

# FAMILY MEDIATION SERVICES, INC.

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## CHECKLIST OF ISSUES FOR MEDIATION

### 1. PARENTING:

(a) Sole v. shared residential living arrangements v. "nesting"

(b) Sole v. shared decision making - re: what issues

(c) Considerations for joint parenting:

Capacity of Parents to Communicate and to Reach Shared Decisions Affecting the Child's Welfare - What's past is prologue

Willingness of Parents to Share Parenting Responsibilities

Fitness of Parents

Relationship Established Between the Child and Each Parent

Preference of the Child - age of child

Potential Disruption of Child's Social and School Life

Geographic Proximity of Parental Homes

Demands of Parental Employment

Age and Number of Children

Sincerity of Parent's Request

Financial Status of the Parties

Impact on State and Federal Assistance

Benefit to Parents

(d) Additional considerations:

Impact of shared custody on child and/or spousal support, e.g., shared vs. sole Guidelines

Ultimately - best interests of the child.

(e) Decision making:

(i) Health care

- insurance v. HMO v. PPO
- impact of religion on medical care
- notification of illness
- notification of accidents
- office visit attendance
- emergencies - decision making
- access to information
- dental care
- vision care
- mental health care
- reimbursement

(ii) Education

- public v. private
- secular v. religious
- choice of schools
- costs - financial aid
- location of schools
- access to information
- sharing of information
- attendance at events

(iii) Religious upbringing

- impact on parenting time
- holidays and observances
- doctrinal matters

(iv) College

- application & testing fees
- SAT prep course fees
- tuition and required fees
- room and board
- books and supplies
- transportation to and from
- living allowance
- selection of college
- grade point (GPA) requirements
- credit hour requirements
- maximum # of semesters
- maximum \$\$ contribution
- formula to allocate costs
- voluntary impoverishment
- financial aid - loans v. grants
- cooperation in selection
- medical and dental insurance

- medical and dental expenses
  - trade or vocational school
  - savings plans - MUTMA
  - educational IRAs
  - IRC Section 529 accounts
  - trusts or annuities
  - security, e.g. life insurance
  - U of Md as default
  - Imputation of income
- (v) Discipline
- corporal punishment
  - impact on visitation
  - notification and consultation
- (vi) Extra curricular activities
- impact on visitation
  - specific dangerous activities
- (vii) Summer & vacation plans
- notice of desired time
  - choice of vacation dates
  - consecutive or non-consecutive
  - limitations
  - foreign travel
  - Passport protocols
  - State Department travel warnings
- (f) Resolution of disputes
- mediation
  - binding arbitration
  - advisory arbitration
  - court action
  - second opinion
- (g) Estrangement from a parent
- (h) Disparagement and denigration of a parent
- (i) Child's surname during minority
- (j) Therapy and counseling - parties and/or child(ren)
- (k) Residence of primary residential parent
- in D.C./Maryland Metro area
  - elsewhere in USA
  - outside of USA
  - reasons justifying move (e.g. employment or marriage).
  - renegotiation
  - mediation
  - resort to court
  - status quo
- (l) Concerns re: fitness of a party - alcohol, drugs, lifestyle

- (m) Non-spouse "roommates" or romantic interests of a party
- (n) Impact of remarriage of a party - Role of step-parent
- (o) Gay or lesbian parent - impact, if any
- (p) Dependency exemption
  - execution of IRS Form 8332
  - currency in support
  - Flexible Spending Accounts
  - dependent care credit
  - child credit
- (q) Head of household filing status including impact of remarriage of party
- (r) Problem resolution protocol

