



Know Your Divorce Options In New Jersey



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stances under which you live pending the divorce.

In choosing to litigate, parties should weigh the complexity of their matter (relative to the factors set forth above) against the risk and inconvenience associated with a lack of control over the process. The more Court protections needed, the greater sacrifice you can make in terms of controlling the process. Be advised, however, that protracted litigation often irreparably damages your post-divorce prospects of communication with your spouse.

The New Jersey Supreme Court has created a certification for attorneys practicing matrimonial law. You can seek an attorney who has been certified by the Supreme Court of New Jersey as a Certified Matrimonial Attorney.

MEDIATION

Mediation is a voluntary process whereby both spouses select a neutral mediator. The mediator uses his/her special skill set to facilitate direct negotiations between you and your spouse. You may engage in the mediation process with or without attorneys. Once an agreement is reached, you then have it reviewed by your respective attorneys. An uncon-

tested divorce hearing is scheduled to dissolve your marriage and incorporate the mediated agreement into a final judgment from the court.

Mediation can be an efficient process for spouses with some residual ability to communicate. You are fully involved in the negotiations and decision making process. Mediation happens outside of court, enabling you to avoid artificial court-imposed deadlines and preserve your privacy. You avoid long, unproductive waits in the courthouse and control costs, since the "work" of reaching a settlement is primarily done by you and your spouse, not your attorneys.

Be forewarned, however, that the more complex your financial situation, such as the ownership of a family business or a heavy debt burden, the more skill required by the mediator. Also, mediation tends to be more successful when each party has reliable knowledge of the financial situation of his/her spouse. If you are in the dark about the family finances, mediation may not be your best choice.

Currently, the gold standard for mediators is the completion of a 40 hour course to be a qualified mediator pursuant to Rule 1:40 of the New Jersey Rules of Court.

COLLABORATIVE DIVORCE

Collaborative divorce is the most promising recent development in family law. It builds upon the mediation model by empowering you and your spouse to take an active role in the divorce process, aided by your attorneys at the negotiating table. Each party selects an attorney of his/her own choosing. Both spouses then commit in writing to negotiate and develop a settlement agreement without litigation. Negotiations then take place over a series of conferences with both spouses and both attorneys present. Outside professionals, including accountants, mental health professionals, child specialists, and financial advisers, are retained, when necessary, to facilitate settlement.

Like mediation, private negotiations occur outside of the courthouse and follow a timetable created by the parties themselves. The process is designed to be more open and less adversarial. The lawyers are used for their problem-solving skills as divorce professionals, not hired guns. Focus is on resolving your dispute with dignity and respect, which provides the groundwork for healthier post-divorce relationships.

In Ocean and Monmouth Counties, attorneys who are also collaborative practitioners have organized a business association to promote the process.

We can be found at www.JerseyShoreCollaborativeLawGroup.com

ARBITRATION

Arbitration is another voluntary process by which the parties contract a third party, often an experienced matrimonial attorney, to serve as their own personal, private judge for their divorce. By contract, the selected arbitrator is empowered to make the final decision in the matter based upon evidence presented by the parties and the attorneys. Arbitration is similar to litigation because it is useful under the same conditions litigation is useful. It suits complex cases involving high net worth parties who value the additional privacy the process provides. Because you have essentially hired a private judge, the timing of the process is in your control, and you avoid airing dirty laundry in open court. If you own a business and have concerns of exposing your business model, finances, tax situation, or trade secrets to scrutiny in open court, arbitration may make sense.

Divorcing couples have four basic options when considering divorce in New Jersey:

- litigation;
- mediation;
- collaborative divorce; and
- arbitration.

Evaluating each option is a good first step in the divorce process.

LITIGATION

Litigation is the handling of your divorce by the adversarial court process. Divorce complaints are filed, information is exchanged, and the Court dictates a schedule of events, all leading to a divorce trial. It suits your case if: there is no possibility of effective communication with your spouse; you have concerns that your spouse is acting fraudulently or in bad faith; there are issues of domestic violence; or if your children need special protection as a result of the risky behavior of a parent, such as substance abuse, violence, mental illness or criminal behavior.

The downside is that you have little control of the process. The Court dictates the scheduling and, in many cases, the financial circum-

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Knowing your divorce options is the first step toward protecting your interests as you consider divorcing.

Jay Turnbach, partner with the firm of Horn, Turnbach & Rybar, LLC, has 15 years experience handling family law matters in Ocean and Monmouth Counties. He is certified by the Supreme Court of New Jersey as a Certified Matrimonial Law Attorney. He is qualified as a divorce mediator pursuant to Rule 1:40 of the New Jersey Rules of Court. He is the vice president of the Jersey Shore Collaborative Law Group, chairman of the Family Law Committee of the Ocean County Bar Association, and an adjunct lecturer at Ocean County College teaching family law.