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Family Law Issues in Agriculture: Alternative Dispute Resolution

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Those persons going through a divorce or separation should consider Alternative Dispute Resolution (“ADR”) as a way to help resolve issues outside of the courtroom, in whole or part. Litigation can be expensive and resolving matters through the help of an ADR professional can be cheaper and faster. There are also other advantages of ADR, including the preservation of the relationship, which may be especially important with some families.

Here are a few different forms of ADR which are applicable to divorce and separation, including:

1. Mediation
2. Arbitration
3. Early Neutral Evaluation
4. Conciliation
5. Collaborative Divorce

Mediation

Mediation is the most common form of ADR in a divorce. A mediator is there to facilitate a conversation between the two of you to discuss the applicable issues. A mediation session is usually between 1.5 to 2.5 hours for each session and it can sometimes take about two to five (or more) mediation sessions to reach a global settlement. The role of the mediator is not to provide you legal advice--that is the role of the

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attorneys.

Arbitration

Arbitration is akin to a trial wherein the arbitrator acts like a judge reviewing documents provided by both sides and making either a binding or non-binding decision for the two of you. In most states, an arbitrator can only be used for economic decisions for the divorce and can never be used for determining issues of child custody and visitation.

Early Neutral Evaluation

Early Neutral Evaluation is a growing but more rare form of ADR. Like an arbitrator, a neutral evaluator is an experienced professional who reviews arguments and documents from each party. The neutral evaluator gives an opinion on what he/she believes an experienced jurist would decide. This can be particularly helpful if the parties are at an impasse.

Conciliation

Conciliation is short for reconciliation. The role of the conciliator is to try to help the couple reconcile. In some situations, the conciliator is also a mediator. Once reconciliation is futile, then the conversation may shift to divorce or separation.

Collaborative Divorce

Please note that a collaborative divorce is a different model. In this form of ADR, a mediator is used, while both parties are represented by their own consulting attorney. Both parties agree in writing that if either goes to court, they each will hire new attorneys. Other professionals are sometimes used in this model such as accountants, financial advisors and therapists.

For more information:

Cari B. Rincker et al., ONWARD AND UPWARD: GUIDE FOR GETTING THROUGH NEW YORK DIVORCE AND FAMILY LAW ISSUES (2015) available at <https://www.amazon.com/Onward-Upward-Getting-Through-Divorce/dp/0692556540>

Mediate.com Everything Mediators, at mediate.com

Cari B. Rincker, "I'm Talking About the Big D and I Don't Mean Dallas" (May 2019), available at <https://www.slideshare.net/rinckerlaw/im-talking-about-the-big-d-family-law-issues-in-agriculture>

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American Academy of Matrimonial Lawyers, Online Book store, available at <https://aaml.org/store/ListProducts.aspx?catid=704530>

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