

COLLABORATIVE DIVORCE

by

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In a collaborative divorce, both husband and wife are represented by counsel trained in the collaborative practice process. Counsel and clients execute a contract, often called a Participation Agreement, which mandates that both attorneys are precluded from representing their clients in the event either party chooses to withdraw from the process. The roadmap of the process provides that the participants focus on the interests of both clients, gather sufficient information to insure that decisions are made with full knowledge, create a full range of options, and then choose options that best meet the needs of the parties. The structure, along with the skill of counsel, creates a problem-solving atmosphere, with a focus on the needs and interests of the parties.

In addition to two collaboratively-trained lawyers, the parties may wish to include in the process a financial planner, one or two coaches, and where children are involved, a child specialist. The financial planner assists in creating budgets, providing alternative support scenarios with income projections, and provides information regarding the tax implications of property settlements. The coaches work with clients to manage anxiety and conflict, to help clients learn communication and problem-solving skills, and to develop a parenting plan. The child specialist assists parents with child-related issues. The child specialist meets with the children to gather information regarding their concerns and preferences, provides input to the parents regarding the developmental needs and the children's perspective, and assists with practical considerations of timesharing and parenting arrangements. The child specialist and/or coaches can also serve as post-divorce resources to assist parents and children during the transition period.

ROADMAP/PROCESS OVERVIEW

- Decide issues to be resolved.
- Understand both parties' interests/concerns.
- Where the parties agree it would be helpful, involve mental health professionals, financial specialists or others.
- Gather all information necessary to make good decisions. Full disclosure is essential.
- Understand the nature/value of what has been disclosed (this may mean retaining neutral appraisers, business valuation specialists or other experts).
- Generate options.
- Evaluate consequences of options.
- Decide which option best meets interests of both parties.
- Prepare and execute agreement.
- Comply with terms of agreement.

THE ELEMENTS

- Team approach.
- No litigation.
- Focus on interests and problem solving.
- Law is not the only standard.
- Process and outcome are important.

THE COLLABORATIVE PROCESS

One of the critical components of the collaborative process is that counsel for both parties prepare and structure the negotiation in a similar way. This shared approach is a critical part of the process. At its most basic, the process is as follows:

- Initial consultation - Review process options to terminate marriage, including collaborative divorce.
- Subsequent meetings between counsel and client - Educate client and elicit interests.
- Meeting of counsel - Review process and substance issues, discuss agenda. If temporary issues must be resolved immediately discuss what information will be needed at first four-way meeting.
- Initial four-way meeting - Review the process, execute Participation Agreement, discuss agenda, decide information needed to generate options, resolve urgent concerns.
- Subsequent four-way meetings - Share information and interests, generate options, negotiate settlement, prepare and execute Settlement Agreement.

NOTES FOR THOSE CONSIDERING COLLABORATIVE DIVORCE

Your lawyer will ask you to focus on your interests, concerns, goals and objectives. This is important because you will be engaging in "interest based" (often called "win-win") negotiation. In essence, your interests are those things that are important to you regarding the termination of your marriage. When you think about your interests, you might ask yourself how you will be able to measure whether you have a satisfactory agreement when your case is completed.

Interests are what you value. For example, an "interest" might be security for the children. This differs from a "position." A "position" would be . . . "I have to have the house for the children." While retaining a house might be an option to meet an interest, in the collaborative process, it is important to look at all of the various options that meet important interests. An interest might be, "It is important to me to have security in my retirement years." A "position" would be . . . "I must retain my retirement plan."

After your lawyer has an opportunity to understand what is important to you, your lawyer will communicate with your spouse's lawyer. This will give the lawyers an opportunity to learn about the case from each spouse's perspective, and to begin discussing how information can be efficiently gathered. If there are immediate pressing issues, the lawyers will discuss a framework for focusing on those issues.

The lawyers will assist you in creating an agenda for the first four-way meeting. The four-way meetings generally take place in two-hour sessions. The majority of the collaborative work is accomplished in four-way meetings, although you will have ample opportunity to meet privately with your attorney. At the four-way meeting, the Participation Agreement will be reviewed. You should spend some time reviewing the Participation Agreement before the four-way meeting to be sure that you understand its terms. The lawyers will also provide an overview of the entire process with you, and reiterate communications guidelines helpful for effective four-way meetings.

For many people going through the termination of their marriage, the idea of a meeting with their spouse and their spouse's attorney can produce real anxiety. The lawyers are aware of your anxiety, but if you are particularly anxious, you should share that with your attorney.

After the four-way meeting, you will likely spend some time with your attorney discussing what needs to be done and agendas for upcoming meetings. Once the collaborative

process begins, the exact rules regarding individual attorney-client contact vary somewhat. In the Charlottesville, Virginia area, the generally accepted practice is to allow individual attorney-client contact between the four-way meetings, provided the substance of the discussions are disclosed at the next four-way meeting. If you have any concerns about the collaborative process, you should always share those concerns with your attorney.

Throughout the process, your attorney will work with you to assist in the negotiation of your case. The attorney will help elicit your concerns. It is also important that your attorney has an opportunity to understand your spouse's concerns. Your attorney will work to ensure all of the necessary information is discussed, and will assist you in generating creative options and in analyzing those options. There are a lot of different ways to analyze options. One way is to determine how the court system might determine a particular issue. Another is to determine how a particular option actually fits into your family, regardless of the court outcome. If you choose an option that is very different than a possible court-generated outcome, your attorney will ensure that you are fully apprised of the consequences of that decision. This is not to preclude you from choosing certain option, but rather to insure you are making your decision in an educated manner.