

DIVORCE PROCESSES



Q: There are so many options out there for people who need to get divorced – mediation, collaborative law, arbitration, litigation. Which process is right for me?

A: That is a good question, and there is no process that is right for everyone. Before we get into what might be right for you, let's start with a brief overview of each option.

THE THINKING WOMAN'S
DIVORCE RESOURCE

MEDIATION This is a voluntary settlement process, in which you and your spouse work out of court with one neutral mediator to arrive at a resolution. The mediator does not represent either spouse. He or she assists both of you in reaching a settlement, but cannot force a solution. Often, each party is assisted by outside consulting attorneys throughout the mediation, but the attorneys normally don't attend the mediation sessions.

ARBITRATION This is another voluntary settlement process that takes place out of court, like mediation, and involves one neutral arbitrator. Unlike the mediator, the arbitrator has the power to impose decisions on you and your spouse where you can't agree. You and your spouse are almost always represented by attorneys, who are in the room during the sessions with the arbitrator.

COLLABORATIVE LAW This is another voluntary settlement process that takes place out of court. You and your spouse each hire a collaborative lawyer to help resolve your case. Collaborative lawyers commit to work with you only towards settlement and so will not to take your case to court. The settlement negotiations take place primarily in meetings with you, your spouse, and your attorneys together, but your attorneys will also negotiate directly with one another.

SETTLED NEGOTIATION In this process, you each hire a separate lawyer to try to negotiate an out-of-court settlement. Unlike collaborative law, however, most traditional divorce attorneys can go to court if necessary, so you don't need to hire a new lawyer if negotiations break down. The settlement negotiations are generally conducted between the lawyers (only) in person, in writing, or by phone, so you don't often sit in the same room as your spouse.

LITIGATION In litigation, a judge will decide some or all of the issues in your case after a trial or trials. While many divorce cases may initially go to court, very few actually end with a trial. It is sometimes necessary to commence litigation if, for example, your spouse simply won't engage in the process or act reasonably. Many judges will try to aid a settlement by providing a "reality check" to your conflicting positions.

Given all these different approaches, how do you know what's right for you? To start, keep in mind that these processes are not mutually exclusive. You may begin down one path and end on another. For example, absent extreme circumstances such as abuse or a financial emergency, most traditional divorce lawyers try to settle out of court and only request judicial intervention if absolutely necessary. A settlement negotiation could turn into a mediation or arbitration if you and your spouse would like the assistance of a neutral professional on a particular issue. On the other hand, a mediation or collaborative process may end up in litigation if you and your spouse are not able to reach a compromise that works for you both.

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Determining the right approach for you depends on your individual preferences and goals. Here are some key things to consider:

PROXIMITY Are you comfortable being in the same room as your spouse negotiating these issues? If so, mediation or the collaborative process could be a good approach. If not, you might consider starting with settlement negotiation, in which there is more of a buffer between you and your spouse, as most interactions occur between the lawyers. The downside to the buffer, however, is that it is easier for you or your spouse to become entrenched in positions and move more slowly toward compromise.

EXPENSE How much money are you able to spend on the process? The least expensive option is usually mediation. Collaborative divorce and settled negotiation processes are generally more expensive than mediation, and roughly comparable to each other. Arbitration can increase your costs because you are paying for two attorneys plus the arbitrator. Nonetheless, arbitration can still be less expensive than litigation, which almost always involves more formal legal steps and more attorney hours. If you go to trial you should be prepared to increase your legal costs significantly.

POWER Is there a significant power differential between you and your spouse? If so, you may prefer to work primarily with an advocate, rather than a neutral. You may also prefer not to be in the same room with your spouse. Nonetheless, if the primary area of imbalance is financial sophistication, you can work with financial experts and accountants in any of these processes to remedy that imbalance. The key is be able to express—on your own or through your advocate—your goals and preferences in your settlement process.

COMPLEXITY How complex is your situation? If you have a complex financial picture, it's important to meet with an advocate at the outset. If you choose to go the mediation route, be sure to have your consulting attorney advising you throughout the process. We recommend you choose a mediator who's also an attorney.

Regardless of the process you choose, perhaps the most important component is choosing the professional or professionals with whom you will work. Beyond feeling a personal fit with that professional, we recommend seeking out an attorney or mediator whose approach to your case is both thorough and balanced, and resonates with your own instincts regarding resolution.



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