

**The Collaborative Way to Divorce:
The Revolutionary Method that Results in
Less Stress, Lower Costs, and Happier Kids –
Without Going to Court**

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CHAPTER 2

Divorce Alternatives:

Is the Collaborative Process Right for You?

In comparing our experience as traditional family lawyers to our experience as Collaborative lawyers, we believe that the Collaborative method offers the best way to end your marriage in the least expensive, least adversarial, and least hurtful way. Based on our work with hundreds of clients, we can also safely say that it's a way that will greatly improve your chances of getting what you want out of the divorce so you can move on with your life with confidence.

But as good as it is, Collaborative divorce is not the only alternative to the traditional divorce process. This chapter is devoted to helping you figure out whether Collaborative divorce truly is the best option for you. But before we do that, we'd like to introduce you to three other ways of reaching a settlement, and highlight how these methods differ from the Collaborative approach.

- Reaching an agreement on your own, with very little professional assistance
- Reaching a settlement with the help of a mediator
- Negotiating an agreement during the traditional litigation process (commonly referred to as a *litigated settlement*)

Reaching an Agreement on Your Own

This is the least formal and perhaps the most difficult option. With this approach, you and your spouse meet, without lawyers or other third parties present, at a restaurant or other public place for the purpose of working on your divorce settlement issues. (See Appendix B for a list of common marital issues.) Choosing a public venue is important because, after all, we're all on better behavior in front of others. You can use this approach to resolve as many issues as you choose, and it can also be an early step toward mediation or the Collaborative process.

To make this work, you and your spouse will need some basic knowledge of the legal effects of any agreements you might make. For that reason, each of you should have access to a lawyer (preferably a Collaborative lawyer) for advice and counseling outside of the conference with your spouse. You'll both need to have all your financial information, such as income statements, house and mortgage values, retirement and investment account balances, credit card statements, and so on fully available. Limit your sessions to one or two hours, with the

understanding that either of you can leave if things get too intense. If you reach a tentative agreement, you'll need to put it in writing (plain, non-legalese English is fine).

Because you'll be working through these issues without an outside professional support, and because this process takes a high degree of emotional stability on your part and that of your spouse, it's successful for only about 10 percent of couples who attempt it. One caveat: This approach is absolutely *not* appropriate if there is an obvious power imbalance between you and your spouse (i.e., if, during the marriage, one of you made most of the decisions, overriding or ignoring the other's input).

How is this different from Collaborative law? With the Collaborative process, each party hires a supportive Collaborative lawyer who attends the meetings in order to best facilitate settlement.

Sam and Julie have been separated for six months, and after some fairly productive marriage counseling, have decided to divorce. They have no children. After consulting with Collaborative lawyers, who gave them lists of important topics to discuss, they decided to try to resolve their issues on their own. After gathering and sharing their financial information, they have been meeting for an agreed-upon hour and a half every two weeks at the local twenty-four-hour restaurant. Between meetings Sam and Julie have met with their attorneys to review progress and get clearer on the legal implications of the issues they are working to resolve. They both hope to have a rough outline of their agreement for submission to their attorneys following their next meeting.

Barbara and Lou, after consulting with their respective divorce lawyers, agreed to try the direct negotiation method to resolve their marital issues. Barbara is clear that she wants to divorce, but Lou has had difficulty adjusting to the idea. They met at a local restaurant for an initial session, during which Lou had a difficult time emotionally and kept making inappropriate, angry statements that Barbara found hurtful. Without the necessary support to make this process work, Barbara declined to continue, and each party is pursuing individual legal representation.

Mediation

Mediation first became available in the 1970s, as a way to avoid many of the pitfalls of traditional divorce proceedings. It attempts to work with the participants outside the court system, as do most other settlement options. Sessions include you, your spouse, and a mediator who is a trained neutral party who works with you and your partner to reach a settlement on all of your issues. The mediator may (or may not) be an attorney by training, but regardless is

prohibited from giving you or your spouse any legal advice. This means that both you and your spouse should each have a lawyer outside the mediation process to advise you on legal issues.

The mediator meets with the two of you – usually without your attorneys – in sessions that generally last several hours. If you are successful in reaching an agreement, the mediator prepares a memorandum, which you submit to your respective attorneys for review, finalizing, and processing with the court. While some consider it an advantage to pay only one person for help in reaching an agreement, be aware that you may still need to retain two separate attorneys to draft and process the agreements reached in mediation.

As with direct negotiations between the parties, extreme power imbalances can be difficult for a mediator to counterbalance, sometimes making mediation a less viable option for couples for which this is a problem.

It is strongly recommended that parties attempting direct negotiations or mediation retain Collaborative lawyers to advise them, since mediators may be prohibited from offering this kind of advice, and these lawyers can provide clear legal counsel and have no agenda or motivation to escalate matters into litigation.

Litigated Settlements

Most traditional divorce lawyers will tell you that they settle almost all of their cases out of court. And the statistics would seem to back them up – in the vast majority of divorces that are headed for litigation, the divorcing couple arrives at a settlement without having the matter decided by a judge. However, there is a big difference between *litigated settlements* and settlements reach through out-of-court approaches.

