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## **Mediating High Net Worth Divorces For Wealthy Spouses**

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# *Mediating High Net Worth Divorces For Wealthy Spouses*

*Divorce Mediator Kimberley Keyes explains some of the factors involved in mediating high net worth divorces for wealthy families.*



A high net worth divorce is sometimes defined as one that involves spouses who earn more than \$500,000 per year or have a total net worth of more than \$5 million. Sometimes, wealthy spouses are skeptical about whether *divorce mediation* can help them. They assume that the complex financial considerations of a high net worth divorce require the input of multiple attorneys. The myth of the overly complex divorce is just that, however. A myth. *Divorce mediation is perfectly capable of helping wealthy spouses divide their marital assets fairly* even when there are complex assets and income sources of a high-income divorce are present. Indeed, in cases where there are more than enough assets and income to go around, divorce mediation provides a confidential, amicable means of obtaining a divorce without the stress and conflict of litigation.

### *The Many Forms of Income in High Net Worth Divorce Mediation*

Wealth can take many different forms. For most Americans, it derives from salaried income reported on W-2 forms. However, business owners, real estate developers, investors, and other high earners are often compensated in less familiar ways, such as taxable business income reported on a K-1 form, capital appreciation, or a wide variety of corporate benefits such as stock options. Add in real estate gains and intellectual property, and determining income for high earners can become complicated quickly. To be clear, a divorce mediator's role does not include conducting discovery or aggressively pursuing one spouse's argument during the mediation. However, selecting the right mediator includes identifying an individual whose skills, background, and experience suit the issues raised in your divorce. In the case of high net worth divorce, it is important for spouses to select a mediator who is familiar with complex or abstract forms of income. Many mediators are experienced divorce attorneys. However, not all divorce attorneys are familiar with the advanced terminology and concepts that frequently arise in high net worth divorce cases. Spouses whose divorce involve complex forms of income should seek out a mediator with a background that enables the mediator to understand each spouse's position, as well as the complex issues that might hinder settlement.

## Valuing and Dividing Complex Assets in a High Net Worth Divorce Mediation

Every divorce includes a *division of marital assets*. Dividing assets is a two-step process. First, spouses must determine the value of each asset they own. After placing a value on their assets, spouses must then decide how each asset will be divided. High net worth divorce cases tend to feature assets that are more complex and difficult to value than a typical divorce involving a house, two 401Ks, and some personal property. High net worth families might own residential and commercial real estate, business interests, offshore financial holdings, non-publicly traded investments, family trusts, and expectancies, intellectual property and unique art and antiques. It is not a mediator's job to decide what each asset is worth. However, a mediator in a high net worth divorce case often assists the spouses with identifying and utilizing a wide range of valuation experts, ranging from commercial and residential real estate appraisers, business valuers, and other financial experts with expertise that fit the unique assets of the marriage. A high net worth divorce mediator acts, in some ways, like a project manager throughout the valuation process, assisting the spouses in hiring experts, managing the schedule, and helping the spouses agree on a methodology for resolving the value of each asset. In many high net worth mediations, the spouses will agree to jointly retain experts to value certain high-value assets. For other assets, each spouse may retain his or her own expert, with negotiations overvalue kicking off after each expert has submitted a report. Dividing a substantial and diverse marital estate can be a complex exercise, and the mediator's role, early in the process, is to help the spouses stay organized and focused on resolving questions of value without getting bogged down in details.

### Not Every High Net Worth Divorce Mediation is Difficult

Another myth about high net worth divorce mediation is that the presence of substantial income or assets automatically translates into a *difficult negotiation*. This is not always the case, however. In many high net worth divorce cases, the wealth and income sources possessed by the spouses actually makes the divorce easier. Here is an example. Imagine a

*couple with a total net worth of \$50 million. The family's wealth is comprised of a wide variety of exotic assets which would require multiple experts to value on an asset-by-asset basis. Despite the complexity, the spouses broadly agree that the family's fortune is worth \$50 million, and that a complex division of assets is not required for each spouse to live comfortably after the divorce. In lieu of hiring an army of individual valuation experts, the spouses agree to jointly retain a single wealth management expert who will work with a mediator to determine a logical, practical division of assets that avoids conflict. The example above does not describe every high net worth divorce. An experienced mediator understands how to manage a small army of experts, each with a separate task, when spouses require a precise valuation of each asset. He or she also understands how to simplify the mediation process when spouses decide there are more than enough assets to go around, and are seeking a private, efficient and amicable resolution. This [excellent blog from Weinberger Law Group](#) explores some of the ways experts can assist in divorce mediation:*

**Financial specialist.** *A financial specialist in a divorce case is usually an accountant or financial planner who has completed additional training on how to analyze and help resolve common divorce issues. ...* **Appraiser.** *If you need an accurate valuation of a significant item of property, such as a home, artwork, or jewelry, an appraiser with training and experience valuing the type of property in question can provide you with an expert opinion. ...* **Business Valuator or Business Appraiser.** *If one or both of you have an ownership interest in a business that is all or partly marital property, a business valuation is essential. ...* **Actuary.** *Actuaries are skilled in statistical analysis and can help you determine the present cash value of an asset such as a pension or a life insurance policy. ...* **Employability or Vocational Expert.** *If your divorce involves a dispute regarding the employability of an unemployed or underemployed spouse, whether that spouse is a former breadwinner whose income has suddenly dropped, or a stay-at-home spouse who now needs to become fully or partially self-supporting, an employability expert can provide information regarding available jobs that fit the spouse's education and experience, along with information regarding the likely salaries of such jobs.*

Check out the [full blog](#) for detailed descriptions of each expert category.

