



NY State Council on Divorce Mediation

# Council News

Your Quarterly Newsletter

Volume 2017 ~ Issue 1 ~ April

**Many Thanks To Everyone!**

Read *President's Podium* for Mark Josephson's recap of Council activities and newsletter articles. In his last letter as president, Mark offers his thanks for Council successes and best wishes for the future.  
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**Recap of Downstate Symposium**

If you missed *Power, Money and Rage*, last December, read Susan Clelland's report on the important topics covered at this annual event.  
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**Robert Emery and Other Notables at Annual Conference**

The 2017 Annual Conference (May 4-6, Tarrytown) will feature many great speakers, hot topics, entertainment, networking, early bird discounts and more.  
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**Lower-cost Liability Insurance**

Learn how NYSCDM helps address the rising cost of professional liability insurance for non-attorney mediators.  
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**NYSCDM's First Webinar; New Director Named**

*The Good, The Bad and the Ugliness* features Donna La Scala and Marc Miller discussing the complexities of dealing with retirement funds during divorce.

Welcome Patty Murray!  
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## Dolly Hinckley: Stalwart NYSCDM Member and Mediation Field Pioneer Retires Leaving a Lasting Legacy

By Trish Blake-Jones

"Mediation has been a HUGE part of my life," reflects Dolly Hinckley as we sit in her living room gazing out the picture window. "I've loved seeing what happens to couples who are at odds with each other, and the place they're at when they're done (divorce mediation)."

I am allowed to say that she is in her 80's, but Dolly demurs about her exact age. At the end of 2016, Dolly retired officially after thirty years as a divorce mediator. Prior to her mediation career, Dolly, who has a

Bachelor of Science in Business Administration, managed a Rochester senior citizens' residence for many years. She is the mother of four children, and a grandmother to seven.

**Thirty Years a Mediator**

Dolly attended her first NYSCDM conference circa 1986, when she and Jack Heister, also of Rochester, were the only non-NYC attendees. In fact, she recalls there were only about twelve attendees in total.



Dolly Hinckley

# Welcome New Members!

Please join us in welcoming our newest members of the New York State Council on Divorce Mediation. The members below completed the membership process during the first quarter of 2017. Many have already become active in the Council volunteering on committees and registering to participate in our events.

**Steven Bettman, Esq**

**Don Boice**

**Nicole Gill**

**Helise Harrington, Esq.**

**Michelle Lewis, Esq**

**Richard Lutringer**

**Hillary Packer, Esq.**

**Stacey Pierce, PsyD**

**Julie Rose**

**Barbara Rothberg, PhD**

**Daniel Sperrazza, Esq.**

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**Bryana Turner, Esq**

**Andrea Vacca, Esq.**

**Nancy Vavassis, Esq.**

**Katherine Weall, Esq**

**Erin Wietecha, Esq**

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*Trish Blake-Jones, Chair*

*Lauren Abramson*

*Chuck Newman*

*Eli Uncyk, Chair Emeritus*

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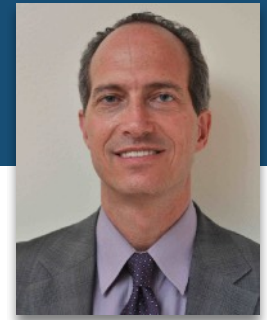
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# President's Podium

By Mark Josephson, Esq., CPA, CFP, CFE, CGMA



## Many Thanks To Everyone!

While the calendar indicates Spring is here, many of us are still surrounded by snow and bundled into our Winter coats! So, after a mediation session with Mother Nature, she and I have agreed that this interim period shall be termed "Sprinter", and promise that the sunny warm days of Spring will follow!

And, with the advent of Spring comes our 2017 Annual Conference, "Turning Challenges into Successes", to be held at the Doubletree Hotel in Tarrytown, Thursday through Saturday, May 4<sup>th</sup> - 6<sup>th</sup>. As Chair of the Annual Conference Committee, I want to congratulate the Committee: Dan Burns, Ada Hasloecher, Jill Sanders-DeMott, LJ Freitag, Kathy Jaffe, Rita Medaglio-Barrera, as well as Patty Murray and everyone else who pitched in, for having outdone themselves in arranging an exciting program and fun filled three-day Conference. Speakers will address the challenges faced by mediators and clients and how to effectively turn these challenges into a successful outcome. It will be difficult to choose among the many exciting topics.

