

**Collaborative Divorce:  
The Revolutionary New Way to  
Restructure Your Family,  
Resolve Legal Issues,  
and Move on with Your Life**

**By Pauline H. Tesler and Peggy Thompson**

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## THE OLD OR THE NEW WAY OF DIVORCE? You Have a Choice

*The truth is that our finest moments are most likely to occur when we are feeling deeply uncomfortable, unhappy, or unfulfilled. For it is only in such moments, propelled by our discomfort, that we are likely to step out of our ruts and start searching for different ways or truer answers.*

—M. SCOTT PECK

You don't need to be a lawyer or a psychologist to know that going through a divorce is one of life's roughest passages. It can cause a myriad of emotional responses that at times makes you feel overwhelmed and limits your ability to think clearly or make good choices. Unfortunately, this occurs at the very time you are called upon to make some of the most important decisions of your life.

For many people, the ending of a marriage is a time of temporary "diminished capacity." By diminished capacity, we mean a period during which the person you thought you were—competent, thoughtful, considerate, reasonable, fair-minded, resilient—disappears for days or

weeks at a time. The person you generally know yourself to be is temporarily replaced by an unfamiliar and frightening self who can hardly summon up enough energy to get out of bed; wallows in fear, confusion, or anger; or jumps to hasty conclusions in order to end the conflicting impulses about what to do and how to behave.

Recovering from the shock of a failed marriage involves moving through that initial period of diminished capacity, until gradually, more and more of the time, your predivorce “best self” is back at the helm. Most people can expect to feel something like their old, predivorce selves in eighteen to twenty-four months from the time of the divorce decree, though it happens more quickly for some and more slowly for many. During that recovery period, it is quite common for people to veer suddenly and dramatically from day to day, or even hour to hour, between optimism and darkest pessimism, between cooperative good humor and frightening rage.

You may be experiencing such intense emotions as you come to terms with the possible—or actual—ending of your marriage. Most people do, at least some of the time. Keeping the focus on best intentions and good decision making in light of that reality is what collaborative divorce is all about.

Thinking clearly about what kind of divorce you want and how you’ll get there may be an unfamiliar concept to you. Most people are surprised to learn that the choices made right at the start of the divorce process have a great impact on what kind of a divorce experience they will have. Even when people do understand the high stakes of those early choices, thinking clearly and making intelligent choices at that time can be very challenging, because divorce is an emotional wild ride like no other. Even very reasonable and civilized people can find unexpected, hard-to-manage emotions popping up at the most inconvenient times, particularly during the early months of a separation and divorce—exactly the time when you will be making decisions that determine what kind of divorce you are likely to get and how your divorce will affect the rest of your life.

## **THE EMOTIONAL ROLLER COASTER OF DIVORCE**

Divorce is an emotional task unlike any other in modern society, and different people experience it in different ways. While some individuals go through nearly all of the extreme emotional states that we describe here, others have an easier time getting through this period and will maneuver these choppy waters with more skill. The important thing to remember is that all the emotions we discuss are normal, but while some are readily acknowledged by the people experiencing them, others are so uncomfortable that it's difficult even to admit they exist. The wide array of emotional states that many people experience during the early stages of the divorce process can diminish their capacity to think clearly, impair their judgment, and make rational decision making difficult or impossible.

### **GRIEF AND SORROW**

Being sad when a marriage ends is natural. Although it's painful, grief is a healthy emotional response to the loss of an important relationship. We are hardwired to feel it, and it wouldn't be reasonable to expect otherwise. While sorrow and grief can be very hard to handle, most people do understand and accept the inevitability of these feelings.

We know from research, theoretical writings, and personal experience with thousands of people going through divorces that though the emotional impact of a divorce is as severe as that of a death in the immediate family, the grief and recovery process does have a beginning, middle, and end. Though they may seem endless, the pain and confusion surrounding separation and divorce do gradually lighten and finally go away—for most people over a period of eighteen months to three or four years following the marital separation, though recovery can be quicker or slower.

Elisabeth Kübler-Ross, a pioneer in the hospice movement, first

described the stages of grieving about and recovering from a major trauma such as death or divorce:

- **Denial:** “This is not happening to me. It’s all a misunderstanding. It’s just a midlife crisis. We can work it out.”
- **Anger and resentment:** “How can he [she] do this to me? What did I ever do to deserve this? This is not fair!”
- **Bargaining:** “If you’ll stay, I’ll change” or “If I agree to do it [money, childrearing, sex, whatever] your way, can we get back together?”
- **Depression:** “This is really happening, I can’t do anything about it, and I don’t think I can bear it.”
- **Acceptance:** “Okay, this is how it is, and I’d rather accept it and move on than wallow in the past.”

