

Consider Alternative Dispute Resolution to avoid divorce litigation

By Trey Yates, Texas Board Certified Family Law Attorney

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.



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The decision to end a marriage is hardly ever an easy or happy one. And the process is filled with many questions and concerns. Your lawyer will advise you to collect a variety of financial records and to compile details information about your family's monthly expenses. Although time consuming, this activity will become an important part of your financial planning process.

Why a post-divorce budget and cash flow plan should drive your divorce settlement

By Patricia Barrett, CFP, CDFA

If you have recently filed for divorce, are anticipating a divorce, or are in the midst of one, I can appreciate how many emotional, legal and financial issues you are grappling with at this time.

Save time and money by assembling your support team now. A good therapist can help you and your family with emotional challenges. Close friends and family members can also provide comfort and support. An experienced, board certified family law attorney can help with legal matters. And a certified divorce financial analyst can show you why setting up a post-divorce budget and cash flow management plan should drive your divorce settlement decisions.



In all likelihood, your divorce settlement will affect you and your family for the rest of your lives. Consequently, the financial component of your divorce should be a priority for you. As a certified divorce financial analyst, I help divorcing spouses evaluate the inventory of all marital assets and liabilities. With this data, I then use proprietary tools to create a number of

spreadsheets and tables detailing the marital estate, taking into account individual situations, adjusting for debts, expenses and taxes when necessary and other unique circumstances.

From here, my client and I plan a post-divorce budget, allowing for both immediate and long-term goals. A good strategy is to start at a point in the future -- 10, 20 or 30 years out and work back to the present. This way, provisions for long-term goals and retirement are built into the plan and are less likely to be forgotten due to month-to-month demands on income.

As we create this financial overview, we take into account the specific spouses' and children's needs in the present as well as in the future, including items such as healthcare insurance, private school and college expenses, taxes, housing costs, special needs and much more. My goal is to help clients see the financial side of divorce from a business perspective -- taking the emotions out of the equation as much as possible.

This is where divorce financial planning becomes a roadmap not only to one's future, but to informed divorce settlement decisions regarding asset division, post-divorce budgeting, home purchase or sale, retirement, and other issues.

As I often tell my clients, every dollar in the marital asset column is not created equal. A dollar of home equity is not the same as a dollar invested in a retirement fund. Dividing the marital estate *equitably* requires careful research, financial expertise and consideration for all concerned.

Divorce is an emotional experience, as well as a legal and financial one. Yours and your family's future depends greatly on you making sure your emotions don't get the best of you while negotiating a settlement. Tend to emotional challenges with your therapist. When it comes to the financial and legal sides of divorce, make sure you are engaged in the process and working with experts who can help you make smart and informed decisions you don't regret later.



Split Decisions

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featured in *Houstonia* magazine, May 2015 issue

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