

A GUIDE FOR DIVORCE NEGOTIATIONS



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We help people reach good agreements.

Odds are that you have never been involved in a divorce negotiation. It's different from most other negotiations, and much more personal. When thinking about negotiation, you are likely thinking about bartering—making offers and counteroffers like when buying a car or visiting a market. While bartering can work great when buying a car, it is usually ineffective (and even counterproductive) in divorce because the context is different. Usually, divorce negotiation is really about planning for what will work in the future. Here are some basic guidelines:

<p>What Needs to be Addressed?</p>	<p>At a <i>minimum</i>, these items need to be discussed by you and your spouse:</p> <ul style="list-style-type: none"> • How will you allocate your property and debts so the priorities of each person are addressed? • What needs to be accomplished so each household will be financially viable and stable? Does anyone need financial support? • If you have children, how will you co-parent them, and how will you share their expenses (including housing and other living expenses)? <p>The decisions you and your spouse make about these and other important items will affect your futures, and each will need to be addressed in some detail.</p>
<p>A Good Agreement.</p>	<p>Focus your energy on reaching a good agreement—one that works over the long term. You are the only person who can judge what might be a good agreement for you; in doing so, you may wish to consider these questions:</p> <p>(a) Will you be able to look back at your divorce knowing you reached your agreement with integrity and in a manner that is consistent with your values? Or will you carry shame or guilt over your behavior or choices?</p> <p>(b) Does the agreement address all it needs to? Do the details in the agreement truly solve the real-world questions that need to be addressed for you and your spouse?</p> <p>(c) Could the agreement (or the way you reached it) harm important relationships? Will it hurt building a good post-divorce co-parenting relationship? Or harm other important relationships, such as friends and family?</p> <p>(d) Did you take the time to think through whether the agreement might have unintended consequences to yourself, your spouse, and others?</p>

	<p>(e) Does the agreement avoid planting seeds for future disagreements or, worse, future failures?</p> <p>(f) Can your agreement actually be carried out, as a practical matter? Have impediments to carrying it out been addressed? Do you understand the next steps?</p> <p>(g) Have budgetary, tax and legal considerations been sufficiently addressed in your agreement?</p> <p>(h) Does the agreement allow you and your spouse to disentangle emotionally and to each be set up for as much success as circumstances will allow?</p>
The Paradox of Divorce Negotiation.	To reach an agreement with your spouse, your proposals must be acceptable to him or her. Similarly, proposals must be acceptable to you. You would likely never sign an agreement that does not sufficiently address what's important to you, and the same goes for your spouse. Either of you can say "no" to a proposal. Focus your efforts on creating a proposal to which you both can say "yes." The easier you can make it for your spouse to say "yes" (while also addressing what is important to you), the easier it will be to reach agreement. This means paying careful attention to what is important to each of you and to the tone of the discussion.
Accepting Change.	Have you both accepted that the divorce is happening? Or is one of you actively trying to reconcile? If you're not on the same page, consider doing some "soft work" with a counselor so you can both reach enough acceptance to participate. Acceptance can't be forced or wished into existence, and can take a little time. Resistance to reaching a negotiated divorce agreement is likely to show up until there is sufficient acceptance by all to proceed.
What's to be Expected.	Divorce challenges everyone, regardless of the process. You can expect that you (and your spouse) will experience strong emotions, including anger, blame, shame, depression, elation, fear, excitability, nervousness, hopelessness, anxiety, and more. There will probably be times when you will want to run away screaming. (This is so for any divorce process.) Try to remember that intense emotions are normal for just about everyone going through divorce and that they will pass. (Really!) Most people find individual therapy invaluable.
Consider the Future.	A good divorce agreement addresses the next chapter in your lives. Before reaching an agreement, it can be helpful to do the work necessary to formulate a realistic plan for what's next that is consistent with your life's goals and everyone's needs. Think about what could be next for you, and try to make it as specific and concrete as you can. That way, you can use that plan as a guide during negotiations.
Exchanging Financial Information.	Because divorce involves making financial decisions that can be far-reaching, it's important that everyone have a good understanding about the resources and expected future financial needs of all. Detailed financial information is needed to ensure your agreements don't have unforeseen tax or other consequences. Be prepared to exchange statements and information about all assets, debts, income, and expenses. Proactively offering financial information can be a good way to help build trust to reach an agreement. Withholding information can undermine trust and make reaching agreement less likely.
Set Groundrules.	Negotiating a wise agreement will normally take some months. Try to reach some preliminary agreements with your spouse about what is necessary so you can both be free from undue fear while negotiating. Here are some examples of Groundrules you might consider making together:

