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Family mediation

Italy

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Family mediation is a process which spouses or partners experiencing difficulties can voluntarily decide to use in order to resolve their dispute involving one or more mediators. The task of the mediators is to facilitate communication and help the couple address both the emotional and the material aspects of the separation (division of assets, maintenance payments, allocation of the marital home, etc.). Their task also includes encouraging the couple to structure the agreements that best meet the needs of all family members.

Mediation is governed, in general terms, by Legislative Decree No 28 of 4 March 2010, as amended, on the 'Implementation of Article 60 of Law No 69 of 18 June 2009, concerning mediation for the purpose of settling civil and commercial disputes'.

This law sets out the procedure for settling disputes regarding **transferable rights** out of court. For certain matters expressly indicated, mediation is a **pre-condition** for the document instituting the proceedings to be deemed admissible.

In family law matters, only disputes concerning family business agreements (i.e., contracts through which the **business owner** transfers, fully or in part, his or her **undertaking** to one or more descendants) require prior mediation.

For all other family disputes mediation is voluntary.

However, in child custody proceedings the court may postpone delivering a judgment so that the spouses, with the help of experts, can attempt mediation to reach an agreement, especially as regards protecting the moral and material interests of the child(ren).

Mediation can take place **in or through public or private bodies** duly entered in the **register of mediation bodies** kept by the Ministry of Justice.

The list of mediation bodies can be found on the following website:

<https://mediazione.giustizia.it/ROM/ALBOORGANISMIMEDIAZIONE.ASPX>

Lawyers registered at the Italian Bar are mediators by right.

In many municipalities, **family mediation services** can be accessed through family advice centres, social services or local health undertakings.

Another procedure – which is different from mediation but which is also designed to settle disputes out of court – is **assisted negotiation**. This is governed by Decree Law No 132 of 12 September 2014, converted with amendments by Law No 162 of 10 November 2014.

Assisted negotiation refers to an agreement (known as a 'negotiation agreement') through which the parties agree to 'cooperate in good faith to settle the dispute amicably'. For the agreement to be valid, it must be drawn up in writing **with the help of one or more lawyers**, and must concern transferable rights.

Unlike agreements reached through mediation, assisted negotiation agreements are **enforceable** and mean that judgment mortgages can be registered.

Like mediation, the negotiation can be mandatory or voluntary.

In family law matters, assisted negotiation is always voluntary.

The law governs **assisted negotiation in matters concerning separation and divorce**, with a view to achieving a settlement by consent or an amendment to the conditions previously established.

For **couples who have no children** who are minors (or adult children lacking capacity), the agreement is submitted to the public prosecutor at the competent court who, as long as he or she does not find any irregularities, notifies the lawyers that there is no impediment to the settlement.

In the case of couples with children who are minors (or adult children lacking capacity), the agreement must be sent within 10 days to the public prosecutor's office at the competent court for verification that it will guarantee the interests of the children. If the assessment is positive, the public prosecutor authorises it. If not, he or she sends it to the president of the court, who convenes the parties within the next 30 days.

The agreement reached and authorised in this way has the **effects and takes the place of judicial separation or divorce provisions** and changes the conditions set out therein.

Following the entry into force of Law No 76 of 20 May 2016, the parties may also use assisted negotiation in the event of dissolution of a **civil partnership between persons of the same sex**.

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