Understanding these stages can be very helpful when it comes to talking about divorce and decision making. It’s important to know that when you are in the early stages of this grief and recovery process, it can be challenging to think clearly or to make decisions at all, much less to make them well. Identifying your present stage of grief and being aware of it is an important step toward ensuring that you will make the best choices you can.

## GUILT AND SHAME

Experiencing guilt and shame is also a normal reaction to the end of a marriage. These feelings arise when we feel a sense of failure—of not having fulfilled our own or our community’s expectations. In the case of divorce, people often feel guilt and/or shame because they have failed to stay married for life. That’s partly a matter of personal expectations—not fulfilling the promises made to a spouse—and also partly a matter of not fulfilling what our culture seems to expect from us. If our culture’s expectations about marriage and divorce are reasonable—if they fit well with how people actually behave in that

culture—and we don't measure up, the guilt and shame felt at the time of divorce may be appropriate. If the culture's expectations don't match well with the reality of marriage and divorce as people actually live it, the guilt and shame can be much more problematic—difficult to see clearly, difficult to acknowledge, difficult to manage in a divorce. In addition, there are some marriages in which one or both partners have engaged in extremes of betrayal, deceit, or even criminal behavior that almost always involve feelings of guilt and shame.

Regardless of whether the feelings arise from not having met one's own or the culture's ideals or from actual wrongdoing, we know that for many individuals, guilt and shame can be so painful that they change very quickly into other, more tolerable feelings, such as anger or depression—often without the person's even knowing that the guilt and shame are there. This is why it is so common in divorce for each partner to blame the other and why it can be so difficult for divorcing partners to accept responsibility for their own part in a failed marriage.

We've encountered few divorcing people who find it easy to see or accept their own feelings of guilt and shame. These powerfully negative feelings often remain under the radar, hidden and invisible, where they do the most harm. Strong feelings of guilt or shame can make it difficult or impossible to take in more balanced information, to maintain your perspective, and to consider realistically your best alternatives for how to resolve problems.

Guilt can cause spouses to feel they have no right to ask for what they need in a divorce, causing them to negotiate unbalanced, unrealistic settlements they later regret. Family lawyers have a saying that "guilt has a short half-life," and because guilt is such an uncomfortable feeling, it can easily transform into anger. We often see people who have negotiated guilt-driven agreements having second thoughts and going back to court to try to set aside imprudent settlements.

Similarly, shame often transforms into blame, anger, or rage directed at the spouse. Bitter fights over children or property can be propelled by feelings like these, because modern divorces seldom brand either partner as Snow White or Hitler, Prince Charming or the

Wicked Witch, and therefore the anger, which needs to go somewhere, goes into fights over matters that courts are permitted to make orders about.

## FEAR AND ANXIETY

Fear and anxiety are common because of our hardwired “fight-or-flight” instinct. Our bodies react to stresses (such as an angry phone call from a spouse) by using physical alarm mechanisms that haven’t changed since our ancestors had to react instantly to avoid being eaten by saber-toothed tigers. You react to stress physiologically in the following ways:

- Your heart speeds up, and adrenaline pours into your bloodstream
- Your adrenaline makes your heart contract more forcefully and may cause you to feel a pounding sensation in your head
- You may feel hot flashes of energy
- Your attention homes in on the event that triggered the strong feelings, limiting your ability to take in new information

When people are under chronic and severe stress, they may have anxiety attacks, in which they tremble and their heart pounds. Or they may be paralyzed by almost overwhelming feelings of fear that seem to come out of nowhere. We work with many people who experience these feelings as their marriages end. People who feel overwhelmed or confused in this way tend to fall back upon old habits of thought and action rather than looking intelligently at the facts of their situation and weighing the best choices for the future.

## OLD ARGUMENTS DIE HARD

As marriages become troubled, couples often rely on old habits of dealing with differences that lead to fights rather than solutions. If those old habits didn't lead to constructive solutions during the marriage, they will surely yield no better results during the divorce. In addition, people feeling anxious and fearful may resist pressure to move forward and resolve divorce-related issues because of feeling unready, while their spouses may be impatient, seeing no reason why the divorce wasn't over months ago. Bitter fights in the divorce courts often stem from differences such as these.

Unfortunately, both our court system and our culture at large encourage us to take action in divorces based on how we feel when we are at the bottom of the emotional roller coaster, when we are most gripped by anxiety, fear, grief, guilt, and shame. After all, that's when most people are moved to make the first call to a divorce lawyer. As a result, people are encouraged to make shortsighted choices based on emotional reactions that do not take into account anyone's long-term best interests. The resulting "bad divorces" harm everyone and serve no one well. They are very costly; they fail to plan intelligently for the future; and they inflict psychological scars on both the adults and the children. Let's take a look at how this corrosive way of divorcing came to exist in our culture.