This year's Pre-Conference program presents Robert Emery, Ph.D., psychologist, mediator and author, whose seminar entitled "Two Homes, One Childhood: Joint Custody and Mediating Developmentally Appropriate Parenting Plans" is not to be missed!

In addition to the sensational program, there will be plenty of time to network with long-time and new friends and colleagues, and let's not forget the fun of the annual dinner, dancing and auction! If you have not already registered, you can read in detail about the exciting presentations on page 7 and register using the links provided.

The December downstate program, with a title that could have been ripped from recent headlines, "Power, Money & Rage", was a great success. The program was held in the memory of Sydell Sloan, a valued and indispensable member of NYSDM. She is sorely missed.

Inside this issue, you can read about Dolly Hinkley, a mediation pioneer who has retired after thirty years of devotion to the concept that mediating divorces

provides long lasting benefits that litigation cannot. Dolly is proof that divorce mediation has come a long way and that there is indeed life after mediation. Dolly, thank you for sharing your story with us and helping forge the way forward.

This issue also shares an article written by our very own Nadia Shahram who, having recently lost her mother, provides great insight into the profound grief, and feelings of loss, spouses experience during and after a divorce. Nadia, our heartfelt condolences to you and your family, and our deepest gratitude and appreciation for taking the time to help us all understand that divorce is the death of a marriage and that our client's need to grieve that loss.

I am extremely happy to announce that Patty Murray will now be our new Executive Director. Patty has helped us with some major transitions since last summer (see page 13). We look forward to continue to work with her to accomplish even more for the Council.

Last, but never will he be the least, Charles ("Chuck") Newman has stepped down from the Publications Committee after many glorious years of keeping the mediation community informed and up to date. He will, of course, remain a NYSCDM board member and a member of the Education Committee.

This is my last letter as President of the Council as Renée LaPoint will succeed me as President in May. She has been an invaluable Vice President. I look forward to working with Renée on the Board, as Past President, and on various committees. I am proud of the many initiatives and accomplishments during my tenure and will report on them at the upcoming Annual Meeting May 5<sup>th</sup> in Tarrytown, in future additions of the Council News, and in and around the Council. My fellow Board members, Committee Chairs, NYSCDM members, and everyone with whom I have worked, I cannot thank you enough. It has been my great honor to work with you all to further the mission of the Council. More to come!

Enjoy the promise of Spring. I look forward to seeing all of you in May at the upcoming 2017 Annual Conference!

# Downstate Symposium Tackles: *Power, Money & Rage*

*By Susan Clelland*

On Saturday, December 10th, seventy mediators gathered at John Jay College in New York City for the NYSCDM's 2016 Downstate Symposium, "Power, Money and Rage." The Symposium was co-chaired by Sheryl-Anne Sastow, Esq. and Philip Wild, Esq., and co-sponsored with the CUNY Dispute Resolution Center at John Jay College. After a warm welcome from Council President Mark Josephson, Esq., Glenn Dornfeld, Esq. offered a heartfelt tribute to the late Sydell Sloan, who had organized this event for many years, and was a beloved friend and colleague to many in the room. The Symposium was held in her memory.



*Attendees enjoying the Downstate Symposium.*

The first speaker, Abby Rosmarin, Esq., LMHC, presented "Money Styles: How the Personal Psychology of Money Influences Divorce Finances." Using interactive exercises, we were asked by Abby to examine our personal "money story" and to reflect on the meaning of money in our lives. We found that money represents many different things to people, such as freedom, love, power, security, and stress. Whether we tend to be spenders, amassers, or avoiders, each of us has a complex relationship with money that is powerfully shaped by personal history and psychology. As we become more aware of our own beliefs about money, we can become more aware of our clients' beliefs. The more we understand the money dynamics in the room, the better equipped we are to help our clients talk with each other about money,

and navigate the financial decision making that divorce requires.

