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PROCESS OPTIONS FOR DIVORCE

Any couple going through divorce generally needs to make decisions in three (3) major areas: (1) property division, (2) parenting responsibility, and (3) financial responsibility. Property division has to do with the inventory, valuation, and division of a couple's assets and liabilities. Parenting responsibility refers to the decision-making and the time arrangements for the children. Financial responsibility refers to the financial well being of the family including spousal support, child support, and tax issues. Spouses experiencing divorce not only have choices in how the above-mentioned substantive issues are resolved, but also in the processes that they may use to resolve the substantive issues. There are four basic processes that divorcing couples may wish to consider as they make decisions for their family.

1. Kitchen Table Divorce The kitchen table divorce is also known in the legal arena as a non-contested divorce. In a kitchen table divorce both spouses sit together at the "kitchen table" to discuss all of the issues related to their divorce. Once the spouses have made their decisions, one of them contacts an attorney who prepares all of the necessary documents that are required by the court. The advantages to this process option are that the spouses maintain control of the decisions regarding their divorce, the timing of the divorce, and the cost of the divorce. The attorney who is hired to prepare the necessary documents can only represent one spouse, to whom the attorney can give legal advice. The attorney may not give legal advice to the other spouse, which is the biggest disadvantage of the kitchen table divorce. The spouse who is not receiving legal advice may be foregoing certain legal rights of which the spouse is not aware by not having spoken with an attorney. While this process is almost always the least expensive way to obtain a divorce, both spouses must be aware of their need for legal advice. This process generally works best for couples who have very few assets or who have quite a few assets but are financially savvy in their understanding of the assets. The process also works well for spouses who can negotiate without third party assistance and who have a good working relationship.

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2. Mediated Divorce In a mediated divorce, spouses will meet together with a mediator, who is an impartial, balanced, third party that will help the spouses discuss all of the substantive issues for the divorce. While the mediator does not give legal, financial, or parenting advice, the mediator may provide legal, financial, or parenting information to the parties in order to help them explore all of the various options available to them. The spouses agree to fully disclose all information, financial and otherwise, that is necessary to make decisions on the substantive issues. Part of the mediator's job is to organize the process in a way that allows both parties to have all of the information that is needed to make informed, consensual decisions. Both spouses may consult attorneys for legal advice at any point in the mediation process. At the end of the process, the mediator prepares a marital settlement agreement and parenting plan, which is reviewed by the parties and their attorneys. At a minimum, at least one party will then generally need an attorney to prepare the remainder of the divorce documents and to process the documents through the court system. Mediation works well for spouses who are able to negotiate with third party assistance and who wish to remain in control of the decisions that are reached during the divorce, the timing of the divorce, and the cost of the divorce. Mediation is also advantageous in that the mediator organizes all of the topics for the divorce to be certain that the spouses have covered all of the topics that are required by the court system as well as all of the topics that are important to each of the spouses. While mediation is generally more expensive than a kitchen table divorce, it is highly advantageous for many spouses because the mediator is able to assist them in exploring options to settle the issues in their divorce in a manner that is custom designed for their family's needs.

3. Collaborative Law Divorce In a collaborative law divorce, each spouse has an attorney who is committed to the process of settlement. In the collaborative law divorce, both spouses as well as their attorneys meet together for a series of four-way meetings where all of the substantive topics for divorce are discussed. The parties and their attorneys are so committed to the process of settlement that they all sign a participation agreement indicating that they will all participate in good faith and will fully disclose all information that is relevant to their decision-making. The participation agreement also provides that both attorneys are required to withdraw from the case if either spouse threatens to pursue litigation or does not participate in good faith. This withdrawal provision of the participation agreement allows spouses to negotiate, with the

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help of their attorneys, without the threat of litigation. This actually frees spouses up to focus on making informed, consensual decisions that are acceptable to both. The disadvantage of this process is that if either spouse does not fully disclose all of the relevant information, then the collaborative process will terminate and each spouse will be forced to start over again with new attorneys. One advantage to this process is that each spouse has the benefit of having his or her attorney present during all negotiations, which means that they have access to legal advice as well as legal information during the negotiations. The collaborative law process is also advantageous in that the parties remain in control of the decisions, the timing of the divorce, and the cost of the divorce. This process is more costly than the kitchen table divorce and may be more costly than the mediated divorce.

4. Litigated Divorce In a litigated divorce, one party contacts an attorney, who prepares a petition asking the court for the divorce. A summons is prepared by the sheriff's department; the other spouse is then served with the summons and a copy of the petition. The other spouse generally hires an attorney, who prepares a response to the original petition. In the best of all litigated divorces, both attorneys would act in a cooperative manner to negotiate the terms of the divorce on behalf of their clients. If the attorneys are not able to negotiate a settlement for their clients, then the case will proceed to trial where a judge will make the decisions. A litigated divorce is almost always the most expensive process option for a divorce. Instead of information being disclosed openly and voluntarily, information is generally not disclosed unless one side requests it. The process of obtaining information through formal discovery is often tedious and very expensive. In addition to the financial expense, there is the mental and emotional expense of not being in control of the decision-making, the timing, or the cost of the divorce. Putting decisions before a judge is truly a roll of the dice with no guarantee of the outcome. Often, people come out of a litigated divorce with decisions handed to them that seem to have no relevance to their specific situations. Despite the risks and the costs of a litigated divorce, there are some cases that are suitable for this process option, particularly in situations of severe domestic abuse, situations where one spouse is intent on hiding assets or seeking revenge, or situations where the spouses simply need a judge to make decisions for them.