

Article

Family Law



Navigating Separation: A 5-Step Guide to Successful Mediation in Family Law

By Joanne Cliff

As a result of a change to the rules of the Federal Circuit and Family Court of Australia in 2021¹, parties are now required to take genuine steps to settle parenting and financial disputes before commencing court proceedings.

One of the most effective “genuine steps” a separated couple can undertake is mediation, which allows you to negotiate the terms of your separation outside of court. Typically, when people participate in a mediation, they hire a lawyer to represent them and ask the lawyer to organise a mediator, who is neutral, to assist. Both parties are responsible for paying their own lawyer’s fees, but the cost of the mediator’s fee is split equally. There are also community-based mediation services provided by organisations such as [Relationships Australia](#). They can offer a lower-cost service that’s guided by a mediator and doesn’t require the parties to retain lawyers while going through the process. Whatever path you decide to take, speaking with a lawyer is important because they will help you understand your rights, obligations and steps for success. Successful mediation saves time, stress, and money compared to going to court, so it’s worth investing in understanding the process.

1. Get an understanding of the mediation process

It is vital to understand what mediation is, how it works in a family law setting, and what outcomes to expect after completing the process.

¹ “Federal Circuit and Family Court of Australia (Family Law) Rules 2021” (2023). Available at: <https://www.legislation.gov.au/Details/F2023C00074> (Accessed: March 8, 2023)

Mediation is a voluntary and confidential process facilitated by a mediator who guides the parties to negotiate and keep focused on the issues. The mediation is usually undertaken in a neutral environment where the parties can be kept in separate rooms, leaving the mediator to travel back and forth communicating offers, proposals and responses. A mediator does not provide legal advice, and they do not decide the outcome.

Before the process begins, the mediator may speak with each party by phone or in-person to gain an understanding of the issues. If lawyers are involved, they can submit a short statement setting out the history of the relationship and details of the unresolved issues. Each party is asked to sign an agreement agreeing to this confidential process.

A lawyer performs a different role in mediation. There is no judge to argue an issue before. With mediation, the lawyer will negotiate with the lawyer on the other side in a calm manner.

If the mediation resolves all of the issues, court documents can be prepared and lodged in court to obtain court orders.

2. Formulate your goals and priorities

What do you want to achieve? To achieve a successful outcome, you should develop a list of your goals and priorities (e.g. to be the primary carer for your children or to retain residence in the family home). Take the time to consider what’s important to you and how your

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desired outcome may impact others you care about, particularly children. You will need to find out if a bank will grant you a mortgage if you wish to retain the home. If you involve lawyers, clear goals will also help them to define the right legal strategies that give you the best chance of success.

3. Prepare for mediation

This step involves gathering information and learning about what to expect during the mediation so goals and strategies can be fine-tuned. You may also need to prepare documents relevant to the dispute, such as financial documents that list assets and liabilities.

4. Plan for or anticipate setbacks and roadblocks

Mediation is not always a smooth process because your former partner will have their own goals and priorities, and they may not be compatible with the outcome you hope to achieve. You should have all of the information you need to quickly adjust your goals and strategies to adapt to the change in circumstances.

If there's a setback or a roadblock, ask yourself, are all your goals and priorities deal breakers, or will you be prepared to compromise? You may be able to give way on one issue to gain an advantage over another. For example, a priority may be to receive a certain amount of cash from the sale of the home. You may be prepared to forgo the equalisation of superannuation to achieve more money. Consider what the other party may want and if it could derail your long-term goals.

5. Take care of your emotions

Separation is a very emotional experience, and feeling hurt, stressed, and angry is normal. However, if you let your emotions and feelings control you during mediation, the chances of success are much lower. If it helps to keep you calm and composed, bring a support person to the mediation and consider other techniques that will help to keep you composed and focused on the important issue, achieving your desired outcome. Many things can be said at mediation, so remember to focus on what you want to achieve and objectively consider all proposals.

By following these steps, you will increase your chances of achieving a successful outcome in mediation. If you would like someone to guide you through this process and help identify solutions to achieve your goals, contact our family law expert, Joanne Cliff.



[MORE INFO](#)

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