

## ABOUT COLLABORATIVE DIVORCE

If divorce is inevitable, couples now have an alternative to the oftentimes painful and lengthy court proceedings that occur with the typical adversarial litigation. With Collaborative Divorce, spouses can choose to settle their differences in a respectful and dignified manner, while protecting their legal and financial interests, and still maintaining the well-being of their children and themselves, all without court intervention.

In most collaborative bases, three independent disciplines work together as a team, the spouses being the most important members of the team, by maintaining a primary focus on the needs of the children and the welfare of the family overall.

Certain principles are basic to the collaborative process. These principles are expressly and mutually agreed to by the spouses, attorneys, and the appropriate mental health and financial specialists in a document entitled The Participation Agreement. At its most basic, the Participation Agreement includes:

- A promise by the parties and the professionals to negotiate in good faith and to provide full and complete disclosure of all relevant information;
- A promise to work toward resolution of all issues without so much as a threat of court intervention; and if either party seeks court intervention, all the professional must withdraw from further representing these spouses and the spouses must retain new litigation counsel;
- A promise that all communications which occur and all documents that are generated in connection with the collaborative process will be inadmissible in any future court proceeding, without the express written consent of the parties; and
- A promise to cooperatively participate in joint sessions with the necessary professionals in order to achieve the best possible settlement for the family.

The collaborative divorce process is controlled by the parties. It keeps the decision-making power where it belongs, with the people who will be affected by the outcome. This is very different from the court process where ultimately court imposed and state statute formulas will determine what the financial and co-parenting arrangements will be. In the collaborative divorce process, the parties retain full decision making authority and control.

There are rules for what will constitute a collaborative divorce. Both spouses must dedicate themselves to honesty, openness and a willingness to place the welfare of the entire family in the very first place. Communication training is as vital to the process as the legal and financial negotiations. The collaborative attorneys will very thoroughly go over the Participation Agreement with the spouses to ensure they understand every aspect of what is expected of them.

## IS IT RIGHT FOR YOU?

In trying to determine whether a collaborative divorce is right for you and your family, please consider the following:

- Are you concerned about containing the financial and emotional costs of a divorce?
- Are you interested in a confidential and private process where you need not air your personal matters in a public court house?
- Do you have children and want to spare them the trauma of protracted litigation?
- Do you want to learn how to best meet the needs of your children while at the same time increasing their sense of security?
- Are you concerned about the post-divorce relationship with your spouse?
- Do you want control over the process and the decision-making rather than turning both over to a judge?
- Are you open to professional and expert advice about legal, financial and emotional issues?
- Do you have a genuine desire to settle rather than to fight?

If you can answer “yes” to the above considerations, and if divorce is inevitable in your situation, the health process of collaborative divorce may be right for you and your family.

## FREQUENTLY ASKED QUESTIONS

**Q. For whom is Collaborative Practice a good idea?**

**A.** For those spouses who are interested in minimizing the emotional and financial costs of a divorce.

For those individuals interested in a confidential and private process where you needn't air your personal disagreements in a public court room

For parents who have children and want to spare them the trauma of protracted litigation.

For parents who want to learn how to best meet the needs of their children while at the same time increasing their sense of security.

For those individuals who are concerned about the post-divorce relationship with their spouse.

For those who want control over the process and the decision-making rather than turning both over to a judge.

For those who are open to professional and expert advice about legal, financial and emotional issues.

For those individuals who want to maintain their dignity.

**Q. With more professionals involved, won't it cost more?**

**A.** Although we stress that clients should not select this method simply as a low cost alternative, experience across North America suggests that savings over a normal adversarial divorce which eventually settles are in the range of 20-40%. Of course, if the adversarial case goes to trial, the cost can be very high.

The lion's share of costs for a contested divorce can be attributed to the attorney's preparation for and appearances at court proceedings. Certainly the attorney's role is a vital one, but collaborative lawyers accept and acknowledge the value and benefits of utilizing an interdisciplinary team consisting of a mental health "coach" for each spouse, a child specialist, if needed, and one neutral financial advisor. Because the parties, with the help of the professionals, make all the important decisions, there is no court involvement. And because the law plays a lesser role, legal fees are lessened while the parties spend time with the professionals most qualified to meet their specific needs. Thus, the parties control the time, the costs and the process.

**Q. What is the difference between Collaborative Practice and Mediation?**

**A.** Collaboration offers a middle ground between mediation and full adversarial litigation. In mediation, the parties meet with one neutral mediator. In mediation, the parties advocate for themselves while often using the services of consulting attorneys outside the mediation sessions. The mediator cannot give any party advice or assist either of them in advocating their position. In the collaborative model, the parties are never on their own. A party who might not be as skilled in negotiating or in understanding financial or legal nuances can feel secure that their lawyer is protecting their interests. The collaborative process provides the parties with added support, and it may be a more comfortable alternative for many clients.

**Q. Is Collaborative Practice a faster way to get a divorce?**

**A.** Spouses in a collaborative divorce must be able and willing to participate with one another in face-to-face four-way meetings. The success of these meetings usually depends upon the ability of each spouse to communicate honestly and to negotiate directly. Most individuals need some sort of assistance in these areas and the sooner the mental health coaches and the one financial neutral become involved, the sooner the spouses can comfortably begin to explore their real interests and to gather the necessary financial information. Ideally, the first few joint sessions should set the stage for the length of time needed to bring the case to a close. The parties themselves will determine the amount of time needed to resolve all of their issues in a manner that is fair to the entire family.

A traditional adversarial divorce is at the mercy of a crowded court calendar, a judge who know nothing about you or your family and the multiple court hearings that are oftentimes necessary. Traditional litigation can often involve months (and sometimes years) of negotiations after the initial Petition is filed and the costly and often futile discovery process is engaged. There is usually a great deal of posturing and delay before any serious attempt to settle is made. Then the settlement is often rushed and arrived at by one or both parties being pressured into an agreement that they later regret and resent.

Negotiations can start immediately in a collaborative divorce. Once the couple chooses the collaborative divorce process, they are able to meet to start the discussion process, often within a few days.

**Q. How can I get my spouse to commit to the Collaborative Divorce Process?**

**A.** Your collaborative attorney, or mental health professional or financial expert (whoever you initially contacted about the collaborative process), will have an information packet with the necessary materials to give to your spouse. If possible, you should speak directly with your spouse about the wisdom of choosing this process. If that is too difficult, we suggest that a trusted individual, such as a friend, clergy member, counselor, relative or someone else close to your spouse, present the information to them. Oftentimes if a third party explains the process, it will be less threatening and more acceptable.