

CHAIM STEINBERGER, P.C.

ATTORNEYS AT LAW

150 EAST 58TH STREET, SUITE 2701

NEW YORK, NEW YORK 10155

(212) 964-6100

FAX (212) 500-7559

www.theNewYorkDivorceLawyers.com

admin@tnydl.com

Shepherding you safely through difficult family transitions!

DIVORCE IN NEW YORK – INTRODUCTION

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INTRODUCTION

Divorce is one of if not the absolute worst, most confusing, most complex experience for most people. A person's closest confidante has turned into an ugly, often vindictive adversary. The person you counted on to have your back, to maintain your secrets, and from whom you sought comfort and solace, is now threatening you and your future, your most precious, most crucial relationships and your ability to survive and thrive. People often fear losing their children, being unable to support themselves in an appropriate lifestyle, and being stymied from finding new relationships, alone in the world. It is understandable to be consumed with fear, overwhelmed with emotions, anger, worry, disappointment, loss, and even shame. Divorce is often accompanied by - overwhelming vulnerability. One emotion bleeds easily into the next, so the gracious desire to

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protect precious children can surreptitiously morph into vindictive anger against the other parent. The fact that most are unfamiliar with the legal system, their legal rights, and how the legal system works, creates another level of vulnerability, fear, and frustration that heightens the already great turmoil and angst. Normal, good people behave as if they have significant personality disorders, and rationality often seems crushed under the weight of fear.

More than in any other area of practice, therefore, it is important to find the right lawyer that will protect, defend, and shepherd you through the terror of divorce. Because so many critical issues are at stake, just “any old lawyer” won’t be good enough for this. A book-smart lawyer who won’t be able to calm you down, will leave you sleepless. A smooth-talking lawyer who doesn’t have the book-smarts will not be up to the task of winning for you. A lawyer who is busy looking at a cell phone as you speak, won’t understand you deeply, “get” your concerns, and be prepared to present your case powerfully to the court in a compelling and winning manner. *You therefore need it all!* A caring, kind, book-smart, people-smart lawyer, who will champion your cause as he calms you down, educate you on the law and help you strategize so that you’re controlled by reason rather than fear; so that you’re proactive rather than reactive; so that you make the durable decisions that will be right for your next decade rather than the one that gives you only fleeting satisfaction.

With over twenty-five (25) years of experience, as a mediator, and formerly a law-clerk to a federal judge, Chaim Steinberger will listen carefully to your issues and concerns. He will help you solve your problems without creating new or bigger ones. He will champion your cause with skill, dexterity, and integrity so as to minimize your pain and cost, as much as possible. Because he has studied not only the law but the psycho-social dynamics of advocacy, he will explain what needs to be done and how, so that you always feel like you’re in control and you will know what will happen next. His ferocious dedication and determination will give you soundly at night, knowing that Chaim is going to take care of you.

How Easy Is It (i.e., How Much Will It Cost)?

Divorce in New York can be simple or complicated depending mostly on the parties and their lawyers’ negotiation skills (and not on the number of children or the size of their holdings).

Parties often feel aggrieved: Parties can get divorced without feeling aggrieved, angry, betrayed, or vengeful. A person can realize that the partner for whom they’ve had such high hopes is incapable of satisfying their needs. Likewise, a person can realize that they cannot provide their partner with what their partner so crucially needs from them. People who clear-headedly recognize this can agree to divorce with no feelings of malice or ill-will from one to the other. In fact, the divorce is then healthy and, if each person wants to give and receive only what is fair to both themselves and the other, the divorce can be negotiated quickly and easily, even if there are children and complicated finances. The parties can remain best friends, in fact can become better

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friends now that they've removed the irritants between them, and can go on to be the loving, caring parents they want their children to have.

Where a party is feeling aggrieved, however, the entire divorce can become extremely complicated. The person's ill-will infects every issue and every negotiation. Every minor issue becomes a heated battle, with no quarter given. We have therefore found that if we can help our clients heal and if we can facilitate our client's spouse's healing then the parties are more apt to approach negotiations in an open-minded manner, willing to listen to reasonable proposals. That sets the scene to have productive negotiation in which both of the parties get better results than either of them could have otherwise had. (See [Win-win Resolutions](#).)

