

Should You Consider a Collaborative Divorce?

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A collaborative divorce—or the legal process in which a couple enters a formal agreement to work together, out of court, to settle the terms of a divorce—can be an excellent choice for spouses who are on good enough terms with one another to be able to hash out a compromise. This process usually involves a combination of mediation and negotiation to reach an agreement. One must retain attorneys who are collaboratively trained.

Courts in every state encourage couples to opt for collaborative divorce, or a similar process, whenever possible. Even when litigation is filed, most Courts require some type of mediation before a trial date can be set. If an agreement can be reached on some or all of the issues, the divorce process is generally less painful for everyone involved.

In every collaborative divorce is a collaborative agreement; one of the fundamentals of this agreement is that, if the collaborative process is not successful and the parties elect to proceed with litigation, the parties are not able to continue on with the representation of their chosen collaborative counsel. This requirement is an incentive for the parties to work harder during the collaborative process, as starting over with new counsel can be both expensive and emotionally taxing.

As a result, some are willing to proceed with a similar process, called an informal settlement. The informal settlement does not require a change of counsel if the collaborative process is not productive. While this is not a true collaborative process, it can proceed in a similar manner.

In either event, experienced collaborative attorneys have the skills to assist the parties in creating a “win-win” situation that may allow areas of agreement that are not available in the litigation process. Generally, in a collaborative divorce, a financial neutral is incorporated into the team from the start. This mechanism provides both parties with knowledge that an independent expert is gathering the data, reviewing it and preparing it in a way that will be easily understood by all parties. The basis for trust is significantly increased when a financial neutral is involved, and that factor alone significantly impacts the probability of successful resolution. Often a coach is also a part of the team, as emotions can run high, and having someone involved who has the skills to help de-escalate the situation and assist the parties in articulating their goals and concerns in a non-threatening way can be invaluable.

A collaborative divorce is just one of many options for a process that may lead to a resolution without the necessity of litigation. In almost every case, there is mediation, negotiation, and, in recent years, arbitration, which will assist those going through the divorce process in arriving at a resolution without the financial and emotional expense of a trial.