## **ROMANTICIZING MARRIAGE AND DEMONIZING DIVORCE**

One of the largest emotional hurdles that anyone considering divorce has to get over is that our society has romanticized the institution of marriage and demonized the process of divorce. Contemporary marriages carry a heavy load of romantic myths that don't fit the real-life challenges of living with another person once the honeymoon is over. In fairy tales, we're told that the prince and princess lived happily ever



after—but those stories usually end right after the wedding. Although marriage ceremonies often include words such as “for better or for worse, in sickness and in health, for richer or for poorer,” it’s rare for a couple basking in the early stages of romantic love to appreciate that the window of time on their blissful feelings is closing fast. Unrealistic expectations that the hormonal excitement associated with early romantic love will last forever—and that something is wrong with the relationship if it doesn’t—account for many of the divorces we see in our work with clients.

These false beliefs that people hold regarding marriage are further complicated by the unhelpful and even destructive myths that they believe about divorce. Unfortunately, these beliefs are quite widespread, often causing people to expect the worst when a marriage ends. They fill the minds of divorcing couples with fear and anger, driving out trust and hope and preventing clear thinking about how to change and adapt well during what is, after all, an entirely normal and predictable life transition. Well-meaning friends and family tell divorcing couples to expect battle and strike first, and they reject as foolish any attempts to make healthier and wiser choices about how to behave during divorce.

But it isn’t simply friends and family, with their misplaced good intentions, who send bad messages to divorcing couples about how to behave. False and exaggerated beliefs about divorce are common in our culture. You’ll find these negative messages everywhere once your ear becomes attuned to them: from television to films to comic strips to novels to news reports to law offices.

Here are some of these false beliefs:

- You can’t expect good behavior or generosity from yourself or your spouse during a divorce
- Divorce always means war
- It is foolish to extend trust or good faith in a divorce
- If she/he has hurt you, you must retaliate
- The only smart course is to expect the worst, look out for number one at all costs, and strike first for greatest strategic advantage

Once you start listening carefully, you will hear these myths about conflict and divorce everywhere. For example, Peggy's dentist, Brad, is now married to Mary, who was divorced about eight years ago from her first husband, Edward. Mary's best friend, Rita, is now married to Edward and is the stepmother of the three children Mary and Edward had together. Edward and Rita themselves have a young son who is the half sibling of Mary's children. The two families celebrate their holidays and birthdays together and sometimes take vacations together. But what does Brad say in casual conversation with his friends and coworkers about how he plans to spend his holidays? He's embarrassed. He tells acquaintances, "Mary's family is strange." He feels he must apologize for them because he "knows" it's not "normal" to be so positive about these adaptations to changes in intimate relationships and family systems.

We, on the other hand, regard the extended family Brad and Mary have created as a sensible, mature, and very functional new system that benefits everyone—children, adults, friends, relatives, and even community (because they are demonstrating a valuable social reality: that divorce does not have to mean war). Brad would be quite surprised if we pointed out to him how much he has absorbed and accepted the negative stereotypes of divorce even as he is participating in a real-life postdivorce family system that proves those stereotypes to be false.

The truth is that divorce is statistically normal. Nearly half of all people getting married will experience it—and this rate has remained constant for more than thirty years. Understanding what's normal during predictable human transitions such as divorce helps people marshal their strength, optimism, and other resources to move through the big changes of a divorce in a constructive, healthy way, whether it was wanted or not.

## **THE POWER OF NEGATIVE THOUGHT**

The tidal wave of negative messages in our culture about divorce equaling war encourages us to believe—incorrectly—that bad behav-

ior is normal. Believing that it's normal to behave badly can actually *encourage* people to behave badly when those feelings of guilt and shame that they're not even aware of take over and make good judgment and self-control disappear.

Solid empirical research demonstrates that even a little negative thinking changes behavior dramatically for the worse in ways we aren't even aware of. You don't have to take our word for it; scientific studies prove it beyond a shadow of a doubt. For example, the science writer Malcolm Gladwell has gathered a number of research reports showing that even very brief exposure to negative ideas has powerful effects—even if you don't believe them or even notice you've been exposed to them.

In one experiment, researchers had students (who thought they were taking a language test) make sentences out of scrambled words full of references to old age, loneliness, and worries. The students who read those words walked out of the testing room more slowly than students who hadn't had those words in their sentences. In another study, students were put into two groups and asked the same set of difficult questions from the game Trivial Pursuit. One group, asked to spend five minutes before the test thinking about what it would be like to be a college professor, got 55.6 percent of the questions right. The other group, asked to think about football hooligans, got only 42.6 percent right.

