

Disclosure Statement:

Marriage Dissolution

Introduction

Should you choose to participate in the Collaborative Law model regarding your divorce, you and your spouse would each have an attorney, and all would have a shared commitment to avoid litigation. The Collaborative Law process primarily entails informal discussions and four-way conferences for purposes of settling all issues. Each party and his or her attorney agree to adhere to honesty and mutual respect for the Collaborative Law process. Both parties and counsel commit themselves to resolving differences justly and equitably without resort or threat of resort to court proceedings. Collaborative Law utilizes informal discovery, such as the voluntary exchange of financial information and the reliance on agreed upon neutral experts, such as tax advisors, financial planners, appraisers and family counselors. The parties may be assigned tasks to assist in preparing inventories and appraisals of assets and liabilities. Parenting plans, allocating parental responsibilities and time with their child(ren), are jointly worked out by the parents with the goal of serving the best interests of the family. The parties proceed in good faith to use their best efforts to arrive at solutions which address both parties' fundamental interests (needs, values, concerns, and priorities) and, if necessary, to compromise in order to reach a settlement of all issues that is acceptable to both parties. If the case cannot settle through the Collaborative Law process, the collaborative lawyers must withdraw and trial counsel may be retained.

Considerations when deciding whether to participate in Collaborative Law

The following may be considered advantages to the Collaborative Law process:

- Collaborative Law contemplates a series of two- or three-hour meetings (known as "four way meetings") to allow for the gathering of needed information, to defuse any tension and to allow each side ample time to consider proposals. During these meetings, you will have the comfort of professional advice and guidance from your respective Collaborative Lawyers. In contrast, mediation involves sessions which can be lengthy marathons to conclusion, and some mediations are conducted without counsel present.
- The Collaborative Law process preserves privacy by not airing differences in a public forum (the courthouse). Some of the agreement

terms and most of the financial disclosures can be kept out of the public court record.

- The parties retain control over the outcome when agreements are reached. Settlements to which both parties agree are more sustainable over long periods of time and invite more consistent compliance, than do court-ordered mandates with which neither party may be satisfied.
- If the parties have children, the direct communication model of Collaborative Law helps parties develop and preserve a cooperative relationship which will benefit those children as the parties go about the task of co-parenting during and post-divorce.
- According to clinical research, the inevitable increase in hostility and conflict which comes out of adversarial litigation is known to emotionally damage litigants' children. The Collaborative Law process is designed to minimize post-divorce conflict.
- There may be a benefit to you in increasing the chance that you and your spouse or your spouse's relatives and your mutual friends will continue to have positive relationships after the dissolution of your marriage.
- You may not be the gambling type and would prefer not to take the risks inherent in court proceedings.
- Collaborative Law can be more likely to level the playing field by having the parties agree at the outset that all legal fees will be drawn from community funds or will be otherwise allocated fairly.
- Collaborative Law requires both lawyers and parties to explore solutions which address the interests of both parties, rather than take tactical positions to advantage one over the other.
- Collaborative Law encourages creative solutions to meet your needs, which may differ from how the court would apply the law to the facts of the case.
- Everyone has an economic incentive to work toward settlement - the parties because of the high cost of litigation; the lawyers because they would be forced to withdraw if settlement can be achieved.

The following could be considered disadvantages of the Collaborative Law process:

- The disadvantage most often voiced is that it is less efficient to have two lawyers (the Collaborative Lawyer and then the Litigation Attorney), if the case is not settled. There may be some duplication of effort as the second lawyer catches up.

- There are things that could have been done to prepare for trial, that the time delay in getting started on trial preparation may make difficult or impossible - such as the discovery of certain relevant facts that are no longer accessible.
- Court-ordered mechanisms to compel production of information will not be available during a Collaborative Law process.
- A restraining order without prior notice to the other side could prevent unilateral disposition of property, incurring of debt or decisions concerning the child(ren), a remedy for which the Collaborative Law process does not offer.
- You may agree to neutral experts during the Collaborative Law process and then not be able to use them if the case does not settle. You might need to hire and pay for additional experts to support your position in court.

The following are other considerations relating to the Collaborative Law process:

- The Collaborative Law process is not appropriate when punitive action is sought, such as contempt proceedings to enforce prior orders.
- The Collaborative Law process may not be appropriate if the necessary underlying honesty is lacking. If you believe your spouse is the type of person who would lie and/or would not be truthful in his dealings with you, the Collaborative Law process may not be appropriate for you. In the traditional litigation model, formal discovery may disclose concealed facts.
- The Collaborative Law process prohibits taking tactical advantage of the other's mistakes, oversights, and misinformation. In contrast, adversarial litigation allows litigants with the less meritorious case to prevail, in some instances, because of superior advocacy or technicalities unrelated to fairness or justice.
- The Collaborative Law process, like mediation, may not be appropriate if there is a history or pattern of family violence. The court has remedies, such as protective orders, which are not utilized in the Collaborative Law process.
- If you feel threatened or intimidated or feel like you are in an unequal bargaining position when you are in the presence of your spouse and do not feel that having your attorney present would help you overcome those feelings, the Collaborative Law process is not suitable for you.

- No one who feels coerced into submitting to the Collaborative Law process should participate in that model.
- If you require a public forum to vindicate and defend yourself from accusations of wrong-doing, the privacy of the Collaborative Law process may not be satisfying.
- There may be a preliminary question of law or fact upon which all the negotiations depend that should be determined by the court at the outset.
- Should the case not settle and the parties proceed to court, the court may not consider statements made in four-way meetings to be confidential, as they would be in mediation and other settlement conferences in the traditional litigation model. Thus, the statements made by a party during a four-way meeting in the Collaborative Law process could possibly later be used against that party in court if the case did not settle.
- If you value working toward a peaceful, amicable solution over winning at all costs, your values will be honored in the Collaborative Law process.