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How Divorce Mediation Helps Spouses Divide Marital Property Fairly

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Divorce Mediator Nicole K. Levy reviews how mediation helps couples divide property efficiently and amicably in a divorce.



*Dividing marital assets can be emotional, complicated and hugely important to spouses who are trying to re-start their lives after separating. **Mediation can help.** Deciding to separate triggers a host of issues to consider. Separated spouses need to divide property, big and small. The pictures we see of separation and divorce often portray people bickering over sums of money and real estate. However, it is often the smaller things, like the coffee maker or the trinkets and pictures stored in the attic, that*

trigger the strongest emotional response in a divorce. Mediating your divorce can help ease you into the property division process, providing an approach for wading through the murkiness, along with tools and tricks for avoiding emotional landmines as you and your spouse transition to separate lives. Experienced mediators know how to encourage spouses to prioritize goals, avoid emotional roadblocks and steadily push through the asset division process.

Asset Division Through Mediation: Resolving the “Easier” Issues First

What’s easy for one spouse can be difficult for another. I work with spouses who can effortlessly divide millions of dollars in assets, but become stuck on paintings and side tables. I also work with spouses who are immediately ready to wash their hands of personal belongings, but cannot agree on the distribution of real estate or retirement assets. With these contrasts in mind, please understand that when I characterize one method as “easier”, when it comes to dividing assets, I do so with a large pinch of salt. Mediation creates a space for the division of assets to occur while minimizing antagonism. Unlike litigation, which assigns a fixed value on assets, *mediation encourages flexibility*. An adversarial process is about identifying strengths, weaknesses and sources of leverage. In a contested divorce, if one spouse is highly focused on a piece of artwork, the other spouse’s attorney will seek to control the same piece of artwork, even if his or her client does not want it. Why? Because divorce litigation is about leverage, and one spouse’s strong desire to retain sentimental property creates leverage for the other spouse. Mediation *works very differently*. In mediation, each party is encouraged to openly identify the property he or she feels most strongly about. If the husband cares deeply about the boat, and the wife feels strongly about the furniture, a mediator seeks common ground – not leverage. Once spouses are placed on even ground emotionally, I frequently hear there are many items that neither spouse wants, which comes as a surprise to both. If one spouse is focused on the artwork, and the other on the 401k, mediation seeks to accommodate both views while finding common ground. Both perspectives are valued and compromise is achieved by

accommodating the other spouse's desires, when possible. By treating "easier" decisions as opportunities for compromise, not leverage, divorce mediation becomes an effective and productive way for divorcing spouses to speed up the process and reduce acrimony, cost and stress during their divorce.

Mediating the Difficult Decisions: How Mediation Differs from Litigation

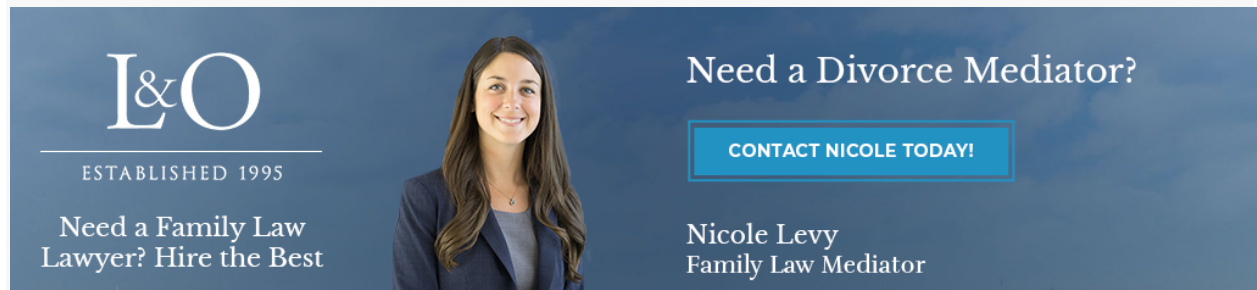
It's hard to predict which assets will create difficult decisions for spouses. I recall one couple whose greatest challenge was dividing up their children's old belongings. The children's possession took longer than other assets to resolve, because both parents had strong sentimental attachments. However, we were able to work through the issue because *mediation rewards creativity*, and through time and concentration, the spouses were able to identify a logical approach to dividing their children's possessions that protected each spouse's sentiments. When dividing a lifetime of assets, property and belongings, it is easy for conflict to arise. You often hear mediators say things like, "litigation encourages conflict and animosity." This is not because divorce attorneys are bad people –*I'm a divorce attorney!* Litigation drives conflict because it is an *adversarial process* in which attorneys are duty-bound to exploit every advantage on behalf of clients. Emotions like fear, anger and the need for control are among the strongest motivators known to humankind. It would be malpractice for a divorce attorney to ignore human emotions during the divorce process, and maximizing a client's opportunities often requires divorce attorneys to turn a party's emotions to the client's advantage. Some degree of conflict and acrimony are baked into the divorce litigation process.

