

COLLABORATIVE FAMILY LAW:
A MEANS TO A LESS
DESTRUCTIVE DIVORCE

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This season's episodes of "Desperate Housewives" demonstrate that divorce can get ugly. When Gabrielle and Carlos's increasingly bitter divorce ended with Gabrielle being awarded the house and Carlos being awarded the furnishings, Gabrielle proceeded to destroy the furnishings, while Carlos destroyed the house. Sadly, this fictional representation is played out in families across Texas because the adversarial model used for divorce can fuel hostilities between divorcing couples. While Gabrielle and Carlos had no children to get caught in the crossfire, many divorcing Texans do. On the other end of the spectrum, some spouses will agree to less than satisfactory terms simply to avoid conflict with their child's other parent during the divorce process. Yet these agreements can result in added stress and trauma to the children as bitterness and resentment with the divorce terms build over time. Fortunately, a new process called collaborative family law is giving divorcing couples a better divorce alternative.

What is collaborative family law?

Collaborative family law is an alternative to traditional divorce litigation that enables the parties to resolve their divorce privately without court intervention. In 2001, the Texas Legislature modified the Texas Family Code to recognize collaborative law procedures as a means of dissolving the marital relationship in a confidential

process without judicial intervention. (Tex. Family Code §6.603, et seq.) Using the collaborative family law process, an agreement can be reached with the parties' interests and the interests of their children being promoted, rather than forsaken, in order to avoid a litigious battle.

The collaborative family law process is built around the following three principles:

- 1. No court.** The parties and their attorneys sign an agreement to reach a resolution without going to court (a signed collaborative law participation agreement suspends all court intervention in the divorce proceedings). Collaborative family law affords privacy to a divorcing couple.
- 2. Transparency.** All information is freely exchanged in collaborative family law and the parties agree to hire the services of neutral professional experts. There is no formal discovery and no depositions are taken.
- 3. Interest-based negotiation.** The interests of the husband, wife, and their children drive the settlement talks. A collaborative team assists the parties in identifying their interests and then looks for creative ways for those interests to be satisfied as opposed to engaging in traditional positional bargaining.

Who are the participants in a collaborative divorce?

The divorcing couple, their attorneys, and neutral professionals make up the collaborative team. In collaborative family law, the spouses each have their own attorney. Under the team-model approach, agreed-upon,

neutral experts (often referred to as allied professionals) are hired to assist the parties in reaching an agreement. These neutral experts usually include a financial professional, often a CPA or certified divorce financial analyst, and a communications specialist, often a family counselor or therapist.

The financial professional's role is to educate the parties on the value of their assets and debts and also to provide information about their financial future. The communications specialist, sometimes called the communications coach, helps the parties confront the emotional issues involved in a divorce. Often the communications coach is the most appreciated member of the collaborative team, as this person helps the spouses manage their emotions through the divorce process so that they can focus on the business of making wise decisions about their future. Although the parties agree to use neutral professionals in the team model, parties can seek outside financial or mental health assistance on an individual basis. The only requirement is that these issues be disclosed to the collaborative team as part of the transparent process.

In collaborative family law, decisions about the details of the divorce are always made by the husband and wife. The collaborative attorneys' job is to make sure that the spouses are aware of all of their options, know the consequences associated with each option, and make fully informed decisions. This level of involvement by the spouses in crafting a resolution is vastly different from traditional, litigated divorces in which the parties often feel that they have little input in the process. Collaborative family law cases utilizing the team model approach are usually resolved in three to five joint sessions.

How does the collaborative family law approach work?

The collaborative family law approach is simple, but it is not easy. The divorcing couple must sit down together with their attorneys and the shared neutral professionals in joint sessions to identify their interests and craft a resolution that meets their respective needs. The collaborative process provides the parties with an opportunity and the resources to reach an agreement that will protect their children and meet their interests, while preserving their privacy and avoiding court battles. Oftentimes, the collaborative process assists the parties in developing non-combative communication skills that will allow them to resolve future issues that arise post-divorce, such as modification of child support, or issues relating to the education, health, and visitation of the children. A good working relationship between ex-spouses may be the most important give a parent can give their children.

Is collaborative family law only for people who agree?

Collaborative family law is not just for people who get along and agree. In fact, that is rarely the case. Beyond the agreement not to take matters to the judge, the collaborative process involves a fundamental difference in the approach to resolving disputed issues through interest-based negotiation that sets this process apart from both litigation and mediation. In the national bestseller, "Getting to Yes: Negotiating Agreement Without Giving In," by Roger Fisher and William Ury, interest-based negotiation is described as "a method of negotiation explicitly designed to produce wise outcomes efficiently and amicably."

Rather than engaging in positional bargaining in which both sides go for the most they can get so that they have a position to bargain off of, the collaborative approach focuses on identifying and meeting each party's respective interests.

If the parties are not able to reach an agreement in the collaborative family law process, their collaborative attorneys are prohibited by law from continuing as litigation counsel and separate counsel must be hired to proceed in court. This requirement helps ensure that the parties and their attorneys agree to participate in the collaborative process in good faith and protects the confidentiality of the collaborative process. Most collaborative family law cases result in an agreed, binding and enforceable resolution filed with the court and

entered as a final divorce decree, and most collaborative cases are resolved more quickly than a traditional, litigated divorce. Dr. Lynell Yingling, a professor of family studies and family mediation, likes to say that if you couldn't have a good marriage, you at least deserve a good divorce.

Collaborative family law provides Texas families with a better chance for a good divorce.

Where can I learn more about collaborative law?

For more information on collaborative family law or to find a collaborative law professional in your area, visit the Collaborative Law Institute of Texas website at www.Collablawtexas.com.

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