

Kathleen M. Newman - The Divorce Process

Is mediation a good option for settling a divorce and how does it work?

When you are going through a divorce, you may be experiencing a lot of emotions that lead to significant conflict. It may seem impossible to ever reach an agreement with your spouse regarding such things as how to divide the property you own, how your children will be provided for, who will be responsible for making the major decisions regarding your children and any needed spousal support.

Although it is understandable that divorce can be difficult to handle, it is possible in many cases to arrive at an agreement beneficial to both parties through mediation. It may be in your best interests to try to reach an agreement in this manner, as doing so can help reduce the overall costs of your divorce while also lessening the emotional damage both you and your ex-spouse may take away from it.

If you choose to try mediation, a trained and neutral third party will work with both you and your spouse to help try to facilitate your reaching an agreement. If you are able to do so, the agreement will become the court's order. If you are unable to reach an agreement through mediation, you may still proceed to a contested hearing on all unresolved issues. Anything that you discussed in mediation will be treated as confidential and will not be allowed to be used in the contested hearing.

Courts believe that mediation can be an effective alternative for many couples. Being able to reach an agreement rather than depending on a judge's order may be of benefit while also saving you money. Our attorneys and staff have experience in this form of alternative dispute resolution.

Can something I post on social media be used against me in divorce proceedings?

Many of us use Facebook, Twitter or other social media tools on a daily basis. Not only does social media connect us with friends and family, it also provides us with a way to document our busy lives. However, social media is definitely something that requires caution when involved in a divorce or family law case.

We have all heard that social media contributes to many divorces and break-ups, but it can also play a role in the divorce itself. When posting a photo or updating a status to reflect our current mood, it's important to remember that what you're writing is not private.

Even if you have mastered your privacy settings or blocked your ex, chances are that you have a “friend” or two who would be more than willing to share the information you post with your ex. When this happens, the information you posted without much thought can become important evidence in your family law case.

Here are a couple of examples of how social media can get you into trouble:

Scenario #1 – Your posts contradict what you’ve disclosed about your finances. In a divorce, you are required by law to provide accurate information about your income and assets. But if you disclose that you are making less at work and then upload photos of a new car or vacation, you could call your honesty into question.

Scenario #2 – Your posts call your parenting into question. There’s no doubt that parents like to have fun too, but if you upload party pictures on nights that you were supposed to be spending with your child, you could give the impression that you aren’t taking parenting seriously enough.

Scenario #3 – You use social media to say bad things about your ex. We live in a free country with first amendment rights to say just about anything. But it’s best to be careful what you say about your ex online during a child custody dispute or the judge might see it as detrimental to your child.

Are prenuptial agreements always enforceable in Minnesota?

Minnesota couples considering marriage might want to know more about prenuptial agreements. In the event of divorce, having a premarital agreement in place may serve to facilitate a couple’s separation by clearly delineating property ownership and establishing guidelines as to how jointly owned property ought to be divided. Different states may have varying means of determining how premarital agreements are to be enforced, and Minnesota has its own set of laws pertaining to such prenuptial agreements.

A prenuptial agreement made between partners in Minnesota may be considered enforceable if both parties had opportunity to consult legal counsel. Moreover, the state requires full disclosure of each party’s property and earnings for an agreement to be valid. Premarital agreements must also be notarized and witnessed, according to statute. Provided that these requirements have been duly met, a Minnesota court will uphold the prenuptial agreement made by a man and woman of legal age.

However, the prenuptial agreement may be invalidated if, hypothetically, it were discovered that one of the parties to a marriage failed to properly disclose the true extent of his or her assets. Another hypothetical situation that may invalidate a premarital agreement is when evidence

surfaces that one of the parties did not have the opportunity to speak with a lawyer of his or her own choosing before the agreement was signed.

In any event, it is prudent for people who are considering marriage to seek the counsel of a family law attorney, if only to ensure that all of their rights remain inviolate and their interest, advocated. In the event that couples wish to enter into a prenuptial agreement, retaining a lawyer is essential.

How are same-sex divorce cases handled by the courts in Minnesota?