We next heard from guest speaker Dr. Andrew Sirlin, a corporate culture consultant who counsels individuals and corporate clients on behavior and communication skills. In his presentation, "Behavior Styles: Unlocking How People Think to Improve Negotiations and Conflict Resolution in Divorce Mediation", Dr. Sirlin explored differing behavioral styles, discussed how these styles give rise to conflict, and how to use an understanding of these styles to reduce and resolve conflict. After asking mediators to complete a self-assessment tool, Dr. Sirlin presented a matrix of four basic behavior styles - Controlling, Promoting, Analyzing, and Supporting - each of which comes with an array of strengths and

weaknesses. Awareness of our own styles and habits, and the ability to stretch ourselves outside of our comfort zone, is essential for us as conflict resolution professionals. With practice, we can learn to incorporate behaviors from other styles to improve our effectiveness in any situation.

Next, Philip Wild, Esq. presented "Negotiation Styles: A New Model Divorce Mediators can use to Help Couples Reach Consensus." As mediators, many of us are schooled in the model of conflict resolution, where parties move beyond their adversarial positions to address underlying interests and reach "win-win" resolutions. But in the real world, that doesn't always happen.

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## Downstate Symposium

An alternative model, S.C.A.L.E., offers us tools for situations where emotions flare and alternative interventions are needed. S.C.A.L.E. stands for Set the Scene, Communicate, Alternatives, Leverage, and Engage. Setting the Scene means being prepared, knowing the law, and taking the temperature of the situation. The next step, Communication, is an especially critical step when emotions run high. The mediator must make a conscious effort to hear not only the words the parties are saying but to understand the complete message, demonstrate empathy, and build rapport.

Wild advocates the active listening process used by the FBI's Crisis Negotiation Unit, similar to the technique of "Looping" promoted by divorce mediator and trainer Jack Himmelstein. Once the parties feel truly heard, they can proceed to explore alternatives, apply leverage, make proposals, and reach consensus.

The day ended with a panel discussion entitled "Domestic Abuse and Divorce Mediation: Considerations & Questions", featuring Helen Atkinson-Barnes, Education Program Manager at The Retreat Domestic Violence Services, and NYSCDM mediators Sheryl-Anne Sastow, Esq., Joy Rosenthal, Esq., and Steve Abel, Esq. Panelists defined domestic abuse as a pattern of coercive behavior in which an individual establishes and maintains power and control over another with whom he or she has an intimate, romantic or family relationship. Panelists expressed a range of views about whether or not mediation may be appropriate in circumstances of domestic abuse. They agreed that domestic abuse situations are difficult to mediate, and that some may in fact be too complicated for mediation. Mediators who take on such cases have an ethical and professional obligation to have specific training and expertise, and to follow appropriate protocols.

Many thanks to our organizers, hosts, and presenters for producing this symposium to support and advance our collective work in mediation.



*Domestic Violence Panel*

**Save the Dates:**  
**2017 Upstate Symposium**  
Saturday, September 9th  
**2017 Downstate Symposium**  
December 2nd or 9th  
**2018 Annual Conference**  
May 3rd - 5th



*Susan Clelland's practice, Rivertown Mediation, is dedicated solely to mediation, with a focus on separation, divorce, and parenting conflicts.*  
[www.rivertownmediation.com](http://www.rivertownmediation.com)

## Dolly Hinckley Retires, Leaving a Lasting Legacy

“It was an interesting time. Divorce mediation was a brand-new concept; we were breaking new territory and were eager to help each other. Not even Steve Abel was yet part of the group.”

Jack Heister, past President and Board member of the NYSCDM, was the reason Dolly became a divorce mediator. They met at a networking event and he suggested she might be interested in exploring this area. She did, and the next thirty years became history, as they say.

Dolly received her divorce mediation training from Ken Neumann and, in the early days, received referrals through the parent and church groups she spoke to regularly. She was inspired by the writings of John Haynes, whom she refers to as the “father of divorce mediation.”

Dolly served as Secretary to the Council for fifteen years, and spent many years reviewing accreditation applications for NYSCDM mediators.

### Swims Every Day

Dolly continues her swim regimen, started in 1978, by rising at 6:00 a.m. every morning, driving to the Pittsford YMCA, located about five minutes from her home, and swimming for at least one mile; 1 ½ miles on weekends. After swimming her lengths, she finishes her workout with a Pilates, yoga or weight session. *Every morning.* “It’s like breathing...I get up, I go swimming. Even at (NYSCDM) conferences years ago, when I had a little more influence, conferences were always at hotels with pools.”

