LEGAL SEPARATION WITHOUT CHILDREN
For Respondent Only

3

Respond

Part 3: Respond to a Petition for Legal Separation
(Instruction Packet)

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RESPOND TO LEGAL SEPARATION

Part 3: Respond to a Petition for Legal Separation (Instructions Only)

How to assemble these documents

This packet contains instructions to respond to a legal separation without children. Be sure the documents are in the following order:

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2	DRLSA31h	Helpful information: How to file a response to a petition for legal separation without children	2
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HELPFUL INFORMATION: HOW TO FILE A RESPONSE TO A PETITION FOR LEGAL SEPARATION WITHOUT CHILDREN

IMPORTANT NOTICE TO VICTIMS OF DOMESTIC VIOLENCE: Domestic violence can be part of any marriage. Domestic violence can include physical violence, such as hitting, slapping, pushing or kicking directed against you and/or your children, and threats of physical violence made against you and/or your children, and/or regular verbal abuse used to control you and/or your children.

All court documents request your address and phone number. If you are a victim of domestic violence, **you must file a Petition for an Order of Protection and ask that your address not be disclosed on court papers. With that order, you do not need to put your address and phone number on your court papers**. Then, write "protected" where asked for this information and update the Clerk of the Court with an address and phone number as soon as possible. The Clerk of the Court will keep your address confidential.

PAPERS YOU SHOULD HAVE RECEIVED WITH THE PETITION FOR LEGAL SEPARATION:

SUMMONS: You have been summoned to appear in court. The Summons tells you how many calendar days you have to file a Response, depending on how you were served with the court papers. Be sure to file a WRITTEN RESPONSE on time. If the time for you to file a WRITTEN RESPONSE has passed, your spouse must complete an ***"Application and Affidavit for Entry of Default"*** and send you a copy of that document. You will have 10 more days in which to file your ***"Written Response".*** If you do not file a WRITTEN RESPONSE ON TIME, a default judgment can be entered. That means, you will not get to tell the judge your side of the story.

PRELIMINARY INJUNCTION: This is an order from the court to both spouses about what you CAN and CANNOT do with property, children, and other issues while the legal separation is pending. If you or your spouse do not obey this order, the party who disobeys it can be in serious trouble with the court. If your spouse disobeys the order, see a lawyer for help on what to do. The Self-Service Center has a list of lawyers who will help you help yourself, and this list tells how much they charge to help you.

INFORMATION FOR CONCILIATION COURT: You may or may not have received a paper on this. There is no requirement that your spouse serve this document on you. In either case, the court has services to help couples with their marriage, called AConciliation≅ and AMediation.≅ You can ask for an appointment by filing a written Petition, to discuss your marriage with these court professionals. You can get the forms for the appointment at the Self-Service Center.

PETITION FOR LEGAL SEPARATION WITHOUT CHILDREN: This is the form your spouse completed to tell the court his or her side of the story about property, debt, spousal maintenance (alimony), pregnancy, and everything else about the marriage. **Read each and every word very carefully**, and decide what you want to do. Here are your choices:

1. **Do nothing.** This means your spouse can get a legal separation and tell the judge his or her side of the story, without you telling your side at all. **This is called a "default."** Even in these cases, the judge will try to decide what is best, but it is never a good idea to ignore the court proceeding and have a court order that you had no input on. You should see a lawyer before you decide to do nothing.

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2. **Decide with your spouse how you want to handle everything:** property, debt, spousal maintenance (alimony), and everything else about the marriage. Then you and your spouse file papers in the court stating your agreement on everything. This is called a **"consent or stipulation."** This is often the best way to proceed, if you and your spouse desire to live separate and apart, and can talk about the critical issues to decide how you both want to handle the legal separation. Mediators can help you with this. The Self-Service Center has a list of mediators, and how much they charge to you.

3. **Protest what your spouse said in the Petition**, file a Response stating your side of the story, and how you want to handle everything: property, debt, spousal maintenance/support (alimony), and everything else about the legal separation. This will make your case a **"contested matter**." But, even if you originally file a Response, you and your spouse can still decide to agree on something, or everything, and file court papers for a **"consent or stipulation."** Mediators can help you with this, and the Self-Service Center has a list of mediators, and how much they charge to help you. If you file a Response and do not settle everything with your spouse, you must be sure to file the court papers you will need to set the case for trial.