On August 1, 2013 Minnesota became the 13th state to recognize same-sex marriage. But when some of these marriages inevitably end in divorce, will the state's court system know how to handle it? If Minnesota is like other states, then probably not.

Courts in other states that recognize same-sex marriage — as well as those that don't — have been struggling greatly with how to handle same-sex divorce cases over the past few years.

One of the biggest issues is that same-sex couples are often together for years before getting married, but the court only considers marital property to be property obtained during the course of the marriage.

That means if a couple lived together for 20 years and was married for only a couple of years before filing for divorce, the court will likely only divide the assets that were accumulated from the marriage on.

This can cause many financial issues for the couple, especially for the spouse who earned less over the course of the relationship and therefore is entitled to less. This could also present a problem when figuring out alimony or spousal support.

Additionally, same-sex couples who are married in Minnesota could also run into problems if they move to another state that does not recognize their union.

For example, Ohio — which has a constitutional amendment banning gay marriage — recently made headlines after one state court judge granted a divorce between a same-sex couple and a few days later another judge in the same court denied a same-sex couple's divorce citing lack of jurisdiction.

Ultimately, this is an area of family law that has seen great change in recent years and will continue to evolve. Some argue that more uniform laws are needed to assist the courts, while others maintain that the issue should be left to each state to decide.

What is the best way to go about obtaining an amicable divorce?

When news that actress Gwyneth Paltrow had decided to “consciously uncouple” from her husband, musician Chris Martin, many Minnesota couples were a bit skeptical. However, many others are actually applauding her announcement.

In more simple terms, “conscious uncoupling” simply means that the two are working on a plan to separate in a way that protects their children from any harm that could potentially result from a divorce. This means that they intend to split as amicably as possible so that they can continue to co-parent in a way that is most advantageous for their children and their situation.

The actress and musician are not the only couple to decide to split amicably. For example, many groups across the nation are working to put in place family law models that promote amicable divorce proceedings. A Minnesota group was able to have a law signed in May that updated language acknowledging that parents who were unable to have an amicable relationship post-divorce could still co-parent their children and that the needs of their children may change through time. While this law may not have a big impact on many couples, it should be noted that this lays the groundwork for any major changes that may happen down the road.

Traditionally, couples who were attempting to go through the divorce process would take their case in front of a judge. More recently, however, attorneys for both individuals involved in the divorce are turning to mediation as a way to hammer out an agreement. Not only does this reduce the costs of the process, but working out an agreement with a neutral third party allows couples to work out an agreement that both individuals are comfortable with and that is advantageous for any children that the couple may have.

What does it cost to get a divorce these days?

One of the most common questions a client will ask upon contacting an attorney is, “How much will this cost?” Unfortunately, the answer is far from clear. While cost is certainly a subjective term, the focus here will be financial cost. As a starting point, the hourly rate a particular attorney charges is set in advance and known by all at the start of representation. However, there are a number of factors aside from hourly rate that impact the time and expense of a divorce and are beyond the attorney’s control.

What are the contested issues?

If divorcing parties are able to reach agreements on the major issues such as custody of children, spousal maintenance, and division of assets, this will often keep the overall cost of the divorce down. However, if one or both parties choose to litigate all issues great and small, much more

time will be spent and consequently the court costs, Alternative Dispute Resolution costs, and attorney's fees will increase as a result.

Who is the opposing attorney?

Attorneys develop unique styles and also develop relationships with other attorneys and the courts. Some styles mesh well, while others do not. An attorney with a particularly litigious approach may not work well with an attorney seeking to resolve matters for a client through Alternative Dispute Resolution. For this reason, it is important to seek an attorney that can adapt to the changing circumstances of a case.

How can we get this settled?

Great emphasis is placed on parties participating in Alternative Dispute Resolution (ADR) in an attempt to keep these important, personal matters out of court. A smorgasbord of ADR options seems to exist including mediation, Early Neutral Evaluation, and arbitration. Working with an attorney who understands these processes and is able to assist you in choosing one that is appropriate for your circumstances is important. ADR is not one size fits all and by getting into an appropriate process, you increase the odds of settlement and decrease the overall cost of the divorce.

Can we talk about this?

