

Utah Divorce Survival Kit

An Instruction Manual

Prepared by Common Ground Divorce Mediation™

THIS KIT IS FOR:

This kit has been put together by experienced divorce professionals for couples who desire to get divorced but do not want to go through the stress of a difficult courtroom battle.

YOU DO NOT HAVE TO GET ALONG, LIKE EACH OTHER, BE FRIENDLY OR EVEN BE ABLE TO TALK TO EACH OTHER TO KEEP YOUR DIVORCE OUT OF COURT!

Most of the couples we help have a lot of conflict and are not able to communicate effectively. If you want to be treated fairly, save money and time, but don't want to set foot in a courtroom then this kit will be very helpful.

THIS KIT IS *NOT* FOR:

If you feel that you need to punish your spouse or make them pay for the damage they have caused **YOU**, then our "**No Courtroom**" divorce service **will not** work for you. You should be aware that there is not a process that will fulfill your needs. The courts *will not* allow either party to punish each other using the court process.

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Step 1 -

Decide if *You* Want to Keep Your Divorce Out of Court.

This is one of the most difficult times in your life. A divorce is considered to be the most stressful event a person could go through, perhaps with the exception of the death of a child.

A divorce has the potential to turn your whole life upside down. It could affect your relationship with your children (if you have children) and it will have a major effect on your financial situation, which for some causes irreparable damage. It is a time of fear, anger, frustration, sorrow, and pain.

You have a decision to make. If your marriage cannot be saved, if you have tried everything and still find yourself believing that a divorce is the only option, then the next decision you make will likely be the most important decision...

HOW WILL I GET DIVORCED?

Believe it not, there is a right and a wrong way to get divorced. You are likely familiar with the wrong way. It is the way most people think of when they get divorced. You both go hire a gladiator (divorce attorney) and send them into an arena to fight a battle. Only in this battle there will be no winning, only degrees of losing. The only one that ends up winning are the Attorney's hired to fight for you and your spouse. You give up all of the control and place everything that means anything to you including your children in the hands of two attorneys and a judge and you hope you Attorney is the best prepared for the fight.

THEY WILL MAKE ALL OF THE DECISIONS FOR YOU.

OR you can take the higher road. You can keep control of the entire decision making process, speak your mind, give input and suggestions of your idea of fairness and customize your own agreement. **THEN** you and your spouse can split with some dignity and save your children from seeing you both at your very worst. It is possible. Thousands of couples do it every year.

Those couples that take the higher road are rewarded. They begin to communicate better than they have in years, get to move on with their life in weeks instead of years and get a sense of closure, which allows them to begin the healing. They give themselves a chance to feel peace again. And best of all they have a fair agreement for both of them.

Those that take the low road get a different reward. They get to see their children suffer because of their actions and more importantly the actions of the Attorney's defending them. They get to incur large attorney fees, spend endless hours in court that begins to take time from home and work, feel they have been cheated and rarely feel that the agreement was fair.

This is a decision that has to start with you. One of you will need to take the first step. Someone must make an attempt to stop the madness and move in a direction of fairness and common ground instead of a delusion of winning and punishment.

If you want to keep your divorce out of court and work towards a divorce agreement that factors in both of your ideas of fairness, then that is all you need. This is a voluntary process. Nobody can force you to mediate. We will help both of you get a fair agreement and leave with some dignity. This is the most important decision that you may ever make.

Step 2 –

Getting Your Spouse to Agree to Mediate.

Over half of the people that call our office wanting to keep their divorce out of court never even make it into our office. WHY?

Because they can't convince their spouse to give mediation a try. Mediation takes both parties to be willing to make this process work. If one person does not want to mediate then the process is over before it ever began.

THIS MAY BE THE MOST IMPORTANT KEY TO A SUCCESSFUL "NO COURTROOM" DIVORCE.

It does not matter how much *you* like the idea of mediation and keeping your divorce out of court, but if your spouse does not "buy in" to the idea of mediation, then you will be forced to get a gladiator.

