



THE LAW SHOP

BY SKOGERSON MCGINN LLC

Amy J. Skogerson / Andrea McGinn
413 Grant Street / P.O. Box 252
Van Meter, Iowa 50261
Tel: 515.996.4744 / Fax: 515.996.4125
Web: www.lawshop.net

FREQUENTLY ASKED QUESTIONS ABOUT COLLABORATIVE DIVORCE

What is Collaborative Divorce? Collaborative divorce is a creative, alternative process for divorce that utilizes specially trained attorneys and other professionals who work together as a team with parties to a divorce. Sometimes referred to as “no court divorce,” the collaborative process is designed to help people resolve differences and create solutions uniquely tailored to the needs of each individual member of the family. Traditional, adversarial litigation can be costly, both financially and emotionally. Collaborative divorce allows people to take a higher minded, more civilized and respectful approach to divorce.

With the right collaborative team assembled, the collaborative process establishes a supportive environment involving fewer traumas for parents and children as compared to traditional divorce as well as faster healing and better relationships after the divorce is over. Collaborative law recognizes that every member of the family is affected by a divorce in different ways, so there is no “one size fits all” solution in any particular case. Divorce is far more than just a legal proceeding. It requires making a whole series of important decisions, many of which have the potential to alter the life trajectory of you, your spouse and your children. Attorneys who work in the area of collaborative divorce have made an intentional, conscious decision to practice law under a whole new paradigm, one that is aimed at moving away from past hurts and events and instead focuses on creating a brighter, happier future for you and your children.

Collaborative practice is based on honesty (full and complete disclosure), satisfying the interests of both parties, cooperation, integrity, professionalism, dignity and respect. It does not rely on court-imposed solutions. Goals of the collaborative process include resolving differences in the best interests of each other and the children, eliminating the negative economic, social and emotional consequences of litigation, and finding solutions that are acceptable to both parties. The process involves good faith negotiation by every member of the parties’ collaborative team.

What Makes an Attorney a Collaborative Attorney? In a sense, being a “collaborative attorney” is somewhat a state of mind as an attorney may simply be cooperative and/or collaborative by nature. That is always the kind of lawyer you want working on your important family law matter. However, a true “collaborative attorney” has also undergone one or more intensive, multi-day, specialized trainings in the collaborative process and is often involved in a local practice group such as the Central Iowa Academy of Collaborative Professionals (CIACP) that works to maintain and promote high standards in the practice of collaborative divorce. Be sure to ask any attorney with whom you consult about a collaborative divorce for information regarding his or her collaborative training, experience and professional affiliations.

How is Collaborative Divorce Different from the Traditional Divorce Process? In a collaborative divorce, the parties commit themselves to settling their case without going to court. For a divorce to be considered a “collaborative divorce,” both the parties and their respective collaborative attorneys must sign a “Participation Agreement” that sets forth the ground rules for the collaborative process and includes a “disqualification clause” for the attorneys (discussed further below). The parties agree to engage in informal discussions and conferences to settle all issues. The parties’ collaborative attorneys provide structure and legal expertise in a series of joint meetings during which everyone focuses on the

property, financial and parenting issues involved in the divorce and the constructive resolution of those issues.

In a collaborative divorce, the parties are free to discuss issues with each other outside of joint meetings if they both agree and are comfortable doing so, however they are prohibited from “springing” discussions on each other such as through unannounced phone calls or surprise visits to the other’s residence. The parties are equally free to insist that discussion of all divorce issues be reserved for joint meetings when the parties’ attorneys are present.

The parties’ attorneys will prepare various legal documents throughout the collaborative divorce process. However, documents are typically not filed with the court until a final agreement has been reached regarding all issues and the parties agree they are ready to conclude the divorce process.

What Is a Disqualification Clause? Parties to a collaborative divorce may terminate the collaborative process at any time for any reason or for no reason at all. In the event one or both of the parties decides to terminate the process, this triggers the “disqualification clause” set forth in the parties’ Participation Agreement (discussed further above). The disqualification clause requires both collaborative attorneys to withdraw from any further representation and the parties must retain new counsel for trial. While this may sound a bit scary at first, the disqualification clause is essential to the collaborative divorce process as this clause ensures the entire team is committed to working toward settlement of your case rather than preparing to litigate your case at trial. *If there is no Participation Agreement containing a disqualification clause between the parties and their attorneys, then it is not a collaborative divorce.*

Upon termination of the collaborative process, there is a brief waiting period, absent an emergency, before any court hearing may be scheduled, to allow the parties time to retain new attorneys and make an orderly transition to the traditional divorce process.

What Issues Does Collaborative Divorce Cover? All aspects of your case may be discussed and settled through the collaborative divorce process. These include but are not necessarily limited to issues such as child custody matters, co-parenting arrangements, child and/or spousal support, medical support, division of assets and liabilities, spousal support and so forth. Collaborative divorce involves negotiation of these issues based on the parties’ interests rather than positions.