Communication with your attorney is extremely important, but also the source of much expense. If you call your attorney multiple times per day to discuss issues ranging from the benign to the true emergency, the invoice received at the end of the month will reflect this. Effective communication is much more vital to your case than continuous communication. While your attorney certainly needs to remain fully informed and be available to give you any advice and guidance you may need, you may want to consider the following tips to effectively communicate with your attorney while keeping costs down:

Write down your questions for the attorney in advance so that you do not forget anything important.

Combine all of your questions into one call or email rather than contacting your attorney multiple times per day.

Take notes. Often a person will forget information or advice given to them by an attorney during a stressful time. Having notes of prior conversations may help decrease the need to ask again.

Be direct. If you are able to articulate your question or concern, your attorney will be in a much better position to answer your question fully.

Who did I marry?

Sadly, the emotional toll of a divorce may lead to parties lashing out at one another or acting in a way each are not accustomed to. These stressful times may lead to more conflict or to one (or both) of the parties taking an unreasonable position. Your attorney will advocate for you, but there is only so much that can be done when the other side is unwilling to work toward settlement. The further into the divorce process a case goes, the more expensive it tends to be. An inability to settle through no fault of your own will unfortunately lead to much higher costs.

The above is not an all-inclusive list of the factors that contribute to the cost of a divorce, but certainly highlights some of the more common factors. There are many other factors that will cause the cost of a divorce to rise or fall. While it is impossible to predict the final financial cost of any particular divorce, it is important to work with an attorney who is familiar with the legal process and is able to help you efficiently and effectively navigate this process to help you protect the assets you have acquired, rather than spend them.

Child Custody and Support

What is meant by "virtual visitation" and what are its benefits to parent and child alike?

Virtual visitation, which describes the use of technology to allow a divorced parent to remain in contact with their child, may be utilized by non-custodial parents in certain situations. One circumstance would be if the custodial parent is seeking to relocate with the child, which would interrupt the non-custodial parent's ability to exercise their visitation rights.

While several states have enacted virtual visitation laws, courts in many states that do not have these laws have ruled in favor of allowing virtual visitation. It should be noted that virtual visitation is meant to supplement traditional visitation for the non-custodial parent. Virtual visitation is meant to give the non-custodial parent the ability to make themselves more available for their child.

This type of visitation has certain benefits for both the child and the non-custodial parent. It allows the non-custodial parent to be more involved with the child by helping with homework, allowing the parent to virtually be at sporting events or other extracurricular activities and even read to them at night on Skype or another comparable technological device. However, virtual

visitation is not meant to be used as a replacement for traditional visitation, but merely as an addition to it.

Most courts operate under the idea that it is beneficial for a child to maintain a relationship with both parents with the exception of certain circumstances. If one parent is granted physical custody, an attorney for the non-custodial parent may negotiate a visitation schedule that benefits both the child and the client. If possible, the attorney may work out an agreement that allows the non-custodial parent to also be able to have virtual visitation with the child to better maintain a relationship.

Do grandparents have any rights when it comes to child custody?

Divorce can be difficult on more than just the couple involved. Not only do children often struggle with the transition, grandparents can also end up feeling torn or left out. As a recent article from the Huffington Post explained, grand-parenting after your adult child has gone through a divorce can get complicated.

In order to best assist the grandchildren with the transition, the article said that grandparents should try to make the time they spend with their grandchildren as similar to pre-divorce visits as possible. Grandparents should also make sure their home is a “neutral zone” where the grandchildren don’t feel torn between one parent and the other.

Unfortunately, access to grandchildren can be somewhat of a problem following a divorce. This can be especially true when the parents and the children are attempting to adjust to the new way of living and both parents are trying to get as much time with the children as possible.

Luckily, Minnesota law offers some rights for grandparents. For example, during or after a divorce proceeding, grandparents may be authorized to petition the court for visitation rights to their grandchildren. This is also true after one parent dies and the surviving parent denies visitation to the grandparent, in addition to a few other circumstances.

In order for a grandparent’s request for visitation rights to be granted, the court must find that 1) the visitation rights would be in the best interests of the child and 2) the visitation would not interfere with the parent/child relationship. The previous relationship the grandparent had with the child is also a major factor.

