petition for Divorce, the court will schedule a hearing a date for your agreement to be reviewed by the judge. While no-one enjoys appearing in court (except lawyers), generally if there an agreement, your "case" will be called quickly and your day in court will be brief.

For other instruments, such as mediated agreements for modification, the courts have a process for approving an agreement without the need for either person to appear in court! As long as the requisite paperwork is filed, the judge can decide to administratively allow a modification agreement without anyone appearing in court.

Does it take both spouses to initiate a divorce mediation?

*Both spouses need to be ready and willing to mediate, but it is not absolutely necessary that you each initiate mediation together. Our office tries to meet with a couple together to ensure you are both engaged in the process, and to avoid any perception favoritism at the early stages of a mediation. Our office often **hears from one spouse**, initially, and will request that a date be schedule at a time convenient to both spouses. This way, neither spouse feels left out of the process early in the mediation.*

Can we start the mediation process before filing divorce papers?

You can start the divorce mediation process right away, without any court filing. You may also start even if you or your spouse have filed papers with the court.

We work with people who are seeking to avoid the trying court process by filing an uncontested divorce or agreed upon stipulation. We also work with people who have filed, but are now exploring other options. Indeed, sometimes mediation is recommended to people who have filed for divorce, or are in the middle of a case! The mediation process is flexible to accommodate couples who want to hit “pause” on their divorce litigation while searching for another solution. It is not unusual for spouses who have hit an impasse when negotiating a divorce agreement through lawyers to try mediation to break the deadlock.

For people who have not filed, there is no need to do so. The Massachusetts Probate Courts have a process to enables couples who have reached an agreement to submit their agreement and paperwork in a single court filing.

What should I bring to the mediation?

For the initial mediation meeting, spouses are encouraged to bring whatever documents each think may be relevant. However, the main purpose of the initial meeting is to review the process, gather information, and begin establishing basic goals, such as [selecting a mediation schedule](#) moving forward. After that, what you bring is really determined by the issues that need to be discussed.

For divorces or modifications that deal with financial issues, spouses will likely need to begin gathering financial information. For divorce or custody issues, documents relating to the children may be relevant. Ultimately, the necessary documents are determined by a couple's individual issues and the resolution that is ultimately being sought. Oftentimes, litigants in a court case are required to provide mountains of information that may or may not be relevant, due to discovery requirements or subpoenas. In mediation, the goal is to focus on your specific issues, gathering only the records that directly affect your solutions.

How long does it take to schedule mediation?

Mediation can [begin as soon as both spouses are ready](#). The initial meeting allows both spouses to get an idea of how mediation will work and get a briefing of the process. After the initial meeting, the first session can be scheduled as soon as possible and/or convenient for the spouses. Maybe you and your spouse decide you each need two weeks to process and gather information – maybe you decide you both want to meet and discuss the issues immediately, building on the momentum of the initial meeting.

The mediator will offer her thoughts regarding a successful schedule, but what it really comes down to what is best for you and your spouse. We offer flexible meeting times, and if necessary, can meet outside the office.

When can mediation begin?

Either spouse can [initiate a divorce mediation](#) by calling our office at (781) 253-2049. Mediation itself can begin as soon as both spouses are ready. Since there are no court filings, the mediator and spouses are not working on the court's timeline. This allows you each to decide when to begin – and how. Our mediator meet with a couple first and discusses some of the basic information that will be needed. Some people decide they want to gather information to present to the mediator before the first meeting, while others prefer to meet with the mediator first to establish a preliminary list of documents for each spouse to gather.

Part of the beauty of mediation is the freedom to work on your own timeline. We have had spouses come in who have a reached a basic agreement, but need the details worked out and assistance with the drafting process; we also have met with people who do not get along, and have not spoken about the divorce, but know they need to reach an agreement somehow. If both people feel ready to begin, then we begin.

Can we mediate even if we have already retained attorneys?

Absolutely. Like most divorce mediators, we suggest that spouses review their final mediated divorce agreement with an experienced family law attorney who represents only that spouse's interests. Moreover, for divorces that involve complex financial issues or other complicated factors, it may be helpful for spouses to secure private attorneys as mediation coaches. An attorney acting as a mediation coach generally does not appear at mediation sessions, or directly contact the mediator, but instead works in the background, assisting the spouse he or she is coaching to prepare for the mediation and understand the legal issues involved. Although a mediation coach represents an additional expense, this form of representation is often considerably less costly than retaining an attorney for divorce litigation.

In general, it is helpful for mediating spouses to work with attorneys who are considered “mediation friendly”. Being “mediation friendly” does not necessarily mean that the attorney is a mediator him or herself. It simply means that the attorney should have an understanding of the mediation process, and tailor his or her services to encourage – rather than disrupt – the mediation process.