### Reflecting on Mediation Career

Dolly has many warm memories of working fruitfully with couples going through divorce. One of her favorite memories is that of receiving a letter from a wife who, a year after the completion of mediation, thanked Dolly and wanted to let her know that she was on good terms with her husband, and that their children were well.

Recently, in December 2016, the RAFM (Rochester Association of Family Mediators) recognized Dolly’s many contributions to the field of mediation. In 2012, Dolly was the second recipient of the Steve Abel Award given by the Council to recognize excellence in mediation and/or service to the mediation community. (Steve Abel was the first recipient in 2011.)

As we wrap up our interview, Dolly reflects. “I identify as a mother, a widow and a mediator. Mediation has been such a big part of my life. I feel sad to stop.”

### “Mediator” Vanity Plates



And, while Dolly has retired from actively mediating divorces, she continues to support mediation simply by driving her car. When her friend and mediator, Vicky Lewin, moved to



Dolly holding the Steve Abel Award from NYSCDM and the RAFM Award.

Florida, Dolly transferred Vicky’s New York State vehicle vanity plates to her own car and proudly displays the vanity plate, “MEDIATOR”.

**Author’s note:** *A lasting legacy: After my interview with Dolly in December 2016, I made a business connection locally who shared that he and his wife had used Dolly to mediate their divorce over a decade ago. The outcome of their story wasn’t a divorce however. As a result of their work with Dolly, and the positive experience of mediation, he and his wife reconciled and are still together today.*

Trish Blake-Jones is the owner of Blake-Jones Mediation, Inc., where she mediates divorce, family and business conflict. Trish also is a certified Mediator with the Center for Dispute Settlement in Rochester and Canandaigua, regularly mediating court-referred custody and visitation cases, small claims and community disputes.



# Register Early for Discounts! Annual Conference

Pre-conference, Thursday, May 4:

## Two Homes, One Childhood: Joint Custody and Mediating Developmentally Appropriate Parenting Plans

Robert Emery, Ph.D., professor of psychology and director of the Center for Children, Families and the Law, University of Virginia, focuses his research on family relationships and children's mental health, including parental conflict, divorce, mediation, child custody, genetically-informed studies of family life, family violence, and associated legal and policy issues. He has authored over 150 scientific publications, and several books including his latest: *Two Homes, One Childhood: A Parenting Plan to Last a Lifetime* (2016, Avery). Dr. Emery has discussed his work on the Today Show, Good Morning America, The Jane Pauley Show, National Public Radio, in Newsweek and Time magazines, the New York Times and the Washington Post. He maintains a practice as a clinical psychologist, divorce mediator, and parenting coordinator. He is the father of five children.

Annual Conference, Friday, May 5 and Saturday, May 6:

### Plenaries:

#### Communicate with Me! Is what I thought I said What you thought you heard?

Interactive session with Frank Wood, PhD, Your Resilient Divorce

#### Let's Face It! The Art of Confrontation with Challenging Clients

Wendy Behary, Author/Expert

#### Must-see: Annual Update on the Law

Featuring Our Very Own: Steve Abel, Esq., Attorney / Mediator

#### Owning the Room During Mediation

Entertaining luncheon address about using acting techniques and non-verbal communication skills with Laura Bonarrigo, Certified Divorce Coach and Actor (Formerly, Cassie on One Life to Live)

2017 Annual Conference

Turning Challenges into Successes

NY State Council on Divorce Mediation

Pre-conference: May 4  
Main Conference: May 5 - 6

Doubletree Hotel  
Tarrytown, NY

<p>Pre-conference: <b>Two Homes, One Childhood: Joint Custody and Mediating Developmentally Appropriate Parenting Plans</b></p>  <p><b>Robert E. Emery, PhD</b> Author Professor of Psychology Director, Center for Children, Families, and the Law University of Virginia</p>	<p>Opening Plenary: <b>Communicate with Me! Is what I thought I said what you thought you heard?</b></p>  <p><b>Frank Wood, PhD</b> Founder and CEO Thriving With Stress Psychologist TEDx Speaker</p>	<p>Perennial Plenary: <b>Must-attend Update on the Law</b></p>  <p><b>Steve Abel</b> Attorney/Mediator Center for Mediation and Training Editor, Federal Family Law</p>	<p>Closing Plenary: <b>Let's Face It! The Art of Confrontation with Challenging Clients</b></p>  <p><b>Wendy Behary</b> Author Founder and Director The Cognitive Therapy Center of New Jersey The New Jersey Institute for Schema Therapy</p>
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Breakout Sessions to Cover Critical Mediation Topics