If you are a grandparent and have questions about grandparents’ rights, talk to an experienced family law attorney in your area for more information.

What kinds of expenses can be covered using child support payments?

When Minnesota parents go through a divorce, the non-custodial parent is often required to pay child support to the custodial parent. It may surprise some parents to learn the wide array of expenses this money can be used for.

Generally, child support guidelines say the child's standard of living should not decrease because the parents get a divorce. The money must meet a child's basic needs. This includes food, shelter, medical care and education, including extracurricular activities.

The amount of child support is determined prior to the divorce being finalized. The courts, however, generally do not monitor how the custodial parent spends the money as long as it is in the best interest of the child. For example, the money can be used to make a mortgage payment since a house fulfills the child's need for shelter. Child support may also be used for entertainment, such as a computer for the child to use or vacations. The child will usually get medical insurance through the parent who has the best medical insurance policy, but child support payments can be used to cover co-pays or out-of-pocket medical expenses.

Child support can be an issue of contention for parents in the midst of a divorce. There is a need to balance what the custodial parent wants with what the non-custodial parent can afford to pay. In addition, the non-custodial parent may want the child support agreement modified if they don't like how the custodial parent is using the money. Even after a divorce is long final, child support issues may arise that may require assistance of family law attorneys to make sure the best interests of the child are safeguarded.

What happens if an incarcerated former spouse refuses to pay child support?

Fathers in Minnesota who have child support obligations often fall into a debt trap when they are incarcerated. While in prison, most fathers are unable to continue making their payments, and many face going back to jail or prison if they can't pay off the debt once they get out of prison. Now, incarcerated fathers will be allowed to pause their child support obligations until they are released.

How is the amount paid for child support determined?

In Minnesota, a divorcing parent may be required to pay a certain amount of child support in order to help support the care of the former couple's child. The amount that the noncustodial parent may be required to pay depends upon a number of factors, including how much the parents make and whether or not the child has any extraordinary needs.

Child support is a monetary payment that is made by a noncustodial parent to the custodial parent in order to help financially support the costs of raising a child. Depending upon the specific circumstances of each case, the parent who was ordered to pay child support may be required

to help support the care of the child and the child's education. Additionally, they may be required to help pay medical costs and reimburse public assistance payments that were previously made on behalf of the child.

Child support is calculated based on the total income of both parents. The total amount that the noncustodial parent may be required to pay is allocated based on the proportionate share of that combined income that would be used to support the child. Additionally, the payment may be adjusted based on how much time the child spends with the noncustodial parent. Other factors may affect the amount, including extra financial needs if the child has physical or mental conditions and parent debts.

An attorney may be able to help the custodial parent determine how much they may need in child support payments in order to properly provide for the child by providing evidence that the requested payments can be afforded. Alternatively, an attorney for the noncustodial parent may be able to advocate for a lower payment if it can be demonstrated that the client cannot afford the requested amount.

High-Asset Divorce

What can I do to protect my business in the event I become divorced?

As Minnesota business owners may know, divorce may subject one's business to property division. While there are ways to protect the business in divorce, instituting such measures in a timely fashion may prevent losing a portion of the business. One of the best ways to ensure that both parties keep what they believe is solely theirs is a prenuptial agreement.

A prenuptial agreement allows the soon-to-be spouses to decide how marital assets would be divided in the case of divorce as well as how alimony may be decided. A properly executed prenuptial agreement may override the state's laws governing property distribution after divorce. It is important to ensure that the prenuptial is structured and signed in a way that prevents future challenges. This includes making certain that the prenuptial is implemented far enough ahead of the wedding to negate an accusation of coercion. Having it notarized or signed in front of a judge may attest to its validity.

If a prenuptial was not signed, certain complexities may arise. For instance, even though the business may have been established before marriage, the value of the business afterward, if it increased, may be considered marital property. If the spouse worked in the business, their contribution may increase their share after divorce.

If the business is a corporation, the owners may implement a plan that requires unmarried shareholders to waive a spouse's right to inherit shares in the company. If it is a sole

proprietorship, the owner may decrease the amount a spouse will receive by paying himself or herself a higher salary during marriage.