The Easiest Possible Solution: The easiest divorce is where the parties get wise, experienced lawyers.

I often say that the worst thing that can happen to you, is to have your spouse get an unskilled lawyer. The lawyers who don't know what they're doing, don't know how to evaluate a case. They don't know what is a legitimate argument with a reasonable chance of success, and what is an out-of-the-ballpark argument that makes no sense, and has no chance of succeeding. As a result, when one spouse has an incompetent lawyer, both spouses end up suffering a lot more aggravation and incurring much greater legal expenses dealing with and refuting arguments that have no legitimate basis in law or fact.

But when each spouse has a wise lawyer, the parties and their lawyers can sit down across the table and hash things out. As an example, whenever I mediate a dispute I first turn to the defendant and say, "Mr. [Smith,] I take you to be a man of integrity and honesty. Can I assume that if you legitimately, honestly and fairly owe the plaintiff money that you would want to pay any money you legitimately, honestly and fairly owe?" The defendant invariably agrees. I then turn to the plaintiff and ask a version of that same question: "Mr. [Jones,] I take you to be a man of integrity and honesty. Can I assume that if you are not legitimately, honestly and fairly owed money, that you would not want to take such money?" Invariably the plaintiff agrees. I then ask the plaintiff, "Okay, tell us why you believe you are legitimately, honestly and fairly owed the money you seek."

Similarly, when negotiating on behalf of a party, I also begin by using the touchstone of fairness. When negotiating a divorce, I welcome the opportunity to sit down with opposing counsel and the spouse they are representing and say "We want a result that is fair to your party and fair to mine. Let's talk about what is fair under these circumstances." This complies with the teaching of Professors Fisher, Ury and Patton of the Harvard Program on Negotiation that they detail in their groundbreaking book "Getting to Yes." This is based on "principled negotiation" rather than "positional bargaining." Here the negotiation can *heal* the parties rather than *harm* them.

When the parties have healed from their wounds, with wise counsel at their side, they can usually achieve a fair result, one that allows each of them to achieve what is most important

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to them (known as a “win-win resolution”—where neither side has to lose), that is much better than anything either of them could have achieved through an adversarial process. (See [Divorce Without Destruction](#).¹)

Once a deal is reached, the deal can be memorialized in a separation agreement and/or a stipulation of settlement. Both parties sign and have notarized the required documents and the lawyers file them with the court for processing in due time. With this process, neither the parties nor the lawyers need to appear in court, saving themselves the angst, time, aggravation, and cost of appearing in court and proceeding through the laborious litigation system. This is known colloquially as an “uncontested divorce” in which both parties agree to the outcome and agree that a judgment of divorce should be issued and the terms upon which it should be issued.

The Nightmare Scenario (and it doesn’t depend on the amount of money!): People often assume that, *if there’s more money there’s more fighting and that if there’s less money there’s less fighting*. Nothing can be further from the truth. Our nastiest, most drawn out case was one where the parties barely had a pot to . . . relieve themselves in. The husband worked as a gas station attendant earning about \$3.50/hour; the wife was a custodial worker, cleaning a local parochial school. When they separated, the husband told the wife, “You keep one television set and I’ll take the other,” to which she screamed back, “Oh, no, you don’t! My mother’s getting the second television.” They fought over everything and it was long, nasty, bitter and expensive. So the time and cost of a divorce is dependent on the parties’ ability to heal from the wounds of their severed relationship, and the ability of each to give the other the respect and dignity of ending their relationship with integrity and caring.

So, How Much Will it Cost You and How Long Will it Take? As you might’ve gathered from the information above, the time and cost it will take you to get divorced is dependent on how you and your spouse choose to resolve the differences you have. The Court filing fees run several hundred dollars (about \$370 for all the papers that must be filed in court) and, once the judgment-roll packet is submitted to the court, will likely take several months to be processed and signed by a judge. (Depending on the county and time of year, six-months might be an average turn-around time.) Usually, however, the largest proportion of costs and delay of time are incurred by working through the legal or factual issues the parties may have and resolving them. Because there’s no limit to what people can fight over or how hard they’re willing to fight, it is impossible to determine ahead of time what you and your spouse’s divorce will cost or how much time it will take. Once the issues are resolved, however, the lawyers need only prepare the papers and submit them to the Court and await their processing.