When widespread negative thinking about divorce promotes the idea that bad behavior during divorce is normal rather than unfortunate and misguided, the resulting effects on behavior are just as clear as what the students experienced in those research studies—but far more damaging to the families involved. False messages about what's normal in marriage and divorce are everywhere, drowning out clear thinking and making people going through divorce less able to

- Understand their own feelings and put them into perspective
- Adapt well to change

- Behave with integrity
- Make healthy, well-considered choices
- Recover from the trauma of divorce
- Raise healthy children
- Recover their optimism
- Get on with their lives

So what can you do to protect yourself from the effects of the negative messages about divorce that surround us? The best protection against damaging myths is to feed your mind every day with positive information about handling divorce with grace, dignity, and creativity. Collaborative divorce teams work expressly with divorcing couples to keep them focused on the positive, on the future, on solutions—on half full, rather than half empty.

## **WHERE DID THESE FALSE BELIEFS AND EXPECTATIONS COME FROM?**

Let's review a little history that anyone facing a divorce should know about. Until thirty years ago, when California pioneered the concept of “no-fault divorce,” the legal process for granting a divorce in this country almost always began with deciding which spouse was the “guilty party.” Without a guilty party, there could be no divorce. The judge then would punish the offender financially and reward the “innocent party” with money and the children. Those old concepts of guilt and fault remain embedded in our legal system in ways that are difficult to see, much less to change.

Think about it: no-fault divorces have been available for at most thirty years—a mere blip on the timeline of the long history of marriage and divorce. For centuries in the English common-law tradition that we have inherited, divorce was not possible unless you were the king. By the nineteenth century, ordinary people could in theory divorce, but divorce remained a shameful and rare event that occurred

only when a spouse had behaved very badly indeed: scandalous sexual behavior, gross physical abuse that couldn't be concealed, or abandonment.

As we moved into the twentieth century, ideas of individual freedom and social change spread into the mainstream, happiness in marriage became an acceptable expectation, and the choice of divorce began to be more common. Particularly after World War II, with urbanization and the breakdown of extended families, we saw a great increase in the number of couples choosing to end their marriages. But to get a divorce, they had to lie to the courts, trumping up proof of adultery that hadn't really occurred or colluding in false allegations of mental cruelty—because without fault, there could be no divorce. This was the context in which our legislatures finally, twenty years after the end of World War II, enacted the first “no-fault” divorce laws. They were trying to make the law reflect modern expectations about marriage and the accompanying modern demand for divorce.

## **“NO-FAULT” DIVORCE REALLY ISN'T**

While “no-fault” divorce is now available in all parts of the United States, “no-fault” is a rather misleading phrase. It's true that you no longer need to persuade a judge that your spouse abandoned you or committed adultery or mental cruelty in order to qualify for a divorce. But courts are ill equipped to deal with “no-fault” divorces because court proceedings are based on an opposition and conflict scenario in which a wrongdoer is identified and consequences are meted out. Courts as an institution are set up to find fault and allocate responsibility, and not much more. Battle is what takes place in a courtroom, and collateral damage is the rule. And you can't have a battle without an enemy. In short, the old habits and thinking of fault-based divorce are alive and well in the divorce courts, “no-fault” or not.

The adversarial nature of the legal system also matches perfectly the strong emotional need that many divorcing individuals feel to ease their pain by blaming their partner for all that went wrong in the mar-

riage. Shame and guilt are so intensely uncomfortable that anything that soothes the pain even briefly is hard to resist, while taking personal responsibility for our own behavior is one of the most difficult things to do. Divorcing individuals can be drawn magnetically to the idea of fault. It is often much easier to attack the other partner than to accept a fair share of responsibility for the breakdown of a marriage. Spouses can feel powerful impulses to demonize and attack each other because of the guilt and shame they feel when their marriage ends sooner rather than “happily ever after.”

### **THE GOOD NEWS: IT'S ALL NORMAL**

Here's the good news: during divorce, it is entirely normal to experience a wide range of emotions. Some of them, you now know, are part of how healthy people adjust to losing a major intimate relationship. Others grow out of that welter of false beliefs and unrealistic expectations connected with marriage and divorce that nearly everyone in our society accepts before seeing them more clearly. With the right help during the divorce, you can learn to recognize and handle strong negative feelings in ways that support good decision making.

Here's another interesting fact: at some point during a divorce, many people can expect to experience not only those negative emotions we've been discussing—such as fear, grief, confusion, anxiety, shame, anger, and guilt—but also intense positive emotional states of exuberance, high energy, excitement, and uncharacteristic openness to experimentation and risk. Feelings such as these sound considerably more pleasant—but they, too, can derail good decision making during a divorce.

