

## Mediated divorces now more common

by *Tara Burns* - Nov. 12, 2010 05:00 PM  
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Saving time and money appears to be the trend these days, and it isn't any different when getting divorced.

From 2009 to 2010, Out of Court Solutions, a mediation firm, has seen a 55 percent increase in the number of divorces being settled by its mediators. It not only can save money, but it also helps a couple keep their divorce settlement private.

It is also not an option just being exercised by the general public in Arizona. Even celebrities, such as Tiger Woods and his now ex-wife, Elin Nordegren, went with a mediated settlement out of court, taking advantage of the option's relatively private legal proceedings.

In a mediated divorce settlement, a couple decide to have a mediator set up a session in which issues of their divorce are resolved out of court.

The mediator can be a lawyer, attorney-mediator, former or retired judge, health professional, accountant or whomever is fitting for the decisions at hand.

"What I do is help them to communicate and negotiate effectively, offer different options and alternatives for resolving whatever issues they have and provide them with legal, financial and tax information," said Oliver Ross, owner and founder of Out of Court Solutions.

Ross is a certified legal-document preparer in Arizona. He was a licensed attorney in California for 19 years before establishing Out of Court Solutions.

The types of issues typically decided in mediation include division of assets, allocation of debt, child support, child custody, the sharing of time with children and spousal maintenance or support.

Signed agreements reached through mediation are binding.

If a couple cannot solve their differences through mediation, both parties can litigate their issues, but anything said during mediation is confidential, according to Arizona statute.

Arizona doesn't require parties to go through mediation before trial, but it is encouraged. The state recommends alternative dispute resolution, which sends both parties to a judge pro tem 30 days before trial.

In this situation, the mediator is the judge, as opposed to an attorney-mediator or a legal-document preparer such as Ross. This is the

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only officially sanctioned program for mediation before divorce.

"People who seek mediation early on in their case already have a mind-set of wanting to resolve it quickly and amicably, and for those cases where the parties seek out mediation early, (those cases) are probably the most successful," said John Zarzynski, certified family-law specialist and lead mediator at Agreement House.

Often, mediation is a much quicker and less-expensive means of settling a divorce. Zarzynski said divorces in Maricopa County usually take a year to settle. With mediation, the settlement can be made in 90 days.

"Usually, they (the two parties) are going to play nice and respect the other party," said Ron Saper, a divorce attorney in Phoenix. "If you are going to trial, you may not know what a judge is going to rule. There is less predictability and less participation in the ultimate outcome."

Mediation is also viewed as a process that takes less of a toll on children than litigation.

"The legal system is an adversarial process, and the more adversity there is, the higher the tension, and that's going to fall not only on the couple but the children, too," Ross said.

Mediation is not always the right way to go, however. For cases in which there is persistent domestic violence, allegations of child abuse or neglect or mental-health issues suffered by one or both parties, mediation is typically not appropriate.

"Mediators can't tell you what to do," Saper said. "They can't really break a tie if the parties can't agree, which can cost you more

money since you then have to pay for mediation and litigation."

To avoid failure during mediation, a few important things must be done. One of the first is to find the right mediator.

"You want someone who will get it done in one, two or three sessions," Zarzynski said.

"In my view, if we haven't figured out a solution before three sessions, you might want to consider litigation."

Some people might try to avoid the emotional stress that accompanies divorce, and it is possible to find a mediator who will be perceptive and respectful of this.

"I advocate situational mediation, which is where the mediator adapts his or herself to the situation of the people involved and the nature of the dispute, all the while recognizing there are tremendous emotions going on," Ross said.

For Woods and Nordegren, mediation was likely the right decision because they had similar goals.

"It is a good example of a well-settled divorce given their circumstances because both probably had a common goal to keep things low-key and to keep it out of the press, whether for their children or for financial reasons," Saper said.

As for couples going through divorces right now, the same civil split is possible.

"If they accept that the divorce has to be, then they must remember the goal of getting through it quickly, inexpensively, smoothly and with as little stress and strain as possible," Ross said.