Henry and Mary Lou attended an informational session with a Collaborative lawyer. In this session, the attorney mentioned, among other procedures, mediation. Henry and Mary decided to try it, and interviewed several mediators recommended by their lawyers. They chose to work with Susan, a practicing mediator with seven years' experience and a background in social work, as an alternative to Collaborative law.

Henry and Mary Lou filled out Susan's information sheets, providing all the financial and budgetary information, and started biweekly sessions at Susan's office. Susan's job was one of facilitation – attempting to draw out the agreements from the parties. Susan's presence and conflict-resolution skills enabled the parties to finesse much of the negativity typically present between divorcing couples, and Henry and Mary Lou took Susan's advice of having Collaborative lawyers on retainer to review and file the final agreement. Susan has kept the lawyers informed on the progress after each session, and, after four meetings, Susan believes the prognosis is good for final agreements after the next session.

Litigated settlements generally are made after much of the preparation for trial has been completed and most of the financial and psychological damage has already been done. They're also frequently made under pressure, forced by the party who seems to have the stronger case.

The Collaborative method incorporates the best elements of each of these options – and goes a step further. A natural fit between litigation and mediation, Collaborative law removes the court from the litigation model and offers the support and the legal expertise missing from the mediation model.* In addition to being a stand-alone settlement option, Collaborative law can serve as a supplement to the mediation process and to assist parties seeking settlement on their own.

John and Judy, after much soul-searching and some marriage counseling, have decided to divorce. In researching different divorce options, Judy heard about Collaborative law and visited the Web site of the International Academy of Collaborative Professionals (www.Collaborativepractice.com). Judy was attracted to the description of the process and was referred to a local Collaborative attorney. She explained the results of her investigation to John, and they decided to explore the Collaborative option further.

As is likely obvious, we favor the Collaborative method over any of the other available settlement options for the reasons previously explained. However, we recognize that it's not appropriate for everyone. The next section provides a quick test to help you determine whether a Collaborative divorce is right for you.

Finding Success with the Collaborative Process

It seems odd to talk about “success” with respect to divorce, particularly if you do not want the divorce to happen. But success with the Collaborative process is best achieved when you are able to focus on your most important goals. IN order to determine whether the Collaborative method is right for you, ask yourself the following:

- What matters most to you in life?
- What are the dreams you have for yourself and your family?
- What will stand out as most important when you look back at this part of your life twenty years from now?

*Unless added as an adjunct by the parties.

Carol was still in so much pain after learning about Bob's new relationship that she found it nearly impossible to focus during their divorce. What Bob had done was wrong, and she wanted desperately for him and others to know how much he had hurt her.

Carol's attorney had advised her that the settlement that Bob was offering was more than a judge would order, and emphasized the benefits of not having to go to court. But to Carol, accepting Bob's offer felt like letting him off too easily.

Carol understood that her state had no-fault divorce laws and that she couldn't legally force Bob to agree to offer her more. But she felt that if Bob wanted this divorce, he was going to have to pay. So she rejected Bob's offer and held firm in her positions. Eventually, after two more very difficult months, Bob came around and offered her a settlement that was worth almost \$20,000 more than his earlier offer. At last, Carol felt she had "won".

During the years that followed the divorce, Carol's bitter feelings toward Bob didn't heal. Getting a better settlement never gave her the sense of vindication that she had been seeking. Moreover, the goodwill and guilt that Bob seemed to show early in the divorce process eventually faded and, as a result, he responded to Carol's anger with his own bitterness. Their anger often spilled over to their parenting decisions, and because they still shared custody of their children, Carol and Bob found themselves fighting over issues concerning them at nearly every opportunity.

Looking back, more than fifteen years later, Carol can barely remember the details of the property settlement that seemed so important to her at the time. What she still remembers, all too well, is how painful it has all been, and not just for her, but for their kids.

Next week, Carol and Bob's oldest daughter, Anne, is getting married. For Carol, this should be one of the happiest moments of her life. Yet every thought of the wedding is accompanied by a lump in her throat when she imagines standing next to Bob and his new wife. She knows now that if she had it to do over again, she would have approached the divorce differently. She would have worked to achieve a resolution that would have left them both less bitter.

A "successful divorce" is one that puts you in the best position to achieve the broad goals that you've defined for yourself and possibly, your children. Those goals might be quite different from the more immediate concerns that you're preoccupied with now. Focusing on the immediate need to "win" can cause you to lose focus on the things that, in the end, may be far more important, as you will see from the following scenario:

Is a Collaborative Divorce Right for You?

Based on our collective experience, we believe that a Collaborative divorce is by far the best and most successful option for most couples. But you are the best judge of your own goals

and situation. Following is a short quiz that will help you determine whether the Collaborative method is your best option. After taking the test, we'll talk about some of the challenges you may face and help you determine whether they can be overcome.

