

Collaborative Divorce

Over the last two months, my articles examined two different options for resolving divorce disputes: mediation and attorney-led negotiation. This month's article looks at Collaborative Divorce.

Collaborative Divorce is a relatively new concept that blends the best aspects of mediation and of attorney-led negotiations into a team process. It is meant to help parties reach a settlement that works for them better than a court-ordered result. It is rooted in the philosophy of client self-determination. It is a process that has grown significantly more popular in recent years, and that offers many clients the hope of avoiding the negative consequences of litigation.

The essence of Collaborative Divorce rests in the formal contractual promise by the parties and their lawyers to stay out of court. If either party breaks this promise, then the lawyers must resign and by contract no longer may participate in the dispute. Moreover, any other professionals brought into the process, such as financial planners, valuation experts, child experts, etc., also no longer may participate. This creates a significant cost and time disincentive for the parties to litigate.

The consequence of this central premise is that the attorneys, instead of approaching the case from the perspective of "How can I make the other side say yes" must instead focus on "How can I get the other side to say yes." This sometimes not-so-subtle shift frees the attorneys to use their talents creatively on finding solutions, rather than expend their energy on gaining leverage.

Confidentiality within the process is another key element. Together with the no-litigation promise, confidentiality lets the attorneys talk to one another frankly and constructively, without fear that admissions about their client will later be used against the client. This allows the attorneys to address the real issues either party may have, and to recommend outside experts who have the right experience and skill to help. The focus is on solutions, instead of blaming, criticizing, or besting the other party.

Obviously, the ability of the attorneys (and parties) to trust one another plays an important role. This trust is easier to achieve, however, than many may think. Collaborative attorneys generally embrace the ability to work constructively with their collaborative counterparts, and are trained to lead the parties by their example. Many divorcing couples crave a process that produces results without the destructive emotional wear and financial cost of litigation. As a result they welcome the safety to work on their problems that trained collaborative attorneys and this process provide.

The cost of a team of professionals can sometimes be an obstacle for clients. This is an area, however, where scrimping often costs more than bringing in the needed expert. And the cost of the right team almost always is less than the price of litigating the issues. Finally, the end result

is one tailored to the parties by involved, knowledgeable, and trained professionals instead of imposed by an overworked judge mechanically applying legal formulas.

As with every process, not all cases are suited to Collaborative Divorce. It represents an important option that every divorcing couple should consider seriously, though, especially as a positive alternative to litigation.

Next month's article will examine situations where litigation may be the best available option.

NOTICE

© 2010 by Hadrian N. Hatfield. For more information about Hadrian N. Hatfield and Shulman, Rogers, Gandal, Pordy & Ecker, P.A., please visit www.ShulmanRogers.com. Any comments or questions can be directed to Hadrian N. Hatfield at hhatfield@shulmanrogers.com.

Modern Family Law Views is meant as an information tool to help people going through the separation or divorce process and those working with them.

Please feel free to make and share copies of any Modern Family Law Views with those you think can benefit from this information.

To unsubscribe, please e-mail your request to ebarrow@shulmanrogers.com.

Thank you for your time!

HADRIAN N. HATFIELD

ATTORNEY AT LAW

hhatfield@shulmanrogers.com | T 301.230.6575 | F 301.230.2891

SHULMAN, ROGERS, GANDAL, PORDY & ECKER, P.A.
12505 PARK POTOMAC AVENUE, 6TH FLOOR, POTOMAC, MD 20854
ShulmanRogers.com