The Mediation Process: Building a Customized Toolbox of Mediation Skills One Couple at a Time

Now that we've established that *all divorce attorneys are not sinners*, nor all mediators saints, we can look at how the mediation process enables spouses to overcome difficult issues. By developing trust,

confidence in the mediation process, and minimizing the conflict during the earlier/easier decisions, mediation guides both spouses towards more complex, more thoughtful discussions when difficult issues inevitably arise. This is a function of skill-building, and it is a key part of the mediation process. Using the skills and methodologies developed by spouses as they review and resolve simpler issues, early in the mediation process, the mediator steadily adds to each spouse's "mediation toolbox" as the process continues. Each spouse learns how to articulate his or her needs in a way that generates a respectful response from the other spouse. Each spouse learns the value of hearing and understanding the other's perspective. Each spouse learns how to identify and process individual issues, building valuable skills along the way. For each issue that arises, mediation teaches each spouse to identify his or her own interest, the interest of the other spouse, and the spouses' shared interests in that subject area. The mediator works with the participants to build a system for problem solving that improves with repetition and refinement, until both spouses show they are ready to apply their new skills to thorny or difficult issues. Writing about the mediation process can be challenging, because there is no one-size-fits-all approach that works for every couple. It is the mediator's job to customize the problem-solving framework to account for each spouse's strengths and weaknesses as individuals and as a unit. Some individuals or couples are blunt and hard-headed, but easily avoid emotional landmines. Others are thoughtful and empathetic, but emotionally fragile. It is the mediator's job to determine what skills the spouses must build – and what hot buttons to avoid or account for – in order to effectively identify and resolve issues and concerns. Mediators encourage spouses to dig deepest and stretch their understanding of each other's positions farthest on the hardest issues. The repetition of spouses working with the mediator towards common goals, instead of against each other, builds the analytical framework that parties need to tackle the most challenging issues in their divorce. By acknowledging the real and sincere concerns of the other individual, spouses learn to address problems cooperatively. In a successful

mediation, solving the other spouse's problems eventually results in the same level of gratification and positive inertia as solving one's own problems. The mediation process also gives the decision-making power on these difficult issues back to the spouses. By *letting spouses put together creative solutions* themselves, spouses can fashion outcomes that are uniquely suited to their individual needs and take into account each spouse's long-term well-being.



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Long-Term Benefits of Mediating Property Division

The benefits of mediating the issue of property and asset division in a divorce go well past the discussion and settlement process. The benefits of mediation can be seen years after the divorce is finalized. By letting spouses craft their own division strategy, each spouse is more likely to get the marital property they need the most for their future. Finally, by reducing the stress of the entire process, there are fewer negative emotions related to the process. For spouses with children, or those who will inevitably see each other again, an amicable relationship remains possible.

Nicole is a divorce mediator and mediation coach for South Shore Divorce Mediation, located in Hingham, Massachusetts. She is also a collaborative law attorney Senior Associate Attorney for Lynch & Owens, P.C., where she specializes in divorce and family law issues. Nicole 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 Nicole Levy, check out [her author page on the](#)

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