Choice of Process

¹ Insert link to Divorce Without Destruction page.

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You can select from among several different dispute-resolution processes to use to resolve your family-law disputes. Each is different from the others and each has advantages and disadvantages. You should consult a skilled family law lawyer (who is skilled in all of them) to discuss your particular situation and to help you decide which from among them, will be best for your situation and to accomplish your goals.

Negotiations: Sometimes all you need is a chance to sit down and talk about what the issues are and how to move forward. This method is particularly well-suited for spouses who are not angry or vindictive with each other, who maturely and clear-headedly recognize that one or both spouses cannot provide the other with what the other needs. There's therefore no need to be angry or vindictive—I can't be angry at someone for not doing something they cannot do or being someone they cannot be.

In such instances, we've served as a "negotiation coach" for one spouse, strategizing and advising how to negotiate and how to facilitate a divorce with a minimum of fuss and expense. We use our decades of mediation and negotiation experience, and help and support clients so that they feel empowered and strong, and negotiate a successful and respectful close to their formal marital relationship.

A danger of this method is that sometimes the other side takes advantage, runs the clock, and causes the other to incur a lot of expense, all to end up with nothing when they finally walk away from the negotiations. That's happened to a client who chose (against our advice) to negotiate directly with the spouse. One year fourteen provisional agreements later, the other walked away from it all leaving our client in the lurch. Rest assured, though, that we then rescued our client. So the parties' personalities and intentions are important considerations in selecting the right dispute resolution method.

Mediation – A Great, But Dangerous, Process: Mediation is a magical process! People with personal or business disputes, who have spent hundreds of thousands of dollars in legal fees, walk into our conference room and a short four or five hours later walk out shaking hands. The mediator serves as a facilitator, keeping temperatures cool and the tone civil in the negotiations, and helps the parties crystalize their thoughts and needs. The mediator also helps the parties brainstorm possible solutions and workouts to resolve their divorce. Mediation empowers people by leaving them in full control of their dispute, allowing the parties themselves to determine what resolution is "right" for them. The job of the mediator is not to tell the parties what to do, tell them what is right, or protect one from the other, but to help them communicate effectively with one another. Because Chaim has been successfully mediating for 25 years, he has the skills to help you resolve your dispute amicably, whether as a mediator between you and your spouse, or whether as a lawyer representing and advising you in the mediation.²

² It is important to recognize that a mediator must remain neutral and cannot represent one party. Therefore, before calling our office, consider whether you want Chaim to act as a neutral mediator (and then call him with both parties on the phone), or as an advisor and representative with you alone. If you want Chaim to serve as a neutral

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Many people mistakenly believe that the advantage of mediation is that the parties only have to hire and pay for one lawyer (the mediator) instead of two lawyers--one for each of the individual parties. That, however, makes the mediation dangerous. Mediation, as an unconstrained process and in the extreme case, takes from the reasonable and rewards the intransigent. A party, who is not schooled in the substantive law that controls the matter in controversy and does not know how these issues are “typically” resolved, does not know if they are being taken advantage of and to what degree. The mediation may seem to be making progress, but all of the progress favors only the other party. A party may inadvertently give up their ability to be self-supporting for the next decade or two, or might leave their relationship with their children in a precarious state, because they did not know they were being taken advantage of. In another instance, a woman called us complaining that the mediation perpetuated her spouse’s abuse of her.

Mediation, therefore, is only safe when each party has a lawyer at their side keeping a keen watchful eye on what is happening. If a client is about to make an ill-advised concession, the lawyer might ask the mediator for a brief break to consult with the client, to ensure the client is fully aware of the ramifications of the concession they are about to make.

The beauty and advantage of mediation is that it doesn’t further deteriorate or traumatize the parties’ already damaged relationship. At the least, it preserves their ability to co-parent their children and work cooperatively for the benefit of their children. Effective mediation can demonstrate and teach the parties new, improved ways of communicating with one another, in a civil courteous manner, each respectful of the other’s needs and station. Indeed, mediation also has the ability to begin a healing process in which each party can hear and be heard often as they haven’t been able to do for many years before their divorce.

