

## **COLLABORATIVE DIVORCE - A Win-Win Situation**

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Divorce.

You know by now the statistics – at least 50% of all marriages will end in divorce. That means that in reality, divorce touches all of our lives at some point in time, whether it happens to us as spouses, in-laws, other family members, friends, co-workers...or even worse, as children of divorcing parents.

As common as it is in today's society, we as human beings in general have a difficult time adjusting to the process and the aftermath of divorce. It is often considered the worst time of our lives – a time that can be made a little easier if handled with care.

If given half a chance, many people will see that although divorce ends the marriage, it does not end a whole series of relationships that the parties have enjoyed and nurtured over the life of the marriage...especially with their children. When kids are involved, the marriage may be over, but the connection isn't – no matter how much one might want it to be. When kids are involved, your connection is for *life!*

Reality check: guess who's going to have to be civil with each other at *weddings, bar mitzvahs, funerals, christenings, graduations*. These will be important memories for your kids and for your extended family in general – no one wants to see those moments spoiled because of a contentious divorce process or because you and your ex spouse just can't get along even *years* after the divorce.

SO... what can be done to help make divorce less of a war, and divorcing couples less adversarial toward each other...*especially* when attorneys get involved? When the attorney you choose practices Collaborative Law, the process can be made to be much easier on everyone involved ...including the children.

### *What is Collaborative Law?*

Collaborative Law is a relatively new approach to resolving disputes. In the last twenty years or so, Alternative Dispute Resolution (ADR) methods such as Mediation and Arbitration have been highly successful ways to conclude all kinds of lawsuits, including family issues. Collaborative Law, the newest form of ADR, has actually been around for almost 15 years, yet most people, including many lawyers, aren't aware of it yet.

Today Collaborative Law is primarily used to resolve divorce issues between couples, using a process where the parties and the attorneys work towards settling a case by agreement, without fighting in court. In a successful Collaborative Law case, the only thing the judge has to do is approve the final decree and grant the divorce.

Unlike Mediation and Arbitration, the collaborative process involves the parties and their attorneys entering into a contract wherein they commit to work towards a resolution and to terminate the collaborative law relationship if either party decides to litigate in court. If the parties engage in litigation of any kind, the attorneys actually withdraw from the case. Now, that's commitment to working it out!

In Collaborative Law, the focus changes from who is at fault to how to solve the problem. It maintains a higher degree of integrity and dignity and respect throughout the case.

But that doesn't mean that everyone sits down together and sings "kumbaya". There is actually a distinct process that is followed, called "interest-based negotiations." Parties are guided by their attorneys through the process in a semblance of order that seems to work best.

In the United States, Collaborative Law has become the new model for family law throughout the country: Texas, Ohio, Georgia, Florida, Pennsylvania, Connecticut, New Mexico, Oregon, and Massachusetts, and the list is growing.

Texas, as always is in the forefront of new and important trends, particularly with regard to the law...so, not surprisingly, in 2001 Texas became the first state to sanction collaborative law by making it a part of the law in statutory form (Sections 6.603 and 153.0072 of the Texas Family Code).

### *Why use Collaborative Law?*

Even in circumstances where there is hurt, pain, betrayal, and disgust, this new approach can go a long way in keeping things on an even keel long enough to get the divorce completed, and may even, in certain circumstances, result in a "friendly divorce", wherein the parties can remain on friendly terms in future years.

Why would you want to remain on friendly terms with someone who you can't stand right now? The answer is simple - for the kids.

In past eras, couples at odds often stayed together "for the sake of the children". Over the years, and through numerous studies of families in such crisis, it became more and more the opinion of psychotherapists and other such professionals that often the best thing for the children was for the parents to split...if they could do so amicably.

But is that possible? We have all heard the horror stories: Harsh words are said that you can never take back. "Game-playing" becomes more brutal as time passes...some kids are even asked to play detective - "is mommy still going out in the evenings?" "Is daddy's new bimbo at his house?" Kids are suddenly placed in the middle of a destructive tug-of-war. Kids should NEVER be placed in the middle of your divorce! All this adds stress and tension to an already difficult situation. As difficult as it is to have a "friendly divorce", more and more couples have accomplished this in recent years, and Collaborative Law lends itself perfectly to the process.

Another positive aspect of Collaborative Law: cases are typically handled quicker – usually within a few months. This makes everyone happy, including the judges. Family courts are under pressure to dispose of their cases as quickly as possible. The average collaborative case takes 17 weeks, compared with the average litigated divorce, which takes 17 months! If everyone sits down together to resolve issues, even if it takes one, two or three meetings, the parties can potentially have their case concluded within the minimum time required in Texas (60 days).

Cost is also a factor. Because the emphasis is on settling without going to court, attorneys' fees are often less as attorneys can spend their time focusing on the settlement rather than taking depositions, interviewing expert witnesses, and preparing for trial. The hours of trial work are eliminated and the challenge of trying to get on the judge's trial scheduling calendar quickly is also alleviated.

Not only does a "collaborative divorce" usually involve less time and cost, it ensures privacy. No public court appearances as a couple are necessary. No public trial. No judge or jury deciding your future. No personal or psychological or financial records (which are public records) go into your court file. No one knows your business but you.

One of the most crucial reasons that families are deciding to try Collaborative Law is that they realize that in such cases, the judges don't make the decisions – the parties do. After all, the parties know their situation better than anyone, so they can make their own decisions better than anyone.

Why would anyone want to rely on a judge or a group of strangers to make decisions for their own family? When decisions are not made by the parties, the judge must make those decisions based on the Texas Family Code, which calls for cookbook rules to parenting, decision making, visitation, and child support...even if they don't make sense in a specific case. Judges are not to blame for any rulings they make in such situations... most judges just do the best they can with information given to them within just a few hours and in an environment of trying to determine whom they should believe. It's a tough call in most cases, and one which would be better handled if the parties could come to an agreement, which would be best for everyone involved, especially their own children.

The result: it costs the parties less money, less trauma, less drama and better relationships!

*Who is involved in the Collaborative Law movement and how do you find out more?*

Most large cities have established Practice Groups – a group of lawyers who include collaborative law in their practice. While there have been active collaborative lawyers in Travis County, Hays County until recently did not have an active group promoting collaborative law. The Hill Country Collaborative Law Group (HCCLG), comprised of members in Dripping Springs and San Marcos, is changing all that. Each of the groups' attorneys is independent and unaffiliated, but work well together on collaborative cases.

One of the main objectives of HCCLG is to promote the Collaborative Law process and to use interdisciplinary teams to achieve optimum results. The teams can include mental health professionals, CPAs, Financial Planners and anyone else interested in assisting clients in this process. The HCCLG is open to having such associates join the team. Meetings are held every month in San Marcos and are open to prospective members.

With the advent of Collaborative Law, divorce no longer requires destruction of family values and family members, who often have no choice but to take sides as the family disintegrates (or risk losing at least one of their loved ones). Couples can choose to leave a legacy of bitterness and hurt or to be examples of integrity and decency in difficult times. Couples and attorneys both have a choice to make...we can all be part of the problem or part of the solution.

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*An attorney who works and resides in Dripping Springs, Milena Christopher practices primarily family law, collaborative law and mediation. Having been a prosecutor for many years, she has seen seemingly “bad people” at their best (in criminal court)...but in family law she unfortunately continues to see “good people” at their worst. “Divorce often brings out the worst in people – things that someone may never expect to say or do suddenly become commonplace when emotions and feelings get in the way of doing the right thing. Collaborative law can assist in maintaining dignity in the process, mutual respect for the parties and integrity of the family for the sake of the children involved.”*