Although you certainly can write in this book, we suggest that you make several copies of the pages that follow. Keep one for yourself and give the other to your spouse. For each statement below, circle the appropriate answer indicating how little or how much you agree. You'll learn what each of your answers means later.

	Strongly Disagree	Disagree	Neutral (or doesn't apply)	Agree	Strongly Agree
My ability to achieve a successful outcome in the divorce primarily will depend on the decisions I make during the process	1	2	3	4	5
In order to achieve my most important goals, I am willing to let go of some smaller, short-term issues, even though it may be very hard to do so	1	2	3	4	5
I am capable of making the emotional commitment necessary to achieve the best possible outcome	1	2	3	4	5
I am not					

afraid of or intimidated by my spouse	1	2	3	4	5
I am willing to try to see things from my spouse's point of view in order to help achieve the best possible outcome	1	2	3	4	5
I believe it is possible for my spouse and me to restore enough trust in each other to achieve a successful outcome	1	2	3	4	5
I am willing to commit myself fully to resolving the issues through the Collaborative process by working toward common interests rather than simply arguing in favor of my positions.	1	2	3	4	5
It is important to me that my spouse and I	1	2	3	4	5

maintain a respectful and effective relationship after the divorce					
I have accepted the fact that this divorce is going to happen	1	2	3	4	5
I believe that it is very important that our children maintain a strong, healthy relationship with both parents	1	2	3	4	5

Interpreting Your Test Results

Once you’ve written down your answers, add up your score. If your total is higher than 40, there’s a very good chance that the Collaborative process is a good fit for you. Assuming your spouse is also a good candidate (he or she should take the quiz separately), your chances for a successful outcome are very high. Reading the remainder of this chapter will help you identify and reinforce your strengths and shore up your weaknesses (any area in which you scored a 1 or 2 is a potential challenge and is worth examining).

If your total is between 30 and 40, you’re still a good candidate for the Collaborative process. Be sure to read the rest of this chapter, focusing especially on your 1s and 2s.

If your total is between 20 and 30, you’re borderline. The Collaborative process may work for you, but you’ll have to do a lot of prep work to get there. Carefully study the challenges identified by your 1 and 2 answers, and consider what you need to do to become better prepared. You also might want to consider postponing the divorce, if possible, until you’re ready to work toward the best possible outcome.

If your total is below 20, it's very likely that you'll become frustrated with the Collaborative process. And there's a good chance you'll find the alternatives equally frustrating. While it's still possible to succeed in the Collaborative process by resolving your case out of court, unless you make some significant changes in your perspective, you won't come through the Collaborative process feeling as if you've achieved your most important goals.

Putting Your Test Results in Perspective

Of course this test is simply a tool used to help identify challenges inherent in the Collaborative process, and help you to determine whether you are willing to meet them. Certainly, there are some circumstances, such as abuse or addiction, that may make collaboration impossible, regardless of how you scored or other aspects of the test. Regardless of your individual results, we urge you to read the rest of this chapter, paying particular attention to the areas where you indicated disagreement. Each statement is explored on its own.

Taking Personal Responsibility

My ability to achieve a successful outcome in the divorce primarily will depend on the decisions I make as I go through the process."

One of the most important indicators of success in the Collaborative process is your ability to take personal responsibility for your role in resolving the issues at hand. If you disagree with this statement and want to consider the Collaborative method, you'll need to rethink this position. It doesn't matter whether the divorce was your idea or not, or who (if anyone) was most responsible for the breakup of the marriage. In the Collaborative process, you and your spouse have much more control over how your case turns out than any judge, attorney, or evaluator. But with control comes responsibility. So you must decide if you are willing to accept the responsibility and to do the hard work necessary to achieve success through this process.

And no, you're not the only one who needs to take responsibility. Your spouse will, as will the professionals you hire (including the attorneys). But since the ultimate responsibility for the outcome lies with you and your spouse, your success will depend on your ability to accept your share of that responsibility.

Playing the Blame Game

One of the advantages of the traditional process is that if things go wrong (and they often do), there's always someone around to blame; your spouse, his or her attorney, the judge, your attorney, the system, choose one! Holding someone else accountable for your situation may give you a temporary sense of relief during a difficult time, but if you opt to pursue a divorce through the Collaborative method, you'll need to trade in that warm blanket of blame for the cold reality of personal responsibility. If you're willing to pay that price, the results can be well worth it.

Role of the Attorneys

One thing that can stand in the way of your success with the Collaborative method is the belief that your attorney is responsible for solving your problems. In the traditional adversarial method, it's common to harbor the fantasy that your attorney will make the perfect argument, leading to your ultimate vindication. While you may understand that your attorney won't be making courtroom arguments, in a Collaborative case, you may still cling to the belief that your attorney will find "the" solution.

Whether you're considering the Collaborative process or a traditional model, it's important to grasp early on that attorneys do *not* solve your problems – imagining they do will cause only disappointment. At best, Collaborative attorneys are responsible for guiding you through the process in a way that maximizes your chance to achieve the best possible results. While an effective attorney can be very valuable in helping you help yourself, the ultimate responsibility for the outcome of your case remains with you and your spouse.

