

THE ART OF NEGOTIATION

How to reach an agreement that's both acceptable and affordable.

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There's a common pattern to all negotiations: a cycle of initial contact, planning (research, goals, strategies, and tactics), and one or more negotiating sessions that lead to a signed agreement, complete with provisions to ensure its implementation.

There are two basic components to any divorce negotiation: what is affordable and what is personally acceptable. The objective is to find a reasonable and legally acceptable balance between them.

Your first experience in negotiating starts with your own lawyer. The two of you must work together until you achieve a meeting of the minds so that what you want can be spelled out in the first draft of the separation agreement. When you're ready for the first negotiating session with your spouse and the other lawyer, how will you approach it?

THINKING LOGICALLY

"Most of our so-called reasoning consists in finding arguments for going on believing as we already do." -- The Mind in the Making, James Harvey Robinson When women use accepted business logic in preparing for a divorce, they may be perceived as ruthless, calculating, and manipulative. When men use accepted business logic in preparing for a divorce, they are usually perceived as being practical, logical, and direct. Regardless of clichés and biases, the reality is that organized and rational thinking is a must for both men and women if spouses are going to create a mutually satisfactory separation agreement in our family court system.

Be concrete in your ideas and remain open to reason. Ask questions until you're satisfied about your spouse's basis for reasoning. Be prepared to answer questions that clarify the integrity of your position. Be as tough as you want where a problem needs resolution, but be soft on the people involved.

If you haven't already done so, you need to analyze and formulate your objectives in order to actively participate in your own future. You must gather together the facts about what you have, what you want now, and what you wish to accomplish by the time you've changed the marriage vow "I do" to the divorce disclaimer "I don't anymore."

The sooner you learn to put yourself into your spouse's shoes and ask, "What would I do if I were you?" the sooner you'll be ready to arrive at a mutually acceptable separation agreement.

ENTERING NEGOTIATIONS

Bargaining for the future welfare of yourself and your family is no picnic. Here's a collection of tips offered by some divorcing couples that will walk you through the process. They refer to both the personal and the practical sides of negotiating.

- Request that negotiations be held where the atmosphere is quiet and professional.
- Be prompt in attendance.
- Dress the way that will make you feel the most comfortable for the setting of the meeting.
- Make sure you have a written agenda from your lawyer.
- Be prepared to take notes and check off each item as it is completed.
- Be sure to have copies of whatever documents you have been asked to bring.
- Sit tall and use direct eye contact as much as you can. Body language "speaks loudly."
- Speak in your normal tone of voice. (You're not on stage, even though you may feel like it.)
- Listen quietly and patiently to what is being said.

- Make sure that you have equal opportunity to voice your opinions or disagreement.
- Try to stay in the first person when you speak. (Don't be afraid of the word "I." In fact, present all of your feelings, facts, and observations in the "I" mode, for example, "I think we ought to...", and "I defend this issue on the basis that...")
- Try not to be defensive about your ideas and be open to advice -- even constructive criticism.
- Refuse to discuss business and personal matters in the same conversation.
- Don't succumb to pressure for an immediate response. (Request a minute to think, or a "time-out" to discuss the matter with your lawyer.)
- Never be forced into a decision -- even if it's one that your lawyer approves. (If you aren't sure, table the issue so that you have time to review your material and to think.)
- When you need to release the tension/frustration/irritation that builds up during negotiating sessions, take a couple of deep breaths from the diaphragm and let them out slowly.
- Don't use alcohol or drugs to calm your nerves during these times.

THE BARGAINING TABLE

Everything is negotiable and anything can be used as a tool for negotiations. Go to the bargaining table prepared for promises to be exchanged and deals to be closed.

It's not a matter of simply putting a value on everything when you are working out what you want or what you're willing to give in a separation agreement. The bargaining process requires setting three different basic values:

- The least you would be willing to give or give up.
- The most you would be willing to give or give up.
- The bottom line you would be willing to agree upon.

Divorcing couples tend to think in terms of things they want (assets) and frequently forget about what they don't want (liabilities). Remember: ownership of items such as debts, a bad piece of property, and lawyer's fees must also be negotiated.

When you reach a stalemate, the lawyers should be able to provide information about how a similar situation has been previously handled within the judicial community where your case is being processed.

The bargaining table is only used to resolve previously undecided issues. As you reach agreement on each issue, consider that topic closed. Agreements never come together if you keep rehashing what was supposedly already settled (in fact, they're more likely to fall apart). Every agreement must adapt to new circumstances or information, but too many new issues late in the game cast doubt on the good faith of what was previously settled.

AVOIDING A FREE-FOR-ALL

Divorce negotiations can be traumatic. In addition to the business at hand, it's very easy to get trapped into old emotional patterns when your spouse begins to act in predictable ways. Either one of you can become overly defensive or hostile.

How do you respond to threats or defuse anger? What happens if the meeting starts to get ugly?

When you and your lawyer discussed your divorce files, especially the profiles and information on extenuating circumstances, you anticipated the danger points and prepared suitable ways of coping. However, when both spouses are wound up, something totally innocuous can trigger an outrageous response. How can it be dealt with right then and there?

