

MEDIATION

Alan Shatter

When a marriage has totally broken down and a couple no longer co-habit or wish to co-habit, new family arrangements are needed regarding child custody and visiting rights, finance, property, pensions, inheritance rights etc.

Mediation is an option for separating couples to reach agreement on these issues without recourse to family court proceedings. Mediation facilitates the search for a fair and feasible solution rather than participating in conflict intended to maximise financial advantage or minimise financial or asset loss. Ongoing judicial separation and divorce proceedings can be adjourned to allow couples attend mediation if they wish.

Mediation is a confidential, impartial service. Participation is voluntary, separating couples cannot be compelled to seek mediation. In the commonest form of marital mediation the mediator sees the couple only, usually for 2-6 sessions. If issues of finance and property are disputed, financial disclosure is mandatory and verifying documentation must be produced at mediation sessions. Mediation may be inappropriate where a history of violence, emotional or physical abuse or intimidation exists in a relationship.

Most mediations end with a written document detailing the agreement reached which is brought to a solicitor for drawing up into a Deed of Separation or Divorce Settlement. Each spouse should seek independent legal advice before signing such agreement/settlement and some seek it during mediation. If agreement cannot be reached, either spouse can initiate family court proceedings to obtain a judge's decision on outstanding issues.

As currently practised in Ireland, the above form of mediation can be limited as some mediators do not deal with complex business/company disputes and related issues that need addressing when a marriage breaks down. Moreover, while family law legislation obliges solicitors to advise estranged spouses of the mediation option there is no formal link between mediators and the family justice system and no court mediation services. Where

complex business, company law and other financial matters need resolution upon marital breakdown, an alternative mediation process exists which may involve substantial preparation beforehand and attendance at a one/two day mediation by estranged spouses and also their lawyers and accountant. If successful, this mediation process also results in a written Separation Agreement or Matrimonial Settlement.

There are important benefits to mediation. It promotes constructive negotiations both for now and the future. It clarifies matters by identifying and defining the issues. It can reduce communication problems between parties. It identifies and acknowledges the parties needs and interests, not just their legal rights. It encourages parties to take responsibility for their situation. It facilitates speedier agreement at substantially less cost than in court proceedings. There can be psychological advantages in parties directly participating in seeking resolution and controlling the outcome. It facilitates parties overcoming legal technicalities and enables them to focus not only on their own needs and requirements but also on the other parties. Couples can choose their mediator but, if they go to court, they cannot choose their judge. Importantly, arrangements contained in mediated settlements of judicial separation or divorce court proceedings can be incorporated into agreed court orders made by the court granting the judicial separation or divorce decree to facilitate and ensure their implementation.

Mediation is available free from the Family Mediation Service operating under the auspices of the Department of Social & Family Affairs, www.welfare.ie and from some voluntary agencies. There are also private practitioners specialising in family mediation.

The above article is by way of introductory information only. Every person's family circumstances and personal background differs and individual legal advice should be sought for guidance on individual family circumstances