Seeing the Big Picture

"In order to achieve my most important goals, I am willing to let go of some smaller; short-term issues, even though it may be very hard to do so."

People who achieve the greatest success in the Collaborative process are those who are best able to take a few steps back and remind themselves of what is truly important. For some people, the urgency of smaller problems can be so overwhelming that it becomes nearly impossible to take a broader view of things.

In the heat of a divorce proceeding, it's easy to let your mind gravitate toward immediate concerns, issues that need to be resolved in order to stabilize your situation and create a safe environment for settlement. But from time to time in the Collaborative process, you'll be asked to divert your attention from the immediate concerns and focus on more permanent long-term goals. For example, you may need to task yourselves questions such as "How will this decision affect my ability to co-parent in the long run?" And you need to be clearheaded enough to answer.

The big-picture issues generally are the ones that will matter more to you in the future than now. When you imagine yourself looking back on your divorce twenty years from now, what do you think will matter the most? Will it have been the custody "label" that you used, or how the children fared? Will it be the exact dollar amounts of your property division, or the fact that you emerged from the divorce with your self-respect intact? If you find it hard to ask and answer these questions because you're more focused on immediate issues, you may find yourself becoming frustrated with the long-range view required by the Collaborative process.

One of the advantages of having practiced law for several decades is that we've both had the opportunity to reconnect with clients we represented ten, even twenty years ago. Even clients who "won" in court often wound up upset with the damage that litigation did to their lives over the long haul. On the flip side, those who made seemingly painful compromises in the short term in favor of meeting their big-picture goals seemed, unanimously, to have reaped the rewards.

Many of Joyce's friends told her she was being foolish for not going to court to demand that Mike pay more child support.

Yes, she could have asked for full custody and the child support to go with it, but there was a lot to the story that her friends couldn't fully understand. Joyce felt that allowing Mike to spend more time with their children would work out best in the long run, even if that meant a lower child support payment. In addition, Mike had made some other concessions that she felt, over time, would turn out to be more important to her. For example, Mike had agreed to participate in family counseling to help their son Joey adjust to the divorce. He had also been willing to make sure the children attended her church on his weekends, even though he did not share her religious beliefs. Still, when Joyce tried to explain this to her friends, they accused her of giving in too easily.

To Joyce, it just didn't make sense to try to push Mike to the financial limit of the law, even if she could. After all they'd been through, Joyce admitted that she didn't like Mike very much as a person. But

despite his faults, Joyce was able to remind herself that Mike was still a great father who had a close relationship with all three of their children.

Twelve years later, when Joyce looks back on her divorce, she can't remember the financial details – and she has no real recollection of who got the better deal. She does remember, though, that somehow she and Mike managed to make it all work out; the changes in the parenting schedule, the adjustment in support when Mike lost his job, the extension of her spousal support when she was unable to finish her education on schedule. None of it was easy, and there were times that she and Mike disagreed over serious matters. But they came out with their dignity intact and their family as close to whole as was possible in their situation. More importantly, their children didn't get caught in the middle.

Joyce and Mike both are excited about the arrival of their first grandchild in May. Joyce still feels some sadness when she thinks of the circumstances of her divorce, but she doesn't spend much time thinking about it anymore. She is happy in her new life, proud of the fact that she was able to get through this dark period with her head held high and move on.

Emotions

“I am capable of making the emotional commitment necessary to achieve the best possible outcome.”

Divorce is complicated by the fact that it generally involves far more than legal issues. In many cases, the emotional component of a divorce may be as critical, or even more critical, than who gets what. But because our legal system doesn't offer an adequate framework for addressing issues of the heart, it tends to emphasize only the items or expenses that can be listed on a balance sheet. But the disappointment, sadness, and betrayal of divorce often don't just disappear on their own. Left unattended, these feelings can magnify to the point where they pose serious impediments to reaching a settlement or maintaining a durable (manageable) agreement in the years after the divorce.

We all know that strong emotions can hinder our ability to make clear, rational decisions, and it is likely that your impending divorce is one of the most difficult emotional challenges you and/or your spouse have ever faced. And yet one of the unfortunate realities of divorce is that people are often asked to make some of the most important decisions of their lives at a time when they are the least equipped to do so.

Since success with the Collaborative process depends on the quality of the decisions you make, you have the option of addressing your emotions through a variety of ways, including hiring a divorce coach or delaying the divorce until you have had time to make the emotional

adjustment. You are also given the freedom to address the emotional aspects of the divorce at any stage in the process. However, if you are someone who is uncomfortable using such tools, your opportunities for success with the Collaborative method may be limited.

Your General Emotional Health

The emotional impact of divorce, when combined with such common mental-health issues as depression, sometimes can render you unable to participate in the decision-making process effectively. If you believe that your emotional health has deteriorated to the point where your ability to make sound decisions is seriously compromised, you may need to consider the possibility of postponing the divorce, or at least some aspects of it, until you're emotionally stronger. While your spouse may be reluctant to want to allow things to drag on indefinitely, it may be possible to negotiate a delay by finding out what your spouse needs in order to make a delay a possible alternative.