## 2. VISITATION:

- (a) Importance of child's age - phase-in over time
- (b) Visitation with less than all children at one time
- (c) Telephonic contact
  - non-custodial parent
  - primary custodial parent
  - installation of telephone
  - privacy
- (d) "Reasonable" v. specific schedule of visitation
- (e) 2-2-3, 2-2-5-5, week/week, 3/4-4/3, and other schedules
- (f) School year v. vacation options
- (g) Weekend visitation
  - Friday to Sunday
  - Friday to Monday a.m.
  - alternate arrangements
  - after school v. specific time
- (h) Midweek visits
  - afternoon and evening
  - after school v. specific time
  - overnight v. until bedtime
- (i) Three day holiday weekends
  - Martin Luther King's Birthday
  - President's Day
  - Maryland Day
  - Memorial Day
  - Independence Day if on Friday or Monday
  - Labor Day
  - Columbus Day
  - Veteran's Day

- (j) "In service" and other non-school days - snow days
- (k) Christmas Eve and Christmas Day
- (l) Christmas/Winter school break
- (m) New Year's Eve and New Year's Day
- (n) Good Friday and Easter Sunday
- (o) Easter/Spring school break
- (p) Thanksgiving - Day v. 4 Day Weekend
- (q) Kwanza
- (r) Religious holidays and observances
- (s) Fathers Day and Mothers Day
- (t) Father's birthday and Mother's birthday
- (u) Child(ren)'s birthday
- (v) Special and extra-curricular activities, e.g. sports, scouting, etc.
- (w) Grandparent and sibling visitation
- (x) Halloween
- (y) Notice of inability to comply with schedule
- (z) Impact of child's illness
- (aa) Entry into other parent's home for visitation
- (ab) Make-up time and right of first refusal
- (ac) Flexibility
- (ad) Impact of extra-curricular activities
- (ae) Priorities
- (af) Transportation - pick up and drop off
- (ag) Restrictions on activities
- (ah) Changeover times and places
- (ai) Out of town/US travel by a parent and child

(aj) Problem resolution protocol

### 3. CHILD SUPPORT & RELATED MATTERS:

(a) Child Support Guidelines

- sole v. shared formula
- computed amount - Basic
- commencement date
- duration
- periodic re-computation - prospective or retrospective
- impact of *Walsh v. Walsh*
- asset transfer

(b) Factors:

- child care expenses
- extraordinary medical expenses
- orthodontia
- therapy
- special educational needs
- transportation considerations
- health insurance costs
- college expense costs
- child's earnings
- trusts for the benefit of a child
- combined income in excess of Guidelines top bracket - extrapolation

(c) Uninsured medical, dental and vision expenses  
- definition of "reasonable & necessary"

(d) Modification of Child Support

- change of circumstances
- bonuses
- frequency - prospective v. retrospective
- exchange of information
- exchange of tax returns - use of CPA
- Consumer Price Index ("CPI")
- mediation
- judicial action
- emancipation of less than all children
- child's income
- Social Security benefits to or for a child

(e) Federal and state tax considerations

- direct payment to providers
- mortgage PITI

(f) Termination

- death of parent or child
- emancipation
- change in primary residence
- change to shared residential custody
- age of majority (or completion of high school)

- (g) Life Insurance
  - amount
  - term v. whole life
  - duration
  - owner of policy
  - beneficiary of policy
  - trustee - spouse or 3rd party
  - insurability
  - policy loans
  - dividends
  - cash value
  - death benefit options
  - payment of premiums
  - medical exam cooperation
  - life insurance trust
  - reciprocity - both or neither
  - penalties for non-compliance
  
- (h) Summer camp and extra-curricular activities
  - sharing of costs
  - substitute for child care
  
- (i) Hospitalization and medical insurance
  - duration of obligation
  - right to select type of plan
  - geographic area of coverage
  - HMO v. PPO v. POS insurance
  - deductibles
  - co-payments
  - of loss of employment
  - employment availability
  - allocation of incremental premium cost
  - best bang for the buck
  - QMCSO
  
- (j) Direct payment v. through the court

4. *ALIMONY*:

- (a) Waiver v. conditional waiver v. reservation
- (b) Amount - Preparation of Budgets
- (c) Duration
  - death of either party
  - remarriage of recipient
  - cohabitation by recipient
  - "marriage like" relationship
  - fixed term
  - change in financial circumstances
  - alimony following remarriage of recipient
  - suspension v. termination

(d) Indefinite v. Rehabilitative - Factors:

- ability of party seeking alimony to be wholly or partly self supporting
- time necessary for party seeking alimony to gain sufficient education or training to enable that party to find suitable employment
- standard of living that the parties established during their marriage
- duration of the marriage
- contributions, monetary and non-monetary, of each party to the well-being of the family
- circumstances that contributed to the estrangement of the parties
- age of each party
- physical and mental condition of each party
- ability of the party from whom alimony is sought to meet that party's needs while meeting the needs of the party seeking alimony
- any agreement between the parties
- financial needs and financial resources of each party, including: (i) all income and assets, including property that does not produce income; (ii) any marital award made by the court; (iii) the nature and amount of the financial obligations of each party
- the right of each party to receive retirement benefits.

(e) Modifiability by the court - pros and cons

(f) Modifiability by the parties

- frequency
- formulas
- CPI Index
- in mediation
- in binding arbitration - pros and cons

(g) Tax matters

- tax savings considerations
- exchange of tax returns - use of CPA
- impact of new spouse's income
- reporting as income
- FinPlan computations

(h) Payments made for by one party for the benefit of the other party

- (i) Hospitalization and medical insurance
  - right to select type
  - HMO v. Insurance
  - duration
  - deductible
  - impact of loss of employment
  - COBRA
- (j) Voluntary impoverishment - Underemployment

## 5. *THE FAMILY HOME:*

- (a) Use and Possession:
  - duration
  - remarriage
  - "marriage like" relationship
  - boarders, tenants, roommates
  - payment of PITI - Crawford credits - deductibility
  - allocation of reduction on principal balance due
- (b) Purchase by Party:
  - (i) Selling price
    - use of appraisers
    - assumed brokerage commission
    - assumed transfer and recordation taxes
    - assumed "points"
    - seller subsidies
  - (ii) Terms of payment
    - interest rate
    - amortization
    - 2nd trust
    - desirability of continued dealings
  - (iii) Existing deed of trust
    - assumption by purchaser
    - indemnification of seller
    - release of seller
    - refinancing - time frame
    - novation
    - foreclosure risk
    - credit report issues
  - (iv) Tax considerations - basis and capital gains issues
  - (v) Affordability
  - (vi) Impact on support issues - bootstrapping

(c) Option to Purchase:

- (i) option period
- (ii) notice
- (iii) reciprocal option
- (iv) see "(b) above"

(d) Sale of House:

- (i) Selection of broker
- (ii) Price
  - asking price
  - selling price
  - appraisal procedure
  - "points"
  - buyer subsidies
  - transfer and recordation taxes
  - tax liens
- (iii) Cooperation
  - with broker
  - lock box
  - tidiness
  - use of trustee
- (iv) Tax considerations
  - allocation of capital gain
  - tax liens
  - \$250,000.00 exclusion
  - ownership and use tests

(e) Interim Provisions:

- (i) maintenance and repairs - minor v. major
- (ii) cosmetic fix-up
- (iii) boarders, tenants, relatives, etc. - rental income
- (iv) payment of PITI
- (v) tax consequences

(f) Division of proceeds:

- recognition of non-marital interests
- escrow refunds - tax and insurance
- excess interest refunds
- payment of joint debts from proceeds
- tax considerations

(g) Miscellaneous Matters:

- impact of pending judgments and liens
- buyer's "basis" for tax purposes
- claims for contribution to PITI
- "principal residence" for tax purposes
- timing of sale - before or after divorce