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INSTRUCTIONS: HOW TO RESPOND TO A PETITION FOR LEGAL SEPARATION WITHOUT CHILDREN

COMPLETING YOUR WRITTEN RESPONSE TO THE PETITION:

STEP	INSTRUCTION
A	Type or print with **black ink** only.
B	Make sure your form is titled ***"RESPONSE TO PETITION FOR LEGAL SEPARATION WITHOUT CHILDREN."***
C	In the top left corner of the first page, fill out the following: Your name; address (if not protected); city, state and zip code; telephone number; and your ATLAS number, if you are receiving or have received AFDC from the Arizona Department of Economic Security. Then state whether you are representing yourself or whether an attorney represents you.
D	Fill in the name of Petitioner and Respondent exactly the same way as it looks on the Petition. Do this for every document you file with the court regarding this case from now on.
E	Use the case number that is stamped in the upper right-hand corner of the Petition. Do this for all documents you file with the court regarding this case from now on.

STATEMENTS MADE TO THE COURT UNDER OATH:

GENERAL INFORMATION:

1. **ABOUT MY SPOUSE, THE PETITIONER.** Fill in your spouse's (the Petitioner's) name, address (if not protected), date of birth, social security number occupation, and length of time domiciled (lived) in this state. This is basic information about the Petitioner.

2. **ABOUT ME, THE RESPONDENT.** Fill in your name, address, date of birth and social security number, occupation, and length of time domiciled (lived) in this state. This is basic information about YOU, the Respondent.

3. **ABOUT OUR MARRIAGE.** This is general information about your marriage. Fill in the date that you were married, and the city and state where you were married.

4. **ABOUT THE LEGAL SEPARATION.** Check one box only to tell the Judge that you want to be legally separated, or that you do not want to be legally separated but that you want to be divorced. If you or your spouse have lived in Arizona for more than 90 days prior to filing the Petition for Legal Separation, the judge has the discretion to change the Petition for Legal Separation to a Petition for Dissolution of Marriage (Divorce) if one of the parties believes the marriage is over and wants a divorce instead of a legal separation.

PROPERTY AND DEBTS: The information you give in paragraphs 5 and 6 tells the court about your property and debts and how you think property and debts should be divided. Community property is generally any property you and your spouse purchased during your marriage or that was paid for during the marriage, regardless of who uses the property or who actually paid the money. Unless property was a gift or inheritance,

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all property gotten during the marriage is community property, and both you and your spouse are entitled to a roughly equal share of this property. Community debts, likewise, belong to both people, regardless of who spent the money. If you have questions, or have a lot of community assets, you may want to consult an attorney regarding issues of community property and debts BEFORE filing your Response and other papers.

It is very important that you be specific in your responses about the property and debt. Describe the property and debt that should go to or be paid by you in detail and describe the property and debt that should go to or be paid by your spouse in detail. Never list an item and check both the Petitioner and the Respondent box.

5a **COMMUNITY PROPERTY.** If you and your spouse do not have any community property from the marriage, mark the first box. If you had property together check the second box. If you checked the second box, you will then tell the Court first what property should go to you and second, what property should go to your spouse. Generally, the court will try to divide the property 50-50, unless there are good reasons not to. Realize that it is unlikely that the court will give most or all of the property to either spouse, so try to put some thought into what you think would be a fair split before answering this question.

First, you will list the property that you want the court to award to you. Next you will list the property that you want the court to award the Petitioner. Put a mark in the boxes corresponding to which property you want to go to which person. You should describe the property as thoroughly as you need to for identification purposes. You can use the brand name and model where applicable, as well as serial numbers.