*A divorce attorney who thinks only in terms of litigation can be **unhelpful when operating from the sidelines of a mediation** for a variety of reasons, ranging from a desire to micromanage the process to self-serving concerns about legal fees. If one or both spouses indicates that he or she would like the support of a mediation-friendly attorney, our mediators are always happy to suggest the names of mediation-friendly attorneys for the spouse to contact. In the end, the decision of who to hire as a mediation coach during a mediation – or whether to hire anyone at all – rests solely with each individual spouse.*

Who is responsible for initiating a divorce mediation?

This is a bit of a trick question. In most instances, either spouse can identify a mediator, call or email the mediator’s office, and schedule an initial meeting. However, many mediators are careful to avoid speaking with one spouse without the other present, particularly at the earliest stages of a mediation, to avoid any perception of favoritism by either spouse.

At South Shore Divorce Mediation, our front desk accepts calls and emails from either spouse, but we generally ask that both spouses participate in the initial contact with the mediator, whether that is by phone (via a conference call with both spouses) or an in-person meeting. It is important for a mediator to maintain not only impartiality, but the appearance of impartiality. If one spouse believes the mediator has a special relationship with the other spouse, this can undermine the trust that is crucial to the mediation process. For this reason, we try to involve both spouses from the earliest stages of a mediation.

It is important to note that once a mediation is underway, spouses will sometimes state a preference for meeting individually with a mediator, outside of the presence of the other spouse. This is often a useful technique, but private meetings between one spouse and the mediator should generally only occur with the informed consent of each spouse.

Are mediation sessions confidential?

In Massachusetts, the confidentiality of the divorce mediation process is protected by law. This can make a huge difference in your divorce because some very intimate details about your marriage are bound to come up in the process. If this happens in a divorce litigation, those details will often be included in a court filing, which is a public record and therefore accessible by members of the public.

In a divorce mediation with a qualified mediator, on the other hand, the confidentiality of any information that gets exchanged during mediation is protected by [Ch. 233, s. 23C](#), so long as both spouses sign a participation agreement before the mediation begins. Importantly, this confidentiality applies even if the mediation process proves to be unsuccessful. This prevents any of the documents or the disclosures made during mediation from getting out into the public eye, protecting your privacy and allowing you to fully participate in the mediation without worrying about divulging something you do not want your neighbors to know about.

In general, a statutory mediator cannot be subpoenaed to testify in court, nor can any of her work product – including notes, documents or recollections of what either party may have said during the course of the mediation – admissible.

What is mediation?

Mediation is one of the ways that you can resolve a divorce. The hallmarks of divorce mediation are the non-adversarial format and the fact that it happens almost entirely outside of the courtroom.

Mediation is also completely voluntary and can only be initiated by the agreement of both spouses.

As a dispute resolution process, mediation focuses on communication and mutual agreement. The spouses meet with a mediator who, over the course of several sessions, identifies points of agreement and conflict, and then helps the spouses resolve their conflicts in a way that is mutually beneficial. The cooperation involved in a mediated divorce saves both spouses a considerable amount of stress and money, and can also keep everything private and make the process go quickly.

How much does divorce mediation cost?

See our new [pricing page](#).

The cost depends on the time involved in the mediation. Generally speaking, between two identical divorces, the divorce that is mediated will cost less than the divorce that is litigated. There are several reasons for this. First, instead of both parties paying for separate attorneys, the parties instead share the cost of a single mediator. In addition, the litigation process requires a great deal of formal obligations for each attorney: They must attend mandatory court hearings, exchange mandatory discovery, and take trial preparation steps from early in the case to protect and prepare each client for a potential trial. Mediation, on the other hand, is a voluntary process that spouses engage in without the pressure of court-imposed deadlines and multiple litigation-driven steps, such as extensive discovery, deposition, and multiple court hearings.

As with retaining an attorney, mediators charge an hourly fee. While it is difficult to predict the ultimate cost, the mediator will review the many ways in which spouses can control mediation costs through their own actions, along with the events and issues that tend to increase the cost of mediation, including extensive document review and scheduling multiple mediation sessions to address multiple narrow issues.

Can my spouse and I mediate our divorce if we don't get along?

It is not necessary for spouses to get along for divorce mediation to be successful. The first and most important ingredient in any divorce mediation is a shared desire by both spouses to avoid the litigation process. From this single shared goal flows a series of shared interests and desires that are often obscured by high emotions, anger or anxiety. Part of the mediator's job is to aid spouses in recognizing their shared interest and prioritizing these interests over secondary feelings such as anger, betrayal or sadness.

