

The Divorce Process

When choosing an attorney to assist you through the steps required to end your marriage, it is important to decide which process is best for your circumstances. This is true whatever your circumstances. This decision will impact the time you must spend, the money needed to complete your divorce and your individual and joint control over this journey. While you did not intend to be at this place when you were first married, you now find that this is your reality. So, you may ask, what are my choices.

There are five basic models (and various combinations inside these models) which are commonly taken when a couple must finalize their divorce. It is important that in each of these models you choose a professional to assist along this journey. These methods are:

Self help

Mediation

Attorney assisted - limited or unbundled representation; and

Collaborative Family Law – each have an individual attorney; or

Full service or traditional divorce attorney representation

Each has benefits and pitfalls or road blocks and it is possible to pick between these models. Are you confused? It is normal that are experiencing stress or anxiety in making a choice. It may seem easiest to just hire an attorney who will to handle all of the necessary steps. However, even when you choose full-service representation, you will face many choices and decisions.

Whichever method you choose, choosing the right professional (whether attorney, collaborative attorney or mediator) based on your individual circumstances is a critical decision.

First, it is important that you have a basic understanding of your needs and circumstances. Each couple is unique and there is not one answer that is right for you. Questions you should ask yourself regarding which method is appropriate are:

how long you have been married?

do you have minor any children?

do you own real estate or other property?

do you have joint debts?

do either of you have retirement savings or pensions?

does one of you dependent on the other for the majority of their basic support?

have either of you received an inheritance or a major gift of property from their individual family?

These are examples of concern you may have to address.

In order to answer these questions and decide what process is best for your divorce, it is important to know your “marital estate”. This term consists of everything either of you own or owe and requires documents. Tax returns are a good place to begin, then the date and place of your marriage and separation and other details. We have attached some handouts which outline the documents you need to share. No matter which model you choose, you need to both understand this information. Now that you understand your marital estate (to the best of your ability) which method will work in your circumstances.

Self-help using preprinted forms.

Self-help is often the first method a family will consider. If you are leaving a short-term marriage with few assets or liabilities this may work for you. Yet, while this may work, will it be the best outcome for either of you? If you have children this is still possible, but more complicated.

Each one of the issues described above add additional wrinkles and considerations that may make a big difference to a “just and equitable” division of your “marital property”. Either of you may have property where you can claim a priority or exclusive right to - such as retirements or pensions earned before your marriage, inherited property, student loans and other property kept separate throughout your marriage. This is very technical and justifies a consultation with an attorney.

Can you obtain a divorce using preprinted self-help form available from the State of Oregon website? Yes, consider consulting with an attorney to learn your legal rights and even check your documents so you divide your property and right in a fair and equitable manner. If you do not wish to consult a private attorney, the circuit court has clerks who can provide you with forms and there are volunteer attorneys or non-profit clinics who may be able to review the details of your divorce documents.

Attorney assisted - limited or unbundled representation

This is a step beyond the self-help method which is when you hire an attorney to handle only a specific portion of your divorce. Maybe to help you fill out court provided forms, coach you about the court system or help with the exchange of information. The attorney may assist you with settlement terms, but you control the terms and timing of your divorce. Later in the process you may decide it is best to hire an attorney assisting you as your trial attorney. However, it is important to recognize that some steps will be up to you or some may not have been addressed. Once you have filed your case, your matter will be pending court action which will control the timing.

If you need more than advice on how to complete the “court forms” you may want to hire an attorney who provides coaching often called “Unbundled” legal services. This may be as simple as having documents reviewed by an attorney, to preparing some or all of your documents, filing with the court electronically, to having an attorney answer your questions concerning one step or issue in the divorce process. The attorney will ask you to sign an agreement (or attorney retainer) that set out what they will do on your behalf, but unlike a full-service attorney you are ultimately responsible for the final divorce agreement. When hiring an attorney for unbundled services you only pay the attorney for the services identified and provided either an hourly basis or by agreeing to a flat fee for each step. This is different from traditional representation, as when elect the traditional method, your attorney this is expected to complete each step until the final divorce judgment is entered. I have outlined more information about traditional representation below for your review.

Mediation

A mediator is a trained professional (often an attorney that has received specialized training) that guides you and your spouse to a negotiated and reasonable termination of your marriage. This individual will act as a “neutral” or un-biased guide to help you resolve the various factors decided in your divorce. If your mediator is an attorney, remember they do not represent either of you individually, but only as a neutral. This may range from division of assets and liabilities, child custody and child support questions, and your mediator will discuss the question whether one party has a right or obligation to assist the other with spousal support and help you establish for how long support should continue. Ideally at the end, you are jointly able to resolve any disagreements or disputes.