Types of property include:

a) **Real estate (property or home).** Mark who you want to get the property. You can ask the court to give you the home, to give it to your spouse, or to sell the home and divide the proceeds. You should write the complete address of the property under "Real estate located at". Most property also has a legal description such as "LOT 77, PINE TREE ACRES, according to Book 111 of Maps," etc. You should use this description, which will appear on your deed papers, if you have it. Cemetery plots are also considered real property.

b) **Household furniture.** This includes sofas, beds, tables, etc.

c) **Household furnishings.** This generally includes other things in the house other than furniture, e.g. dishes, small appliances, rugs, etc.

d) **Other items (explain).** List the things that you specifically want to go to one person or another that have not already been listed.

e) **Pension/retirement fund/profit sharing/stock plan.** You and your spouse each generally have a right to a one-half interest in any spouse's plan, ONLY for the number of years you were married. The longer you have been married, the greater your financial interest in a spouse's plan, up to 50 percent if you have been together the whole period of the plan. **Mark this box if you want to divide your interest in a retirement or profit sharing/retirement/401K plan. If you mark this box, you should see an attorney about a document called a Qualified Domestic Relations Order or QDRO.**

A QDRO is a very specialized legal document that requires a professional's assistance to prepare. To find out what the actual cash value and present day value of the pension plan is, you may want to consult with an accountant experienced in valuing pension plans.

f) **Motor vehicles.** List the vehicle identification number, the year and make of car (Ford, Chevrolet) and the model (Mustang, Camaro), etc.

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5b **SEPARATE PROPERTY.** If you do not have any separate property, mark the first box. If your spouse does not have any separate property, mark the second box. If you have separate property, check the third box. If your spouse has separate property, check the fourth box. Then describe the property and who should get the property. Separate property is usually property an individual had prior to the marriage. Separate property also includes gifts, devises, and inheritances. There are other times that property can be separate property so it is always a good idea to talk to a lawyer before you fill out any court papers.

6a **COMMUNITY DEBTS.** If you and your spouse do not owe money on any debts from the marriage, mark the first box and GO ON. If you did have debt, mark the second box. If you mark the second box, tell the court first which debts the Petitioner should pay and then which debts you should pay. Generally, the court will attempt to make a fair split of the debts, and if you get the property that money is owed on, you probably will also be given the debt. It is unusual that the court will order one person to pay all the debts. Think about what is a fair split of the debts before answering this question. Put enough information to identify the specific debt.

If you and your spouse have been separated and have acquired new debts on your own before filing for legal separation or divorce, you may want the court to Order that each of you pay for any new debts you have gotten after the date you separated. You can make this request on the page of your Response under “Community Debts."

6b **SEPARATE DEBTS**. If you and your spouse do not have separate debt, check the first box. If you have separate debt, check the second box. If your spouse has separate debt, check the third box. Then describe the debt and who should pay for it. Separate debt is usually debt acquired prior to the marriage.

7. **TAX RETURNS.** Mark this box if this is how you want to handle income tax refunds. If you want some other arrangement, write that in instead. It is always a good idea to talk to a lawyer and an accountant about your taxes.

8. **SPOUSAL MAINTENANCE/SUPPORT.** Spousal maintenance/support is the term used to describe money paid from one spouse to the other spouse as part of a Divorce or Legal Separation Agreement or Order. You may know the term as alimony. The money is designed as a safety net for a spouse who cannot provide for his or her needs or who meets other requirements listed. The idea behind spousal maintenance/support (alimony) is that accomplishments during your marriage, including increases in earning potential and living standards are shared and earned by BOTH parties to a marriage. Look at the list of boxes to see if any of these apply to you or your spouse. If so, you can decide to make a request that spousal maintenance/support be awarded to the appropriate party or that spousal maintenance/support not be awarded at all. Mark as many boxes as apply to your situation. If none apply, go on with the form. **Spousal maintenance/ support is paid separate from child support and is NOT a substitute for or supplement to child support.**

9. **PREGNANCY.** Check the box that tells the Judge whether the wife is pregnant or not and fill in the information requested if wife is pregnant.

10. **SUMMARY.** Since you are responding to what your spouse asked for in the Petition, you should summarize what you want that is different than what your spouse wants.

11. **CONCILIATION**. Here you must state that the conciliation requirements under Arizona law, A.R.S. 25-381.09 do not apply or have been met. The court has a service called Conciliation.

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Conciliation allows you to meet with trained professionals to resolve the issues of your marriage or the issues in dispute. You must agree that conciliation would not be helpful to you and your spouse, or that you have gone to conciliation.