What Information is Disclosed in a Collaborative Divorce? The Participation Agreement signed by the parties and their attorneys in a collaborative divorce provides that the parties will give full and complete disclosure of all information relevant to the issues that must be decided in the divorce, whether requested or not. Any request for information is made informally, i.e. simply by asking for whatever information or documentation is needed. Participation in the collaborative process, and the settlement reached, is based upon the assumption that the parties have acted in good faith and have provided complete and accurate information to the best of their ability. If one of the parties’ collaborative attorneys learns that his or her client is withholding relevant information from the other party, either disclosure must be made or the attorney must withdraw to avoid engaging in abuse of the collaborative process.

What Other Professionals May Be Involved in a Collaborative Divorce? As part of the parties’ collaborative team in a collaborative divorce, the parties may choose to engage a financial professional, divorce coach, child specialist, mediator and/or other type of professional who has been trained in collaborative law to assist in the process and work with the parties’ attorneys on the team.

A financial professional can assist the parties with division of assets and liabilities, analysis of tax consequences, budgets and support issues. A divorce coach can assist the parties in managing emotions, improving communication, developing co-parenting skills and creating a parenting plan. A child specialist can meet with the parties' children to understand their needs, provide a voice for the children, give feedback to the parties about their children's needs and work with the parties on a developmentally responsive parenting plan. A mediator is a neutral third party who helps facilitate discussion between the parties in an effort to find a mutually agreeable resolution of matters in dispute.

In the collaborative process, the parties are only allowed to use neutral experts for any issue that requires expert advice and/or recommendation. This does not prevent either party from using an expert to educate him or her on any issues in the divorce, provided such use is disclosed to all members of the collaborative divorce team. Any report, recommendation or document generated by, or any oral communication from, a neutral expert must be shared with the entire collaborative team.

Is an Agreement Reached in Collaborative Divorce Legally Binding? Generally, yes, any written agreement signed by the parties and their legal counsel is considered a legally enforceable contract, which is often later incorporated into a court order through the assistance of the parties' legal counsel. The parties' final agreement will always be submitted to the court for entry of an order approving the agreement when the parties are ready to conclude their divorce.

Is the Collaborative Divorce Process Confidential? Yes, statements made in a joint or four-way meeting are made for purposes of compromise and are not admissible in court. Except to the extent required by law or the court, all information exchanged in a joint meeting is confidential. The collaborative process is based upon open and honest communications. However, just as in the traditional divorce process, there will be private communications that take place between each party and his or her respective attorney and those communications are protected by attorney-client privilege.

How Long Does a Collaborative Divorce Take? The length of a collaborative divorce depends on several factors including but not limited to the readiness of the parties to resolve the issues, commitment to the collaborative process, the level of conflict between the parties and the complexity of the issues needing resolution. The collaborative process is not designed to be a faster way to divorce, but rather a less adversarial, more caring and creative way to divorce. The process may be brief, lengthy or anywhere in between, depending on the parties and issues involved in the case.

Does Collaborative Divorce Really Work? There is no guarantee parties will successfully resolve all their differences by using the collaborative process, however most collaborative participants report being pleasantly surprised by how much they were able to accomplish in their collaborative divorce and how much healthier their divorce went as compared to friends and family who utilized the traditional, litigation oriented divorce process. And similar to mediation, studies show that parties are generally more satisfied with and committed to agreements reached through their own mutual efforts as opposed to orders entered by a court after emotional, time consuming and expensive trials.

How Do I Get My Spouse to Choose Collaborative Divorce? The decision to use the collaborative process must be voluntarily agreed upon by you and your spouse. Ideally both of you should retain collaboratively trained divorce attorneys as well. You may be comfortable simply speaking with your spouse directly about whether collaborative divorce is a fit for your particular case. If you are uncomfortable proposing the idea of collaborative divorce in person, then consider suggesting it in writing instead. In addition, some collaborative attorneys are willing to meet with you and your spouse together prior to initiation of a divorce for informational purposes only, i.e. to educate both of you about the collaborative process so you can then make an informed decision together about the process best

suiting to you and your family. The Law Shop by Skogerson McGinn, LLC offers this type of educational consultation upon request at no charge.

It may be helpful to provide your spouse with brochures and websites on collaborative divorce. The Law Shop by Skogerson McGinn, LLC has brochures available from the Central Iowa Academy of Collaborative Professionals (CIACP). You and your spouse can also go to the CIACP website at www.iowacollaborativedivorce.com for more information as well as a list of certified collaborative divorce attorneys in central Iowa. Another helpful resource is the International Academy of Collaborative Professionals (IACP). The IACP website is located at www.collaborativepractice.com.