

Family Law Department

The Alternatives To Court

Alternative methods of dispute resolution can help people going through family difficulties find constructive, creative, cost effective and flexible ways of resolving problems.

So what methods are on offer as alternatives to court?

1. Mediation

This is a process by which an impartial third party, the mediator, facilitates a discussion between the couple going through family difficulties to help them reach a suitable solution to their situation.

Mediation is usually quicker and more cost effective than court proceedings and can allow a couple to reach their own solution tailored to their needs rather than having a solution imposed upon them.

Mediation can be used to resolve numerous family issues including division of assets following a relationship breakdown and issues involving children.

Although an agreement reached at mediation is not legally binding in certain circumstances the agreement can subsequently be converted into a Consent Order and submitted to the court for approval, often without the need for anyone to actually have to attend court.

In most cases the couple must at least attend a Mediation Information and Assessment Meeting to see if the case is suitable for mediation before court proceedings can be issued.

2. Solicitor-led negotiation

When emotions are running high and relationships have broken down it is often extremely beneficial and a huge relief to have a solicitor there to represent your interests, deal with matters in a rational and objective way, readdress any imbalance of power and prevent you having to put yourself at risk of conflict and distress that may be caused if you were to enter into negotiations directly yourself.

If there is a dispute relating to financial matters before negotiations can be entered into, and indeed before the court can approve any agreement, there needs to be full disclosure of the financial assets.

Financial disclosure is usually done by way of exchange of a Financial Statement, known as a Form E. On first sight this is a rather large and intrusive document requiring a great deal of information but it really is the best way of putting the respective cards on the table.

In some cases where there is an element of trust, co operation and understanding between the parties and it would not be cost effective to deal with matters by completion of Form E some people agree to deal with matters by way of an exchange of summary information instead.

Following the financial disclosure process your solicitor can then discuss matters with you and work out a settlement proposal and enter into negotiations to resolve matters. The negotiation is largely based on letter and telephone communication but can be conducted by way of round-table discussion with your solicitor, yourself, your ex partner and their legal representative.

In certain circumstances if an agreement is reached within negotiations it can then be converted into a legally binding Consent Order for approval by the court.

3. Collaborative Law

This is a model which has been highly successful in America, Australia and New Zealand and has been brought into our legal system through Resolution (formerly the Solicitors' Family Law Association). Within this model all the parties are required to sign an agreement stating that the matter will not be taken to court and all shall endeavour to come to an agreement.

meetings with the parties and their legal representatives (who must be qualified Collaborative Lawyers). An agenda is drawn up prior to the meetings so that specific issues are dealt with at each meeting. The parties have their legal representative present within the meetings in order to give guidance and direction. The lawyers work together also to ensure that the best outcome is achieved all round and it is one which will stand the parties both in good stead for the future.

transparent and inclusive model, both parties have to put all their cards on the table so to speak. Other experts such as financial advisers, actuaries and accountants can also be enlisted as part of the 'team' to help reach a suitable agreement. Once an agreement is reached it can be converted into a Consent Order and submitted to the court for approval so that it becomes legally binding.



It takes the form of four-way, round-table There is no secrecy involved, it is a fully

For further advice or information please contact a member of our Family Law Team at enquiries@mayowynnebaxter.co.uk
Offices at Brighton 01273 775533, Eastbourne 01323 730543, Lewes 01273 477071 and Seaford 01323 891412

Disclaimer: This document is written as a general guide only and is not intended to provide legal advice.
© Mayo Wynne Baxter July 2010 all rights reserved