Pre- and Post-nuptial Agreements ~ Mediating Special Needs Cases  
Mediating Modification of Child Support ~ Social Security  
The Complex Emotions Behind Conflict ~ Business Valuations  
Working with LGBTQ Clients ~ Life Insurance & Trusts  
Overriding Our Instincts ~ Owning the Room  
Expert Panel: How to Mediate Legal Questions

**PLUS:** Exhibits ~ Annual Auction ~ Abel Award ~ Networking ~ Dancing ~ Fun!

### Breakout Sessions:

- Hiding Behind the Anger: The Complex Emotions that Drive Conflict
- Pre- and Post-nuptial Agreements
- Divorcing Parents and Their Special Needs Children
- Mediating Modification of Child Support
- Social Security: Show Me the Money
- Business Valuations: Making Sure the Deck Isn't Stacked Against One Spouse
- The Emotional and Legal Needs of LGBTQ Clients
- Life Insurance & Trusts
- Overriding Our Instincts
- Expert Panel: How to Mediate Legal Questions
- Mediation vs. Litigation: The Latest Findings

### [Conference Brochure](#)

### [Registration Form](#)

# Grief and Loss in Divorce

*By Nadia Shahram*

On April 29, 2016, at my parents' home in LA, my precious mother leaned back on the sofa, closed her beautiful eyes, and passed away. Just like that. My mother closed her eyes to life, and I've been missing her ever since.

Even after her funeral, I was overwhelmed by the sense of rootlessness I felt. What would mother say to me, is the question I asked myself as I desperately climbed back to the surface to take a breath. What would she want me to do?

"Stop mourning and making yourself sick", she would say. "Change the hurt into strength by transferring the pain into energy."

This is why I am writing about grieving in divorce. I am a divorce mediator and I emotionally invest in each and every one of my clients. How can I learn from my own agonizing journey of loss to help my clients ease the pain of ending their marriage?

Robert Emery, Ph.D. is a professor of Psychology and Director of the Center for Children, Families, and the Law at the University of Virginia. He talks about the complexities to divorce grieving that make it a unique challenge among all types of grieving processes. If left



*Nadia Shahram*

unrecognized, this grief will manifest into something else dark and foreboding. Because the end of a marriage is not symbolized with a funeral, it is easy to overlook the reality of the profound grief of loss upon divorcing. Indeed, the grief is often well disguised in the cloak of rationality, as our society offers most divorcing couples no clear grieving ritual that substitutes as the role of a funeral for the marriage.

When couples are divorcing, they find themselves isolated; even friends and extended family, once a safe oasis for empathy and support, become unavailable. When divorce is high conflict and litigated, the grief of loss is not addressed and may manifest itself in other forms, both

mental and physical. For instance, several years ago a dear friend of mine, who was going through a litigated divorce, sold her husband's custom designer suits for pennies on the dollar, at a garage sale which she was careful to advertise at his place of work. This was her way of avenging the hurt and anger that had resulted from realizing that her husband had been unfaithful over the years. Her marriage died with that discovery, but she could not grieve; she was

feeling betrayed so very deeply that the totality of the loss of family, emotional security and companionship was not yet clear to her.

During divorce, a self-aware person will pass through a grieving process resembling Dr. Elisabeth Kubler-Ross' five stages of grieving death (denial, anger, bargaining, depression, and acceptance). When experienced as part of the process of grieving, each step has its beneficial purposes. The better that one can embrace the need to pass through each of the five stages, including depression, the sooner and more fully that person can experience the wonderful promise at the end of the grieving process. What is that promise? It's nothing less than a new awareness: Divorce is not the end of the world; it is a new beginning.

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## Grief and Loss in Divorce

As Mediators, we are aware, more often than not, that one spouse may have already “checked-out” from the relationship. I have always felt intuitively sensitive to the one partner in a divorce who has not come to the conclusion that they no longer wish to be married. I encourage couples to seek counseling even when they think there is no issue. Encouraging divorcing couples to work with professionals and trusted friends can assist anxious clients, lessen feelings of stress, and help spouses to more readily understand and hear one another and so they can address the issues they face, hopefully with a lighter heart.