Here are the 3 most common reasons your spouse may not want to mediate.

1. **It is your idea.** This is one of the most common reasons. Your spouse may have felt controlled throughout your marriage. Now they are feeling some liberation with the decision to get divorced and they are going to make sure that you never control them again. Anything you suggest may come across as an attempt to control.

SOLUTION: Give your spouse a chance to let this be their idea. Express you would like to keep the divorce out of court and you want to be fair and you think it would be a good idea to get help from some divorce professionals who won't take sides. Then suggest that you both select a

mediator to go and consult with and see whom you both feel comfortable with. Mediating is always better than going to court.

2. **They don't trust you!** This is a difficult hurdle to overcome. For whatever reason they don't trust you and are building a network of people they turn to who are likely giving them bad but well intended advice. You are likely also doing the same. This may be family members, friends or associates at work. For most couples the more one partner pushes for mediation the more they will question your motive. They may question your motives of wanting to keep it out of court.

SOLUTION: Don't push to hard! You might have to make some concessions up front to get them to experiment with mediation. You might offer to pay the cost of the first mediation session. Tell them that if the mediation does not go well then both of you can call it off. Give them the option to bring somebody to the mediation (including their attorney if they have one) that makes them feel more at ease. Let them make the terms of the mediation, when to meet, where to meet, who the mediator will be.

3. **They want to punish you.** It is not uncommon for a spouse to feel like you need to suffer during the divorce. They want to punish you. They want to make you pay for the damage they perceive you have caused.

If you tell them mediation will take less time and save money and be an easier process then there is a good chance they may feel you are trying to avoid the consequence of your actions and take the easy way out. They could feel that if they mediate then this divorce will not be as painful for you as they want it to be.

Solution: If your spouse has this type of personality then don't make mediation sound too good to be true. Let them know that in mediation they will be able to vent all of

their frustration unlike in court where the judge makes everybody keep their mouth shut. You may want to involve a third party that both of you trust.

More than likely your spouse will feel a combination of all of these. You must resist the urge to cram this down their throat. It will only make things worse. How you package your request to mediate will determine your success at keeping this divorce out of court.

If you have a difficult time talking to your spouse you should consider writing them a letter yourself and even include a letter from us that explains how mediation works. This always seems to be the best way to introduce mediation to an unsure spouse.

Attached is a sample letter you can use that will address most concerns people have when considering mediation. We have also included a letter on our letterhead you can provide to them in addition to your letter.

IF YOU THINK THAT THERE IS ANY CHANCE THAT YOUR SPOUSE WILL HESITATE AT YOUR SUGGESTION TO MEDIATE THEN USE THESE LETTERS!

(See Attached Letter)

Dear Spouse,

I know this is not a fun time for either one of us right now, and I am very concerned we both handle ourselves the best way we can while we go through this. I am sure we are thinking along the same lines about not wanting to be taken advantage of and being fair, and getting it done as soon as we can.

I think it would be great if we could handle this whole thing outside of court, and use mediation. I have heard that it takes less time and money and it is easier on all of us including the kids. I also have heard that in the future, most divorces will be handled in mediation.

I have done some research on mediation and even talked to a mediation firm. I have learned that mediators are trained to know all of the Utah divorce laws and statutes but they don't represent either party. They work with both of us to help us customize our own agreement. The mediation firm I spoke with on the phone seemed very professional and experienced and their goal is to help us get a fair divorce agreement with out going to court. They have a very good website at www.nocourtrooms.com.

Will you please consider mediation? I know you may not trust me completely. I don't have an agenda, I am only thinking what would be best for us and I think mediation is the best fit.

If you would like to check into other mediators I respect that. The mediation firm I talked to is called Common Ground Divorce Specialists. They offer a free consultation but they require that we both attend.

I think it would be a good idea to schedule a consultation with someone you have looked into. Then we can decide which is a better fit for us.