Addiction or Codependency Issues

In considering the Collaborative process, it's important for you to honestly assess whether you suffer from any addictions, such as alcoholism, drug addiction, or compulsive gambling. It's also essential to consider whether you have codependency issues as a result of living with someone who is addicted. Either of these conditions can severely affect your ability to make important decisions. And your success with the Collaborative process ultimately will depend on your willingness to get the help you need. One of the goals of the Collaborative process is to create a safe environment in which you can seek assistance without the fear that acknowledging the problem will weaken your position or put you at a disadvantage in the settlement negotiations.

Fear and Intimidation

"I am not afraid of or intimidated by my spouse."

Feeling afraid of or intimidated by your spouse raises some special concerns for Collaborative, such as:

- Is there a marked imbalance of power between the parties?

- Is there a climate of distrust?
- Do the parties engage in blaming and name-calling?
- Does one or the other of the parties want to control everything?

The Collaborative process can work effectively only in a safe environment, so it's important for your lawyers to know as much as possible about how these patterns existed in your marriage. They can then assist you in coming up with procedures to counteract these tendencies when working Collaboratively.

Intimidation and Other Power Imbalance Issues

Even without a history of abuse, you may still feel intimidated by your spouse as a result of other dynamics in your relationship. And even if there isn't direct intimidation, there may be a power imbalance in your relationship. In many marriages, one spouse "wears the pants," playing a more dominant role. That additional power may be the result of a variety of factors, ranging from the degree of financial sophistication that each person possesses to the manner in which you each handle anger and fear. Depending on your particular situation, you will need to consider the impact that this will have on your divorce negotiations.

What If There Has Been a History of Domestic Abuse?

Some experts maintain that victims of domestic abuse should never use Collaborative law, mediation, or any method of dispute resolution that is not centered around a court of law. We disagree. In many cases, the Collaborative process can be very effective alternative – as long as you and your spouse commit to the Collaborative process and acknowledge the past history of violence.

If there has been any domestic abuse in your relationship, you must be completely honest with your attorneys, and you'll need to consider whether the dynamics between you and your spouse will affect your ability to negotiate an agreement. You may also need to consult with a mental-health professional who has worked with abusers and survivors in order to accurately assess your situation.

If you have been the victim of abuse, you'll want to make sure that you're not put in an unsafe environment where you may feel physically or emotionally threatened. If you are truly afraid of physical harm from your spouse, the Collaborative process can't work; you may need to seek legal protection and more traditional proceedings.

If you have abused your spouse, the Collaborative process can work *only* if you understand your

behavior and are sincerely willing to agree to *whatever* action is necessary to allow your spouse to feel safe.

The Less Powerful Spouse

Being the less powerful spouse when it comes to conflict resolution doesn't mean that you'll be at a disadvantage with the Collaborative approach. In fact, handled skillfully, it can better address power imbalances than any other method, setting a positive precedent for future interactions. The key is finding and working with professionals who support you and help to create an environment where you feel completely comfortable expressing your ideas and interests.

The More Powerful Spouse

If you see yourself as the more powerful spouse emotionally, financially, or psychologically, if you feel that you need to control the direction of every discussion, or if you have a tendency to anger easily or use intimidation to get what you want, you'll need to change your behavior for the Collaborative process to work. While these strategies may, on occasion, make you feel that you've won the battle, the residual negativity will likely have a more detrimental effect on your long-term goals than you realize. Skilled Collaborative practitioners (attorneys, coaches, so on) will work to prevent anyone from trying to intimidate or exercise an undue amount of control over the process. If you believe their intervention will be difficult for you, you'll need to consider whether the Collaborative process is truly a good fit for your particular personality.

Seeing and Understanding Your Spouse's Point of View

"I am willing to try to see things from my spouse's point of view in order to help achieve the best possible outcome."

A strong indicator of success in the Collaborative process is your ability to empathize with your spouse. By that we mean the ability to listen to your spouse and understand his or her perspective. You don't have to agree with what's being said – but you do need to understand it. If you're unable or unwilling to put yourself in your spouse's shoes, you'll likely have trouble benefiting from the Collaborative process.

It's not easy to listen when you're angry with your spouse. You may be thinking, "Why should I empathize with his needs, after what he did to me?" The short answer is that it's in *your own* best interest. While showing empathy may indeed *seem* like the nice thing to do, as Collaborative attorneys we're less concerned about being nice than being *smart*. The more carefully you listen to what your spouse is saying is important to him or her, the more readily you will find the keys to a solution that you will both find acceptable.

If you believe that you might have some trouble empathizing, you may be able to improve in this area by using coaches (see chapter 4) or by selecting an attorney who is particularly strong in this area (see chapter 3).

Building Trust

"I believe it is possible for my spouse and me to restore enough trust in each other to achieve a successful outcome."

For some people, asking spouses in the middle of a divorce to trust each other may seem like a contradiction in terms ("How can I trust someone who cheated on me?" or "If we trusted each other, we wouldn't be getting a divorce!")

