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Common Topics for Divorce Mediation

Divorce or legal separation mediation is a confidential, voluntary process to resolve family law issues amicably without court. You work with an unbiased mediator to negotiate terms like property division and child custody. Benefits include cost savings, time efficiency, and maintaining a respectful relationship, especially important for families with children.

Marriage and Separation

Understanding the dates of marriage and separation is not merely a legal formality but a critical component in the divorce process. The date of marriage establishes the length of the marriage and can impact decisions related to spousal support and asset division. The date of separation signifies when the couple began living separately with the intention to terminate the marriage, thereby affecting financial evaluations and obligations. This knowledge empowers individuals to make well-informed decisions.

Filing Divorce Documents

Petition and Summons: The divorce or legal separation process begins when one spouse files a petition for divorce or legal separation, outlining the grounds and initial proposals for asset division and custody arrangements. The summons notifies the other spouse of the proceedings and their rights and responsibilities. It's common practice to check all the boxes that favor the person filling out the form. However, do not be overly concerned with the requests made in these initial documents.

Response: The responding spouse must file a response to the petition if they disagree with any aspects. This response sets the stage for negotiations and, if necessary, court intervention. It's important to note that the roles of Petitioner and Respondent are interchangeable, and clients sometimes decide this by flipping a coin.

Important Note: Just because certain requests are made on a petition or response does not mean this will be the final outcome. What truly matters is the terms you both agree upon and include in your Marital Settlement Agreement at the end of the case. The initial filings are starting points for discussion and let the court know there is a case. They do not reflect final decisions.

Mandatory Waiting Period: California law requires a mandatory 6-month jurisdictional waiting period from the time the divorce petition is served until the divorce can be finalized. This period is designed to allow time for reconciliation efforts and ensure that both parties have ample time to consider their decisions fully. (Note: The waiting period does not apply to legal separations.)

Previous Agreements

It is essential to consider any prenuptial or postnuptial agreements the parties have entered into. These agreements can significantly influence the division of property and spousal support, outlining terms agreed upon before or during the marriage regarding assets and responsibilities. Mediation respects these agreements as binding contracts unless proven otherwise and integrates them into the discussion of divorce terms.

Division of Property

Community vs. Separate Property: In California, all assets and debts acquired during the marriage are considered community property and equally owned by both spouses. Separate property includes anything owned before the marriage or acquired by gift or inheritance, including income from labor and efforts after the date of separation. Mediation clarifies the nature of each asset, considering Watts charges, Epstein credits, and reimbursements under Family Code section 2640.

Household and Personal Property: You are encouraged to handle the division of most household and personal property on your own. This includes items like furniture, appliances, and personal effects. A practical approach can be effective, such as taking turns choosing items or using an app to catalog and agree on the division.

Pets and Jewelry: Pets often hold significant emotional value, and decisions about their care and custody can be sensitive. Similarly, jewelry can also carry emotional and significant monetary value. These items require careful consideration to decide on a fair division, reflecting both their sentimental and financial worth.

Complex Property Issues: Divorce mediation addresses more complex property issues, including:

- Businesses and Intellectual Property: Evaluating the worth and deciding on the division or management of business ventures and intellectual property.
- Investment and Bank Accounts: Dividing assets in checking, savings, and investment accounts and handling issues like stock options and restricted stock units.
- Deferred Compensation, Credit Card Points, and Airline Miles: Addressing how to divide deferred compensation plans, credit card rewards, and frequent flyer miles.
- Real Estate and Timeshares: Discussing the division of primary residences, rental properties, and timeshares.
- Memberships: Deciding on continuing or dividing club memberships and other entitlements.
- Inheritances: Handling inheritances that were mingled with community assets.
- Digital Assets: Dividing digital properties such as social media accounts and other online assets.

Retirement Accounts

Dividing retirement benefits can be complex, involving specific legal rules. California law requires the calculation of the community interest in pensions and retirement accounts, which are usually divided equally. Assets like 401(k)s or pensions often require a Qualified Domestic Relations Order (QDRO), and you may be referred to a pension specialist.

It is essential to know that tax-deferred assets such as retirement accounts are treated differently than non-tax-deferred assets such as a house. Remember, because of taxation, a dollar of retirement assets is worth less than a dollar of non-retirement.

Division of Debt

Debts incurred during the marriage are typically considered community property, whereas debts incurred before marriage or after separation are the responsibility of the individual spouse. Mediation can address:

- Secured Debt: Debt tied to an asset, such as a mortgage or car loan.
- Unsecured Debt: General debts like credit cards or personal loans.
- Student Loans: Typically considered separate debt unless proven to benefit the marriage.

Children

Legal vs. Physical Custody: Legal custody involves decisions about a child's health, education, and welfare. Physical custody concerns the child's living arrangements and parental care. Both can be joint or sole, depending on the child's best interests.

Parenting Plans: Mediation facilitates the creation of detailed parenting plans, including the daily schedule, sharing of holidays, and vacations, ensuring both parents remain actively involved in their children's lives.

Child Support and Add-ons: Child support considers factors like income, custody, and the children's needs. Parents usually share extra costs such as healthcare, childcare, education, and activities. In California, a mandatory statewide guideline exists, and you must show the court awareness of this amount if litigated. We use the same software as the courts to estimate child support. The final amounts depend on both parties' agreement.

Spousal Support

In mediation, you can discuss spousal support arrangements to include temporary or permanent support, depending on the length of the marriage and each spouse's financial needs and abilities. Spousal Support is discussed in California Family Code Section 4320, with factors the court must consider when making support orders. Support discussions can also cover the following:

- Waiver: You may agree to waive spousal support in some circumstances.
- Lump Sum: Instead of ongoing payments, you might consider a one-time lump sum payment.
- Modifications: Conditions under which support amounts might increase, decrease, or terminate.
- Wage Assignment: Mechanisms for automatic payment processing.

Insurance and Security

Ensuring you and your children have necessary insurance coverage after the divorce is crucial. Discussions in mediation may include:

- Health Insurance: How you and your children will maintain health coverage.
- Life Insurance: Using life insurance as security for spousal or child support.
- Auto and Property Insurance: Adjustments to policies to reflect new living situations and ownership details.

Income Taxes

Navigating post-divorce tax implications is an essential topic in mediation. You will need to consider:

- Filing Status: How you can file taxes during and after the divorce process—jointly, head of household, single, or married filing separately.
- Dependency Exemptions and Child Tax Credits: Who claims the children can significantly impact your tax liabilities and benefits.
- Impact of Filing Choices: The implications of each filing status on your financial situation, including potential liabilities for audits, refunds, or capital gains taxes.

Miscellaneous Considerations

Other considerations that might be unique to your situation can include:

- Name Changes: You may choose to change your surname back to a previous name after the divorce.
- Religious/Cultural Considerations: Handling elements like a Catholic annulment or a Jewish divorce.
- Frozen Embryos: Decisions regarding the disposition of frozen embryos, if applicable.

Conclusion and Resources

Mediation fosters open communication and aims to achieve a fair resolution that respects both spouses' interests. This process promotes cooperation and minimizes conflict. For additional assistance or inquiries throughout the mediation process, please feel free to consult resources such as attorneys, mental health professionals, or financial specialists.

You are also welcome to contact us directly for further information. Please note, however, that as neutral mediators, we are unable to provide legal advice.

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