First of all, there should be a time-out to cool down the emotions before returning to the facts. Then allow your lawyers to summarize the situation. If new issues come to light through an emotional outburst, they will require discussion and verification. Then a decision can be made about how this new information will affect the developing agreement.

WHEN TO BE REASONABLE

Not all divorces are adversarial. Not all agreements are structured from long and bitter disagreements over who gets what. Just because you're getting a divorce doesn't mean you can't continue to work together.

Be open to brainstorming. If you're at an impasse or seem to be totally deadlocked, you can always flip a coin. Seriously, the very idea that you have only a 50-50 chance of "winning" usually revives the interest in negotiating. If the other side won't negotiate, don't attack his or her position -- look behind it to try to determine the motivation for the refusal to negotiate.

HELPFUL PHRASES AND QUESTIONS

Here are some useful model statements to use if the proceedings stall or if you encounter other difficulties:

"Please correct me if I'm wrong..."
"I appreciate what we've done thus far..."
"My basic concern is fairness."
"I'd like to settle this on a basis of principle, not power."
"Could we go over this once more to make sure that I understand clearly?"
"What is the principle behind your request?"
"Let me show you where I'm having trouble with that."
"A more equitable solution might be..."

SIX DEADLY OBSTACLES TO NEGOTIATION

The deadly sins can never be seen or imagined more clearly than in the process of divorce. When any of the negative patterns of a marriage are brought to the negotiating table, the battle will be long and difficult.

Greed will make any reasonable financial negotiation impossible.
Anger will waste time and energy.
Lust will fire up old memories that might get in the way.
Jealousy will get you nowhere -- it's not your relationship anymore.
Pride causes stalemates.
Fear is perhaps the greatest sin of all.

Fear can be the worst enemy of good negotiation: fear of rejection and loss of position, property, or place in the community. There are also the fears of loneliness and of having to start all over again; of personal and financial hardship; and of not being able to handle all that is ahead. The more dependent you have been upon your spouse -- financially, personally, or emotionally -- the deeper the roots of fear. The fear of negotiating with a spouse who is more powerful, more prestigious, or more "important" than you creates problems, particularly if the spouse is well-connected or has a prominent family.

Under these circumstances, sitting down at a bargaining table seems like risky business. When there are significant emotional or practical inequities, you must do whatever you can to change the expected patterns of your position. Use all available resources: books, counseling, and so forth. If you can avoid succumbing to predictable old ways and if you have a lawyer who isn't easily impressed or intimidated, you'll be able to balance the pressures against you by using strategies that are different from those expected from you.

Whatever the obstacles, the basic rule in negotiating is to understand what options exist for both of you. Insist upon realistic objectives. Focus on the problems, not the person. Try to find a different approach to the same problem; reframing a seemingly insoluble problem may solve it.

It's not necessarily all the things you know that will help you during negotiations; it's what you can think of at the right moment to back your issues and arguments. This is where your files of prepared information can be invaluable.

RECOGNIZING COERCIVE TACTICS

What's fair and what's unfair in the arena of divorce? What does it mean to step over the bounds of common decency? Just what kind of tactics are allowable? What one spouse considers good strategy might be seen as deceptive to the other, depending upon the motives of negotiation.

An early step in predicting what your negotiations will be like is to try to recognize the tactics being used. If your divorce is adversarial, you're likely to face tactics designed to wear you down such as:

- Deliberate deceptions
- Misrepresentation of facts
- Less than full disclosure
- Building in complicated compliance features
- Psychological warfare
- Stressful situations
- Personal attacks
- Silent treatment
- Withholding money or children
- Playing on spouse's sense of guilt
- Body language
- Black-hat/white-hat designations
- Threats
- Dependency and helplessness
- Positional pressures
- Refusal to negotiate
- Unreasonable demands
- Escalating demands
- Hardheartedness
- Calculating delays
- Hiring a "barracuda" lawyer
- Control versus dependency

"SPOUSE BLINDNESS"

A spouse who wants to remain in a difficult marriage even after the relationship has become untenable is usually suffering from what we call "spouse blindness": a condition whereby that spouse is unable to see the marriage as being anything other than perfectly acceptable. This delusion can continue up to the very day of -- or even long after -- being served with divorce papers.

Getting over spouse blindness requires time to see the issues clearly and to heal some of the hurt. Only then will it be possible to develop a balanced separation agreement. Unfortunately, having finally made the decision to divorce, the departing spouse is usually in a hurry to get it over with. The "blind" spouse will often try to drag the divorce out interminably in the hope of a change of heart. The departing spouse and lawyer must be prepared to set compassionate limits for a reasonable transition period.

This article has been edited and excerpted from *The Divorce Decisions Workbook: A Planning and Action Guide* by Marjorie L. Engel and Diana D. Gould (McGraw-Hill, \$27.95). Designed to help individuals prepare in advance for every phase of the divorce process, this workbook is available at better bookstores or by calling (800) 338-3987.