There's a common misrepresentation that trust is a black-and-white issue – either it's completely present or completely absent in a relationship. The truth is, in most situations only a *degree* of trust exists.

For example, allowing yourself to be in the same room with someone generally means that you trust that he or she isn't going to harm you. If you allow your children to be in the care of someone, even for a short time, you are demonstrating some level of trust that this person will not harm your children. Things will happen over the course of a relationship to increase or decrease this level of trust. Overall, trust is generally something that's earned through repeat behavior.

In a marriage, trust increases and decreases as each individual keeps or breaks promises, small or large. If you were to chart your trust levels over the course of your marriage, you'd likely discover that it's gone up and it's gone down, sometimes pretty dramatically. You'd probably also find that, now, in the face of divorce, it's at an all-time low.

While it may be hard to predict, it's important to try to anticipate what level of trust you'll have in your spouse, in this process, even in yourself, from here on out. Believe it or not, it's actually possible for trust between a couple to *increase* during the divorce process. Similarly, it's possible for trust to be significantly damaged during the divorce process, sometimes beyond repair ("I don't even know her!" and "That's not the man I married!" are common refrains). That's why "winning," in the traditional context of divorce, is an illusion. If one of you wins in court and irreparably damages the trust in your relationship, have you really accomplished what you set out to do?

One of the most valid reasons for choosing the Collaborative process may be its potential for enhancing some measure of trust or, at a minimum, avoiding further damage to the relationship. However, in order to make it work, you must be willing to attempt to trust, even in small measurable things, and you must be willing to engage in trustworthy behavior in order to restore some integrity to the relationship.

Committing to the Process

"I am willing to commit myself fully to resolving the issues through the Collaborative process by working toward common interests rather than simply arguing in favor of my positions."

Success in the Collaborative process is directly related to your commitment to making the process work. If you're considering Collaborative divorce because you think it'll be cheaper and faster, and you have no real commitment to making it work, you'll be disappointed. But if you're prepared to work hard on things such as listening, brainstorming creative solutions to seemingly irresolvable situations, and honestly evaluating your weaknesses, and you're willing to commit the necessary time and resources, you'll have a much better chance at a positive outcome.

Time

You are more likely to have a successful Collaborative divorce if you're willing to be patient and plan carefully.

There is a natural urge for most people to rush the process by focusing only on short-term goals and moving immediately to the negotiation of tough issues. While sticking points are inevitable in most negotiations, if you have thoroughly prepared prior to reaching that point, you will be more confident (and less panicked) that you will reach an acceptable solution.

Resources

Fully committing to the Collaborative process may also involve a willingness to commit the resources necessary to successfully resolve your issues. Even though the Collaborative method is almost always much cheaper than litigation, for people who are focused only on cost it will never seem cheap enough.

The desire to preserve your financial resources is certainly understandable. The financial demands of divorce draw on economic resources when they are least available. However, focusing on the cheapest solution may cause you to miss out on the most important benefits of Collaborative divorce. Collaborative law is more about the quality of the settlement than about speed and cost.

The Postdivorce Relationship

“It is important to me that my spouse and I maintain a respectful and effective relationship after the divorce.”

You are most likely to have success with the Collaborative process if you recognize that it's to your benefit to have at least a civil relationship with your spouse after the divorce. It's easiest to understand when children are involved, but it can be true in other cases as well.

If You Have Young Children

If you have young children, it should be fairly obvious why the quality of the postdivorce relationship with your spouse is important. But we've seen divorcing clients who, out of anger or sadness, come into our offices saying, “I never want to have to deal with this person again.” While that's very understandable emotion, your children's well-being may depend on your ability to build a functional postdivorce relationship. If you don't see value in working toward that goal, you may not be a good candidate for a Collaborative divorce.

If You Have Grown Children

Even if your children are grown, it is likely that you have a stake in the quality of your relationship with them and, by association, with the other parent. Many prior clients report that one of the things they value most about their Collaborative divorce is their ability to work with the other parent on issues affecting their adult children. Being able to feel comfortable attending college graduations, weddings, and births of grandchildren when their ex-spouse is present is very important to these clients and their children.

If You Have No Children

Many divorcing couples express a strong desire to either maintain a friendship with their ex-spouse, stay in contact with in-laws and mutual friends, or preserve the memory of the relationship. Resolving the divorce with dignity and respect will help you achieve these goals.

Acceptance

“I have accepted the fact that this divorce is going to happen.”

Much of the success of the Collaborative process depends on accepting the divorce. But what if one of you doesn't want it to happen at all? It's hard to focus on divorce-related goals when your main hope is to reconcile the marriage. If you and your spouse share an interest in reconciling, by all means focus every effort on that goal! But if only one of you believes reconciliation is possible, the issue becomes much more complicated.

