Starter Marriages - Top Ten Differences in Divorce Mediation

(Provided by Anju D. Jessani, MBA, APM, Accredited Professional Mediator)

Pamela Paul's book, *The Starter Marriage and the Future of Matrimony* (Random House Publishing, NY 2002), created controversy among social scientists for its inference that young people are entering first marriages in a similar manner to the way they purchase first homes (i.e. starter homes). While virtually nobody who enters a "starter marriage" thinks he's in it for the short term and will eventually upgrade to a better marriage, that is apparently what appears to be happening in a large number of these marriages.

Paul defines a "starter marriage" as one "that is a childless union between people under 35 lasting less than five years." Paul's thesis that although these marriages are entered into with the best of intentions, many are doomed from the start, due to unrealistic expectations of marriage and relaxed attitudes toward divorce. Ultimately, the majority of these failed marriages can serve as dress rehearsals for more stable marriages down the road. "The biggest lesson people can learn from their own divorces was how to get married again and how to get married for a lifetime, " Paul says.

There is a dearth of literature about starter marriages and the divorce process, let alone the divorce mediation process. Even John M. Haynes in his groundbreaking book The Fundamentals of Family Mediation (SUNY Press, Albany NY 1994) - which serves as bible for many mediators, does not address the specific needs of this segment. I have found clients from starter marriages often to be among the most devastated at the loss of their marriage and their dreams for the future. At the same time, they are hungry for information on how to deal with their unique situation. In this article, I explore ten ways divorce mediation may be different for starter marriage clients.

1. Grounds for Filing: Process of Elimination Often Leads to the Choice of Extreme Cruelty

Most couples come into the process with the intention of filing under irreconcilable differences only to discover that in New Jersey, and many other states, these are not among the list of grounds to choose from to file a divorce complaint in their state. They are usually forced to choose between separation or desertion for a specified period of time (usually between 12 to 18 months), adultery, extreme cruelty and some other even more unpleasant choices.

Choosing grounds can be a source of conflict in mediation, even with the knowledge that in many states, including New Jersey, the courts do not award assets based on fault. While clients from longer-term marriages seem willing to wait a 12 to 18-month separation period, for shorter-term marriages, this can seem like a lifetime. The

majority of starter marriage clients eventually settle on the grounds of extreme cruelty through a process of elimination.

(Author's note – since this article was first published, New Jersey amended grounds for divorce in 2007 to include irreconcilable differences, with New York following suit in 2010; 99% of my clients now file under irreconcilable differences).

2. Legal Advice: Lawyer Involvement Tends to Occur Later in the Process

When a couple from a starter marriage inquires about divorce mediation, it is rare that they have consulted, let alone retained, attorneys. Many of these clients find their mediators as well as their information on divorce, on the web. Starter marriage clients are less likely to come through an attorney referral, but they may come through a referral from their individual or marriage counselor.

As opposed to the usual situation where the attorneys sometimes have too much influence on their clients, the challenge with starter marriage clients is convincing them that the attorney does provide a value-added service. In the end, most clients neither have the time nor the psychic energy to file their own divorce after mediation, and are satisfied using a mediation-friendly attorney to review their agreement and file for the divorce. Although it is recommended that they each have their mediation memorandum reviewed by separate attorneys, I have found that frequently, one party chooses to represent themselves pro se and forgo this review.

3. Custody: The Pet(s) Take the Place of the Children

With no children to fight over, if the parties have pets, these can become a good substitute. If one party brought the pet to the marriage, they usually end up with custody of the animal. If custody is an issue, I ask clients the same questions that would be asked of parents - who takes the pet to the vet, who walks the pet, who would friends say the pet is closer to? Whoever receives custody, usually becomes responsible for the expenses of the pet going forward. Occasionally, the parties will agree on a shared custody arrangement, or will agree to the party not receiving custody to have visitation. Some pet visitation agreements are more detailed than most parenting agreements.

4. Dividing the Spoils: Usually Equitable Rather Than Equal

My experience is from mediating New Jersey and New York divorces, where the law provides for property to be divided based on criteria such as the physical and emotional health of the parties, versus states such as California or Texas, that usually mandate equal distribution of marital property. In marriages with children, and childfree/childless marriages over the ten-year mark, I have noted that my clients tend to divide their marital assets and liabilities fairly equally, while clients in starter marriages tend to pay more attention to the relative contributions of the spouse to the asset or liability. Nevertheless, readers should note that one of the cornerstones of

mediation is the notion of self-determination - clients are free to choose whatever arrangement they feel is fair.

5. The Car: Leases Often Make for Complications!
In urban settings, clients tend to share one car as one or both people may be commuting to the city by public transportation. Starter marriage couples have to decide how to divide that car in the divorce.

Further complicating the issue is the trend by younger clients to lease their cars. Car leases are notoriously difficult to amend or transfer, and extremely expensive to terminate. So, clients tend to keep the car for at least the term of the lease. If the lease is in both names, even if one party is taking possession of the car, it's difficult to remove the other party. Therefore, until the term of the lease is over, there is question of credit risk if the party who has taken possession of the car does not make the lease payment. In contrast, if the parties had bought the car with a loan, it's easier and less expensive to refinance that loan for the party taking possession of the car.

