

Alternative Dispute Resolution Choices in Divorce

Prepared by: Frederic E. Lieber CPA, ABV, CFE

Divorcing couples have several choices in determining the method by which their marriage will be terminated. In addition to the adversarial form of divorce, litigants may choose to Mediate their divorce or participate in a Collaborative Divorce proceeding.

The adversarial choice involves both parties hiring attorneys and other required professionals, which may include financial, mental health, actuarial, real estate and childcare specialists, among others. The process involves a court mandated procedure that includes filing, a series of discovery requests and affidavits, analyses, meetings, court hearings, depositions, negotiations and ultimately a trial if the parties are unable to reach a settlement without the assistance of the court. This is a protracted process that can be expensive, time consuming (several years minimally) and emotionally draining for the litigants and their children. It is, however, the process chosen by the great majority of divorcing couples.

The Mediation process includes the use of a neutral Mediator who facilitates a series of discussions between the parties that enable them to reach their own resolution of the divorce. Each party has their attorney to consult with as well as other specialists as required. However, the attorneys and other professionals are not part of the mediation process other than as “outside” advisors. The Mediator may speak with the professionals during the pendency of the mediation with the knowledge of the parties. Upon completion of the mediation process and having reached an agreement, the parties have their attorneys draft the Marital Settlement Agreement. The mediation process is less costly both financially and emotionally and occurs over a relatively short period of time. It requires a highly motivated couple that can set aside emotional issues and treat their dissolution in a business-like fashion. Additionally, a trained and skilled Mediator aids in moving beyond emotional issues and assists the parties in remaining focused on the issues of the divorce.

Collaborative Divorce is a process where the parties, their attorneys and outside professionals agree to work together as a team to reach an equitable solution to the dissolution. An agreement is signed by all parties that defines the process and essentially provides a non- “litigated” environment where all parties seek a common and just solution. Although the attorneys remain advocates for their clients, they also are advocates for the collaborative process. In this fashion there is a mutuality of focus by all parties on the resolution of the divorce through a series of honest interchanges and sharing of information. The end result is one that has been through an in-depth process under the scrutiny of all of the parties to the collaborative process. This usually takes less

time and is less costly both financially and emotionally than an adversarial divorce proceeding. It requires professionals trained in the collaborative process and dedicated to a jointly structured conclusion as well as parties that remain focused on the purpose of the collaborative undertaking.