Psychological Divorce and Legal Divorce

The phrase *psychological divorce* is used to describe the actual emotional acceptance of the fact that a marriage is over. Psychological divorce often occurs on a completely different timeline than legal divorce – sometimes earlier, often later. In addition, while you and your spouse are required to proceed through the legal divorce at the same pace, it is possible you will proceed through the emotional divorce at a very different pace. In some instances, both spouses may have experienced the psychological divorce long before one or the other chose to take legal action. Although the delay in attending to the legal divorce sometimes can take its toll, these

couples have some advantage when the legal divorce has started because they both feel emotionally ready to move ahead.

Saving the Marriage: What to Do When Reconciliation is Possible

If your spouse has clearly stated that he or she is not willing to work on the marriage, your only choice may be to work on accepting that decision. However, if both of you are at least willing to explore the possibility of saving the marriage, you need to fully explore your options.

Your Collaborative lawyer probably won't have the professional background to counsel you about the particular methods that you should choose in working on your marriage. However, he or she may be able to recommend counselors, religious organizations, support groups, retreats, books, or other resources that you can investigate on your own.

If You're Uncertain About Your Spouse's Willingness to Work on the Marriage

If you are uncertain as to whether your spouse is willing to work on reconciliation, try to find a way to have a frank discussion about the issue. If you can't, raise your concern with your attorney and ask him or her to help you address it with your spouse. Your attorney may suggest a variety of options, including meeting with counselors or coaches to help create the right environment. It may also be possible to address this issue during a four-way meeting, although this is unlikely because of the absence of mental-health professionals with expertise in reconciliation issues.

Concerns About the Delays Caused by Reconciliation Efforts

If either you or your spouse is reluctant to work on the marriage because you're worried that the delay may have an adverse impact on the outcome of your divorce, discuss this with your attorneys. Your Collaborative attorneys probably can help you reach temporary agreements to address these concerns so that neither you nor your spouse will be penalized for taking time to work on reconciliation.

Collaborative Cases Can End in Reconciliation

No divorce process can save marriages – that decision needs to come from the couple. However, when a safe and effective environment for problem solving can be maintained, the range of outcomes can be very wide and, on occasion, even reconciliation can reappear as an option.

You're Ready, He's Not

In a perfect world, the legal divorce could wait until both spouses had caught up emotionally. In the real world, however, the person who has emotionally accepted the divorce

often feels a need to move ahead, even if the other spouse has not reached a point of emotional acceptance.

When one spouse is ready to end the marriage and the other is not, divorce lawyers often refer to the issue as “leaver/leavee.” These situations present unique considerations that need to be addressed in the Collaborative process. In almost all jurisdictions today, it takes only one person to proceed with a divorce. Therefore, the divorce is almost certain to happen, even if one person believes the marriage can be saved. However, in the Collaborative process, it’s important to acknowledge when one person doesn’t want the divorce and to prepare to deal with the emotional issues that may arise as a result.

He’s Ready, You’re Not

If you didn’t initiate the divorce, you may be feeling a great deal of sadness, anger, loss, and fear. You may also believe that your spouse should be held accountable for what he or she has done to you, or for forsaking your wedding vows. These feelings may run the gamut, from simply wanting some acknowledgment of the wrongdoing to wanting a more favorable settlement.

It’s important, though, to come to grips with the fact that there’s nothing you can do legally to stop your spouse from moving ahead with a divorce if he or she really wants it. If you’re not emotionally ready, you may have difficulty making critical decisions necessary to start your new life, which makes it understandable that you might want to slow down the process.

There may, in fact, be ways to put things off for a while, but there also may be significant negative consequences to delaying the divorce. Your spouse may resent your efforts to unilaterally delay the divorce, causing much of the goodwill to erode and making settlement much more difficult when the hard issues have to be addressed. In addition, delaying some decisions, such as the decision to separate, may create tension in your home that could have an adverse emotional impact on your children. You should carefully consider these consequences before voicing your desire to delay.

In the Collaborative process, you may be able to negotiate a delay in order to make the emotional adjustment. To get your spouse to agree, you’ll likely have to help him or her see that you are taking steps to move toward the adjustment. You may also need to reach certain

temporary agreements to assure him or her that the delay will not work to his or her strategic disadvantage. The hope is that your spouse can see that the delay will also serve his or her interests since you both will be more ready to resolve issues once you fully engage in the process.

In the midst of the divorce process, some couples decide to attend marriage closure counseling in which they, with the mental-health professional, try to get to an emotionally similar place, to help them grieve the loss of marriage, or deal with unresolved issues. Others choose to work with divorce coaches. Still others negotiate a pace for the divorce that will help the “slower” spouse better make the adjustment.

When Delay Is Not Possible

If you’re unable to agree to delay the divorce, or if the delay ends before you have reached a point of emotional acceptance, you may have no choice but to move ahead. As you might guess, this presents a unique set of problems. The fact that you aren’t ready may cause you to resist reaching an agreement, either out of anger or resentment, or because you are finding yourself emotionally incapable of making decisions. This makes collaboration difficult, since, even if you don’t intend it, it may appear that you and your spouse are working toward cross-purposes.