As you will read again and again in this book, you cannot avoid making choices. Refusing to choose what kind of divorce you will have is, in fact, a choice—one that will lead to a bad divorce. In the same way, making an uninformed choice equals choosing a bad divorce. So does making choices and decisions reactively, in the grip of strong emotion. Knowing that such intense emotions may take over

unpredictably as you adjust to the ending of your marriage will help you anticipate and manage their impact on your ability to think clearly. Knowledge is power, and with knowledge about the emotional side of divorce you'll be better able to strip these strong emotions of their otherwise destructive force. Our experience tells us that understanding the connection between strong emotional states and bad divorce choices can help most people make better, more conscious, more informed ones.

### **THE CHALLENGE: MAKING GOOD DECISIONS AT A BAD TIME**

When strong feelings take over, we quite literally cannot think straight—no matter how intelligent or competent we normally might be. Because divorce-related confusion and intense mood swings are so common, and because they tend to work against careful thinking focused on the best long-term outcomes, we have learned that people can rarely achieve their own “best divorce” working alone. They need the right professional advisors who can help them stay focused on that goal even when the roller coaster has once again swooped to the bottom. The collaborative divorce process provides coordinated resources that give divorcing individuals and couples the specific kinds of help they need to make good decisions, even—perhaps especially—at a very hard time.

In the past, people turned primarily to lawyers when they needed assistance in making decisions during a divorce. But lawyers' specialty is the law, and a divorce—to anyone other than a lawyer—is not primarily a legal event. It is a complex experience involving not only a legal transition but also enormously challenging emotional and financial changes. For most people we work with, these emotional and financial changes are at least as compelling as the legal aspect of a divorce that is the only domain in which traditional lawyers give their advice and counsel, and often far more so. Collaborative divorce, as

you'll see, is the first way of getting help that will address all three aspects of your divorce: legal, emotional, and financial.

## THE CHOICES YOU MAKE AFFECT MANY PEOPLE

If you're like most people, you'd probably say that your divorce is of concern only to you and your soon-to-be "ex," but in truth a bad divorce spurred by bad decision making has a much broader impact than you might think. If you have children—even adult children—you need to understand that they are the forgotten casualties in most divorces. Children of all ages are typically left out of the process, subjected to enormous life changes about which they receive little or no information and over which they are permitted to exert little or no influence. Their home and school may change, their contact with Mom or Dad may be restricted greatly, their financial welfare may be at risk—all without explanation or any opportunity for them to give input.

What's more, you (and your children, if you have any) have important relationships with many people outside your immediate family. In many divorces, battling adults who consider their divorce a private adult matter unwittingly foster conflicts and rifts that can make it impossible for those relationships to continue. They do not think about the impact that the divorce will have on children's relationships with their grandparents, aunts, uncles, and cousins whom they care about. Even if there are no children involved, most people who divorce have important relationships with friends and extended family, all of whom will be affected by the divorce. In conventional "old-style" divorces, these people often feel pressured to take sides, so that what one or both spouses thought was a solid web of supportive relationships may crumble and disappear in the face of divorce-related conflict. Similarly, coworkers and supervisors may become resentful of your reduced productivity and increased absence from work because of the legal and emotional demands of the divorce process. Collaborative divorce is the



first way of getting help as your marriage ends that encourages you to pay attention to this important dimension of your divorce.

And, of course, your divorce takes place within a larger community. Is your son an important member of the football team? Does your daughter have the lead part in the school play? Were you a volunteer in the children's classroom or at the church or nursing home? If the time and energy you will have to commit to these pursuits during and after divorce will be reduced—and they probably will—the community you live in will be affected. Collaborative divorce is the first system of helping people through divorce that consistently brings concerns like these forward for your attention.

Our point in raising these questions is that your divorce affects far more people than you and your spouse might imagine, in ways that you might not yet be thinking about, and takes place in a community context in which your decisions can affect even people who are not especially close friends or family. The way to minimize the unintended negative effects of divorce is to be aware of all those who may be affected and to make good, careful choices that are the best for you and those you care about.

## THE BEST DIVORCE FOR YOU

We assume that your goal is the best divorce you and your partner are capable of achieving. Such a divorce would protect your children, help you retain your dignity, preserve your finances, and allow you to have a cordial relationship with your spouse in the future. A good divorce builds your self-esteem. If that's the kind of divorce you want, here are some questions to consider as you choose who will help you through it:

- Do I want to get advice during my divorce from someone who believes that taking care of “number one” is the only agenda that matters when a marriage ends?
- Or would I rather be advised by people who believe that paying attention to healthy recovery from the divorce,

and to creating healthy new systems and relationships after the divorce, can be as important as paying attention to the bottom line?

