

YOU HAVE A CHOICE

Now that the decision has been made to divorce, you come to another important decision – how will you accomplish your goal? There are several roads leading to the termination of your marriage, and the one you choose can have a significant impact on your future and that of your family. The purpose of this paper is to give you sufficient information about the various routes you and your spouse can take so that you can make an informed decision about which road to follow.

"Kitchen Table" Settlements

This settlement method is simple. The husband and wife sit down "at the kitchen table" and work out an arrangement that satisfies each of them. The agreement can be taken to a lawyer to be put into legal form, or used to complete do-it-yourself divorce forms.

Unlike some other divorce options, this method of reaching agreements can produce inexpensive, quick, private agreements for couples who do not have children or substantial assets. Without the benefit of legal advice, however, you may not know if you are giving up valuable rights. It is also easy to "re-invent the wheel," or make mistakes that someone with family-law experience could help you avoid. People often find, upon taking the agreement to a lawyer, that questions will arise that may cause one or both spouses to change their agreement. If the husband and wife do not have equal information and equal power in the relationship, one person might not get his or her needs met.

Do-it-Yourself Divorce

Bookstores and online resources sell forms that can be used to handle a divorce without attorneys. Forms may also be available at local law libraries. Simple forms for people without children or substantial property are also available online without charge. Divorce kits or forms generally provide a check-list approach to property and child-related issues, so users are not left completely in the dark about their options. But not all forms are equal; some can create more problems than they solve. When children and real estate or other major assets are involved, the forms may not be detailed enough to do what you are trying to accomplish. Further, check lists cannot inform you of your rights and leave little room for creativity. If the husband and wife do not have equal information and equal power in the relationship, one person might not get his or her needs met.

Early Intervention Mediation

Mediation is assisted settlement negotiation. Mediators don't take sides, and are used for the sole purpose of trying to help people reach a settlement. Many couples find working with a skilled mediator at the start to be a helpful and satisfying way to settle the issues in their divorce. A mediator is a neutral party, not necessarily an attorney, who can help the couple resolve all of the questions that a court wants addressed in a final divorce decree. Even if the mediator is an attorney, he or she cannot give the parties legal advice. Often couples who choose this route to resolution will hire an attorney or attorneys to give them legal guidance before or during the mediation process, which usually is conducted in a series of joint meetings with the mediator.

Collaborative Law

In the Collaborative Law model, husband and wife and their lawyers agree in advance that no one will take any contested issue to court. The “Collaborative Team,” which often includes mental-health and financial professionals, focuses its attention on finding ways to restructure the family so that everyone involved gets their needs met to the greatest extent possible. The lawyers on this team should be family lawyers with experience and training in Collaborative Law. If a husband and wife decide to follow the Collaborative Law road to divorce, they must sign an agreement that they will share all information available to them about their property and children. They agree to work together with their attorneys and other professionals to come to a mutually arrived at solution that meets both of their most important goals and concerns. In the event that they are not able to settle their cases using the Collaborative Law model, litigation attorneys can still take the case to court, but the Collaborative Law Team cannot continue to represent them.

Collaborative Law is conducted in a series of joint meetings in which the parties and their lawyers, and possibly other professionals, sit down together in the same room. Under Texas law, everything that is said in these meetings is confidential and can never be brought up in court. Participation in the process is voluntary, and can never be ordered by a court. Either party may choose to end the process at will, and both parties must agree to any resolution that is reached.

Litigation

In litigation, decisions are made for the parties by a judge, or sometimes a jury. There are very strict rules about what information may be presented to the decision-maker.

Litigation does provide resolution for people who cannot find a way to settle their differences any other way. The court system is the only way to “force” a reluctant party to deal with family law issues. Litigation, however, is a process that often focuses on the negative aspects of divorce and other family law matters. In comparison to some other divorce options, it causes people to focus on how they are “right” and the other is “wrong,” when they really may just have different ideas about how their lives should look after divorce. Litigation can be expensive and destructive to relationships. Even though most cases settle before they ever go to trial, the process of preparing to go to trial, if necessary, can cause relationship damage that is difficult – if not impossible – to repair. The costs of litigation can use up funds that could be put to better use, like children’s college or litigants’ post-divorce financial autonomy.

Mediation is generally part of the litigation process. In most Courts, the parties are required to try to settle their case through mediation before they go to court for trial. The mediators are neutral and can offer clients a different, unbiased perspective. Also, having both clients, both lawyers and a mediator in the same place at the same time with everyone’s attention focused on getting a settlement can often create a positive environment for making agreements. But mediation often takes place just before a case is scheduled to go to trial, after the parties have already spent money, time and emotional energy fighting.

Mediation under these circumstances can sometimes feel coercive to clients, who may never have discussed the realities of their situation with their attorneys.

Arbitration

Although seldom used, arbitration is another road to resolution that is available in a divorce, if both parties agree to utilize the process. An arbitrator is a hired judge who hears the evidence that would otherwise be presented in a trial, and the arbitrator's decision can be binding or non-binding, depending on the agreements of the parties. Like Collaborative Law, an agreement to arbitrate in a family law matter must be in writing. An arbitrator can be hired to decide all of the issues in a divorce or just one or more. Unlike a trial to a Court, the hearings before the arbitrator can be heard at times convenient to the parties and their attorneys. If everyone has agreed that the arbitrator's award is binding, the Court must enter a judgement that reflects the arbitrator's decision. A trial to an arbitrator may be informal, or may follow all of the rules of evidence and discovery that are required in a trial to the Court, depending on the signed agreements. An arbitration can be heard before one judge or three judges, depending on the signed agreements. Either way, the arbitrator must be paid for his or her time, which could add up to the same cost as litigation.