A business owner has various options available that may protect their business in the case of a divorce. An attorney may assist in structuring a valid prenuptial agreement ahead of the wedding day. A postnuptial agreement may also be an option.

Who gets to keep my pension after a divorce?

Minnesota residents contemplating divorce may have questions about property division. Minnesota is an equitable division state where marital property is divided fairly although not necessarily equally.

Property that was obtained before the marriage by either spouse is considered separate property. Division of marital property includes both assets and marital debts while separate property is excluded. There are exceptions. If separate property was commingled with marital funds, it may be considered marital property for the sake of division.

Determination of how the assets will be divided is based on the contribution each spouse made during the marriage. It may also be based on the age of both spouses, their health and the ability to earn a living. Assets such as retirement plans and pensions may also be divisible during divorce providing it was obtained or added to during the marriage. For instance, a retirement plan or pension that was established before marriage but added to during marriage has both separate and marital facets. Setting value on assets may be complex when pensions are considered.

Vested pensions are marital property and, as such, are divided during the divorce. The amount paid to a spouse may not be more than the benefit amount. In addition, public pension plans must be procured by the plan member and be released before the spouse may collect.

A defined benefit plan generally depends on the salary an employee has at the end of his or her career and the total years worked. The spouse may not be paid in a lump sum. Assigning value with a defined benefit plan may be complicated. An attorney may assist in determining the value of marital assets including pension plans. The attorney may also advocate for financial advisors to review pension and retirement plans and determine how the plan's benefits may be divided.

How are assets divided when one of the spouses owns a business with hidden assets?

Many Minnesota couples who go through a divorce may know that it is a process of dividing marital debts and assets. Most of the time, it is simple and generally involves dividing credit card debts, houses, cars and retirement accounts. However, a smaller number of couples experience

issues with complex asset division where there is, for example, a business or complicated asset that need to be evaluated and divided. In cases like these, it may be a good idea to work with a forensic accountant to review financial disclosures if either party feels that they are being manipulated.

A forensic accountant is a sub-specialist in the accounting field. Generally, this type of professional is able to review the financial documentation involved in divorce proceedings and determine if there are discrepancies. For example, if the accountant discovers a person's business experiences gross revenue increases while also seeing declining gross profits, he or she might be able to determine if the figures were doctored in an attempt to shield some assets from division.

In addition to being able to find evidence of fraud or hidden assets, a forensic accountant might also be able to help a client with the valuation of complicated assets. Certain assets, such as partnership interest in certain professional practices and stock options, can be difficult to divide because their value is uncertain. However, a forensic account may be able to provide an accurate estimate.

Those who are involved in complicated divorces might also benefit from working with a family law attorney. That attorney may be able to inform a client about his or her rights during the proceedings. In addition, the attorney could also represent a client's interests in settlement negotiations with the other party or during hearings before a judge if court action becomes necessary.

How is 'marital property' defined?

When people are going through a divorce in Minnesota, the judge will typically conduct an equitable property division in the final orders and decree. Not all property is considered to be marital property, however, leaving some to not be subject to division.

Marital property includes all property acquired during the marriage. This includes both real and personal property, interests accrued in pension and retirement accounts. All property acquired during the marriage by either spouse, whether jointly or separately, is included in the category of marital property.

Separate, or nonmarital property, includes any property acquired prior to the marriage. Any property that was obtained by one spouse in exchange for separate property that was a gift, bequest, devise or inheritance will likewise be classified as nonmarital property and is thus not subject to property division. Property included in a legitimate antenuptial contract may also be excluded and considered to be separate.

Property division can be quite complex, especially in high-asset divorce cases. People who believe the other party may have hidden assets or those whose assets are complex and intermingled with the other person's may benefit by seeking help from a family law attorney. This information is not intended as specific legal advice, and an attorney may be able to help determine whether a court is likely to find an existing prenuptial agreement to be valid, help locate and uncover hidden assets and help devise a fair and just property settlement. Legal counsel may also help by filing all needed motions, subpoenas and other associated documents.

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