

Everyone has likely heard horror stories about someone they know being forced into a courtroom to “duke out” issues pertaining to a divorce. However, many people do not realize that divorce does not have to be ugly. Rather, it can be a respectable, private and dignified process—with cheaper price tag—when the parties utilize the collaborative divorce process, mediation, or privately negotiated settlements.

COLLABORATIVE DIVORCE

The collaborative process involves both spouses committing to settle their divorce without ever seeing the inside of a courtroom. Spouses must retain collaboratively trained attorneys to assist them in the process, which includes a series of meetings at the attorneys’ offices rather than taking the issues in front of a judge for resolution. The process focuses on goals and interest-based negotiations instead of the parties taking positions and pitting against each other.

There is complete transparency in the collaborative process, unlike the game playing and manipulation that often goes on in litigation. In the collaborative process, parties focus on their futures and respective goals rather than pointing fingers and looking backward. Collaborative practitioners are trained to help the parties avoid the “blame game” so the process stays productive and the parties are continuously moving closer to their goals.

Sometimes it is necessary to employ the use of other collaborative professionals in the process, such as collaborative coaches, who are mental health professionals. They run the meetings, help the parties keep their emotions in check, and take the minutes. Financial neutrals, such as CPAs and financial advisors, can assist by educating the group on the parties’ finances, helping with budgeting, providing an inventory and accounting of the parties’ assets and debts, and valuing a business.

Collaborative divorces are handled in stages: gathering information (where the parties cooperate in exchanging financial and other pertinent information),

AVOIDING THE COURTROOM: ALTERNATIVE PATHS IN DIVORCE



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exploring options that will help the parties meet their goals, testing consequences, and, in the end, finalizing the parties’ settlement.

MEDIATION

Mediation is another viable option for settling a divorce without ever setting foot in court. A mediator is a third-party neutral who assists couples in coming to an agreement on things they may not otherwise be able to agree upon independently. Going through the mediation process tends to be a cheaper option than litigation. At the end of a successful mediation, the parties get an agreement, called a memorandum of understanding, which is a non-binding settlement agreement. Most mediation participants have private attorneys who review the memorandum of understanding and formalize it into a binding marital settlement agreement. One of the spouse’s attorneys, not the mediator, then files the divorce complaint and the final legal documents with the court.

PRIVATELY NEGOTIATED SETTLEMENT

Some couples work out all of the details of their divorce by themselves, and then merely hire an attorney to make it legal. This cost-saving measure is a great option for parties who are able to adequately communicate with each other. Since an attorney can never represent both spouses in a divorce because it is an ethical conflict of interest, the attorney representing one of the parties can do all of the paperwork. The unrepresented spouse will then have the option to pay for another attorney’s time to review the paperwork before signing to make sure he or she understands the deal.

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