

Home>Taking legal action>Mediation>Family mediation>**Family mediation**

Family mediation

Malta

Law regulating mediation

The applicable law in Malta is Chapter 474, namely the [Mediation Act](#).

What is mediation?

When a couple is in dispute with one another regarding family matters, they can ask for assistance from a mediator to help them reach an amicable settlement without recourse to formal proceedings in Court. Under Maltese law, mediation is a compulsory step the couple has to go through before instituting proceedings for separation before the Civil Court (Family Section).

Who is the mediator and what is his role?

The mediator is there to help the parties reach an amicable settlement. He is an impartial and independent person appointed by Court. In some cases, the parties choose the mediator themselves against a fee. Mediators are all professionally qualified to act as such. Most of them are also family therapists, social workers or lawyers.

A mediator can never provide evidence in Court as to what was said in mediation proceedings if the parties proceed to a Court case.

Who can apply for mediation?

Mediation can be used in the following cases:

for separation or divorce (provided that for divorce the spouses would have been living apart for four years or more);

for maintenance from his/her spouse;

to regulate matters regarding a child born out of wedlock, for example care and custody, visitation rights and maintenance;

to change his/her contract of separation or divorce;

to change his/her contract that regulates his/her child care and custody, visitation rights or maintenance.

One does not have to be married to apply for mediation.

How do mediation proceedings start and what do they consist of?

To have recourse to mediation, the interested party must file a letter, addressed to the Court Registrar, requesting permission to start the mediation proceedings. The letter must contain both parties' names and addresses and at least the identification card number of the person submitting such letter. The letter does not need the signature of a lawyer to be valid. This letter is filed in the Family Court Registry and which process is completely free of charge.

Mediation can also be opened by a note, however this procedure is used when both parties involved are already agreeing on most legal matters. The note contains the same details of a letter, with the difference that the parties also present a contract drafted by their lawyers or common notary. The note must be signed by both parties together with their notary, or both their lawyers and their notary.

Once a letter or note is filed, a mediator is appointed from a list established by court. The mediator can also be privately chosen by the parties themselves in agreement. The mediator will send for the parties by post with a specific date for them to come to Court. Sessions are held in a private room with only the mediator and if the parties' wish, the parties' lawyers as well. Mediation does not require a lawyer to be present.

The mediator will explore with the parties the possibility of reconciliation. If the mediator feels that there is hope for the couple's marriage or relationship to succeed, he can send them to counselling and put the mediation on hold. If the parties feel that their marriage or relationship can no longer work, the mediator will then try to help the parties reach an agreement on their children and their assets.

If the parties do manage to reach an agreement, a contract is then drafted and read by the mediator, and if the parties are satisfied with the content of the contract, the mediator will then present the contract formally in the Registry so that it can be seen by the Judge. If the Judge approves the contract, the parties can then go to a notary, who will publish the contract and make it official.

If the parties are unable to agree, the mediation is closed and the parties are authorised to proceed with a Court case. Parties are to institute proceedings before the Civil Court (Family Section) within two months from when the mediation is closed. In case of failure to proceed within the said timeframe, the couple will have to commence proceedings through mediation once again.

What if one of the parties lives abroad?

A cross-border dispute shall be one in which at least one of the parties is domiciled or habitually resident in Malta and the other party is domiciled or habitually resident in another Member State on the date on which:

the parties agree to use mediation after the dispute has arisen;

mediation is ordered by court;

an obligation to use mediation arises under national law; or

in cases where a decree or order has been delivered by court, from the date of such decree or order.

In such an instance, the person residing or domiciled abroad shall either travels to Malta or give a power of attorney to his/her lawyer in Malta to represent him/her and then s/he travels to Malta just to sign the contract of separation. On the other hand, if the person domiciled or habitually resident in Malta does not know where his/her partner resides (example left Malta or abandoned his/her partner), s/he is to present a mediation letter stating such fact under oath, and the letter is closed immediately and a court case is instituted by the said individual against curators for the absentee, who are appointed by court.

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