I used my recent grieving experience with a couple that bickered bitterly and endlessly over the most trivial details of their splintering relationship. I asked them calmly – “How would you feel if one of you dropped dead right now? Is this how you want your last memory to be of one another?” My simple question finally focused them on what really matters: In the larger scheme, it really does not make a difference what

court papers say...what matters is the meaning we give to the words in divorce papers.

This is indeed the most emotionally gratifying part of my vocation. This is the part that made my mother proudest.

Every so often, I counsel people in my office, wanting to mediate or file for divorce, whose story breaks my heart. They include the loving husband coming back from an overseas deployment with Post-Traumatic Stress Disorder with radically different behavior; a wife enduring cancer treatment but wanting a divorce before she undergoes the removal of the tumor; the sixty-nine year old woman who described her life as “over” after being emotionally and economically abused by her alcoholic husband, once her high school sweetheart. The reasons for divorce have little to do with the grief caused by the divorce. One should, and must, grieve no matter what the cause, even under the most justified reasons for divorce.

Now when I hear the silly cliché that there are “more fish in the sea,” I know, more than ever before, that the partner who utters those words is probably masking hurt. Can love for someone new replace the love you shared with someone else? Possibly not. If you try to find someone new, “fresh fish”, before grieving, it could end up hurting you in the long run. Divorce is the death of a relationship. You owe it to yourself to heal your broken heart and spirit by allowing yourself to go through the grieving process patiently and properly.

As my mother used to quote from Helen Keller:

*“Character cannot be developed in ease and quiet. Only through experience of trial and suffering can the soul be strengthened, ambition inspired, and success achieved.”*

*Nadia Shahram is an Advanced Accredited Mediator with extensive experience in the field of Matrimonial Law. She received training as a Family Mediator from the Rochester Mediation Center and has been in professional practice for over 15 years. [www.buffalomediation.com](http://www.buffalomediation.com)*

### Chuck Newman Steps Down from Publications Committee

Chuck Newman has sharpened his last pencil as editor of COUNCIL NEWS. After many years as contributor, publisher, editor and mentor of the Council’s newsletter, Chuck is stepping down to focus his energies on other volunteer activities.

We will miss his sense of humor, his love of expression and his laser focus on the written word. Chuck set an exacting standard for publishing a high-quality newsletter on behalf of the NYSCDM.

The Publications Committee THANKS CHUCK PROFUSELY for his dedicated committee work and leadership. Chuck will carry on as a NYSCDM board member and member of the Education Committee. We will no doubt continue to seek his guidance.



Chuck Newman

# Transferring Assets in Divorce: Gain or Loss Recognition and Basis

By Mark A. Josephson, Esq., CPA, CFP, CFE, CGMA

As long as certain requirements are met, transfers of property between spouses in divorce should not give rise to a taxable event. However, when addressing the division of property careful consideration should be given to the tax basis (used in determining gain or loss from disposition of the asset) of property being transferred and liabilities associated with such property. This article will discuss some of the basic tax rules for transfers of property in divorce, determining the tax basis of such property and considerations to be aware of to avoid tax surprises after the divorce.

## The Basics: Transfers Incident to Divorce

The tax treatment of property transfers between spouses and former spouses generally fall under the rules of Internal Revenue Code Section 1041 (IRC 1041). This code section provides there is no gain or loss recognized upon transfer of property between spouses. Essentially the receiving spouse “steps into transferring spouse’s shoes” and the tax basis of the transferring spouse carries over to the receiving spouse.

For a transfer to qualify as “incident to a divorce” it must occur within one year after the date the marriage ceases or the transfer must be “related to” the cessation of marriage. Transfers that occur more than six years after a divorce can be challenged and may not qualify as “incident to a divorce”.

The rules of IRC 1041 apply whether the transfer is of separately owned property or marital property. They also apply regardless of the reason for the transfer and what may be received in exchange for the transfer.

## Basis of Property and Holding Period

If a transfer of property from one spouse to the other is structured as an actual sale, the receiving spouse is still not eligible to increase their basis in the property to reflect the agreed upon “purchase” price. This rule will apply regardless if the transferors’ cost basis (the original value of an asset) in the property is less than, equal to, or greater than the fair market value of the property at the time of transfer. Additionally, the holding period of the transferor (the length of time the asset has been held) will



carry over to the transferee. For example, if the husband owned the property for five years and then transfers it to his spouse, the wife’s holding period will also be five years.