	<ul style="list-style-type: none"> • You will not surprise the other with a divorce filing or other legal action. Instead, you'll work together to figure out an agreement in a manner and at a pace that works for both of you. • You will not unilaterally make financial changes, withdrawals, or charges. Any proposed change will be discussed together in advance so it can occur orderly. Both of you will continue to deposit income and pay expenses as you always have until clearly agreed otherwise. • You both agree to do your best to ensure that any agreement takes into account the concerns, needs, priorities, and goals of both of you. • Both of you agree to defer a discussion to another time if it's feeling like "too much" to be productive. If deferred, you will agree to set a time and place so those discussions can be safe and productive. • If either of you needs support to be able to effectively negotiate, you agree to consider Mediation and Collaborative Divorce as ways to address the questions together, instead of letting the situation get out-of-hand. • Each of you will keep your agreements with each other. If there's a need to change an agreement, you will jointly discuss and decide whether and how to change the agreement.
<p>Take the Long-Term View.</p>	<p>No one likes uncertainty, but reaching a good divorce agreement can take some time. Divorce will probably involve more decisions, take longer, and cost more than you imagined. To reach a durable agreement—one that does not unravel and that does not contain the seeds for future problems—take the time and effort so you and your spouse can make good decisions. Getting good professional help can reduce angst and usually costs less over the long-term.</p>
<p>How to Speak.</p>	<p>Whatever you can do—and however you can speak—so your spouse feels (and is) genuinely respected and heard will reduce the chance of a defensive response. Working to understand both your own and your spouse's concerns can help break power struggles. Doing so will help you reach an agreement. In all interactions with your spouse, the "golden rule" applies—treat him/her in the way you'd like to be treated. If you're experiencing a moment of being unable to be productive, then take a break until you can be.</p> <p><i>Doing this consistently can be difficult—especially during divorce.</i> Feeling a little stuck or need help with this? Call your Collaborative lawyer, Collaborative divorce coach, or mediator.</p>
<p>Options for Negotiation.</p>	<p>You have several options to reach a negotiated divorce agreement with your spouse. Options include:</p> <ul style="list-style-type: none"> • Do-it-yourself negotiation. • Mediation—you and your spouse work with a neutral mediator to reach agreements. • Collaborative Divorce—you and your spouse work with specially trained lawyers who work solely to help you reach and implement negotiated agreements. Usually, the expertise of a financial specialist, child specialist, and divorce coach is part of the Collaborative Divorce process to help you succeed. • Adversarial-style negotiation with conventional lawyers. <p>Each of these options has its own advantages and disadvantages, best chosen after a consultation. With your spouse, choose the option that offers both of you the highest likelihood of success. You can learn more about these options here: www.mark-weiss.com/family-law/divorce-options.</p>

<p>Consider the Personal Impact of Your Negotiation Choices.</p>	<p>Divorce does not end a relationship, but does change the relationship. Especially if you have children, you'll need to rely on your ex-spouse to coordinate and work with you in the future. How you choose to behave and negotiate during your divorce can positively or negatively affect the ability to effectively co-parent in the future.</p> <p>How you choose to negotiate can also affect your future relationships with others, because it will affect the way you think about your former spouse, about relationships—and about yourself. Will you be able to look back at your divorce and be proud of how you navigated an important life transition? It could also impact how they think about you. Your choices about <i>how</i> to negotiate during this transition can be as important as the actual agreement.</p>
<p>Fairness.</p>	<p>Most people want to know “what’s fair.” Unfortunately, there is no answer to the question. “Fairness” is inherently subjective—no two people (including lawyers and judges) have the same idea about what may be “fair.” And, if you tell your spouse that all you want is what is “fair,” it could come across to your spouse that you think they are unfair—and thereby create defensiveness or resistance. Instead of asking “what is fair?” perhaps ask “what needs to be addressed?” and “what is agreeable?” based on your and your spouse’s own values and priorities.</p>
<p>The Law.</p>	<p>The lawyers will provide information about the law so you are fully informed. While this information is important and ensures you have the understanding needed to make informed decisions, remember that the purpose of most divorce law is to provide guidance so judges can make decisions <i>for those who can't come to their own agreements</i>—in other words, not you. The law differs in different states, and you'd probably get a different answer if you were to move to another state for your divorce. Which state's law is correct? What is certain is that the law was not written with you in mind. And, you and your family are the ones who will need to live with the outcome of your decisions. If your goal is to reach a good agreement, then your own priorities and values, and the practicalities of your specific situation, are what will really matter in the end. Focus on what's important to you—including your values and relationships—and the practicalities of you and your spouse's situation as the most important guidepost for what is a good agreement for you.</p>
<p>Getting the Right Help.</p>	<p>If you're seeking professional help to reach an agreement, be sure to select professionals whose focus, skill, and experience is to help people reach agreements constructively. Mediators are a good choice.</p> <p>For good legal help, you'll need to seek out a lawyer who has learned skills to help you reach agreement. The work of most divorce lawyers is court-oriented; spending much of their time engaged in court battles, even negotiations tend to become adversarial. Many Collaborative lawyers are trained to help people reach agreements using a non-adversarial approach, so that is a good place to start. A list of local Collaborative law attorneys can be found at http://kingcountycollab.org</p>