## *Divorce Mediation Can Expedite the Process and Lower the Cost of High Net Worth Divorce*

*Even in complex high net worth divorce cases, mediation is often significantly [more cost-effective than litigation](#). Divorce attorneys are expensive. Divorce attorneys who are experienced with high net worth divorces are often more expensive. Couples who mediate immediately achieve cost savings by hiring a single mediator instead of two or more separate attorneys. Qualified financial experts are often as (or more) expensive than divorce attorneys. In litigation, attorneys tend to hand-select individual financial experts, and are often reluctant to jointly retain experts to resolve questions of income and assets on behalf of both spouses. Thus, high net worth divorce litigation often results in each spouse having a separate attorney, real estate appraiser, business appraiser, tax expert, etc. The costs quickly multiply. Whenever possible, a mediator attempts to identify joint experts to work for both spouses to resolve income and asset-related issues. In addition to costing half as much as two experts, a single jointly-retained expert can greatly accelerate the process of requesting and reviewing records and information. Instead of engaging in costly and time-consuming discovery, a joint expert seeks records on an informal basis, communicating directly with the spouses and their accountants and other professionals holding critical information.*

## *For High Net Worth Spouses, Privacy is Paramount During a Divorce*

*Wealthy individuals often serve prominent roles in their family, business organization and local community. This prominence generates curiosity, particularly when one or both spouses relies on his or her reputation in business, community leadership or philanthropy. Litigating one's divorce in court undermines family privacy in a variety of ways. With a few rare exceptions (such as sworn Financial Statements), court pleadings are public records. Any non-impounded pleading filed in Probate and Family Court can be viewed by friends, neighbors, family members, business associates or competitors. As any political reporter will tell you, finding*

*“dirt” on a politician is often as simple as searching his or her public divorce file. By its nature, divorce litigation is about leverage. If one party is especially protective over his or her reputation, the other party will be greatly tempted to reveal embarrassing information to obtain leverage over the more sensitive spouse. Litigated divorces tend to bring out the worst in spouses due to the emotion and conflict involved. Embarrassing private details have a way of becoming public knowledge as a result of this high-stress environment. Prominence results in curiosity and gossip, and there is often intense interest about the lives of wealthy individuals. Allegations of adultery, domestic violence, bad parenting and financial shenanigans all provide ripe fodder for the gossip mill. In the heat of the moment, divorce litigants often fail to consider the long-term consequences of revealing embarrassing information about a spouse in a public forum. Years later, ex-spouses often regret the acrimony of their divorce as they continue to encounter the former spouse in their community, and at family events such as their children’s weddings. By then, however, the cat is already out of the bag. **Mediation is confidential and voluntary.** Under **Massachusetts law**, a mediator cannot be compelled to disclose what was discussed during mediation sessions, nor can they be forced to produce their work product in subsequent litigation. Any discussions between the spouses during mediation is confidential and inadmissible in court. If confidentiality is your priority, mediation is vastly superior to litigation in virtually every way.*



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## *Mediation is Far Faster than Traditional Divorce for High Net Worth Spouses*

*Our mediators wear many hats. In addition to serving as mediators, they are experienced divorce and family law attorneys who can speak first-hand about the complexity of a fully litigated high net worth divorce.*

*A dizzying amount of effort is poured into pleadings, discovery, depositions, court hearings and trial preparation in a complex divorce, and the process invariably takes years to complete. If you have not been through a divorce, it may be hard to conceptualize the sense of scrutiny that a wealthy divorce litigant faces throughout the entirety of their divorce. A spouse's every financial transaction will be scrutinized. That iPhone you and your spouse like so much? I hate to inform you that your smartphones are treasure troves of private communications, location data and evidence. Do you spend frivolously? Have you moved on to another relationship? Do you drink? How do you talk to your children? When you are embroiled in divorce litigation, the scrutiny lasts for years, and in the digital age, privacy is virtually impossible to achieve. Mediation resolves divorce quickly, on your timetable, without intrusion into your private life. The wealthier you are, the more valuable these attributes are likely to be to you.*

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***Kim is a divorce mediator for South Shore Divorce Mediation, located in Hingham, Massachusetts and East Sandwich, Massachusetts. She is also a Senior Associate Attorney for Lynch & Owens, P.C., where she specializes in divorce and family law issues. Kim is a statutory mediator under [M.G.L. Ch. 233, s. 23C](#) and a proud member of the Massachusetts Council on Family Mediation. To read more from Kim Keyes, check out [her author page on the Lynch & Owens Blog](#).***

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