## Illustrative Scenarios:

### Transfer of Property Only

Assume Jack transfers property to Mary with a cost basis of \$10,000 and a fair market value of \$100,000. No gain or loss is recognized by either spouse upon the transfer of the property. Mary’s basis in the property she receives will be \$10,000.

### Transfer of Property and Cash

Assume the same scenario as above except Mary transfers to Jack \$25,000 in cash. The cash is not taxable to Jack (as long as it does not qualify as alimony) and Mary’s cost basis in the property is still \$10,000 even though she paid Jack \$25,000.

An important consideration for the spouse receiving the property in the above scenario is the unrealized tax gain inherent in the property received. If this is not addressed in the property settlement agreement they may not be aware of the true “after tax” value of the property they are receiving.

## Tax Tidbits: Transferring Assets

For example, Mary received property with a tax basis of \$10,000 and a fair market value of \$100,000. Assuming the property's fair market value remains the same when she sells the property Mary will have a taxable gain of \$90,000. If she is in a 30% tax bracket, she will owe \$27,000 of tax upon the sale of the property, thus decreasing the "true" value of the property received at the time of divorce. (Note: This is an overly simplified example and does not address special tax rates or exclusions such as the home sale tax exemption.)

### Properties Subject to Liabilities

If property transferred is subject to liabilities that exceed the basis of the property, no gain or loss is recognized. A spouse who receives property and assumes the liabilities attached to the property, is not entitled to an increase in basis equal to the debt nor do they increase their basis when they pay the debt off.

In the previous example, assume the property Jack transfers to Mary is owned by him separately and prior to the transfer he borrows \$30,000 from the bank using the property as collateral. As part of their divorce agreement Mary agrees to assume the loan when the property is transferred to her. No gain or loss is recognized by Jack or Mary. The debt relief to Jack is not taxable income. Mary's cost basis is still the same \$10,000 and when she makes payments on the mortgage her basis does not change.

### Exceptions to Gain or Loss Treatment - Non-Resident Alien Spouse ("NRA")

Property transferred to a non-resident alien spouse or former non-resident alien spouse would not be eligible for the gain or loss exclusion afforded to spouses under IRC 1041. A sale or exchange of property with an NRA spouse or former NRA spouse will trigger a taxable event to the U.S. spouse making the transfer. The transferring spouse would recognize a taxable gain resulting from the difference between the fair market value of the property at the time of transfer and their cost basis in the property. For example, if a U.S. spouse transfers appreciated stock to an NRA spouse as part of a divorce settlement, the U.S. spouse would have to pay tax on the inherent gain in the stock as if he or she had actually sold the stock. Tax

implications must also be considered for the NRA spouse as certain assets transferred to the NRA may give rise to U.S. income tax obligations.

### Summary

When mediating property settlements, it is important to accurately determine the difference between the fair market value and cost basis of property being divided to understand the built-in tax effect and to ensure a fair and equitable division of property. Any liabilities associated with property should be considered as well. Additionally, it is important for the receiving spouse to obtain and maintain the appropriate documents to substantiate their cost basis (E.g., closing statement for original purchase, etc.) at the time of acquiring the property. This information is necessary to support the cost basis and holding period claimed in the event of a future sale of the property. If the proper documentation is not obtained and the cost basis of property is challenged by the taxing authorities, the cost basis can be determined to be zero.

*For more information regarding the Internal Revenue rules governing transfers of property pursuant to a divorce see IRC Sec. 1041. Also refer to the Internal Revenue Service's Publication 551 (2016), Basis of Assets available at <https://www.irs.gov/pub/irs-pdf/p551.pdf> and 504 (2016), Divorced or Separated Individuals available at <https://www.irs.gov/publications/p504/>.*

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# NYSCDM Helps Address the Rising Costs of Professional Liability Insurance for Non-attorney Mediators

*By John Piper, Membership Committee Chair*

Professional liability insurance, or as it is commonly known, Errors and Omissions Insurance, has long been a mainstay of practitioners in all professions along with most boards of directors. For mediators, particularly non-attorney mediators, the cost of such insurance has increased considerably over the past year. For many single-mediator practices, there has been a change in the levels of coverage that is available for professionals.

