

# The Mediation Process

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## **What is Mediation?**

Mediation is one of the multiple alternative dispute resolutions (ADR) offered to parties going through a divorce. Essentially it is a negotiation between the two parties, hosted by a third party. This third party can be anyone from your lawyer to a certified mediator (in some cases, the mediator is both). Mediation is different from arbitration because the final decision is not made by a neutral third party. The mediator is there to facilitate the negotiation and bring up topics for negotiation and discussion that may otherwise be forgotten.

## **Why Mediation?**

If you are unable to resolve conflict amongst yourselves, mediation is a great place to look. It is generally a short-term process that is task-focused and provides a compromised win-win situation for both parties involved.

Through the use of mediation, the parties use a neutral third party to help resolve disputes. This neutral third party will help in the negotiation process, aiming to secure a win-win situation for the disputing parties. The mediator helps the disputing parties to find common ground, to look at an issue from different perspectives and discuss possible outcomes of each situation. The mediator may also offer creative solutions to issues, which can aid in the process of drafting a final settlement. The mediator listens to the concerns of both parties, relays information, lays out the issues at hand, and discusses solutions to the defined problems.

## **When to Mediate**

Mediation is usually a self-volunteered form of conflict resolution but may sometimes be court ordered or be a requirement based off the previously made settlement. Mediation is most common in small claims courts, family courts, and some criminal court establishments, particularly in smaller neighborhoods where conflicts do not always need to reach litigation.

Unlike the litigation process, where a neutral third party (usually a judge) imposes a decision over the matter, the parties and their mediator ordinarily control the mediation process. This allows for more freedom in your resolutions, and a more open discussion when trying to resolve an issue. The mediator will typically decide when and where the mediation will take place, who will or should be present, how the mediation will be paid for, and how the mediator will interact with the parties.

## **After a Mediation**

After a mediation session, if a resolution is reached an agreement is written as a legal document. This forms a legal contract, which requires the disputing parties to abide by the terms. In New York, a mediation agreement is always considered a legal contract if properly prepared, acknowledged and executed. If an agreement is not reached, the disputing parties may decide to pursue their claims in other processes.

## **Summary**

The mediation process is generally a more direct, inexpensive, and simpler process than formal litigation. It allows an open discussion where the disputing parties can delve into their conflicts rather than focus on the legality of their claims and the litigation process. In court, there is an emphasis on the law, who is at fault, and if you have the evidence to prove your claim. This is not the case in the mediation process. The most important aspect of mediation is to find a resolution so both parties feel they were heard and their concerns were addressed and are satisfied with the outcome. Mediation is not appropriate if someone is looking for punishment, blame revenge, or labeling the other party as “wrong”. Mediation is a respectful process where you fully participate to find creative solutions to your legal matters.