

DIVORCE, COLLABORATIVE STYLE

You have been married for 15 years and have 2 children. The marriage has been in trouble for some time. Perhaps you've tried marriage counseling, to no avail.. In any event, you and/or your spouse have come to the painful decision to end the marriage. You know a couple that has recently gone through a nasty, contentious divorce, which seemed to go on forever. They spent thousands of dollars and in the end both were miserable and resentful of one another and the legal system. Their children suffered throughout the process and haven't been the same since. If possible, you want to avoid this kind of ugliness and spare your children their childhood and their college education. You've heard about a new approach called "Collaborative Divorce" but don't really understand it.

What is Collaborative Divorce?

The idea of collaboration in the context of divorce seems like an oxymoron. The very idea of "divorce" conjures images of fighting, animosity and a pulling apart of what was once a union, whereas the concept of collaboration implies a joining together for a common purpose; a working together towards a mutual goal. In fact, collaborative divorce is just that. It involves you, your spouse and your respective lawyers, coming together to work towards the goal of dissolving your marriage while preserving everyone's self-respect and dignity as well as your resources. Debbie Ford, in her book Spiritual Divorce opines that "even when you separate that which has been joined, the separated part contains part of the other part from which it has been separated. Put another way, it is possible to be apart, but it is impossible to not be a part." This is especially true if you have children.

Collaborative divorce is a new process couples are using as an alternative to the traditional adversarial system. The premise is that people can minimize the cost and trauma of a divorce for themselves and their children, if they work together in a spirit of cooperation, with their attorneys, to resolve all of the issues in their divorce. While some people choose to exact revenge during a divorce, most want to get through the process as painlessly as way possible, without losing their dignity, their sanity or their life savings. Collaborative divorce provides this opportunity.

How Does It Work?

Usually, the first thing one does in the face of divorce is to consult an attorney. If, either by intent or by accident, you consult with an attorney who practices collaborative law your attorney will explain to you all of your options, including mediation, collaboration and the traditional, adversarial approach. Most attorneys who participate in collaborative divorce also represent clients under the traditional approach and are therefore all too familiar with the carnage that can result from the adversarial process. If you articulate an interest in collaboration, your attorney will provide you with information about the process to share with your spouse or, at your direction, may send your spouse a letter containing the same information along with a listing of local attorneys who practice

collaboration. All of the attorneys on the list have expertise in the area of family and divorce law, and each has received training in the collaborative approach. If your spouse were interested in pursuing collaboration, s/ he would make an appointment with one of these attorneys. Each of you would then retain (hire) the attorney you selected, and an initial meeting would be scheduled with both attorneys, you and your spouse to discuss in detail the collaborative process. If, for some reason either of you decide not to pursue this process, your attorneys can continue to represent you in the traditional way. If you decide to pursue this process, a Collaborative Agreement is signed by everyone. The agreement contains a “no-court” pledge that states that no one will file motions or seek court intervention for the resolution of any disputes. In collaborative divorce, all issues relating to the divorce are resolved through negotiations and four-way meetings with you, your spouse and your respective attorneys. If court intervention becomes necessary, both attorneys are disqualified from representing either of you and new counsel must be hired. The reason for this prohibition is to encourage participants to “stay at the table”, even when it’s difficult. The cornerstone of the process is that you and your spouse, with the help of your attorneys, commit to resolving all of the issues of your divorce without filing motions or going to court until a final written agreement is reached and it is time to go to judgment.

What If You Don’t Want the Divorce?

The fact is, like it or not, it only takes one of you to want the divorce for it to happen. Sometimes people think that the way to prevent a divorce is to make it difficult and to prolong it as long as possible. This approach usually results in escalating the cost, both financial and emotional to everyone involved. Family judges agree that the longer a case lingers in the system the less likely it is that either person will feel vindicated at the conclusion and the more likely it is that the couple will be back in court again on post-judgment issues. More often than not, in an adversarial divorce, the focus quickly becomes all that is/was wrong with both of you and with the marriage. Personal issues and flaws are put under a microscope, magnified and dissected. There is rarely an opportunity for healing or acknowledging what was of value in the relationship. In a collaborative divorce, while problems may be discussed, the focus is on each of your needs, the best interests of your children and a resolution that will serve everyone’s interests. In a collaborative divorce there is an opportunity to respect what was of value in the marriage and have a meaningful dialogue about the future.