I hope that you take this letter in the spirit that it was intended. I don't want you to feel like I am forcing mediation on you. Mediation is a voluntary process. I just think that we should give it a try and do what we can to keep this divorce out of court.

If you want I will set up an appointment for us to go visit the mediators and then we can both see if it is something that we want to try out. Please call me to discuss this as soon as possible.

Sincerely,

Mediation vs. Going to Court

This is a comparison of what you could expect if you were to mediate vs. going to court. Read each step and then decide if fighting in a courtroom is really what you want?

| | LITIGATION | MEDIATION |
|---------------|--|---|
| Step 1 | Consult with an attorney. In this meeting you will find out how much the attorney charges and how strong your case is. | Orientation with Mediators. In this meeting the couple asks questions about mediation and the mediators help you realize that you can do this without going to court. |
| | Time: 90 Minutes | Time: 30 Minutes |
| Step 2 | Prepare Documents to File or respond. Your attorney will prepare the documents to file with the court and will arrange to have a constable serve your spouse those papers. | Fill out Mediation Starter Kit. This kit will educate you about all aspects of your divorce. Different statutes will be provided so you can see how the courts treat certain issues. There will also be detailed check lists and instructions for filling out certain worksheets that will help you in the mediation |
| | Time: 2 hours | Time: 2 hours |
| Step 3 | Service of papers. You will be put on a waiting list from the constable to have the divorce papers served to your spouse on a first come first serve basis. If your spouse is avoiding the service of papers then this process could take much longer. | <p>Begin Mediation Sessions and discuss temporary needs both in parenting and any immediate financial concerns like who will make which payments on what. This helps to make sure that both parties will feel comfortable about all the financial needs until the divorce is finalized.</p> <p>The mediators also will show an award winning video about how to help the children deal with the divorce and will help the couple tailor a parenting plan that is customized for their situation.</p> <p>The mediators will help the couple reach agreements on a weekly parenting plan, a holiday plan, transportation issues, and how to deal with one or the other parent moving away. The mediators will provide examples of what other couples have done to ensure a successful parenting plan. A session summary will be provided to each spouse that summarizes what was discussed.</p> |
| | Time: 2 weeks | Time: Week One. 2-hour session. |

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| Step 4 | Motion Hearing for Temporary relief for support payment of debts splitting of assets and custody. Assuming your spouses attorney does not contest the initial filing, your attorney will have a meeting with a commissioner (judge) to establish how the monies and children will be handled while waiting for the divorce to finish | Continue Mediation sessions and finish parenting plan. The mediators will talk about how child support works and will provide calculations on the amount child support will be. There will also be discussion on other support issues like medical insurance, extra-curricular expenses, daycare, college expenses and much more. A session summary will be provided to each spouse that summarizes what was discussed. |
| Time: 4 weeks | | Time: Week Two. 2-hour session. |
| Step 5 | Postponement of hearing to gather Documents. Usually your attorneys will need additional time to gather information and will ask each other and the courts for extensions that could add months to the proceedings especially if there is a lot of debts and/or assets and high conflict. | Continue Mediation sessions and begin separation of Debts & Assets. In this session we focus on the financial aspect of the divorce. A Certified Financial Advisor will come in and give opinions and analysis on the debts and assets and give suggestions on the best ways to make an equitable split factoring in tax consequences. |
| Time: 1 month | | Time: Week Three. 2-hour session. |
| Step 6 | Discovery Phase. Gathering evidence and gathering testimony. In this phase the attorneys meet with the other spouses and their attorneys to get questions answered about various issues. You are required to be forthcoming in these proceedings however if one party does not come prepared then this can likely become a very lengthy process lasting 5-6 months. | Continue Mediation sessions and begin discussion on Spousal support issues. In this session we will talk about what each party should consider when determining alimony. We talk about the guidelines the courts use and make sure that both parties get to have input. A session summary will be provided to each spouse that summarizes what was discussed. |
| Time: 3-4 months | | Time: Week Five. 2-hour session. |
| Step 7 | Professional analysis of financial issues. Either attorney may want to get an expert opinion on various financial issues to include pension plans, inheritance, stock options and in the event that the parties own a business they will need an independent valuation on the business. | Finish discussion on spousal support issues and finish mediation sessions. Any other issues that have not been resolved will be covered here. The mediators will make sure that they have all the information they need to create the final agreement. A session summary will be provided to each spouse that summarizes what was discussed. |
| Time: 1-2 months | | Time: Week Six. 2-hour session. |
| Step 8 | Custody Evaluation. If there is any question of conflict as to whom the children should live with and what the visitation should be the courts will require a Professional custody evaluation. Normally both parties split this cost. The evaluator takes several weeks talking to neighbors, teachers, and the children then offers their professional opinion to the judge. The judge typically uses this information in making a decision about what will happen to the children. | Sign Mediation Memorandum. In this session you will have an opportunity to review the agreement. Then you will sign the agreement in front of a notary. The mediators will get them to a document preparer. |

