



Lawyer Katherine Miller:
"Collaborative divorce
won't work if either
spouse is out to kill."

Getting a Divorce? Why It Pays to Play Nice

Collaborative divorce offers splitting spouses a kinder, less expensive way to say "I don't" **BY CARLA FRIED**

Breaking up is hard to do, not to mention expensive, as any of the more than 1 million couples who divorce each year can tell you. In fact, the decision to end a marriage is often the prelude to serious financial pain marked by a battle over the division of property, lofty legal bills and each spouse feeling as if he or she got the raw end of the deal.

It doesn't have to be that way. If you and your spouse ever decide to part company, collaborative divorce may be the best way to avoid the rancor and expense that typically accompany a split. This rela-

tively new way to formally end a marriage emphasizes cooperation over confrontation, and problem solving over grievance airing. And it rests the decision-making power in the hands of the couple rather than those of a judge.

Here's how it works: Couples agree in writing to forgo the courts and negotiate a fair settlement directly. Unlike in mediation, where splitting spouses are guided by a neutral third party, husband and wife are each assisted by a lawyer so they have the benefit of individual counsel. If the two sides can't agree, the lawyers can't

represent their clients in any future court case—a clause intended as an incentive for everyone to get it right the first time. "In traditional litigation, the attorneys fight to get the biggest piece of the pie for their client," says Dallas family lawyer Larry Hance. "In collaborative law, the focus is on a settlement that works for everyone."

Playing nice pays off. In addition to the promise of a more equitable settlement, the costs are much lower, with estimated savings from 40% to 65%, largely because there's less likelihood of a protracted legal battle. If a typical divorce case runs about \$35,000, the bill for the same split negotiated collaboratively would more likely be \$12,000 to \$20,000. The result is, there's more left for you and your ex to divide.

A collaborative approach isn't right for every divorcing couple, however. If you can't bear to look at your spouse anymore, let alone sit down to talk with him or her, the traditional route probably makes more sense. (See "Split Decisions" on page 50 for other legal options.) But if you like the idea of a less rancorous approach and are eager to save a few bucks, collaboration can make sense. This is what you need to know to make the process work for you.

► HIRE THE RIGHT HELP Collaborative law is a relatively new field, so you want to make sure you retain a lawyer who is well versed in the process. More than 7,000 lawyers in 40 states have gone through formal training, and the best way to find a good one is through word of mouth. But if you don't know anyone who has gone the collaborative route, you can

PRICING THE OPTIONS

Collaboration can save each spouse a bundle in legal fees.

COST OF A TYPICAL DIVORCE

Traditional	Collaborative
\$35K	\$16K

NOTE: Actual costs vary, depending on the number of contested issues. SOURCE: Attorney estimates.

get referrals to local practitioners by using the search engine of the International Academy of Collaborative Professionals at collaborativepractice.com.

Be prepared to interview several candidates. Ask how much of their practice is devoted to collaborative law, whether they've had formal training and whether they've ever had a collaborative case collapse. Also talk to a few former clients to get a feel for how the attorney works. "Collaborative law is more of a dance between the lawyer and the client than conventional law—sometimes the lawyer leads, sometime the client does," says Katherine Miller, a family lawyer in New Rochelle, N.Y. "So it's especially important for the client to feel comfortable with the attorney's style."

➤ **AGREE TO BE POLITE** At the start of the collaborative process, you, your spouse and, usually, your lawyers sign a joint-participation agreement that lays out the ground rules for negotiation. The basic tenets: You agree that you will reach

a settlement without the courts, that the lawyers will withdraw if either side decides to sue and that all parties will negotiate in good faith.

In practical terms, that means readily sharing all pertinent financial information, such as the existence and value of

In collaborative divorce, you and your spouse share experts instead of each hiring your own. Using one expert in place of two cuts costs in half, and eliminates time spent negotiating to reach common ground.

retirement funds, banking and investment accounts and insurance policies. Coming clean saves money by eliminating the need for the lawyers to spend billable hours trying to unearth all the financial details through research and depositions.

The participation agreement also typically includes a promise to focus on what's best for the children, if any are involved. "Kids are much better off during and after the divorce when they see their parents working together to reach an agreement rather than being at each other's throats," says Mary Ann

Aronsohn, a therapist in South Pasadena, Calif. who works with divorcing couples.

➤ **LEARN TO LIKE FOURSOMES**

Don't plan on being a spectator at your own divorce. Unlike a traditional approach, in which much of the action

happens behind the scenes in lawyer-vs.-lawyer sessions, collaborative divorce requires you, your spouse and your respective lawyers to sit down at a table together to hash out a settlement.

To work out a fair division of assets and liabilities—who gets the house, how to divvy up pensions, who's responsible for which debts and so on—you and your spouse agree to share experts instead of bringing in your own hired guns. A single real estate appraiser might be used, for example, to determine your home's value. One financial planner might be charged with reviewing each person's income and expenses to help work out an equitable child-support arrangement, place a value on unvested stock options and figure out contributions to a child's college fund. Using one expert instead of two not only cuts costs in half but also eliminates the time-consuming negotiation traditionally needed to reach common ground.

➤ **SET A REASONABLE PACE**

Collaborative settlements are often faster than conventional ones, since there is no court schedule to follow. If you want to power through in four to six sessions, you can. If you want to take a few months off to catch your breath, that's fine too.

When the negotiation is complete, the lawyers draw up the final settlement, you sign on the dotted line, and the document is submitted to the court. Then you're ready to move forward in your new life—with more money left in your wallet, in all likelihood, than if you had divorced the traditional way. \$

Split Decision

\$ DO-IT-YOURSELF LESS THAN \$100

If you and your spouse can amicably work through the division of property and the custody issues yourselves, you can get the documents needed to formalize the split at divorcelawinfo.com. For help sorting out the finances, the handbook *Divorce and Money: How to Make the Best Financial Decisions During Divorce* (\$21.69) is available at nolo.com.

\$\$ MEDIATION \$3,000 TO \$10,000

Instead of retaining lawyers, you can use a trained, impartial third party to help you and your spouse reach a settlement, although neither side is obligated to accept the recommendations. Mediation works best when the spouses are still on speaking terms and there is a balance of power in the busted relationship, and when both sides understand the finances and are able to speak up for themselves. For more information, check out the Divorce Mediation Resource Center at nolo.com.

\$\$\$ FULL-COURT PRESS \$20,000 TO \$50,000+

If either spouse is bitter and bent on revenge, or if there is a serious imbalance in financial power in the relationship, a straight-up "your lawyer vs. my lawyer" approach may be the way to go. Traditional litigation is by far the most expensive divorce process, though.