6. Liabilities: Credit Card Debt Can Be Overwhelming
It is not unusual to see credit card debt exceeding $20,000 for these marriages. Knowing that their incomes are only going to increase in the coming years, newlyweds often borrow to establish a lifestyle they aspire to (i.e. the average income hypothesis). However, with the impending divorce, they are faced with a problem with how to deal with this debt. It pays to take care of credit issues properly, as any negative information will remain part of an individual's credit history for seven years, and can impact their ability to qualify for a mortgage and even some employment opportunities.

Sometimes, clients are not completely aware of how many credit cards they have, and whose name they are under. The best solution to this is ordering credit reports to ensure they miss nothing (see my article on checking your credit). If they have the cash, it may be wise to retire the debt with the highest interest as well joint debts. For simplicity, it makes sense for the parties to each keep the debt in his/her own name, if each person has approximately the same amount of debt. The parties may also have the challenge of figuring out what portion of the debt is premarital and marital and allocating those portions appropriately. All agreements regarding credit card debt should be properly documented in the mediation memorandum and the subsequent divorce agreement.

7. Assets: Employee Stock Options Are Both Prevalent and Confusing
They may have debt, but they also have employee stock options. Stock options, which were once a benefit reserved for the most senior officials, have become a fairly routine benefit in younger and technology companies. One of the greatest challenges

in mediation is valuing employee stock options. If a similar option trades on one of the exchanges it is certainly easier to value the option. However, employer options now seem to have exercise dates up to ten years out. In these cases if the parties want to value the options, they would need to utilize the appraisal services of an options expert.

It is also important to differentiate between vested options and unvested options. Usually, an employee would only be eligible to exercise their vested options if they left their employer. In mediation, the parties make their own decisions on how to treat and value their options based both on the law, and what they feel it fair. It is recommended that clients discuss tax implications of any decisions involving options with their accountants as well as their attorneys.

8. Stuff: Takes on a Life of Its Own Including the "Ring"
By the time the parties have inventoried every item in their 900 square foot apartment, it becomes apparent that every item they have purchased together takes a greater symbolism of their time together and the marriage. This is in sharp contrast to people with young children, where no one wants the stained couch.

Most mediators will accept whatever lists the clients provide. Sometimes the list includes wedding gifts of crystal and china that have never been utilized. I have found that many of my starter marriage clients make extremely detailed list of their separate and marital possessions to make the process of dividing "stuff" fairer, sometimes assigning dollar values to the assets based on either replacement or garage sale prices. Clients can always check on eBay for realistic resale prices if necessary. It does not make sense to spend 20 minutes of mediation time over a $30 item. I tell clients that most of the "stuff" they are fighting over will seem inconsequential a year or two from now (few pay much attention to this comment!).

One point that is sometimes brought up is the engagement ring. As I have indicated in my article on equitable distribution, if this is given as a gift to the wife by the husband prior to the marriage, the ring usually becomes her property upon the marriage. Nevertheless, in mediation, that decision is up the parties. Most of these rings end up in one safe deposit box or another after the divorce!

9. Housing: Leases Rather than Mortgages
The majority of clients from longer-term marriages tend to own their home or apartment, while the majority of my starter marriage clients tend to rent. Whether clients rent or own, for people getting divorced, sooner or later, one of the parties must move out.

For renters, if the person had the apartment before the marriage, that person is usually

the one who has first dibs on staying. More frequently, the person who wants out of the marriage may move out. If the couple is paying a market rate rent, deciding who is going to move out becomes more a matter of convenience. However, if the apartment is far below market rent because there is rent control or stabilization, there may be a dollar amount assigned to the value of the lease during mediation, which could be subject to equitable distribution. I see this primarily with some Manhattan clients.

If the security deposit on the marital residence was paid from marital funds, it should be subject to equitable distribution, as with any other marital asset; after all, the person leaving the apartment will in all likelihood have to make a deposit on a new apartment. Sometimes, the parties will also agree to share that person's moving costs.

10. Religious Issues: Primarily Catholic Annulments Predominate
The most common religious issue faced by starter marriage clients is the Catholic annulment. This is a declaration by the Church stating that the marriage was never valid. In order to remarry in the Catholic Church, a Catholic must first obtain an annulment. I have found while the majority of my Catholic starter marriage clients have an interest in obtaining an annulment, couples with children very rarely do.

The reason to address the annulment at the time of the divorce is that if an interview is required with the other party, and a person wait until they are ready to get remarried to apply for the annulment, they may not be able to locate their ex-spouse for the interview. Even if the parties weren't married in the Catholic Church, an annulment might still be necessary for the Catholic partner to later marry in the Catholic Church. The rules for these seem even more complicated than for stock options, and I always recommend that the person desiring the annulment consult with his/her priest.

Conflicts sometimes arise when one party wants the annulment and the other does not. The question I put to the reluctant party is, if the other party pays all fees required, and all they have to do is submit to an interview and tell the truth in their own words, what does it really cost them to cooperate?

As readers go through this list, they might find that none of these issues apply to their situation; typically, two items usually apply. Because this is the first article that I believe addresses the topic of starter marriages and divorce mediation, I look forward to receiving your feedback on the relevancy of this article to your situation.