## 6. *ADDITIONAL TAX MATTERS:*

- (a) Joint v. separate returns
  - Requirement of itemization
  - Allocation of refunds or payments due
- (b) Dependency exemptions
- (c) Head of household filing status - impact of remarriage
- (d) Innocent spouse rule
- (e) Hold harmless re: past tax liabilities
- (f) Execution of documents required by IRS or State
- (g) Exchange of tax returns
- (h) Exchange of tax information
- (i) Hold harmless and indemnification
- (j) Business tax obligations - 941 and FICA and Medicare

## 7. *SALE AND/OR DIVISION OF PROPERTY:*

- (a) Identification of all property interests including:
  - (i) clothing, jewelry and other tangible personal belongings;
  - (ii) household furniture and furnishings;
  - (iii) motor vehicles, boats, aircraft, snowmobiles, jet skis;
  - (iv) stocks, bonds, and other securities and investments;
  - (v) savings, checking and other depository accounts;
  - (vi) pensions, CSRS, FERS, military, or other pension plans;
  - (vii) survivor annuity benefits;
  - (viii) life insurance cash values;
  - (ix) IRA, deferred compensation, 401(k), 403(b), 414(p), SEP-IRA, HR-10, TDSP, TSP, and other similar retirement plans and accounts;
  - (x) real estate interests including timeshares;
  - (xi) sole proprietorships, partnerships, close corporations and other business interests;
  - (xii) stock option plans;
  - (xiii) pending claims and receivables; and,
  - (xiv) season tickets.
- (b) Valuation of all property - appraisal issues - tax issues
- (c) Determination of marital vs. non-marital property
- (d) Sale v. in kind allocation and distribution of property v. monetary award

Factors to consider:

- Contributions, monetary and non-monetary, of each party to the well-being of the family
- Value of all property interests of each party
- Economic circumstances of each party at the time the award is to be made.

- Circumstances that contributed to the estrangement of the parties
  - Duration of the marriage
  - Age of each party
  - Physical and mental condition of each party
  - How and when specific marital property was acquired, including the effort expended by each party in accumulating the marital property
  - Contributions by a party to real property titled as tenants by the entireties.
  - Any award of alimony and any award or other provision that the court has made (or to which the parties have agreed) with respect to family use personal property or the family home
  - Any other factor that the court considers necessary or appropriate to consider in order to arrive at a fair and equitable monetary award
- (e) Tax considerations - capital gain and income

#### 8. MISCELLANEOUS ISSUES:

- (a) Identification and payment of debts - joint and separate - marital and non-marital
- (b) Estate and inheritance rights pending divorce
- (c) Estate and inheritance rights after divorce
- (d) Continuation of insurance coverages
- (e) Constructive trustees
- (f) Personal property selection procedure
- (g) Definitions, e.g. "gross income"
- (h) Reference to Consumer Price Index
- (i) Military benefits, e.g. PX, Champas, Tricare, etc.
- (j) FEGLI insurance
- (k) FEHB benefits - TCC and "spouse equity"
- (l) Disability insurance
- (m) Confidentiality of marital communications
- (n) Bankruptcy - impact on contractual obligations
- (o) Social Security benefits
- (p) Religious divorce
- (q) Modification procedures
- (r) Use of mediation/arbitration to resolve future disputes
- (s) Choice of applicable law
- (t) Reconciliation
- (u) Execution of necessary documents
- (v) Preparation of QDROs
- (w) Penalties and procedures for violation of mediated Agreement
- (x) Legal fees and court costs
- (y) Children as 3rd party beneficiaries of Agreement
- (z) No unreasonable withholding of consent

- (aa) Waiver of claims
- (ab) Grounds for divorce
- (ac) Impact of Agreement on pending litigation and prior agreements
- (ad) Indemnification and hold harmless agreements
- (ae) Pending claims by or against party/parties
- (af) Definitions - "income", "marriage like relationship", "gross income"
- (ag) Security for performance of Agreement
- (ah) Confirming Last Will and Testament