

ALTERNATIVES TO DIVORCE LITIGATION

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In the Commonwealth of Pennsylvania parties who are experiencing a divorce and who have property to divide have three alternatives. One alternative is to litigate through the equitable distribution process managed by the County wherein the divorce has been filed. The second option is to secure the services of a divorce mediator. A third option is what has been commonly referred to as collaborative practice.

The process of divorce litigation is the process which varies from county to county. The end result is essentially the same, which is the marital claims to various asset values and debt values as well as the increased value of certain other assets are ultimately divided by the Divorce Master assigned to the case. The process is one in which the Divorce Master will attempt to allocate the various asset values and marital claims in an equitable manner. There is no presumption within the Commonwealth of Pennsylvania that an "equitable" division is a 50/50 division. The Divorce Master has an obligation to consider thirteen different variables when dividing marital assets. This divorce litigation process can also be resolved by agreement drafted for the parties by their legal counsel and signed by the parties to the divorce action. That agreement would resolve all marital claims.

The other two options mentioned previously were divorce mediation and collaborative law. Essentially, divorce mediation allows for the parties to meet with a divorce mediator with or without the presence of legal counsel for each party. Generally, parties are prepared ahead of time by their legal counsel or by their individual effort in order to determine what marital assets and debts exist and what the values of the assets are. There can be an exchange of documentation supporting the values for the marital assets as those values have been determined by each party. The process of the divorce mediation is to allow the parties to then meet with a trained and qualified divorce mediator to see if a satisfactory resolution can be reached to divide marital assets and debts. If an agreement is reached through the divorce mediation process, the equitable distribution/property division portion of the case can be resolved. At that juncture, an agreement should be prepared and signed by the parties. A Divorce Decree is generally entered after an agreement is reached either through the equitable distribution process or through the divorce mediation process or even through collaborative law, which will be discussed next.

The process of collaborative law is one in which both parties who have generally retained counsel have an agreement which allows the parties to work with their respective attorney in order to develop the values of the marital assets and debts and to explore the rights each party may have to certain percentages of those property values. The effort of legal counsel for each party is to work toward an agreement. The work toward that process would be accomplished as a result of the collaboration between counsel and their respective clients. The ultimate result would be to avoid litigation and to potentially save the parties a significant sum of money which would otherwise have been spent in legal fees.

If an agreement cannot be reached through the collaborative effort between the parties and their counsel, each party would be obligated to terminate their professional relationship with their respective attorneys. The clients would then need to secure other

legal counsel to represent their interest through the resulting divorce litigation process. That process would then resume with the first option mentioned previously, which would find the parties proceeding through a Divorce Master and equitable distribution litigation process.

At Hoffmeyer & Semmelman, LLP, our family law attorneys and support staff all work toward developing the ascertainable values for the marital assets and debts as well as exploring the claims each party may have in regard to marital assets and debts pursuant to the thirteen factors set forth in the Divorce Code. We would also review the factors relevant to potential alimony claims which consist of seventeen additional variables which need to be considered by the parties and/or the Divorce Master. The efforts of our staff at Hoffmeyer & Semmelman, LLP are for a full disclosure of what we believe to be the marital assets and debts and an open discussion with opposing counsel to work toward an agreement which would be satisfactory to our clients. In essence, our efforts are already geared toward mediating and/or collaborating on the divorce related issues and, therefore, we do not specifically engage in collaborative law. Another aspect of our position relative to collaborative law is that we do not feel it is a just result for the clients who have sought our legal advice to be required to terminate our involvement with our client if the collaborative effort is not successful. Our experience has demonstrated that it only takes one party to become entrenched in a position, regardless of whether that position is tenable or untenable, and that entrenchment will force litigation as well as the expenditure of additional monies for legal fees by both parties. Therefore, if we can work with our clients toward an agreement, we will certainly do so. If that end result of an agreement is not probable, we focus our efforts along with our clients' energies toward getting a good result through zealous representation of our client's interest through the litigation process.