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Mediation in Family Law

Overview

Family law involves legal matters relating to family life. Issues involving marriage, divorce, property settlements, adoption, child custody and visitation fall under the jurisdiction of family law. Mediation, whether court-ordered or voluntary, provides a way to solve problems without resorting to going to court. According to the American Bar Association, mediation in family law is the most common method of ADR, or alternative dispute resolution.

Identification

The purpose of mediation is problem resolution. A family law mediator acts as a neutral third party to help involved parties work out their own solution to a problem or issue. During a divorce, for example, family law mediation most often involves resolving problems relating to custody or visitation issues. Family law mediators can be court-appointed or hired privately and are usually mental health professionals or attorneys. While the American Bar Association acknowledges there are no reliable national statistics about the success in family law mediation, they estimate that 50 to 90 percent of custody cases in larger cities settle through mediation.

Types

Three main types of mediation in family law include Family Counseling Divorce Mediation, also called Therapeutic Family Mediation, Legal Issues Divorce Mediation and Moderated Divorce Mediation. Family counseling is therapeutic in nature, and deals with grief, relationships and issues involved in moving forward after a divorce becomes final. While children are not usually present, mediation focuses on making decisions that first consider the needs of the children. Legal issues mediation tackles custody, visitation and property division. Moderated divorce mediation works to finalize a divorce agreement before presenting it to the court for approval. This type of mediation involves parties who agree on the basic terms of divorce but need help to work out final divorce details.

Timeframe

Court-ordered family law mediation usually occurs in a specified number of sessions. If you cannot come to agreement within this time, a judge takes over and resolves the case. Private family law mediation may take more or less time, depending on the type of mediation, the issues and degree of cooperation. In general, family counseling covers a period of less than two months and includes five to six sessions of one or two hours each. Legal issues mediation involves one or two sessions totaling five to eight hours. Moderated divorce mediation can usually be complete in one or two sessions.

Process

Family law mediation usually takes place in the mediator's office, rather than in a courtroom. Participants include you, the mediator, and sometimes your children and attorneys. Having an attorney present can be helpful in case you have legal questions, as family law mediators do not provide this type of advice. Before beginning mediation, you sign an agreement promising to mediate in good faith. The agreement also explains the mediation process and provides information on who will have access to private information, such as your attorney or a judge. The mediator usually talks to both parties separately and then begins mediation by starting and managing conversations based on topics discovered in private meetings. If you come to an agreement, the family law mediator goes over the details of the agreement.

Considerations

Successful family law mediation requires honesty and an open mind. Keep in mind the best interests of your children, but also understand what you are agreeing to, as mediation agreements become part of a court record and are legal and binding. When done correctly, family law mediation can help prevent a court fight that results in leftover feelings of bitterness and resentment.

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