

## Enlightened Divorce/Private Divorce: The Collaborative Approach to Family Law

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Legislative efforts to protect the privacy of divorcing parties have been front page news in recent weeks. To date, these laws have been declared unconstitutional because they impose secrecy on public proceedings. An alternative process, collaborative divorce, solves this problem and makes new laws unnecessary. The collaborative practice model is the most recent and revolutionary approaches to divorce and child custody disputes. One of its key features is that the proceedings are private and not part of the public court record. The only documents filed with the court are those required to outline the agreed upon settlement between the parties. The negotiation and process notes used to get to final settlement are not part of that record. Privacy is only one of the many benefits to families for choosing the collaborative model.

Divorce often becomes a declaration of war, causing serious emotional and financial harm to the family, particularly to the children who become innocent victims. Collaborative divorce is a good alternatives to "fighting it out" in court and a consensus is forming that courtroom should be the choice of last, not first, resort. An alternative that is gaining wider popularity nationwide is Collaborative Divorce. This alternative dispute resolution resource is a solution-focused approach that gives former partners maximum control and privacy as they work out marital settlement agreements and child sharing plans. The underlying win/win premise of Collaborative Divorce means that both parties must assume a high level of responsibility in shaping a joint agreement with the help of their team.

Husband and wife are encouraged to use tested strategies to achieve a mutually beneficial agreement. Collaborative Divorce promotes mutual respect, fairness and honesty as a means for achieving a legal divorce that protects children and minimizes destruction. The clients assemble a team that includes two attorneys and two coaches (one for each side), one financial specialist, and one child

specialist, if necessary. The team works together with the clients to find constructive solutions to issues related to money and children.

At first glance, the process seems expensive, but research shows it is less costly (both in time, money and emotion) than a litigated family law proceeding. Because of the commitment to cooperation and staying out of court, it is a more cost-effective approach. There are no hearings, no discovery, no preparation for court proceedings, and no dueling specialists. Because the court system is not used, there is no public filing of declarations about the family's private and personal life. Personal matters remain private and are not aired in a court proceeding for public view.

**The Collaborative Attorney:** Each party has his or her own attorney trained in the Collaborative Divorce process. Each attorney protects individual rights in the context of the overall good of the family and a mutually beneficial outcome. The role of the collaborative attorney is to educate, facilitate and mediate each client through the legal process. The attorney also assures that all legal steps have been taken so the final document is a reflection of the parties' agreement and is executed properly. The overall goal is to minimize the negative impact of protracted divorce litigation to the parties and their families. The collaborative process is a more compassionate and supportive process that looks for constructive solutions to divorce issues and allows room for establishing goals for the future so each party and the children can have a new beginning.

**The Collaborative Financial Specialist:** As the couple works through the collaborative process in conjunction with the financial professional, many of their "concerns" become linked to specific financial objectives. The financial specialist provides a financial analysis and assists in completing required documents.

The financial specialist assists each party with establishing a formal budget based on their income and expenses. If a business needs to be valued, or temporary support or other financial issues are imminent, the client and team members address the issue together to seek immediate solutions and the need for additional specialists.

A preliminary financial report is produced detailing the facts and "concerns" of the parties. Potential tax, insurance, separate property, cash flow or other issues are identified and included in the report. A complete understanding of the financial

data and how it relates to the clients "concerns" is essential. All parties are free to propose various options for satisfying the concerns in dividing the community property and establishing the amount of support needed by the spouse and children.

The Financial Specialist is neutral and seeks creative solutions that minimize taxes and maximizes cash flow to the family. Various financial models are created in detail and graphic form depicting the proposals. Team meetings continue as various options are narrowed down. The final decisions are formalized into an equitable financial solution with both parties having a clear understanding of their decisions and outlining implications for the future.

The Collaborative Coach is a licensed mental health professional who serves each client in three ways. First, coaches and clients identify barriers to healthy communication and more constructive forms of communication are substituted for those that undermine the ongoing relationship of the parties. Second, using individual and joint sessions with the two clients, coaches help each former partner develop effective communication strategies that promote cooperation and extinguish animosity. This means that each client couple develops shared ground rules and abide by these shared agreements. Third, coaches help clients link present healthy tactics to future benefits for the entire family. Clients begin to understand how their effective coping skills build an amicable long-term relationship, one that fosters the welfare of both parties and their children.

It is important to understand that divorce is about loss and a normal reaction to loss is anger, sadness and fear. If these painful emotions take the form of hostility, they can cause tremendous damage to everyone in the family, gaining a vicious momentum that can spiral out of control.

The Child Specialist becomes the voice of the child or children during the divorce process. A licensed mental health professional, the child specialist meets separately with the children and their parents to understand how the children feel about changes in the family and gain their perspective on the best child sharing schedule for everyone. The report prepared by the child specialist is used by the coaches and the attorneys to create a structured schedule of child sharing that will maximize the children's attachment to both parents.

Collaborative Divorce has many virtues for every member of the family. Using effective, solution-focused techniques, the team ushers the family into a future where loss is minimized and the new family, morphed into two rather than one household, can achieve an enlightened beginning.

For more information about Collaborative Divorce, please call 888-837-9700. The web-site for the Collaborative Family Law Group of San Diego is [www.collaborativefamilylawsandiego.com](http://www.collaborativefamilylawsandiego.com).