

COLLABORATIVE DIVORCE

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Even under the best of conditions, divorce is a stressful event and it frequently is overwhelming, confusing, and expensive. Traditionally, each spouse retains an attorney to engage in a highly adversarial process played out in the public venue of a courtroom before a judge. Each spouse may hire their own financial professional to defend their own interests. Litigated divorces commonly take six months to, in some cases, years to resolve, with divorce expenses constantly spiraling upward.

Mature or retired couples are increasingly facing the challenge of a divorce. Although divorce rates have generally declined over the past thirty years, for those 55 or older, this is not the case; a moderate rise in divorce rates has been observed in this demographic group. Also, longer-term marriages continue to account for a surprising percentage of all divorces. In 2008, one-quarter of all divorces were of couples married over twenty years. Clearly, maturity and experience with a long-term marriage are no guarantees of immunity to the threat of divorce.

Collaborative divorce offers couples an alternative to adversarial litigation. By sidestepping the tendency of divorcing spouses to denigrate each other in order to win an advantage before a judge, less long-term damage is done to the post-divorce relationship with collaboration. Many veterans of traditionally litigated divorce attest to the rancor and loss of dignity associated with it. In collaborative divorce, participants sign an agreement committing to full disclosure. Failure to fulfill the terms of the collaborative agreement may result in the deceptive party having to fire their attorney and start the process anew. A single financial professional is designated as a “neutral” collaborative team member responsible for gathering all relevant information pertaining to marital assets, liabilities, and valuation of possessions. Often marital assets are better preserved by not hiring two opposing financial experts and paying for them to negotiate with each other.

Of course, each divorcing spouse retains their own attorney, one trained in the collaborative process. As do all team members, the attorneys agree to share all relevant information and foster transparency as the process unfolds. Each attorney continues to guide and advise their client but does so under the collaborative framework. If the collaborative process irrevocably breaks down and one or both divorcing parties withdraw, all professionals, including attorneys, are then prohibited from providing further divorce-related services to the clients. This provision is intended to heighten motivation for clients as well as team members to stay with the process.

The cohesiveness of the collaborative process and its desirable outcomes are attributable to a specific series of steps. The one who is designated as “the keeper of the process” is a neutral mental health professional who has received specialized training in this area of practice. The mental health professional functions to maintain the focus of the clients and team on a four-step model. First, clients’ goals and interests, both individual and shared, are specified. Typical goals may be “equitable distribution of marital assets” or “provisions for continued nursing home care for an elderly parent” or “establishing a trust fund for a child.” In the solution generating stage, options are identified. Then options are evaluated for costs, practicality, acceptability, and consequences. Negotiation then ensues with the input of all parties. This process is applicable to issues ranging from decisions pertaining to dependents to financial, educational, and retirement goals.

The mental health professional nominally leads the team meetings, bringing skills and a fund of experience derived from psychotherapy to the collaborative process. Calming, clarifying, and reframing are techniques familiar to mental health professionals and ones that have high applicability to collaborative divorce. Clients sign a “Code of Conduct” wherein they agree to focus on the future, not interrupt or disparage others, speak only for himself/herself, and refrain from arguing. The mental health professional is essentially a coach rather than a therapist but may call for individual meetings with clients as needed, in addition to team meetings.

Thus far, collaborative divorce has been especially appealing to divorcing parents of minor children because it helps focus their efforts on what is in the best interest of the children; naturally, collaboration better preserves the parents’ solidarity, respect, and open communication lines more so than adversarial confrontations. Similar to the protectiveness parents feel towards their bonds with their minor children, a divorcing mature couple may express the same concerns over their extended families. After sometimes decades of marriage, various bonds and allegiances among divorcing spouses and their in-laws or extended families may be seen as valuable and worthy of preserving, despite a divorce. Often, there is a sense of two **families** having married and are now divorcing. Just as with dependents, extended families benefit when equanimity and good will are preserved during the divorce process.

Another advantage of the collaborative process is that clients can immediately agree on financial relief without waiting for a judge to do so. In litigated divorce, parties must attend mediation before receiving temporary spousal support and attorney’s fees. In general, the pace of collaborative divorce is determined by the clients rather than by a judicial calendar, resulting in a speedier finalization. Often this time savings translates into financial savings as well. Collaborative divorce may take four to six months whereas a litigated divorce usually lasts well over six months.

For many, increased control is a very attractive aspect of collaborative divorce. In litigated divorce, the clients do not control the outcomes. The law places

restrictions on a judge's options for problem-solving. Moreover, all that transpires before a judge becomes public record. For those desiring the dignity of personal privacy, collaborative divorce is the natural choice.

Far from a panacea, collaborative divorce nonetheless appears to have distinct advantages over traditional divorce for many couples. It may not be suited for cases involving certain issues such as untreated substance abuse or domestic violence. Collaborative divorce is currently available by state law in the following states: California, Connecticut, Georgia, Massachusetts, New Hampshire, New Jersey, North Carolina, Ohio, Oregon, Pennsylvania, Texas, and Utah.

For those who want to learn more about this topic, consider visiting collaborativepractice.com or in Florida, www.cflcfl.com. The next step for interested parties would be to schedule a consultation with a collaboratively trained attorney or other professional. Considering the advantages of collaborative divorce, it would be time and money well spent.