| | | |
|----------------|--|--|
| | Time: 2 months | Time: 15 minutes |
| Step 9 | Actual trial. The trial will last about 2 days and depending on how much preparation is needed, it can be the most expensive portion of the divorce. This is where the Judge will make a final decision on how the children will be handled and the separation of the debts and assets. | Prepare Documents for Filing and file Decree. This is the step where the Mediation Agreement is converted to the "decree format" that is required by the courts. The Mediation Agreement is filed with the decree as an attachment. You will sign the decree and other various documents and the document preparers will take them and file them with the courts. You will need to pay the filing fee as well at that time |
| | Time: 3-5 months | Time: Week Seven. 15 minutes to sign final documents. |
| Step 10 | Hearing to enforce Judges decision. In the event that you or your spouse doesn't obey the judge's decision on any of the issues then you are forced to go back to court to have the judge enforce the ruling. While this does not happen all of the time, it is still very common and sometimes necessary if one spouse is depending on the other for financial support. | Wait for Judge to sign decree. Your divorce will be given priority as a mediated divorce and will then go before a judge for a final review. You will never have to go to the courtroom or see the judge. You will simply wait to here back from the courts as to when the divorce was signed and finalized. |
| | Time: 2 months | Time: 1-2 weeks |
| | Total Time Spent: 13-17 months | Total Time Spent: 4-7 weeks |

Frequently Asked Questions

Why is Common Ground considered to be among the best divorce services?

Every divorce is like a fingerprint. We have learned that there needs to be multiple ways to get people to an agreement. For some a simple Divorce Coach will work. For others a skilled mediator will get them to an agreement. Others must have an attorney involved at every step of the way and there are even some that want the wisdom of a judge to get them over the rough spots. Common Ground offers all of this.

Most mediators focus on only getting the couple to an agreement. While this is good we have found that it is not enough. Our mediators actually teach skills on how to implement the agreement and make sure that it is going to work. This is particularly important when building a parenting agreement. Having an agreement won't do you any good if you are not able to implement it.

What if we live in a rural area or too far from the Mediators office and can't travel to the sessions?

This is only a minor hurdle. If one or both parties are unable to come to the mediator due to distance restrictions then the mediators will do conference call mediation. This is still very effective and works quite well. If distance is a problem for you then contact us to discuss your options but don't let it deter you from considering mediation

What if our situation is too difficult for mediation?

This would not likely be the case. In fact it is the opposite. The more conflict in the situation the better mediation works! Statistically only 3% of the cases that we start ever end up needing to involve the courts. This is because the mediators spend time with the couple focusing their anger and frustration and helping them realize the more control they have in the agreement reaching process the better the agreement will be for both of them. When you let a judge and attorneys make the decisions for you then there is a greater chance that the outcome will create even more conflict. This would explain why over 35% of all litigated divorce cases end up back in court.

What if mediation does not work?

