Divorce in Malaysia

Today, if a partner wanted to leave a marriage after all attempts at reconciliation have been made, there is no provision in the law that could prevent it.

However, because the law does not provide for a purely ‘no-fault’ divorce, a petitioner would still have to prove, if they have not been separated for more than 2-years, unreasonable behavior or adultery on the part of the respondent spouse in a litigated divorce. This may be appropriate for some couples but for many it simply adds emotional stress and hostility to an already difficult process.

Conflicts in a litigated divorce, often result in one person "winning" while the other feels they are "losing" where any concession is made in negotiations between their lawyers. The process may take years, their private family matters subject to public scrutiny, with neither party feeling that they were “heard” nor satisfied at the end of it.

Meanwhile, their lawyers are encouraging each client to ask for more, with tens of thousands of ringgit alone, going to legal fees. Ultimately, the parties have limited control over the outcome, as a judge decides what happens to their property, children and future.

Until the law is changed to allow couples to divorce without being forced to blame the other spouse, couples should be aware of their options in the divorce process, to help them go their separate ways, with their children, finances and dignity intact.

Why Mediate?

Process:
The mediator is a neutral 3rd party, who facilitates communication and decision-making to resolve conflicts in a co-operative manner. Parties agree on parental, financial, and property arrangements in their best interests.

Benefits:

1. Mediation is quicker:
The process of reaching settlement is much shorter, and is dependant on the parties’ schedules, not on the Courts’. The litigation process in a contentious divorce typically takes 2-3 years from start to finish. A mediated settlement and divorce by joint petition would require under a year if parties are amenable.

2. Mediation is less costly:
The legal fees for litigation of a highly contentious divorce may run from RM25,000 - RM75,000. The savings in time and paperwork in Mediation puts the costs of a typical mediated divorce in the range of about RM5,000 - 15,000 depending on the level of conflict and the complexity of issues, including the filing of the mediated separation agreement and a joint petition of divorce into Court, and the obtaining of a final decree absolute.

3. Mediation is confidential:
This may be particularly important for couples who wish to avoid the adverse publicity that is a possibility in litigated divorces.

4. Mediation empowers:
Parties themselves (not a judge) determine the outcome of their divorce by agreeing on separation terms that are in their own interests.

5. Mediation puts the children’s interests first. (see Children of Divorce)

Children of Divorce

Divorce puts the emotional, economic and educational well-being of the children of the marriage in danger.

Parental conflict is the factor that most consistently predicts maladjustment among children of divorced parents. This, combined with the uncertainty of their future living arrangements pending the disposal of child custody and maintenance issues, increases the trauma suffered by these children, often resulting in irreparable psychological and emotional damage.

Divorce mediation focuses on protecting the children from parental conflict by teaching parents how to put their conflict on hold and focus for a time on their children’s needs to find workable solutions in the best interests of their children.

Conclusion

We believe that the structuring and termination of personal relationships should really be a matter of private decision. Couples should be actively involved in making the choices that would shape their own future and those of their children.

Divorce Mediation is the more thoughtful, sane approach to this very difficult process.