Chaim has served as a mediator for twenty-five years, resolving complex commercial matters and family disputes. In one recent divorce case he mediated, the wife’s lawyer walked out at the end of the mediation announcing that although she had earned a master’s degree in social work, she’d never seen anybody do what Chaim did at that mediation. In fact, several weeks later the lawyers reported that the parties decided not to even get divorced.

Collaborative Law - Mediation With Protection: For most reasonable, non-vindictive people, Collaborative Law is the best and safest process to use when getting divorce. In Collaborative Law each party has their own lawyer and both lawyers are also trained mediators. The four of them (the two lawyers and the two parties) then sit down in a conference room and in a non-adversarial manner work out a solution that works for all of them. Another striking feature of Collaborative Law is the “withdrawal provision.” Both clients and both lawyers agree that if either party leaves the non-adversarial negotiating table and commences an adversarial process like litigation, both lawyers will withdraw, forcing both of the parties to obtain new litigation counsel.

mediator, he cannot engage in conversations with you alone without your spouse on the phone.

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Because each party has a lawyer at their side, Collaborative Law is effectively “mediation with protection” provided by counsel. The theory undergirding Collaborative Law is that 99% of all cases are resolved without being decided by a judicial officer. So, the reasoning goes, why force all cases to go through the added effort and expense of the litigation track instead of doing things collaboratively. The small percentage of cases that will not resolve and will have to go to litigation can incur the expense of litigation, but all the rest can benefit from the efficiency of a non-adversarial system. Like mediation, Collaborative Law does not further traumatize the parties’ relationship and allows them to heal and learn to work together for the benefit of their children.

Unfortunately, there are some dangers to the Collaborative model as well. One party may not enter it in good faith, and might intend, like in the other models, to run the clock and force the other to incur legal and other expense and end up with no agreement. We therefore have long introspective conversations with our clients about whether their spouse can be trusted to negotiate in good faith. (Although almost all spouses going through divorce believe that their spouses cannot be trusted, many times by treating the spouse with civility and integrity, the spouse becomes trustworthy. You will be able to tell early on, if the other is negotiating in good faith and, if not, you can withdraw from the process without significant loss. Thus it is only the spouse who is so manipulative and Machiavellian that they have the ability to deceive us and appear to negotiate in good faith while never intending to follow through, that needs to be worried about. If you suspect that your spouse is in that category, call us to discuss your situation so that we can protect you from being manipulated in that way.) Another danger is that when one party leaves the Collaborative process, the party’s spouse is also compelled to obtain new counsel, losing the connection with the lawyer they trust and the institutional knowledge the lawyer acquired at great expense, and causing the spouse to incur the expense of bringing a new lawyer up to speed and difficulty of establishing a new, trusted relationship with the new lawyer. The withdrawal provision, however, provides a powerful incentive for the parties and their lawyer to “go the extra mile” in trying to resolve the issues even when a resolution seems impossible. Because it can benefit the parties and their children for decades to come, it is the best process for divorcing couples.

Chaim is a trained Collaborative Lawyer with many years experience negotiating and mediating disputes, and can help you navigate this process.

Litigation: This is the paradigm and traditional method of getting divorced. It is typically an adversarial process in which each side has a lawyer (*see our article, [So You Don't Think You Need A Lawyer!](#)*), who face off one another. It usually requires multiple visits to the courthouse and appearances before the judge. Most people find it aggravating and intimidating, and suffer from anxiety and other mood disorders whenever a date approaches for their cases to be called in court. For more information, see *[The Litigation Divorce Process](#)*.

As it is usually practiced, litigation is destructive to the parties, their relationship, and their future ability to coparent their children. Too many lawyers think that the only way to achieve their clients’ objectives is by being contumacious and obstreperous, vindictive and provocative. There is, however, a better way. Chaim’s article in the New York Law Journal, “Divorce Without

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Destruction,” outlines how a lawyer can disagree without being disagreeable, be a tough litigator and negotiator without being disrespectful or provoking a backlash. He uses his mediation skills even while litigating, often seeing opportunities to reach a settlement on favorable terms even when the parties were ready to go to an all out battle.

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