What If You Disagree about The Children?

The most debilitating aspect of any divorce is its effect on children. Divorce is traumatic for children. There is no way around this truth. While experts disagree about almost all aspects of divorce and its effect on children, including the extent of the trauma, its lasting impact, whether it is better to stay together for the sake of the children, what parenting arrangement is best for children based on what criteria, etc., the one thing they all agree on, is that the higher the level of conflict between the parents, the more devastating it is for their children. In a traditional divorce, when parents cannot agree on a plan (“custody” in legal jargon) for parenting their children, courts do it for them. However,

before that happens, the court will order that a “custody evaluation” be undertaken and, in most cases, that an attorney or guardian ad litem be hired to represent the children. At that point, strangers are introduced into their lives and called upon to ascertain what they want and/or what is best for them. The reality is that what most children want is for their parents to stay together. The last thing children want is to be put in a position of having to choose between their parents. Children may become the casualties of their parents’ war. Even well meaning parents, who love their children dearly, often are unable to comprehend how they are destroying their children in their righteous pursuit of what they think is best for them. In collaborative divorce, parents commit to resolving differences related to the children quickly and in a way that promotes each other’s parenting relationship with the children. If you or your spouse has concerns about parenting issues that are not readily resolvable, an experienced child and family specialist may be brought into the process.

What If You’ve Never Handled The Finances and Don’t Know The Value of The Assets?

All financial information that is customarily produced in an adversarial divorce, is produced and exchanged voluntarily in the collaborative process. This includes financial affidavits, tax returns, retirement statements, bank accounts, payroll statements, etc. It is essential to the process that everyone has a complete understanding of the financial issues before resolution is considered. Both attorneys have an obligation to their respective clients and to the integrity of the process to ensure the accurate and complete disclosure of all relevant information. When needed, other professionals such as appraisers, accountants, financial and/or estate planners or other professionals are brought into the process to assist in determining the value of assets. When experts are needed, they are selected by agreement and hired jointly. If a business needs to be valued or real estate appraised, the process is then both expedited and more cost effective. Frequently, in the adversarial approach, each side hires its own expert(s) and then either compromise the result (the experts almost never reach the same result) or litigate the differences. It often becomes a battle of the experts. Tremendous amounts of time and money can be spent on expert fees and depositions.

What If You Don’t Trust Your Spouse?

In most divorces, spouses don’t trust one another. It is incumbent on the attorneys to ensure that all information is disclosed and documented. In fact, in collaborative divorces the participants and the attorneys must identify and correct any inadvertent mistakes, miscalculations or omissions that may occur. The reality is that one who is intent on concealing assets can sometimes succeed, under both the traditional and collaborative models. However, in a collaborative divorce, an attorney who learns that his or her client is not being honest is required to withdraw from the case and not continue to represent the client.

How Is Collaboration Different than Mediation?

The fundamental difference between collaboration and mediation is that in mediation you and your spouse meet with a neutral third party, the mediator, in an effort to negotiate the terms of your divorce. The mediator does not represent either of you but acts as a neutral facilitator to help the two of you come to a written agreement that forms the basis for your divorce judgment. Most mediators suggest that both spouses seek independent legal counsel to review any potential agreement and to consult with on issues that arise in the mediation process. Your attorneys are not present during the mediation sessions. They are more like consultants and are less actively involved in the mediation process than in both the collaborative and the adversarial processes. Mediation is a viable and often successful alternative for many couples. However, there are situations where one spouse is disadvantaged either in terms of knowledge, negotiating skills, or emotional readiness to deal one on one with their spouse. For them, the collaborative process is safer.

Why Should You Consider A Collaborative Divorce?

The vast majority of all divorce cases (over 95%) settle and do not go to trial. The question is how, when and at what cost- financially and emotionally. In many cases, it is only after months or sometimes years of ugly and contentious proceedings that the attorneys and their clients end up on the courtroom steps, cutting and pasting agreements together after last minute compromises. Often these agreements do not withstand the test of time. Both spouses feel beaten up, confused and ultimately resentful of the process, the legal system and especially one another. By then, the damage has been done and the wreckage is irreparable. Collaborative divorce isn't for everyone but it offers an alternative and the promise of a better future.

For more information about Collaborative Divorce go to www.collaborative-divorce.com

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