12. **GENERAL DENIAL:** This tells the court that even if you did not answer each and everything said in the Petition, you deny what you did not address. This is extra protection for you.

REQUESTS TO THE COURT: This section of the Response formally requests that the court grant or not grant you and your spouse the legal separation, and tells the court other requests you are making:

A **LEGALLY SEPARATE OR CHANGE TO DIVORCE.** This is your request to be legally separated from your spouse, or if you do not want to be legally separated, but want a divorce from your spouse instead. See a lawyer for help on this, if you are not sure.

B **SPOUSAL MAINTENANCE/SUPPORT (ALIMONY).** This tells the court that you or your spouse should pay money to the other spouse on a monthly basis to help with living expenses. If you do want one party to receive spousal maintenance/support, check the Petitioner or Respondent box, the monthly amount, and the time period. If you do not want spousal maintenance/support ordered, do not mark anything, GO ON.
(You can only mark a box here if you marked the same box in the section above). If you request spousal maintenance/support, choose what you believe to be a reasonable monthly amount and tell the court how long the money should be paid. Base the amount of any request based on the receiving party's need and the income of the spouse paying this money. Remember, spousal maintenance/support is not a substitute for, or supplement to, child support that may be ordered.

C **COMMUNITY PROPERTY.** This tells the court that your requested division of the property is fair, and that the court should divide the property as requested by you in your Response.

D **COMMUNITY DEBT.** This tells the court that your requested division of the debts is fair, and that the court should divide the debts as requested by you in your Response. If you have been separated from your spouse for enough time that you or your spouse may have additional debts, write the date of separation on the line provided if you want each of you to pay the debts you caused after you separated.

E **SEPARATE PROPERTY AND DEBT**. This states you want you and your spouse to keep property you each owned before you were married or that is separate property, and to pay debt that was acquired before you were married or that is separate debt.

F **OTHER ORDERS.** Tell the court anything else you may want Ordered in your Legal Separation that has not been covered elsewhere in your Response.

OATH AND VERIFICATION OF RESPONDENT: Sign this form in front of a notary. By doing so you are telling the court that everything contained in the Response to Petition for Legal Separation is true.

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PROCEDURES: WHEN AND HOW TO FILE YOUR RESPONSE TO THE PETITION

INFORMATION ABOUT WHEN YOU MUST FILE YOUR RESPONSE:

- **TIMETABLE BELOW**. If the **last day** to respond falls on a Saturday, Sunday, or legal holiday, you **DO NOT count that day.**

- **INCLUDE WEEKENDS AND HOLIDAYS IN YOUR COUNT** until you reach the number of days in the Time-Table below. If you file a written response with the court on time, the Petitioner **CANNOT PROCEED BY DEFAULT.**

DEFAULT TIME TABLE

METHOD OF SERVICE	COUNT	EVENT
Acceptance of Service in Arizona	21 Days	after YOU, Respondent, sign Acceptance of Service
Acceptance of Service out-of-state	31 Days	after YOU, Respondent, sign Acceptance of Service
Process Server in Arizona	21 Days	after YOU, Respondent, received papers from Process Server
Process Service out-of-state	31 Days	after YOU, Respondent, received papers from Process Server
Sheriff in Arizona	21 Days	after YOU, Respondent, received papers from the Sheriff
Sheriff out-of-state	31 Days	after YOU, Respondent, received papers from the Sheriff
Certified Mail out-of-state	31 Days	after YOU, Respondent, signed for the papers
Publication	61 Days	after the 1st date of publication

INFORMATION ABOUT HOW TO FILE YOUR RESPONSE:

1. **Copy the Response:** After completing your Response, make 2 copies of the Response. One copy will be for you, and the other you will mail or hand-deliver to the other party (or the party's lawyer, if a lawyer represents the other party). If a lawyer represents the other party, the lawyer's name and address will be on the Petition in the upper right-hand corner.

2. **File the Response.** File the original Response with the Clerk of the Court. **Be sure you file within the time limit set, or you will lose important rights.** See the Default Time Table to decide when you must file your Response. It is always a good idea to have the Clerk stamp your copy to show the date you filed your Response.

