

About the Collaborative Family Law Institute and the Collaborative Divorce Process

The Collaborative Family Law Institute is an association of skilled, like-minded attorneys, mental health professionals and financial professionals dedicated to helping resolve family disputes using the dignified and non-adversarial process of collaborative law. This process enables separating spouses to accomplish their divorce in a spirit of cooperation and mutual respect in an environment in which both transparency and personal privacy are emphasized. Although the value of privacy can hardly be overstated for many couples, often it is the first casualty of a traditional, legally contested or litigated divorce. The collaborative family law process uniquely allows divorcing parties to keep their family matters private because the process is expressly designed to keep marital dissolutions out of court and out of the public record. In essence, it is breaking the cycle of conflict.

In 2000, a small group of attorneys in South Florida committed themselves to a saner, healthier alternative to “winner takes all” divorce litigation. They formed the Institute in an effort to promote a method of resolving family disputes in a way that is less stressful and damaging for all parties involved. Members of the Institute prefer collaboration over litigation – and we believe most people will feel the same way once they learn about the collaborative process. Under the Institute’s model, at the outset, and if the parties consent, attorneys for both spouses recommend and often work with a neutral mental health professional. The role of the mental health professional is multifaceted and distinctly different from that of a therapist. The mental health professional works closely with the couple, initially gathering important information about their concerns, goals and interests while fostering trust and facilitating good communication among the parties. Mental health professionals work closely with the parties’ attorneys, facilitating the process and promoting communication within the team. A mental health professional manages the progression by assessing and supporting each party’s emotional readiness for the divorce process. When children are involved, they are able to facilitate and encourage the development of a healthy co-parenting plan by teaching the parties new communication skills, how to address and resolve disputes, and how to build trust.

When appropriate, a neutral financial professional is brought in to become part of the team to help the parties identify the financial issues that are a consequence of the divorce process and to suggest options for an equitable settlement. A mediator or a child specialist may also take part in the collaborative process, when appropriate.

How the Collaborative Divorce Process Works

The essence of the collaborative family law process is the Collaborative Participation Agreement, which the parties and collaborative professionals sign, and which stipulates that the parties agree not to seek judicial resolution of the dispute during the collaborative family law process. The parties make an economic and emotional commitment toward achieving a mutually agreeable settlement out of court.

The Collaborative Participation Agreement includes an attorney disqualification requirement. Participation in the collaborative process is voluntary, but if one of the parties opts out of the

process, both parties must engage new legal counsel. This is because the lawyers are required, by virtue of their commitment to the collaborative family law process as signatories to the Collaborative Participation Agreement, not to represent the parties in litigation if one of the parties opts out of the collaborative process. The collaborative attorneys are prohibited from representing the divorcing spouses in any subsequent litigation between the parties that may arise as a result of their divorce.

How to Get Started

After the Participation Agreement is signed, the two parties, their attorneys and any allied mental health and financial professionals hold an initial client meeting, which typically lasts for two hours. This session is designed to help the clients set goals and draft an agenda for the next meeting.

The role of the lawyers in this session is to ask questions: “What issues are most pressing, financial matters, distribution of assets or children issues?” No one leaves the initial meeting without an assignment – something that needs to be done before the next meeting – which promotes the personal responsibility and involvement of clients in the process from day one. The lawyers’ role is to guide their clients, so that everyone is prepared for the next joint conference.

In a collaborative family law case, the attorneys’ advocacy role does not change; however, in the process, clients learn how to be their own best advocate and find their own voices. The attorneys continue to give their clients advice, just as in the traditional litigation model, but it is given with the specific goal to help the client resolve all of the issues involved in their divorce.

Financial Considerations in the Collaborative Family Law Process

With no depositions and no contested court hearings or expert testimony, the collaborative family law process offers a potential for significant savings over the costs of a traditional, litigated divorce. Unlike the discovery process in divorce litigation, the parties in the collaborative family law process provide information themselves, and do so voluntarily.

Complex financial issues are discussed in front of everyone in a spirit of transparency and cooperation.

Typically, after the clients and attorneys hold their first or second joint meeting, they decide whether to engage a neutral financial professional to help the clients resolve their financial issues. Ultimately, the financial professional’s role is to assist the parties in finding a solution that will maximize the financial benefits to both parties. Financial disclosure documents and affidavits are voluntarily exchanged. Through these financial disclosures, the parties disclose their income, expenses, assets and liabilities.

Once the parties voluntarily submit their financial disclosures, the financial professional creates a list of assets and liabilities with proposed equitable distribution charts to help the parties decide

how the assets are to be divided. The financial professional will also help the parties resolve alimony and child support issues and provide advice on the tax consequences of proposed settlement options. For example, one recurring issue is the deductibility of alimony and ways to maximize potential tax savings for both parties. The financial professional can readily provide information on this and other significant financial issues.

