

Cooperative divorce:

An alternative

By **Linda Roberson**

Collaborative divorce has admirable goals, but creates unnecessary risks for divorcing spouses and their lawyers. Cooperative divorce can accomplish the same goals without the risks.

No reasonable person believes that contested litigation, personal acrimony and high lawyer fees serve the needs of divorcing families. Experienced attorneys concur that divorce cases are best handled through negotiation and out-of-court resolution rather than through lengthy trials, because parties have more alternatives available through settlement and because the emotional damage created by a contested proceeding can reverberate in the family for decades.

Nonetheless, anyone who has been divorced understands that the process is not usually a friendly one, that splitting spouses generally mistrust each other to some degree, that each spouse believes he or she has been wronged and thus may feel justified in taking advantage of the other in some ways. As a result, many divorcing parties want the protection of an attorney's advice and advocacy.

Traditionally, a person who retains a lawyer has the comfort of knowing that the lawyer works solely for him or her, is obligated to protect his or her confidences, and will advocate for positions advantageous to him or her. Traditionally, divorce litigants have the right to the protection of the courts – and their intervention, if necessary – to ensure that all relevant information is disclosed so that each party concludes the process with full understanding of the financial and other facts and circumstances relevant to their marriage. Traditionally, if negotiations fail, the lawyer who knows the case can take it to the judge for a decision.

The participant in collaborative divorce gives up these safeguards. His/her attorney must disclose all information the attorney believes is relevant to the case, whether or not the client provided this information in confidence. Court oversight is not available to make sure that the other side fully discloses appropriate information. If the

parties are unable to negotiate a settlement, they must start the process all over again with new lawyers.

Cooperative divorce provides the framework for working out a negotiated settlement without giving up the safeguards of client confidentiality, the ability to discover information through appropriate court processes if necessary, and the ability to proceed to contested litigation with the lawyer you have worked with throughout the process if you are unable to agree.

Many experienced lawyers are concerned about the ethical and malpractice ramifications of collaborative divorce, since it requires that the client give up traditional protections and imposes duties to the opposing party. Cooperative divorce enables the divorcing couple to have the best of both worlds, without creating ethical conflicts and malpractice risks for the attorney.

Lawyers don't have to join a special association to do cooperative divorce, nor are they limited in whom they can work with as opposing counsel. Cooperative divorce requires simply that the parties and their counsel treat each other courteously, exchange information informally prior to engaging in formal discovery, meet together to attempt to resolve disputed issues before going to court, and cooperate to the extent possible in hiring expert resources (accountants, appraisers, psychologists) to assist in the resolution of issues. Most of the time, the parties can reach agreement without involving the court. But the court remains available if they need it.

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