

Collaborative Law Information

1. What is Collaborative Law?

Collaborative Law is a method of resolving your legal dispute in which both parties retain a Collaborative Attorney whose job is to assist them in reaching a mutually agreeable resolution. The parties and their Collaborative Attorneys agree to work respectfully and in good faith to gather all information needed to reach an agreement. The parties and their Collaborative Attorneys agree that they will not go to court during the time they are working towards settlement. If they are unable to reach an agreement, the Collaborative Attorneys withdraw and litigation attorneys take the dispute to court.

2. How does Collaborative Law differ from other methods of dispute resolution?

In the traditional legal approach, both parties retain attorneys whose focus is to prepare a picture of "reality" which will result in the best decision for their client by a judge. Often, this method includes denigrating the other party or his/her perception of reality. Trial is often compared to a battle, in which the best side "wins." In some circumstances, litigation is the only option. For example, if the other party consistently hides information or is abusive, the formal procedures utilized in litigation may be the tools necessary to obtain an acceptable solution.

In mediation, a neutral professional assists the parties settle the dispute. Generally, the parties agree that all information will be shared and that they are seeking a "win-win" solution. The mediator does not represent either party and the parties do not go to court. Typically, the mediation does not include attorneys except in a consulting or reviewing capacity. Mediation can work well for parties who have the ability to communicate their needs directly to the other person and who are sophisticated enough to understand the information being provided.

3. What are the differences between the other methods of dispute resolution and Collaborative Law?

Collaborative Law combines the positive qualities of litigation and mediation. Just as in litigation, each party has an independent attorney who will give her or him quality legal advice and will assist in asserting his or her interests. Drawing from mediation, the parties and their Collaborative Attorneys commit to an open information gathering process and to settle without going to court.

4. How is information gathered in Collaborative Law?

The parties do not engage in expensive legal procedures to obtain information. The parties and their Collaborative Attorneys agree from the beginning that they will produce all necessary information and documents voluntarily and in a timely fashion. Hiding documents or unnecessary delays are not permitted. If a party is not acting in good faith and "hides the ball", it is the duty of the attorney to work with the client to change his or her behavior and to withdraw if the behavior continues. If a party continues to refuse to act in good faith, the Collaborative process can be terminated.

5. How do the parties and attorneys work together?

After the initial meetings with their own Collaborative Attorneys, the typical process is to start the case with a 4-way conference - the parties and Collaborative Attorneys meet together to discuss the issues, make any necessary interim arrangements regarding children or finances, and to plan for information gathering. The 4-way conferences continue to be utilized to exchange and clarify information and to brainstorm possible options for resolution. The Collaborative Attorneys work together and with their clients to plan each meeting. The parties and Collaborative Attorneys focus on educating everyone regarding the underlying information, each party's interests and possible solutions. Out of this process, a settlement which meets the approval of both parties can be fashioned.

6. Does it work to have everyone together in the same room in the middle of a divorce?

The job of the Collaborative Attorneys is to "set the tone" for positive communication. Spouses in a divorce are often feeling vulnerable and emotional and can be less aware of how their pattern of communication can cause problems. The Collaborative Attorneys help each client to present his or her interests and needs in a positive manner that will be heard by the other spouse. Meeting together can help everyone to be "on the same page", which ultimately facilitates reaching an agreement. The focus of the meetings is on finding a solution, not attacking each other.

7. Must an agreement be reached in Collaborative Law?

No. Both parties must voluntarily agree to the solution. Neither party is forced to accept a solution that does not meet his or her interests and needs. Both parties understand that the goal is to fashion a solution that comes as close as possible to a "win-win" agreement, while recognizing that they won't receive everything on their "wish list."

7. If the parties reach an agreement through Collaborative Law, what happens next?

The Collaborative Attorneys will draft the necessary legal documents to memorialize the parties' agreement. This paperwork is then submitted to the court for approval. A court hearing is not required.

8. What happens if a settlement cannot be reached?

If the parties cannot reach an agreement, the parties can explore other options for settlement such as mediation, arbitration, private judging and neutral case evaluation, some of which may allow them to stay within the collaborative framework. If court hearings are required, the Collaborative Attorneys withdraw and each party retains a new attorney for trial. The Collaborative Attorney will transfer the information gathered and will assist the trial attorney in the transition.

9. Why is it necessary for the Collaborative Attorney to withdraw if an agreement is not reached?

Attorneys are typically trained to approach cases with the underlying assumption that a court will make the ultimate decision. Cases are analyzed with this foundation and are settled with the backdrop being "what will happen if we go to court." "Going to court" can often become a weapon or threat that derails rather than moves the parties to settlement. Since settlement has not been the focus from the very beginning, cases often do not settle until the parties are "at the courthouse steps," after incurring substantial attorney's fees and depleting their emotional resources.

The agreement by both the parties and Collaborative Attorneys that the Collaborative Attorney will not go to court focuses everyone on creative means of settling the case in a way that is acceptable to both parties. The focus of the process stays on the steps needed to reach an agreement rather than the steps needed to prepare a case for trial since the Collaborative Attorneys will not be representing the parties in court. The tendency to "drift" to court as the default decision-making method is reduced.

10. Who should consider Collaborative Law?

Collaborative Law works best for parties who wish to settle without going to court and are willing to commit to a good faith effort to do so. In Collaborative Law, you maintain control over your decision making rather than letting a judge decide. You can also control the amount of information that becomes a part of the public record (normally, the entire divorce file is open to the public, including any allegations made by either party in obtaining temporary orders or at trial.)

Divorcing spouses often have continuing relationships with each other, as co-parents or through their circle of friends and relatives. Collaborative law will increase the possibility of maintaining a civil or even cordial relationship with your spouse after the divorce.

You should also consider Collaborative Law if you wish to dramatically reduce your legal fees. A divorce that goes through the entire legal process including a trial can cost \$20,000 and up for each party. The formal legal procedures take much more attorney time (and your money) than the informal process used in Collaborative Law. The focus on settlement moves the case to resolution faster than the typical court-directed case, which also reduces your fees.

11. What do I do if I want to use Collaborative Law?

You will need to find a Collaborative Attorney whom you can trust to provide you with both quality legal advice and the skills needed to work towards a settlement. You can discuss with the Collaborative Attorney the ways of approaching your spouse about collaborative law, which can include you discussing the idea with him or her, your attorney contacting your spouse, or your attorney discussing it with your spouse's attorney, if she or he has retained one.