

Heading for divorce? It doesn't have to be World War III

Depending on where you obtain your statistics, one-third to one-half of all marriages end in divorce. The perception is that divorce is an ugly, messy process that destroys everyone in its path. Often only one spouse wants to divorce and the other puts their head in the sand. Nevertheless, the process moves forward whether or not both parties are on board.

Couples facing divorce have an avalanche of thoughts: "I want to pay as little to my spouse as possible," "I'm worried about the business I've worked so hard to build," "I'm worried I won't get to see my children as much as I'd like to," "I want to take him/her to the cleaners," "what will happen to the money my parents left me when they died," "I want to inflict as much damage on my spouse as possible," "I don't want to pay child support, so I will fight for custody," etc. These are natural thoughts as individuals face fear of the unknown, and most certainly, a significant change in their everyday "normal."

The hardest, and perhaps the most important thing, is to look past the emotion. Decisions you make during your divorce have the potential to affect you and your family for decades to come. There are so many issues to untangle: financial issues, including those where one spouse owns their own business, or one's compensation includes an annual bonus or significant overtime dollars; debts; if there are children, issues of custody and child support; and spousal support, to name a few. One thing is certain—if you and your spouse don't and can't agree on how to resolve these issues, the decision will be taken out of your hands and left to a judge or magistrate who doesn't know you and your family.

One option to consider is a process called collaborative divorce. Collaborative divorce allows you and your spouse to craft creative solutions that are right for your family. The solutions don't have to be what "traditional" families do, and they don't need to be what the law would otherwise require couples to



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do. Collaborative divorce allows the parties to maintain the decision making and avoid the often irreparable damage of contentious litigation. Collaborative professionals, including attorneys, are specially trained in the process and required to maintain a certain number of continued training hours each year.

Although it may seem counterintuitive, parties that engage in collaborative divorce make a commitment to avoid litigation. They and their attorneys sign an agreement that requires them to essentially start over with new attorneys if either party chooses to terminate the process and litigate their issues. However, just like in traditional litigation, the lawyers' obligation is to their client, and their goal is to obtain the "best" outcome for that client.

The parties and their attorneys meet with each other and other professionals to resolve all the issues. By having their own attorneys present, some of the misgivings of mediation are eliminated, i.e., that one party or the other is not well versed in "the law," or is more emotionally vulnerable, and thus will be taken advantage of. Attorneys inform the parties of what the law would require in a litigation setting and what possible outcomes might be. The process is excellent for couples with a substantial amount of assets, and even those with significant debts. It benefits both spouses who have children and the issues that come along with separating a family, and spouses without children.

Rather than have each side hire their own "expert," which can get expensive and often doesn't help parties resolve litigated

divorces short of trial, the collaborative process allows the parties to hire one expert who will act as a "neutral" and act on behalf of the family as a whole. These experts can include financial planners, business evaluators, child specialists, communication facilitators and real estate appraisers, among others, and eliminate the need for "dueling experts."

Often court proceedings take many months or even years to complete, as the parties engage in a formal exchange of information that can prolong the process. Collaborative divorce is typically a quicker process, as the team sets up several meetings in advance and aims to be efficient by assigning homework between meetings and circulating an agenda. Even with the momentum, there are periods of time built in between collaborative meetings to allow the parties to process the information, gather additional data and speak to their individual attorneys.

Very often what is important to one spouse may not be as important to the other. Thus, the regular face-to-face meetings enable the parties to communicate directly with each other and eliminate the guesswork and posturing of litigation. It allows individuals to keep their integrity intact, while dealing with sophisticated legal and financial issues that could otherwise destroy any possibility of civility in the future. Collaborative divorce allows the parties to control the final outcome in a way that works for them.

Make no mistake, collaborative divorce, like any divorce, isn't easy. There will still be disagreements and strong emotions. The process will, however, assist the parties in dealing with these in a constructive way to minimize conflict and damage, and maximize the best interests of both parties.

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