

The Divorce Agreement Newsletter

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A Review of Negotiation & Dispute Resolution Models

The last 35-40 years have been an active period for testing out new ways of negotiating agreements to be used in settling divorce cases. This article is an outline of some of the most useful of these models. The main focus of all these models is to expand settlement *options* and make them more creative.

Getting to Yes. Find options based on concerns and/or interests rather than positions. Then find objective ways to choose among those options.

Thomas-Kilmann. When both parties are negotiating from a positive mix of assertiveness and cooperation, they can collaborate on mutually beneficial options, or at least find compromise options that will settle the dispute.

David H. Olson. The best negotiated options in a family system result when both parties have balanced flexibility and are not just reacting to each other based upon their emotional enmeshment or emotional distance.

EAR. Civility usually produces more creative options. Even highly conflicted parties may react more positively to *empathy, attention, and respect.*

So make a proposal! Creative options are rarely generated by criticism. Asking the other party instead to make a proposal can foster the exchange of problem-solving options.

Aikido. Start with finding area of agreement with the other side, and then incorporate these into more balanced and mutual options.

Blaise Pascal. Acknowledge when the other side makes valid points, and then surface options that provide for a more complete resolution of the matter.

Left brain-right brain. Left-brain rationality and right-brain intuition may each produce more limited options than when the two sides work together.

Legislative and judicial models. Courts mostly look backward and focus on solutions within their often limited jurisdiction. Legislatures pass laws designed to solve problems for the future. If the parties broaden the scope of negotiations beyond their particular legal case, they thus become a two-person legislature instead of a two-person court, and have a broader range of options.

Summary. There are many ways to conceptualize options for a negotiated agreement. This article is mainly about *process* options. *Substantive* options can be crucial to the ultimate resolution in many cases. *Process* is about the manner in which the negotiations are managed. Whether one is a negotiator or a neutral assisting negotiations, it's important to be aware of both aspects of negotiating. Either side can become vital to the success or failure of the negotiations.