- Do I want my divorce advisor to be someone who believes that nothing about my divorce is important unless the law allows judges to issue orders about it?
- Or do I want my divorce advice to come from professionals who believe that my own values and concerns should determine what's relevant in my divorce?
- Do I want my divorce advice to come from someone who believes that going to court is just another way of resolving divorce issues?
- Or would I rather be advised by someone who believes that staying out of court if at all possible is healthier for both adults and children experiencing divorce?

These are the issues to consider when you make your first choices about what kind of a divorce you want and who can provide the best help to get you there. People who don't think carefully about these questions tend to make hasty decisions that can result in an ugly divorce that no one really wanted.

## **A GOOD CHOICE: COLLABORATIVE DIVORCE**

We know from long experience that only collaborative divorce—not old-style adversarial legal representation, and not a single mediator working with or without lawyers in the picture—views divorce as a complex experience requiring advice and counsel from multiple perspectives if it is to be navigated well. Collaborative divorce prepares you to deal with the emotional challenges and changes associated with divorce and provides the resources that can best help you make a healthy transition from married to single.

Collaborative divorce builds in important protections for children, too. It informs you fully about how your children are experiencing the

divorce and what they need to weather the big changes in their family structure without harm. It helps protect your future relationship with your spouse by informing both of you fully—together, at the same time—about the financial realities of your marriage and divorce in a way that eliminates pointless arguments about economic issues. It also teaches you and your spouse new ways of problem solving and conflict resolution so that you develop useful skills for addressing your differences more constructively in the future. Further, collaborative divorce

- Helps you clarify your individual and shared values and priorities
- Helps you and your spouse reach maximum consensus
- Includes complete advice about the law without using legal rights as the sole template for negotiation and resolution
- Helps you and your spouse resolve serious differences creatively and without destructive conflict
- Helps parents improve their ability to coparent after divorce
- Builds in agreements about resolution of future differences after the divorce is over
- Focuses not only on resolving past differences but also on planning for healthy responses to current challenges and on laying a strong foundation for the future after the divorce is over
- Aims toward deep resolution, not shallow peace

## **WHY YOU DO NOT WANT AN “OLD-STYLE DIVORCE”**

We’re confident that, like the people we work with every day, you want to protect yourself and your loved ones from the havoc that an old-style divorce can wreak in your lives. Let’s summarize the facts you now know about old-style divorce:

- It is based on the centuries-old belief that divorce is wrong and abnormal
- It seeks to find fault and mete out punishment
- It focuses on the past
- It is premised on conflict
- It is constrained by an arbitrary legal framework intended to resolve matters of right and wrong by the exchange of money
- It aims at a deal, not deep resolution
- It fails to take into account current understandings of how people are wired, what they need in times of change, what children need during and after divorce, and how families change and restructure

What's more, we know that old-style divorce is bad for individuals, families, and communities because

- It's expensive
- It's hurtful and damaging
- It's "one size fits all"
- It deems irrelevant many common concerns that are extremely important to most people because judges can't issue enforceable orders about them
- It focuses on the past
- It encourages unrealistic expectations on the part of both spouses about what should happen in the divorce
- It resolves disputes through competing predictions of what a judge would do rather than focusing on what you and your partner can agree on
- It won't provide essential help to you or those you care about
- The emotional and social costs are incalculable

Luckily, we live in an era when there is finally a better option—one that can end a marriage without destroying a family or setting

into motion negative effects that can bedevil family members for a lifetime.

## **WHY COLLABORATIVE DIVORCE WORKS SO WELL**

The reasons why collaborative divorce does such a good job of helping most people achieve their own “best divorce” are simple. Collaborative divorce addresses the financial and legal matters that must be resolved in any divorce, but it does so more effectively because it provides the built-in help of three professions, not just one. The design of collaborative divorce—with its team of professionals, its systematic attention to values, its emphasis on healthy relationships, and its focus on the future—takes into account the broad spectrum of what really matters to most people when their marriages end. It considers not only the two spouses but those around them who also matter to the divorcing couple and who will be both directly and indirectly affected by a good or a bad divorce: children, families, and even extended families, friends, and colleagues. It applies what we know about marriage and divorce from the realms of psychology, sociology, history, law, communication theory, conflict resolution theory, finance, and other realms in a very practical, useful, and concrete way.

