

THE DIVORCE MEDIATOR

CENTER FOR DIVORCE MEDIATION & ALTERNATIVE DISPUTE RESOLUTION, INC.

THE TROLLEY BARN • 10 WALL STREET • NORWALK, CONNECTICUT 06850 • (203) 854-9394

NEW COURT RULES WILL CHANGE DIVORCE

The Superior Court Rules Committee is proposing changes to the court rules that will dramatically change divorce procedure. Under the new rules, a time schedule would be established when the case is brought. This would give clients a better sense of when the divorce might be granted. The court would require financial affidavits to be filed within 30 days, and within 60 days, filing of IRS forms such as W-2, 1099 and K-1 for the last three years; pay stubs or other evidence of income for the current year; bank statements for the last two years; pension statements; life insurance statements; a summary of medical insurance benefits; and written appraisals concerning assets. This would avoid some of the problems parties have in obtaining this information. The court would also automatically enter standing orders relating to assets, borrowing, child custody and visitation, and life insurance thereby maintaining the status quo and avoiding the necessity of going to court for temporary orders. All of the changes would formalize what we already do in mediated divorces.

MARCUS ELECTED PRESIDENT OF CONNECTICUT COUNCIL FOR DIVORCE MEDIATION

We continue to be very active in the CCDM, the state-wide organization of divorce mediators. Walter Marcus was recently re-elected President. In addition, Mary Marcus gave a presentation entitled "Mapping Minds: How to Avoid Mediation Minefields" at this year's first general membership meeting on October 10, 1996. CCDM will hold a membership meeting on January 22, 1997 at 5:30 p.m. and an all day statewide conference on April 1, 1997 at the Trumbull Marriott.

DIVIDING PENSIONS

Very often next to their home, a couple's most valuable assets are their retirement funds. These may take the form of an IRA, a 401(k), a profit sharing plan or pension fund. Many couples assume that the retirement funds belong to the party who owns it. They do not know that pensions are marital assets subject to division between the parties. IRA's may often be easily divided by completing simple forms with the custodian of the IRA. It is often possible after the transfer is made, for the party to withdraw funds and only pay taxes and not any penalty. Other retirement benefits such as most pension plans can only be divided pursuant to a Qualified Domestic Relations Order (QDRO). A QDRO allows a specified portion of the pension plan to be paid to the other spouse who then has total control of that portion. The spouse to whom a portion of the pension has been transferred by the QDRO may independently decide how the money is invested and may withdraw the money at a different time than the other spouse. There is no tax or penalty for the transfer. QDRO's are very technical documents and should be drafted by an attorney who specializes in pension law.

November 1996

Dear Colleagues:

The CENTER FOR DIVORCE MEDIATION & ALTERNATIVE DISPUTE RESOLUTION, INC. is pleased to send you this fifth issue of THE DIVORCE MEDIATOR.

The CENTER FOR DIVORCE MEDIATION & ALTERNATIVE DISPUTE RESOLUTION, INC. has developed this newsletter to share information and ideas related to Divorce Mediation. We want to share what we know as well as invite your questions, thoughts and comments. This exchange of ideas will allow us to continue to grow and learn from each other and better serve couples who have made the difficult decision to end their marriage.

Wally Marcus and Mary Marcus

FREQUENTLY ASKED QUESTIONS ABOUT DIVORCE MEDIATION

Q. Do I have to go to court?

A. At least one of the parties must attend the final hearing at court. We recommend that both parties attend so that they can achieve some emotional closure.

Q. How long does it take to get a divorce?

A. It takes approximately four months from the time the divorce papers are served until the parties can go to court for the final hearing. It can take longer, depending on how long it takes the couple to reach an agreement.

Q. Does it matter who is the plaintiff and who is the defendant?

A. No. However, we encourage the defendant to bring a cross complaint to make the parties equal in the process.

Q. Is Connecticut a community property state?

A. No. This means that in Connecticut each spouse is not automatically entitled to half the property of the other spouse.

Q. How are the length and amount of alimony determined?

A. The legal factors include the age, health, occupation, amount and source of income, vocational skills, employability, estate, liabilities and needs of the parties, the opportunity of each for future acquisition of capital, assets and income, the contribution of each of the parties in the acquisition, preservation or appreciation of the assets, the needs of the parties, and the causes of the divorce. There is no formula for the length or amount of alimony.

Q. Do I need an attorney if I use mediation?

A. We ask clients to use an attorney to review the agreement the couple has developed in mediation. This guarantees that an independent counsel has explained and approved the agreement and helps resolve any power imbalances.

Q. How is child support calculated?

A. The State of Connecticut has established child support guidelines for most couples. Couples who have incomes above the State maximums must negotiate the amount of child support beyond the floor set by the guidelines.

Q. Does a spouse have to prove fault to obtain a divorce?

A. A spouse does not have to prove fault. Most divorces are granted on the ground of irretrievable breakdown. Theoretically, fault can be taken into account in determining the division of property and the awarding of alimony.

Q. If one party keeps the house, is the other party removed from the mortgage?

A. The other party is not automatically removed from the mortgage. The parties must request that the bank remove the party which is rarely agreed to, or the parties must refinance the property.

Q. Is the spouse who has inherited property during the marriage allowed to keep this property once divorced?

A. Not necessarily. Inherited assets are marital assets, to be divided like any other marital asset.

THE DIVORCE MEDIATORS

Walter Marcus is an attorney who has practiced Family Law for 24 years. He is a Practitioner Member of the Academy of Family Mediators, President of the Connecticut Council for Divorce Mediation, former Chair of the Connecticut Bar Association Divorce Mediation Committee and member of the Executive Committee of the Family Law Section of the Connecticut Bar Association. When co-mediation is requested by couples, Walter Marcus co-mediate with Mary G. Marcus, Ph.D. She is a Clinical Psychologist who has had a private practice of individual, couples and family therapy for 16 years. Dr. Marcus is a Practitioner Member of the Academy of Family Mediators, a member of the American Psychological Association and the Connecticut Psychological Association, and is Chief of the Section of Psychology at Norwalk Hospital.

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Free one-half hour consultation