In Brief: Legal Steps in the Collaborative Process

1. The parties meet in joint conferences until an agreement is reached.
2. A settlement agreement is executed and filed with the court with a joint petition and answer signed by both parties. The petition is simple, without any accusations about either of the parties or details of their financial situations.
3. One or both parties appear at an uncontested hearing to finalize the divorce, where a judge ratifies the settlement agreement and enters a final judgment dissolving the marriage.

Collaborative Law in Florida

Collaborative law is now being taught in Florida law schools, and a collaborative law statute is likely to be passed in Florida in the near future. It is a viable alternative to litigation that has been around in one form or another in the United States for more than 20 years, and is now being practiced in 20 countries around the world.

While collaborative law is used in Miami-Dade County primarily in family cases, it also is used in other parts of the country to resolve probate and commercial disputes. It allows the parties to independently resolve their dispute without going to court or having a third party make decisions for them. Because collaborative cases are fully confidential, collaborative law is an especially attractive alternative to litigation for those in the public eye.

The Collaborative Family Law Institute: breaking the cycle of conflict. We believe that resolving family law matters should be accomplished through a non-adversarial, dignified process and that the collaborative process is the best means of doing so.

Questions and Answers

Q: Can the collaborative law process be used in non-marital cases? What about same-sex relationships?

A: While typically used in standard divorces, the collaborative law process can also be used in

non-marital cases. Collaborative law is probably the ideal option for handling a same-sex split since the judicial system in Florida is currently not equipped to handle those matters.

Q: How do you handle it when one of the parties does not want to compromise?

A: The entire point of collaborative law is to focus on the needs and interests of both parties who are working to prevent the sort of self-centered dynamic that plagues so many divorces. Should a party refuse to compromise, the option and effect of resorting to litigation is again explained to that client by counsel, and the decision whether or not to continue rests with that particular party. Collaborative law was created in the area of family law to help parties work together with their attorneys and other professionals in an atmosphere of civility and negotiation.

Q: What about children?

A: Collaborative law is especially advantageous for dissolving marriages that involve children. It is a dignified and understanding way to move forward with a difficult process, hopefully shielding the children from the type of damage sustained in many divorces. The attorneys make it clear that children should never be co-involved in the issues or emotions raised by the dissolution of the marriage. Both parents need to reassure their children that they are loved and will be secure. In many cases, a mental health professional, perhaps supported by a child specialist, will help the parents with this process.

Q: And what if the process does not work?

A: It usually does. The experience in Miami and throughout the U.S. has been that less than 10% of collaborative cases break down and wind up in litigation. In situations where it appears that the process might fail, the team of professionals involved is consulted. If they agree that the process will not work, the lawyers withdraw. At that point, there is a 30-day window, during which the clients receive assistance in finding new attorneys. Collaborative professionals take care to avoid any conflict of interest and do their utmost to help their clients make the transition, so no one feels abandoned as they shift gears and prepare to enter traditional divorce litigation. Of course, collaborative attorneys are obligated to explain to their clients the consequences of abandoning the collaborative process.

Q: What's the difference between collaboration and mediation?

A: In Florida, mediation is mandated in divorce cases pending before a court. Collaboration is voluntary. There is also a feeling in mediation that the clock is ticking – solutions must be reached by a certain deadline or the divorce will proceed in court. Collaboration removes the threat of court. With collaboration, issues are dealt with one at a time, so that the concerns of each party receive the full attention of everyone involved. When necessary, mediators can be brought into a collaborative matter to resolve issues that are problematic. Most importantly, the collaborative process is an all-expansive, continuing process in which the parties, their attorneys, and the other allied professionals who may be on the team confer together in a comforting, non-combative environment. Mediation is a limited method, usually occurring during a one- or two-day time period during which each party and his or her attorney are separated from the other

party and attorney, thereby having minimal contact with each other. Mediation does not involve gathering and/or identifying documents. The mediator moves back and forth from one room to another, working to help the parties reach a settlement. If mediation fails, there is an imminent threat of litigation in court.

Q: How private is collaborative law?

A: As private as the parties make it. The collaborative process is conducted privately, but transparent among the team of professionals. Everything in the joint conferences is confidential – as it would be in mediation – unless both parties agree to disclosure.

Q: Is it possible to use the collaborative process with a pre-nuptial agreement in place?

A: Yes, it certainly can be used when the parties have previously signed a prenuptial agreement. The collaborative process would help the parties address the terms of the prenuptial agreement and to resolve any issues that were not addressed in the agreement, such as issues involving children.