## **COLLABORATIVE DIVORCE DEALS WITH WHAT PEOPLE ACTUALLY EXPERIENCE IN DIVORCE**

Unlike any other divorce conflict resolution process that has come before, collaborative divorce teams make constant use of vital information about how people are “wired,” how we think, how our emotions affect our ability to communicate effectively and to process information, how we experience pain and loss, how we recover from the end of a marriage, what our children are experiencing and what they need in the divorce, and what the needs of each member of the family after the divorce are likely to be. In this way, collaborative divorce offers con-

## **Do You Want Your Divorce to Be Public Property?**

Did you know that in most states, anyone can sit in on and watch divorce hearings and trials? Did you know that in thirty states in the United States, courthouse records are put online, making personal information from your divorce available to Web surfers, data collection companies, and identity thieves, as well as the media? Did you know that with few exceptions, anyone can go to the courthouse and have complete access to your entire court divorce file?

Although it's true that the parties in most old-style divorce cases do eventually settle, the court files are not purged of the embarrassing accusations and counteraccusations leveled along the way. All the personal dirty laundry and detailed financial data that were ever put before the judge remain on the public record—information that none of us would want our neighbors, our children, or identity thieves to have free access to.

Think about it: collaborative lawyers are the only divorce lawyers whose work is always conducted entirely outside the court system. Collaborative divorce files are never made part of any public record. When a couple reaches agreement in a collaborative divorce, their lawyers can ensure that only the bare minimum the law requires to process the legal divorce goes into the court file. They can ensure that your personal information is insulated from public records to the maximum degree permitted by law.

structive, comprehensive, multidisciplinary professional support that responds to the actual complexities of divorce as people experience it, rather than imposing an old-fashioned, limited institutional legal point of view as the sole perspective on a complex human experience.

## HOW COLLABORATIVE DIVORCE IS DIFFERENT FROM MEDIATION

When you first hear about collaborative divorce, you may think, “That’s just like mediation.” While it is a cousin of mediation, and while individual mediators often accomplish very good work with their clients, the mediation process itself compared to collaborative divorce is like checkers compared to 3-D chess. Through their very structure, collaborative divorce teams can consistently offer couples and families far more resources and far more powerful support for deep conflict resolution than any single mediator possibly can. Here are the important differences you need to know about:

<b>Collaborative Divorce</b>	<b>Mediation</b>
<p>You and your partner each have your own specially trained collaborative lawyer as an advisor and counselor by your side at all times, helping you sort out and express your own concerns and priorities before helping you to reach an agreement.</p>	<p>One neutral mediator, working alone in meetings with you and your partner, helps you reach an agreement. Many mediators will not meet privately with clients outside mediation sessions to help them clarify and express concerns. Most states do not license mediators or require any specific training, credentials, or professional affiliation or degree.</p>

Your legal advice is built into the heart of the negotiations, which are guided by collaborative lawyers whose sole job description is to help you and your partner reach fully informed resolution. You can terminate the process and go to court, but if you do you'll need new lawyers because the collaborative lawyers may not participate in adversarial litigation. One hundred percent of the effort of collaborative lawyers is devoted to settlement.

You must get your legal advice during mediation from independent lawyers who are not a central part of the conflict resolution process. Whether they do or do not sit in on mediation sessions, their job description includes going to court with you if mediation does not reach resolution. They are not fully aligned toward settlement as their sole job description and experience no consequences if they don't help you reach agreement.

You and your spouse each have a trained collaborative coach (a licensed counselor or psychologist) who will teach you and your partner how to communicate better during and after the divorce than you did before and will assist you to be a more focused, effective participant in legal negotiations.

No one teaches you how to improve your communications with your spouse during or after the divorce or how to be a more focused and effective participant in negotiations.



<p>A specially trained child development specialist (a licensed mental health clinician) helps you and your partner understand your child's specific needs during and after the divorce and helps the child understand and communicate with the parents about the divorce.</p>	<p>No one helps the children express their needs and wishes or teaches you or your children what you need to know about the stresses and challenges children generally, and your children specifically, experience during divorce. So long as you and your partner reach agreement about dividing up time with your child, the job is done, whether or not the arrangement is likely to work well for your child.</p>
<p>A neutral financial consultant helps you and your spouse together to understand the family finances, prepares financial spreadsheets for use with the lawyers, and advises you and your team about financial and tax aspects of settlement options that arise during legal negotiations.</p>	<p>Mediators do not ordinarily bring financial expertise to help you and your spouse reach a shared understanding of the family finances. It's not the job of a mediator to teach financial skills, nor is it his or her job to help evaluate the long-term financial consequences of various settlement scenarios from an informed financial perspective.</p>

## **WHY YOU OUGHT TO BEGIN WITH COLLABORATIVE DIVORCE PROFESSIONALS**

Here's what the presiding judge of the San Francisco Superior Court had to say about collaborative divorce: "I favor any system that best serves families and children, and from everything I've seen so far, the collaborative law approach is *the* best and the least litigious." From the very beginning, the process focuses on a positive outcome and minimizes the fighting. In a litigious divorce, the objective is to fight the good fight and win as much as possible. It doesn't take into account the emotional fallout, especially for the children. The effect in collaborative divorce is that parents and children suffer less and recover faster.