It is rare that mediation will not result in an agreement that both parties feel comfortable with. When this does happen it is usually because of unwillingness from one or both people and that may be as a result of false expectations that have been generated from a friend or family member or maybe even an attorney. If a couple is not able to find common ground in mediation then there are still alternatives to going to court that can usually bring agreement. One of these alternatives is to use an "advisory panel" made up of 3 retired judges or seasoned attorneys that the mediators choose. They read a summary of what the impasse is about and what each person wants. Each panel member acts independently of each other and they do not know who else is on the panel. This is a sort of "mock trial" that gives the couple a sense of how a court would rule on a particular issue. This process works very well but should only be used as a last alternative. If there is continued impasse the couple can always go to court and let a judge make a decision. For more information on how an advisory panel works please contact a mediator at 801-270-9333.

Are Mediated Agreements Legally Binding?

At the end of the mediation the mediators will prepare a document called a "Memorandum of Understanding" or "mediation agreement" this document will include all the agreements the couple made throughout the mediation. This document will be signed and notarized as a legally binding document. It is a contract between the couple. In order for the courts to recognize it as a divorce it must be converted into a "Divorce Decree". This is the accepted format by the courts. It usually means that the "mediation agreement" is used as an overlay or template to create the decree. Everything in the mediation agreement will be in the decree.

Often times the "mediation agreement" is even filed with the decree as an attachment. To prevent any perception of bias either the parties or an attorney or paralegal does the decree document preparation. The mediators can facilitate all of the document preparation if the couple chooses.

Why is mediation less expensive than using attorneys?

When a couple decides to use attorneys and the courts to handle their divorce, they are paying them to do all of the work. In mediation the couple will be expected to do a lot of the work. This means the process will take much less time. If a couple wants to keep control of the process and outcome and are willing to commit to spending time in mediation trying to reach fair agreements they will find mediation will cost significantly less than litigation.

Why do some firms claim to be able to do divorces for \$100.00-\$200.00?

First of all there are no mediation firms doing complete divorce mediations for this price. There are several "document preparation" services done by both paralegals and even attorneys that will prepare the basic minimum required documents by the courts. There is no mediation. You must have complete agreement on all issues. There is no opportunity to discuss options or alternatives. Most of the time couples choose this service trying to save money. But a majority of these divorces have major problems in the future and often end up back in court. If this happens the modifications can be very costly in both time and money. This type of service may be appropriate for situations where the couple has no children and have been married less than 2 years and have no debt or asset conflicts.

What do Attorneys think of Mediation?

Most attorneys understand that the courts are ill suited to handle family divorce issues and encourage divorcing couples to at least try mediation. Beginning in 2005, all divorces will be required to mediate before having a hearing so attorneys are getting used to mediation. Many attorneys have given up their legal practices to pursue careers in mediation for this purpose. Judges are also big proponents of mediation because of the success rate of mediated divorce agreements. Only 3% of mediated divorces end up back in court as opposed to 35% of litigated divorces.

How long will it take and how much does Divorce Mediation Cost?

This is the number one question asked to us by divorcing couples. Quite frankly this is amazing! This should be the last question asked. If you needed an emergency heart transplant would you shop around until you found the cheapest surgeon? Would you go to a foreign country if you found out you could get it for half the cost? If you have been married for any reasonable amount of time and especially if you have kids, you should know that the decision to get divorced and how that divorce will be done is every bit as big of a decision as having a heart transplant!

Cost and duration obviously depends on the level of conflict and/or level of complexity that is in the divorce. The cost may be as little as a couple hundred dollars or as much as a few thousand dollars.

Is it cheaper than going through the legal process using adversarial attorneys? Absolutely! But if you are hoping mediation will only cost 100.00 then don't waste anymore time considering it as a possibility. We have payment options for every couple's situation from hourly fee's to a flat fee option. Schedule a free consultation with one of the mediators and they will ask you some specific questions about your situation and will be able to suggest a payment type that will work best for you.