This past fall, my errors and omission renewal (which I obtained through another association) came with a couple of caveats. The lower limit of coverage (i.e., \$300,000), was no longer available. The new lower limit of coverage was now \$1 million. Along with that came a notice that my new premium would increase by 50%!

A report from my insurance agent was more disconcerting as she was unable to find coverage below \$1 million, and found that this seemed to be an alarming trend for her clients who are small professional practitioners. Subsequent conversations with other mediators in the area confirmed this trend.

My search for a new errors and omissions provider was brief as I reached out to Complete Equity Markets, the mediator liability insurance company listed on the [NYSCDM website](#). The ease of applying and obtaining insurance as a new client was amazing! Better yet, the provider was able to match my needs for insurance and provide coverage for hundreds of dollars less than my former carrier. My needs were met through NYSCDM, and I continue to spread the word to other mediators looking for affordable solutions for professional liability insurance.

Isn't that what associations should do for their members?

## Please Update Your Find-A-Mediator Profile on the Council Website

One of the most visited pages on the Council's website is the Find-A-Mediator Directory. As a member, a profile is included in your membership and is a valuable marketing tool working 24/7 on your behalf promoting your divorce mediation practice. Recently, I noticed that many members have not yet updated their profiles with their profile photo, address, phone number, link to website, bio, credentials and more.

To optimize your chances to attract new clients, I strongly encourage you to take five or ten minutes to update your Find-A-Mediator profile. Just log into the member portion of the website using the link below. Your username is your email address and your password is whatever you designated it to be. If you forgot, you can reset the password at any time using the link below. (To set up your password, [click here](#). To log in, [click here](#).)

While you are logged in, take some time to learn about the Member Portion of the website by taking the virtual tour I created for you. [Part 1](#) (If you advance to the 16-minute mark, you can go straight to the member-only tour.) [Part 2](#)

As always, feel free to contact me with your comments, suggestions and questions.

Patty Murray, Executive Director  
[director@nysmediate.org](mailto:director@nysmediate.org)

# New Member Benefit: Education Committee Hosted First Webinar

## Retirement and Divorce: The Good, the Bad and the Ugliness!

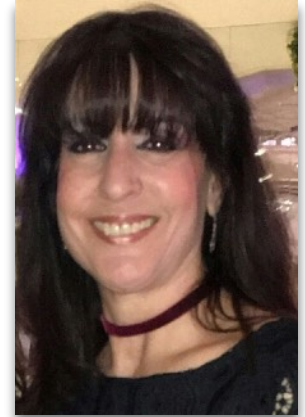
*How to help your clients go from "yours and mine" back to "ours"*

Available On-demand

This complimentary webinar -- *developed especially for NYSCDM members as a new member benefit* -- was held on March 30th and focused on the following:

- What you need to know but were afraid to ask about Defined Contribution vs Defined Benefit plans
- How psychological/emotional factors can play out for the participants of the divorce mediation process, especially around issues concerning the equitable distribution of financial assets, including retirement plans.
- How divorce mediators can help their clients behave more rationally around resolving money-related conflicts, thereby preventing impasses in the mediation process.

Our featured speakers were **Donna La Scala** and **Marc Miller, Ph.D.**. If you would like to listen to the archive recording, please email [director@nysmediate.org](mailto:director@nysmediate.org).



Donna La Scala,  
American Portfolios



Marc Miller, Ph.D.  
MLM Coaching & Consulting, LLC

## NYSCDM Names New Executive Director

The Council is pleased to announce the contracting of Patty Murray, of Murray Public Relations, LLC., as the NYSCDM Executive Director, effective immediately. In addition to managing the Council's administrative operations, programs and communications, Murray will increase engagement with Council members, board members, committee chairs, partner organizations, members of the public and other key stakeholders.

During the past few months as interim director, Murray managed the transition to MemberClicks, a comprehensive association management platform that has already improved efficiencies and saved costs. In the Fall, she redesigned *Council News* and our member communications. This month, she collaborated with the Education Committee to host and moderate our first webinar - *a new member benefit!* Murray has also been working closely with the Annual Conference Committee to implement new marketing strategies that have improved registrations.

The Board is excited about the energy and ideas Patty will bring to her assignment.

*Welcome Patty!*



Patty Murray named new  
Executive Director  
for NYSCDM