3. **Cost to File Response**. There is a filing fee to file your Response of $191.00. If you qualify, you might be able to have the fees deferred so that you can make a payment arrangement with the court. The forms to request a fee deferral are available at the Self-Service Center.

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Procedures: When and How to Use the ADR Statement to the Court

On December 1, 2001, a change in the Arizona Rules of Civil Procedure (A.R.C.P. 16(g) imposed a duty on parties in any dispute before the courts to talk to each other (by telephone or in person) about the possibility of settlement and about whether some type of ***ADR*** (**Alternative Dispute Resolution**) process might help them to reach settlement. The Rule requires the parties to report to the court that they have discussed settlement or ADR, to inform the court about which ADR process (if any) they prefer, and when they expect to complete the process. Some of the various forms of ADR are explained on the following pages.

After a response is filed . . .

(1) **The Respondent must then immediately mail or deliver a blank copy of the ADR statement (and these instructions) to the Petitioner along with a copy of the response that was filed.** (If either party is represented by an attorney, all communications should be sent directly to the attorney.)

(2) **The parties must meet (in person or by telephone), within 90 days of the *filing* of the response with the court *(not*** the date the response is *delivered* to the petitioner)**. If you have not discussed these matters with the other party as required, be prepared to explain to the court the reasons.** ("Inconvenience" is not an acceptable reason.)

(3) Within 30 days AFTER you meet, and **NOT LATER THAN 120 DAYS AFTER THE DATE THE RESPONSE WAS ORIGINALLY FILED WITH THE CLERK OF COURT** you must file the ***"Alternative Dispute Resolution Statement to the Court."***

You may file earlier, but not later than 30 days after discussing your ADR options with the other party. If you cannot agree to file together on one form (jointly), then you must both file your own forms separately. If you have not discussed these matters as required, you must *file your separate forms* within 120 days after the date the Response was filed. There is no charge for this filing. Keep a copy of the completed form for your records.

GO TO THE COURT TO FILE YOUR PAPERS: The Court is open from 8am-5pm, Monday-Friday. You should go to the court at least **two hours** before it closes. You may file your court papers at the following Superior Court locations:

The Clerk of the Superior Court
CENTRAL COURT BUILDING
201 West Jefferson, 1st floor
Phoenix, Arizona 85003

OR

The Clerk of the Superior Court
SOUTHEAST COURT FACILITY
222 East Javelina Drive, 1st floor
Mesa, Arizona 85210

The Clerk of Superior Court
NORTHWEST COURT FACILITY
14264 West Tierra Buena Lane
Surprise, Arizona 85374

INFORMATION ABOUT ADR (ALTERNATIVE DISPUTE RESOLUTION) PROCESSES

ADR is any peaceful alternative to the courtroom process that helps parties in court disputes reach settlement without having the judge decide all issues. Court sponsored ADR programs are currently available at no extra cost, or you may choose to hire a private ADR provider at your own expense. There are different types of ADR processes, several of which, including mediation, arbitration, and settlement conferences, are explained below.

The purpose of ADR is to encourage settlement of family court cases.

Benefits of ADR include, but are not limited to:

- ADR provides parties opportunity to resolve disputes more quickly and less expensively than a full trial.
- ADR provides parties more control over the outcome in a negotiated settlement.

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- ADR provides parties greater satisfaction with results than litigation.
- ADR provides parties a greater chance of establishing or maintaining a working relationship.

COURT SPONSORED ADR OPTIONS (There is currently no extra charge for these services.)

MEDIATION OR OPEN NEGOTIATION **through CONCILIATION SERVICES** of child custody or parenting time (formerly "visitation"), are court-sponsored ADR alternatives where parties work with a neutral third party (the "mediator" or "negotiator") to reach mutual agreement on future parenting responsibilities. Parents choosing to mediate or negotiate through Conciliation Services are **required** to attend a minimum number of mediation sessions.

