



**Kanzlei für  
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## MEDIATION BROCHURE

# Mediation

## What is mediation in separation and divorce?

These written explanations are meant to inform you about the basics, requirements and contents of going through mediation for of separation or divorce. It is intended to enable you to ask informed questions in the preliminary session so that you can enter into mediation with an idea of what to expect. In the best of cases you should be able to decide – during the preliminary session or after – if mediation is an option for you or whether you would prefer other (conventional) approaches to your specific situation.

1. There are several options available for the settlement of separation or divorce. First the parties involved can work out their own arrangement in direct communication without outside help. Secondly they can claim the services of a mediator to help with the negotiations in order to facilitate reaching a mutually acceptable solution. And thirdly one or both parties can charge their lawyer(s) to either make an out-of-court settlement or have the court make a ruling for them.
2. Mediation is an out-of-court procedure for solving conflicts. In separation- or divorce mediation the consequences of separation or divorce are discussed in direct, cooperative and fair negotiations with the help of a professional mediator to reach a mutually acceptable settlement.
3. The main requirement for this procedure is the willingness of the involved parties to work out an agreement tailored to their own demands under their own direction. That includes the willingness to shoulder the responsibility for these decisions instead of delegating it to third parties such as lawyers or judges. They are supported in this effort by a neutral and independent mediator who – in contrast to e.g. a judge in court – has no right to make decisions for the parties. The mediator does not take over decision-making in problematic issues but helps them to overcome their differences and find a fair solution that is mutually acceptable. The services of a mediator are centred on shaping a constructive work process. The mediator moderates the negotiations, encourages the parties to adhere to previously agreed

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rules of communication, gives everybody room to voice their opinions, concerns and ideas, helps them out when they get stuck, offers the help of experience, nurtures the progress of negotiations and emerging settlements and writes the protocols of the individual sessions as well as the summary of results.

4. It is the nature of mediation to discuss differences of positions constructively, to let individual requirements for a settlement emerge and be viewed as valuable and equal contributions in the search for agreement. A mutually acceptable and fair agreement has been reached if personal interests of the parties as well as those of possibly existing children have been taken into account.
5. Participation in mediation is voluntary. This includes the right of any party to end mediation unilaterally at any time, if the process does not satisfy their demands anymore.
6. Participation in a mediation process requires the parties to agree to not going to court for the duration. At the beginning of mediation it is generally agreed upon to let existing court proceedings rest and not start any new proceedings. This agreement should not cause any party to lose advantages in court so the mediator is required to keep informed on existing deadlines for applications in court or other legal positions affected by this break in court proceedings.
7. Mediation involves privileged information and is confidential. At the beginning of mediation the mediator will inform the parties of the requirement for an agreement that irrevocably waives the right to call upon the mediator as a witness in court.
8. In the course of mediation the parties actively participate in the process of reaching an agreement. They are responsible for voicing their interests

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and demands and for developing ideas for a mutually acceptable respectively integrated solution. The solution is the responsibility of the parties. A settlement is only reached, if the parties agree on it.

9. A fair solution requires the parties to know all relevant information including legal regulations pertaining to their conflict. The parties have to be ready to reveal their personal and financial standing. If the mediator is a lawyer they have the right to legal advice on all relevant matters.
10. To be able to judge the work in progress and the quality of the results achieved the parties are required to get individual legal advice outside mediation independently, latest before signing a legally binding settlement. In addition to that it may be advisable to get information and recommendations on matters concerning children and their education from respective centres and qualified sources.
11. The parties choose the list of topics to be discussed in mediation according to their requirements and wishes. In case of separation or divorce the most common topics are future arrangements for housing and living situations, child care, financing the cost of living for all members of the family, distribution of family assets or debt and possessions.
12. Mediation is a process with an itinerary. Typically there is a preliminary session to determine, whether mediation is the method of choice or what other alternatives exist. If mediation is chosen an agreement on ground rules of cooperation follows. Next individual topics and requests of the parties are collected and formed into the program for the next sessions. The topics are discussed according to the previously agreed sequence and the interim results are recorded. In the end these are integrated into the end result of the mediation process. This should be a concept for a settlement that includes agreements on all topics debated, in how far they should be legally binding

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and what the factual consequences and next steps should be. A memorandum of the agreement is made.

13. In the next step this memorandum is transformed into a legally binding document by the mediator (if a lawyer) or an external lawyer or notary.
14. The results of a mediation process require the agreement of both parties involved and are only acceptable, if both parties consider them fair. The mediator does not support unilateral solutions favouring one party.
15. Mediation is billed by the hour according to a previously agreed upon rate. Billable hours include sessions, writing of session protocols and other necessary activities according to agreement.
16. The most important application of family-mediation occurs in cases of separation or divorce. But family-mediation is also applicable for the regulation of other familial problems such as prenuptial agreements, conflicts between parents and adolescents, between significant others, drawing of wills, disputes over the estate, conflicts within family businesses and questions of succession.
17. A word on the two most common misunderstandings concerning mediation. As implied by the term “mediation in cases of separation or divorce” the aim is a settlement for separation. It is not a form of help with the goal of finding a way to save the relationship. Here psychosocial help can be required as opposed to the premature use of mediation. Yet if one partner is not ready for separation, mediation still may be applicable to reach an agreement on such matters that cannot be postponed in the current situation, without planning further steps towards the end of the relationship. In these cases only the status quo is subject to the agreement. The second most important misunderstanding may consist of the expectation that the mediator

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function as a referee in the topical disputes, if the parties are not able to find a solution on their own. But the role of referee is not consistent with that of a mediator. A mediator will strive to lead the parties out of the dead end they are stuck in and help them find a mutually acceptable solution. If that is not desired, alternatives to mediation are required.

*Lydia Bergida, Mediator*

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