To be clear, a mediation cannot ultimately be successful if the feelings of hostility and anger between spouses are so powerful that the negative emotions overwhelm a couple's ability to reach common ground and mutual understanding. However, a significant part of the mediation process centers on processing negative emotions by helping each spouse prioritize his or her emotions in the larger context of a divorce. So long as there is an agreement to mediate, a successful mediation is possible.

How long does a divorce mediation take to complete?

The duration of a specific mediation is largely a function of the motivation level of the spouses. If spouses are eager to complete their divorce quickly, the mediator is generally able to accelerate the process to a few months (or even weeks). Motivation is not the only factor, however. The need to obtain and review extensive financial records or address complex financial issues often requires the spouses and mediator alike to slow down to ensure that complex issues receive sufficient attention and emphasis. If one parent has recently left the home, spouses will often slow the mediation down before finalizing an agreement to allow the children to adjust and to try out new parenting schedules. Emotional barriers, including anger or a spouse's desire to reconcile rather than proceed with a divorce, may need to be addressed before spouses can proceed to substantive issues such as parenting time, child support or alimony, or the division of marital

assets. Lastly, if each spouse reviews a mediated agreement with an outside attorney, additional time may be needed to allow for the attorney's schedule and the resolution of any final details.

Each mediation is unique, so there isn't a standard answer. The timing depends on the number of issues, their complexities, and whether there is an agreement on any of the issues. Couples come to mediation at different stages in the divorce process, and the duration of a particular mediation will often depend on how eager the spouses are to complete their divorce and the degree to which they enter mediation with a clear idea of the main issues they agree on.

How does the divorce mediation process work?

Many books have been written on divorce mediation, making it impossible to explain the entire mediation process in a short Q&A. However, we can say several things with confidence:

1. The parties will schedule a meeting with one of our mediators. In general, our mediators will avoid speaking on the phone with each individual spouse – a conference call with both spouses is less problematic, and ensures that each spouse feels he or she is working with a neutral, impartial mediator.
2. The mediator will meet with both spouses, review the facts of your marriage and family, and identify what goals each spouse has for the divorce and/or mediation process.
3. The mediator will seek to identify areas of broad agreement that the spouses already hold, while carefully exploring and identifying other areas that the spouses may not have discussed or disagree about at the time of the meeting.
4. The mediator will discuss the concrete steps that are likely to occur within the couple's mediation, and the parties will determine whether to retain South Shore Divorce Mediation to mediate their divorce.

5. *The mediator and spouses will set out a proposed schedule, goals, and a methodology for finalizing areas of agreement and for working through areas of disagreement.*
6. *Following mediation sessions, the mediator will prepare a written summary of each party's respective position, including issues that are resolved or remain in dispute, and set the agenda for the tasks each spouse (and the mediator) must complete before the next session, as well as the agenda for the next session.*
7. *As the mediation progresses, the focus will tighten on the specific issues that require resolution. These can include custody, division of property and assets, child support, and any other issues that arise.*
8. *As consensus is reached, the mediator will aid in developing a formal, written separation agreement that embodies each area of agreement the parties share.*
9. *After producing a final mediated divorce agreement, most spouses will choose to present the agreement to an independent attorney (who may be suggested by the mediator) prior to finalizing the agreement.*
10. *After reaching a final agreement, the mediator will generally assist in the production of a Joint Petition for Divorce and associated documents for the Court.*
11. *After receiving a date from the Court, the parties will appear before a judge in a brief, uncontested hearing. There, the judge will review the agreement to determine that it is "fair and reasonable." If it is, the judge will approve the spouses' divorce.*

The specific sequence above can vary from mediation to mediation, depending on the issues and concerns presented. However, most mediations follow this basic framework towards resolution.

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What is a divorce mediator and what do they do?

A divorce mediator is a trained, neutral third party who guides divorcing spouses through the negotiation of a final separation agreement that can be entered by a Massachusetts Probate and Family Court judge without the need for litigation. Although many divorce mediators are attorneys, there is not a requirement under Massachusetts law that a mediator meet any special educational requirements beyond those outlined in [Ch. 233, s. 23C](#). Many spouses seek out experienced divorce attorneys to serve as mediators because divorce attorneys are intimately familiar with the issues raised in a divorce, as well as the technical specifications of a separation agreement. It is important to note, however, that a divorce mediator is not offering legal advice, even if he or she is a trained attorney.

Divorce mediation is a non-adversarial and voluntary procedure for conflict resolution. It is not the mediator's job to instruct the parties to agree on certain issues. Instead, the mediator's role is to facilitate negotiation and agreement by asking the right questions, identifying and finalizing areas of agreement, and assisting in the preparation of a final separation agreement which effectively contains the mutual agreements of the parties.

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