Mediation offers parents an opportunity to make their own decisions about their child(ren)'s future care. The mediator, a neutral counselor, works with parties to reach agreement regarding custody and/or parenting time. Mediation conferences are private and confidential. Nothing said or written during mediation may be disclosed unless all parties to the mediation give their consent. The mediator helps parents identify their child(ren)'s needs and each parent's ability to meet those needs, by restructuring family relationships. Together, they generate options and consider choices to develop a workable parenting plan that meet the child(ren)'s best interests. Parties who reach agreement in mediation have a 14 day "objection period" to raise any concerns or points of confusion contained in the agreement. If no objections are raised, the Parenting Plan is adopted as an order of the court, which makes it binding on the parties.

Open negotiation is a process similar to mediation, in that the negotiator helps parties identify their child(ren)'s needs, and how they will meet those needs in the future. However, open negotiation is NOT confidential. Parties meet with the negotiator to try to resolve their differences. If they are unable to agree, the negotiator may give feedback to the court on areas of agreement and disagreement. In addition, attorneys are entitled to be present in open negotiation sessions, if they so choose.

SETTLEMENT CONFERENCES are pre-trial meetings between the parties, their attorneys (if represented) and the conference officer, where they attempt to settle all issues in dispute before going to trial. The judicial officer helps parties evaluate the strengths and weaknesses of their case and may also suggest ways to resolve disputed matters, but they will not decide the case or make recommendations to the Court.

PRIVATE PROVIDER OPTIONS (You are responsible for all costs.)

In Private Mediation, parties work with a neutral third party (the mediator), who helps them identify their needs and explore viable options to settle all issues surrounding their Family Court case, including custody, parenting time, child support, property division, etc. With the aid of the mediator, the parties can determine the outcome of their case. A roster of private mediators is available through the Court's Self-Service Center. You can access the Family Court Mediator Rosters at:

Phoenix – 101 W. Jefferson, 1st Fl. M – F, 7:30am – 5:00pm
Mesa – 222 E. Javelina, 1st Fl. M – F, 8:00am – 5:00pm
Surprise- 14264 W. Tierra Buena Lane, M – F, 8:00 am – 5:00 pm

Internet – www.superiorcourt.maricopa.gov/ssc (Then click on "lawyers & mediators")

In Private Settlement Conference, the ADR neutral helps parties reach settlement by taking a more directive approach than in mediation. The neutral will focus on the conflict's legal issues, realistically evaluating case strengths and weaknesses, and actively suggesting and weighing options for the parties to consider, as they attempt to resolve their case.

In Private Arbitration your case is submitted to one or more neutral individuals, who after receiving evidence and hearing arguments have the power to make a decision resolving the dispute (unlike mediation, where the mediator

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does not make a decision for the parties). In arbitration, parties may limit the range of issues to be decided or the scope of relief to be awarded and arbitration may be binding or non-binding. When parties agree to binding-arbitration, the arbitrator's decision is final; it can be enforced by the court and may not be appealable. When arbitration is non-binding, the arbitrator's decision is advisory and will be final only if parties agree to adopt it. . Some arbitration providers are listed in the Yellow Pages under "Arbitration Services".

Private Judging involves hiring an individual, usually an experienced attorney or former judge, to act as a judge in your case. The person acting as judge listens to each party present their case and makes a decision. The decision is usually legally binding (has the force of law) but may be advisory (a suggested solution), depending on what the parties agree to in advance. Attorneys may be consulted at any time. The proceedings are private and confidential. The decision may be made part of a court judgment or ruling as well.

OTHER PRIVATE OPTIONS: Private ADR providers may offer additional options or variations on those already described. Some may also offer evening or weekend hours or other conveniences. Some churches or other religious or social service organizations may also offer family counseling, arbitration or mediation services. You may also find additional providers listed in the Maricopa County Directory of Human Services and Self-Help Support Groups, available at public libraries or by phone at 602-263-8856.

You may also find private providers in the Yellow Pages under "Arbitration" and "Mediation." Be aware that there are differences among private providers. While some are trained specialists, counselors, and attorneys, others are not. There are no licensing or minimal educational requirements to advertise as a mediator, arbitrator, or alternative dispute resolution provider.

As with hiring any private business for service, we recommend asking friends and relatives for referrals for any of the services mentioned above. You are responsible for all costs involved in using private providers.

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