The Collaborative process does offer additional options that may help you and your spouse resolve the issue of being in different places. For example, you and your spouse could work with divorce coaches to help each of you communicate your needs more effectively and help you gain a better understanding of what each of you is saying. In addition, there are divorce-closure counselors who can help you and your spouse address underlying frustrations that may be getting in the way of your ability to resolve some of the key divorce issues. The role that coaches and counselors may play in your case is further discussed in chapter 4.

Realities and Challenges

Acknowledging the Realities of Your Situation

While the issue of who initiated the divorce may not be legally relevant, it will very likely affect the divorce process. In most cases, it is best to acknowledge this so that you can reach sound decisions about the pace of the process and best address this dynamic. Sometimes acknowledging the issue can lead to apologies or

therapeutic interventional to help with the healing and emotional adjustment.

While acknowledgment of the circumstances of the divorce may be possible, punishing the “wrongdoer” is another matter. If you have a strong desire to punish your spouse for what he or she has done, you will need to work with your attorney and hopefully your coach and/or therapist to find better ways of addressing your emotional needs.

When You're the Leavee

The Collaborative process, as discussed, is generally far less painful than litigation. While this is almost always regarded as a positive thing, sometimes the “leavee” feels or fears this is letting the other spouse “off too easily.” This may tempt the leavee to lean toward a litigation system either out of spite, or to make it harder for the leaving spouse to get out of the marriage.

It is true that the litigation process, because it can be extremely expensive and uncomfortable, can be used to inflict a certain amount of pain on the other person. However, generally it cannot be done without inflicting an equal or greater amount of pain on you and your children.

Your greatest challenge may be to separate your emotional needs from the critical legal decisions that you will need to make. If there are legitimate things that your spouse may be able to do to help you make the adjustment (such as coaching, divorce-closure counseling, slowing the process down, and so on) you can work with your attorney or coach to request your spouse’s participation.

If You're the Leaver

Look honestly at the full impact of your decision. While you can’t be held legally accountable for your decision to leave, the Collaborative model gives you the opportunity to consider whether it is in your best interests to attempt to repair some of the damage in the relationship through acknowledgment, affirmation, or even apologies, if appropriate. In addition, you may need to be patient in allowing your spouse to process the psychological divorce before the legal divorce can be complete.

If you are the leaver, and have already been through the psychological divorce, you may be eager for the legal divorce to be completed as well. However, your desire to move through the divorce quickly can raise significant problems, as your spouse is not likely to be ready to end the marriage as quickly and may resent your desire to “put this all behind you” as soon as possible. Similarly, if you believe your spouse is intentionally slowing the process down, you may become (understandably) frustrated by the delays.

Children Need Effective Relationships with Both Parents

“I believe that it is very important that our children maintain a strong, healthy relationship with both parents.”

In situations involving children, the Collaborative process works best when the adults involved recognize that children need to have full, healthy relationship with both parents. That doesn't mean that the parenting has to be exactly equal. Rather, it means that there must be a shared goal of preserving and enhancing both parental relationships.

If you're in a situation in which you don't believe your children will benefit from a loving relationship with your spouse, you may have considerable difficulty with the Collaborative process. We recognize that there are some parents who, because of mental illness, addiction, patterns of abuse, or other problems, aren't capable of maintaining healthy relationships with their children without undergoing radical change. If those parents are working toward recovery there is still a good chance that the Collaborative method can facilitate that. On the other hand, if a parent is unable or unwilling to create a safe environment in which to parent his or her children, it's extremely unlikely that the Collaborative process – or any other out-of-court settlement option – will work.

Ed and Karen chose to use the Collaborative process because they wanted to protect their children, Emily, age twelve, and Joe, age nine, from unnecessary acrimony. Karen had been home with the children during much of their preschool years, and she and Ed agreed that Karen's home should be the children's primary residence. However, Ed had always been a very involved father and didn't want to become a “visitation dad.” Karen wanted to allow the children to spend a great deal of time at Ed's home but was concerned about Ed's alcohol abuse. Ed acknowledged that his drinking had increased during the past few years, but he claimed that it was primarily the result of trying to escape the mounting tension in their marriage.

In reality, Ed knew he had a problem but feared that if he admitted it, he would automatically be labeled an alcoholic and his time with the children would be limited or supervised. After two four-way meetings and some work with his divorce coach, Ed came to realize that, unlike in a traditional divorce setting, his candor about his drinking would not be used against him, and that he'd actually be more likely to get a liberal visitation schedule if Karen knew he was actively addressing the problem.

Ed enrolled in an alcohol dependency program recommended by a counselor. As Karen saw that Ed was addressing the problem, she became increasingly comfortable expanding Ed's visitation rights. Eventually they reached an agreement that allowed Ed to have a full schedule with the children, provided he continued to follow the counselor's recommendations regarding his alcohol use.

We trust this chapter has provided adequate information as to whether the Collaborative process is right for you. In the next part of this book, you'll take the first steps in the Collaborative process – getting your spouse to agree to the Collaborative approach and assembling a team of experts, starting with your Collaborative attorney.