## **COLLABORATIVE DIVORCE IS NOT FOR EVERYONE**

Collaborative divorce is the best approach to divorce that either of us has encountered. But we must be honest: it can't work miracles. You need to know its limits as well as its strengths. There are situations in which collaborative divorce may not be the best option, and it's important to take that fact into consideration when examining your divorce options. Collaborative divorce may not be a good choice when

- One or both partners have serious mental illness or drug or alcohol problems that aren't under control
- Domestic violence is occurring
- One or both partners lack the ability to participate fully and freely in the discussions that will lead to resolution
- One or both partners lack the capacity to make and keep commitments about behavior and follow-through, even with the help of collaborative divorce coaches
- One or both partners are prepared to lie in order to conceal information about finances

Of course, no other way of divorcing handles those challenges very effectively, either. Even conventional divorce representation can't make a liar honest, can't make an immature spouse behave responsibly, and can't cure mental illness or addiction. If you married someone with such problems, or if you have them yourself, your divorce will be challenging no matter how you proceed. Your own personal choice is to decide whether you would prefer to be in an adversarial divorce, which tends to bring out the worst in most people, or a collaborative one, which may or may not be able to bring out the best in you and your spouse but which tries to do so in ways that have worked for others. Since so much depends on what each of you is capable of, there are no guarantees.

But our years of experience with conventional and collaborative divorces have taught us that most people have what it takes to give collaborative divorce their best try. There is every reason to do so and seldom a strong reason not to. Collaborative divorce may be the single best thing you can do for yourself, your spouse, and your loved ones.

## **CHOOSING FEAR OR CHOOSING HOPE: JILL AND HOWARD'S STORY**

Jill feels helpless, scared, and full of emotional turmoil. To Jill, her husband, Howard, has always seemed powerful and dominant and has been able to get his way because he can outlast her in an argument. She knows that mediation is not for her—she's afraid of losing control and humiliating herself if she sits face to face with Howard without an ally and advisor at her side. She is uncertain about whether she'll be protected sufficiently if she goes along with his urging to choose collaborative divorce.

Jill feels tempted to hire an old-style divorce lawyer who will take over all communications and negotiations, insulating Jill from any direct contact with Howard within the legal divorce process. But when Jill confers with a potential collaborative lawyer, that lawyer points out something that is easily overlooked at a time of overwhelming fear and

confusion: the fact that she and Howard will need to be in communication constantly, now and for years to come, because they both love their young daughter. They will need to plan her custody and visitation schedule, holidays, school matters, medical appointments, camps, and so on. A gladiator lawyer may be able to insulate her while the actual divorce is being litigated, he tells her, but when the lawyer's file is closed, she will be entirely on her own and living with the aftermath. Further, he points out that an adversarial approach would prevent Jill from learning how to become more confident and competent in the parenting conversations that lie ahead for her and Howard.

Upon reflection following that meeting, Jill realizes that she would very much like it if Howard would agree to another round of marriage counseling. Choosing a conventional divorce lawyer, she fears, would probably close that door once and for all. And she also worries that if she retains a tough adversarial divorce lawyer to protect her, her husband might become so cold and withdrawn that it would affect his relationship with their beloved ten-year-old daughter, who misses him greatly since he moved out.

By reading the pamphlet given to her by the collaborative lawyer, Jill learns that in a collaborative divorce, she and Howard will work with divorce coaches to devise a sound, flexible, responsive parenting plan for their daughter as a first priority. This will necessarily bring them into more meaningful communication and problem solving about how to build the most functional relationship possible for them as divorced coparents.

Realizing the effect a bad divorce might have on their daughter makes Jill decide to give collaborative divorce a try. She and Howard have years of coparenting ahead of them. Without collaborative divorce coaching, they will have nothing to fall back upon after the divorce as their daughter grows older except the fear, anger, and avoidance that helped end their marriage. Their chances of parenting their daughter well together would look poor indeed.

Coaching will help Jill learn how to manage her strong feelings, build her self-confidence, and improve her communication skills. These are valuable self-caring skills she will take away from the divorce

process and use for the rest of her life. Howard, too, will learn skills in the coaching process that can help him to communicate more effectively with Jill and with his daughter. With coaching, both of them will come out of the divorce far better prepared to guide their child effectively through her adolescent years.