

# "I'm thinking of divorce..."

Options for couples seeking to end their marriage  
- from the kitchen table to court -

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# Disclaimer

- The purpose of this presentation is to give you clear, unbiased information on the options you have when considering divorce.
- This presentation is NOT legal advice and should not be considered legal advice.
- This presentation is NOT promoting divorce, but simply recognizing that divorce is a process many couples face. We would like any couple seeking a divorce to do so as an informed consumer of the legal process.

# Where do I turn?

- Call an attorney?
- Talk to a friend or relative who has been through divorce?
- A marriage counselor?
- My pastor?
- The internet?

# What is divorce?

- Is it a legal event?
- Is it a financial event?
- Is it a parenting event?
- Is it an emotional event?

Divorce is an emotional, relational, financial, and parenting event with legal overtones.

# The importance of knowing your options

- Typically, couples do NOT know their options when it comes to divorce.
- Most information comes from hearing what others do.
- The next biggest sources about the process are TV and other media.
- Not knowing = limited choice, minimal outcomes.

# There are lots of options

- Going to court, each of you with your own attorney, is only 1 of several options.
- The continuum of options is based on how much control you and your spouse have over the process – from almost complete control to very little.
- Going to court results in very little control – settling for a minimum, safety net approach.

# Why want control?

- You know your situation best.
- When you have more control, you can more efficiently use your knowledge in face-to-face, real-time discussions.
- Outcomes can be more creative and flexible, based on the needs of your family.

# ADR Continuum

Alternative Dispute Resolution

MOST  
CONTROL

LEAST  
CONTROL



## Family-Centered Model

- Greater likelihood of better quality, longer-lasting outcomes
- More creative, flexible
- Based on interests and personal values
- Problem solving approach
- Multi-disciplinary
- Relational aspects honored

## Court Model

- Limited outcomes within the shadow of the law and trial
- Adversarial
- Competitive
- Distributive
- Evaluative

# Kitchen Table

- What is it?
  - You and your spouse discuss & decide upon the details of separation – property, finances, and kids if you have them – at home.
  - You bring the details of your agreement to your attorney who then drafts the dissolution papers and files them with the court.
  - Alternatively, you can fill out and file the papers yourselves.

# Kitchen Table

- Pros

- Maximum control over the process.
- Easier if no children involved.
- Very low cost.

# Kitchen Table

## • Cons

- You may not give sufficient consideration to important financial and/or legal issues & implications for the future. In other words, you don't know what you don't know!
- If unaware of certain tax implications, you may make decisions that have a negative financial impact.
- If filing on your own, you have minimal information on the process or outcome.

# Mediation

- What is it?
  - You and your spouse meet with a qualified mediator to discuss the details of your separation (property, finances, kids).
  - The mediator serves as a neutral third party who facilitates the discussion toward agreement.
  - If the mediator is an attorney, he/she may also give information on legal aspects of the divorce (but not advice).

# Mediation

## • Pros

- Considerable control over the process.
- Easier if the couple is largely in agreement on key aspects of the divorce.
- Low cost.

## • Cons

- You may not give sufficient consideration to important financial and/or legal issues.

# Collaborative Law

- What is it?
  - A team approach to working out an agreement for divorce.
  - Consists of 2 attorneys, a divorce coach, a parenting specialist, and a financial specialist.
  - Has a “participation agreement” that requires the couple to commit to resolving the aspects of the divorce out of court.

# Collaborative Law

## • Pros

- Considerable control over the process.
- Uses a team approach that covers the relational, financial, parenting, & legal aspects of divorce.
- Cost effective – is typically less costly than settlement, arbitration, or trial.
- Possibly the most family-friendly approach because of the care taken to support children.

# Collaborative Law

- More pros
  - Less stressful as the process supports both parties in bringing their “best selves” to the table.
  - Can be responsive to special needs (e.g., chemical health issues, mental health issues).
  - Can serve as a “safe container” in which to reach resolution.

# Collaborative Law

- Cons

- May not be appropriate if 1 partner is unwilling to collaborate (i.e. insists on taking an adversarial, win-lose approach).
- If the team is unable to reach a settlement, the participation agreement requires the couple to "start over" with the divorce process.

# Settlement with Conventional Attorney

- What is it?
  - Each partner has his/her attorney.
  - There is a discovery process.
  - The details for settling issues relating to property, finances, & children are negotiated until a settlement is reached or you go to trial.

# Settlement with Conventional Attorney

- Pros

- Familiar to most people.
- Helpful when 1 spouse is not interested in collaborating.
- May be appropriate in cases where there is domestic violence or substance abuse.

# Settlement with Conventional Attorney

- Cons

- Adversarial, win-lose approach.
- Time consuming.
- Often involves custody evaluations (psychological evaluation of both parents to determine balance of care between parents).

# Settlement with Conventional Attorney

- More cons
  - Can be costly because of the discovery process, interrogatories, experts, and motions.
  - May not be responsive to the emotional and relational aspects of co-parenting.
  - Threat of going to trial if details cannot be negotiated.

# Arbitration

- What is it?
  - The details needing settlement are brought to a court official (typically a lawyer or former judge) who both mediates and then has the authority to make binding decisions regarding the divorce.
  - Less formal than a trial but is conducted like a hearing or trial.

# Arbitration

- Pros

- Can cut short the waiting period to have a case tried in court.
- It's a way to stop ceaseless litigation.
- Can be used to decide all or only 1 issue.
- Any decision reached cannot be appealed.

# Arbitration

- Cons

- Arbitrated issues cannot be appealed (whereas the outcome of a trial can be appealed).
- You may be very unhappy if the matter is decided in your spouse's favor, and have no recourse.
- Can further harm the co-parenting relationship when children are involved.

# Trial

- What is it?
  - Have your divorce settled by a judge after each attorney has presented their case on you and your spouse's behalf.

# Trial

- Pros

- Familiar to most people (at least from TV).
- Judge will decide on issues that have not been negotiated or settled by your respective attorneys (but appeal is still possible).

# Trial

## • Cons

- Stressful, time consuming, & expensive.
- Minimum flexibility - you get the minimum, safety net of the law that will have you settling "low."
- Adversarial and competitive in nature.
- Children often suffer as they see their parents experience the conflict inherent in the process.
- Continued deterioration of co-parenting and extended family relationships.

# For more information

- Contact:

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651-882-6234 [NewFamilyBeginnings.com](http://NewFamilyBeginnings.com)

- Visit [www.CollaborativeLaw.org](http://www.CollaborativeLaw.org)

- Visit [www.IACP.org](http://www.IACP.org)