

When Should you Choose Collaborative Divorce?

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There are many law firms that limit their family law practice to collaborative divorce. Our firm does not. We offer a full range of services for divorcing people, including collaborative divorce, mediation and litigation advocacy, including trials in all court in Massachusetts. We are committed to helping each client determine what approach is the most likely one to get them through the divorce process with the best outcome. We consider "best outcome" to include minimizing conflict and acrimony and maintaining post divorce relationships, in addition to financial results, which clients will sometimes make the mistake of concentrating on to the exclusion of other considerations. It is our belief that "collaborative law" optimizes the chances for a "best outcome" but it is not indicated in every case.

What is collaborative divorce?

You should see the other article entitled "Getting Divorced? You Have Options" by this author for details, but essentially in Collaborative Divorce clients choose specially trained collaborative divorce lawyers who are committed to a negotiated settlement. Clients agree in advance not to go to court except for obtaining of the divorce judgment, in an uncontested proceeding. Negotiations are conducted primarily in meetings with clients and attorneys in the room. Full disclosure and transparency is the hallmark of this process. Gamesmanship, threats to "see you in court" and the like are absent from this process. In the event the case does not settle, the collaborative attorneys are required to withdraw from the case and the clients choose new litigation counsel. With this feature the attorneys have no incentive to foster litigation.

Sounds Great right? Why shouldn't everyone choose Collaborative Divorce? The following are reasons NOT to choose collaborative law:

1. Domestic violence or child abuse. Any history of recent domestic violence makes it foolish and perhaps even dangerous to consider a process in which parties are required to sit in the same room.
2. History of Financial misconduct: In a contested divorce financial restraining orders preventing the transfer of assets can be obtained automatically upon commencement of the case. This can prevent marital assets from disappearing. If there is a meaningful concern about this kind of behavior, clients should go to court immediately.
3. Serious mental illness: If one party has major depression, substance abuse, or psychosis, Collaborative Law is unlikely to work, although there is little risk in trying. Often an experienced Collaborative Lawyer is the best resource a person with such a disability can have, although, there may be a need for court intervention if the party's ability to participate in the process is seriously impaired. In that situation a court appointed "Guardian ad Litem" will be appointed to act on behalf of the impaired spouse, and in such situations, Collaborative Divorce may be difficult to pursue.
4. If one party is not committed to the Process. For Collaborative divorce to work, both parties have to be committed to attempting to work in this fashion. If one party refuses to be transparent about disclosing information, or is using the Collaborative Divorce process as a way to delay or avoid dealing with the hard issues, then the only way to move things along so the parties can finally be divorced, is to go to court.

Most litigated cases end up settling eventually and for that reason even if Collaborative Divorce, as formally practiced is inappropriate, it does not mean that your divorce will be World War III, however, it is important that clients not be afraid to obtain the protection of the court when indicated. For questions about this subject and any other questions relating to divorce in Massachusetts, please email the author: hgoldstein@rfglawyers.com or call Howard Goldstein at 617-964-7000 Massachusetts Divorce Lawyer