

Avoid litigation in a divorce by choosing Alternative Dispute Resolution

By Trey Yates

While litigation is still an option for divorcing couples, many are turning to Alternative Dispute Resolution (ADR) options to save money, save time and more effectively control the outcome. Through ADR methods such as mediation, arbitration or collaborative law, couples may be able to avoid the courtroom, resolve differences, keep the details private, and possibly help create a post-divorce relationship that better meets the needs of their minor children.



In the greater Houston metropolitan area, most divorcing couples are required to at least try mediation before going to court. Mediators can be neutral attorneys, financial professionals or other trained professionals who know divorce laws. They should also be experienced in facilitating communication to help couples reach a settlement that is fair, meets as many of their individual needs as possible, and is in the best interests of their children. Mediators have no decision-making authority, unlike a judge or arbitrator.

Sometimes mediation does not result in a settlement agreement. If this occurs, the couple may try a second mediation, participate in **arbitration** (where a judge or attorney hears the parties, reviews the numbers and makes the decisions), or proceed to litigation.

Couples facing divorce may want to explore a relatively new ADR option for legally ending marriage called **collaborative divorce**. This approach emphasizes cooperation over confrontation and problem-solving over grievance-airing, and was developed as a way to minimize battles over property division, legal bills and emotional anguish of a traditional divorce process.

Here's how collaborative divorce works. Divorcing couples agree in writing to forgo the courts and work together on developing a fair settlement. In the collaborative process, while couples may not always agree on everything, they are encouraged to try to understand each other's needs, interests and point of view. This is designed to enhance trust, reduce hostility and facilitate a settlement that works for everyone.

In collaborative divorce, each spouse is assisted by a lawyer so they have the benefit of individual counsel. All negotiations take place during four-way meetings with both parties and their lawyers. Attorneys gather documents, guide settlement meetings and strategize with their clients.

One significant drawback to the collaborative approach occurs if the process breaks down and the couple cannot agree on a settlement. Both collaborative attorneys who worked on the case must withdraw and each spouse must hire a new attorney -- essentially going back to square one. This is likely to prolong the divorce process and increase costs.

ADR options are not for everyone. In order for these approaches to be meaningful, effective and fair, both spouses should have relatively equal “bargaining power,” and should not be overly emotional, angry, fearful or intimidated by the other. ADR options also may not be appropriate for the mentally or emotionally incapacitated, or anyone struggling with substance abuse or domestic violence. In addition, full disclosure is required and both individuals must be fully informed of all relevant issues – i.e. legal rights, assets and liabilities, etc.