This does not mean the road will be smooth, but it is still a voluntary process. You communicate directly with your spouse with the assistance of the mediator(attorney) in order to arrive at a final decision. Mediation is a voluntary process and no one will make the decision for you, but you can both work towards a resolution. This can be done in separate rooms with little or no personal contact or around a conference table working face to face.

Mediation is a process that can also be used with one of the other attorney assisted methods. At times, even if each you is represented by an attorney, the parties still need help to arrive at a settlement one or two specific areas to reach a final agreement. Mediation may occur just before a trial date with the assistance of a mediator and often your attorney may recommend a retired family law judge to assist you in your final decision.

Mediators are found in various practices and locations but many or most also have other professional training. Social workers, attorneys and retired judges are just some of the professionals that may include mediation as a part of their services. Colleges and universities offer education in “dispute resolution” whose graduate may then be mediators in a specialized field. Many courts and often unions hire mediators to assist their clients or members in resolving disputes. While there is no official license or training required at this time to be a mediator, it is important to understand your mediator’s training and experience and the focus of their practice.

Mediators who are also Oregon attorney can, once you have reached a settlement, be hired to complete the legal documents necessary to memorialize your agreement and dissolve your marriage. This is documents by a separate written agreement which you have both signed. The attorney will charge a fee for preparing these documents separate from the mediation process. The fees can be charged based on the time it takes to complete your documents or may be a flat fee based on the issues that need to be addressed. If either one of you hired an attorney, your own attorney can also prepare the final documents for signature by your spouse. If you are dividing a retirement account or pension in your divorce, it usually requires you hire an expert attorney/specialist with specialized training to address federal regulations.

Mediation allows you to each make educated decisions, but you must remember the mediator will be a “neutral” party. Your discussions during mediation are confidential until placed in a final agreement. If your mediator is an attorney and has a back ground in family law, they can

provide the basic legal rules, but you should speak with your individual attorney or legal advisor for regarding how a specific decision affects you individually if you are uncertain about your decision.

Collaborative Family Law

If you choose Collaborative Family Law (CFL) each party has the support and advice of their individual lawyer. A lawyer trained in CFL will assist you in choosing your own solutions using their legal Knowledge with their focus on resolving the marital questions without resorting to a court trial where a judge makes the final decision. Many have training as mediators and trial attorneys but recognize that you wish to proceed without a court trial.

At a minimum you will meet in a four-way meeting where as a team you will address your specific needs and concerns. The number of meeting will depend on your ability to reach a full agreement. If you need additional help from other professionals, they may be brought into the decision making also. These professionals can range from child specialists, financial advisors, appraisers or counselors. It is your choice which professionals are required in your circumstances.

This can provide each party with some of the benefits of a mediated case, but the support of their own attorney. Your attorney will establish an hourly rate for time spent on your case and while every attorney sets his or her own rates, time is normally billed at an hourly rate. This is likely less expensive than a traditional method, but usually more expensive than some of the other methods. Remember it is similar to a mediation where you and your spouse are in control of the process. As a member of the Oregon Association of Collaborative Professional, (ORCP) review the ORCP web page at the following location: <https://collaborativepracticeoregon.org/>

Full service or traditional divorce attorney representation

This method has been the “typical” process chosen by parties to end a marriage. Each party will hire an attorney, documents are prepared then filed with the court. The attorneys exchange information and offers are exchanged. Your attorney will collect a deposit or “retainer” up-front to pay for anticipated time spent on your case. This deposit varies widely. Your attorney will bill you for her time and for her support staff’s time as well. If custody or either parties’ parenting time with children is an issue, a parenting time evaluator might be needed to give the court guidance in reaching a decision.

If the parties are able reach a settlement before trial, documents are filed, signed by a judge, and entered into the court’s records. The divorce is then final. If you cannot reach a settlement, your case will proceed to trial as each attorney has been preparing for trial since the case was started. Often settlements may be reached the day or week before the trial starts. Trial is expensive as it can take up to one or two days of court and attorney time. This method often will cost more than other methods and the final decision is made by the judge hearing your case. Of course, this is more complicated than outlined in this handout, and it is often the only choice, and may be your only option, but this is not for everyone.

Before you decide which option is right in your circumstances, gather research and inform yourself about various options. This knowledge will help you and your spouse make a decision that is correct for your family based on your individual needs. Remember, one size does not fit all.