

# COLLABORATIVE DIVORCE GUIDE



## **WADE GRIMES FRIEDMAN SUTTER & LEISCHNER PLLC**

**Family Law Attorneys**

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Battling your spouse in court puts your divorce – and the fate of your children, your finances, and your future – in the hands of a judge instead of your own. But what if there were another way?

In this **Collaborative Divorce Guide**, you'll find articles, interviews, tips, and other key resources to help you understand whether Collaborative Divorce, an out-of-court divorce resolution method, is the best choice for you, your family, and your future.



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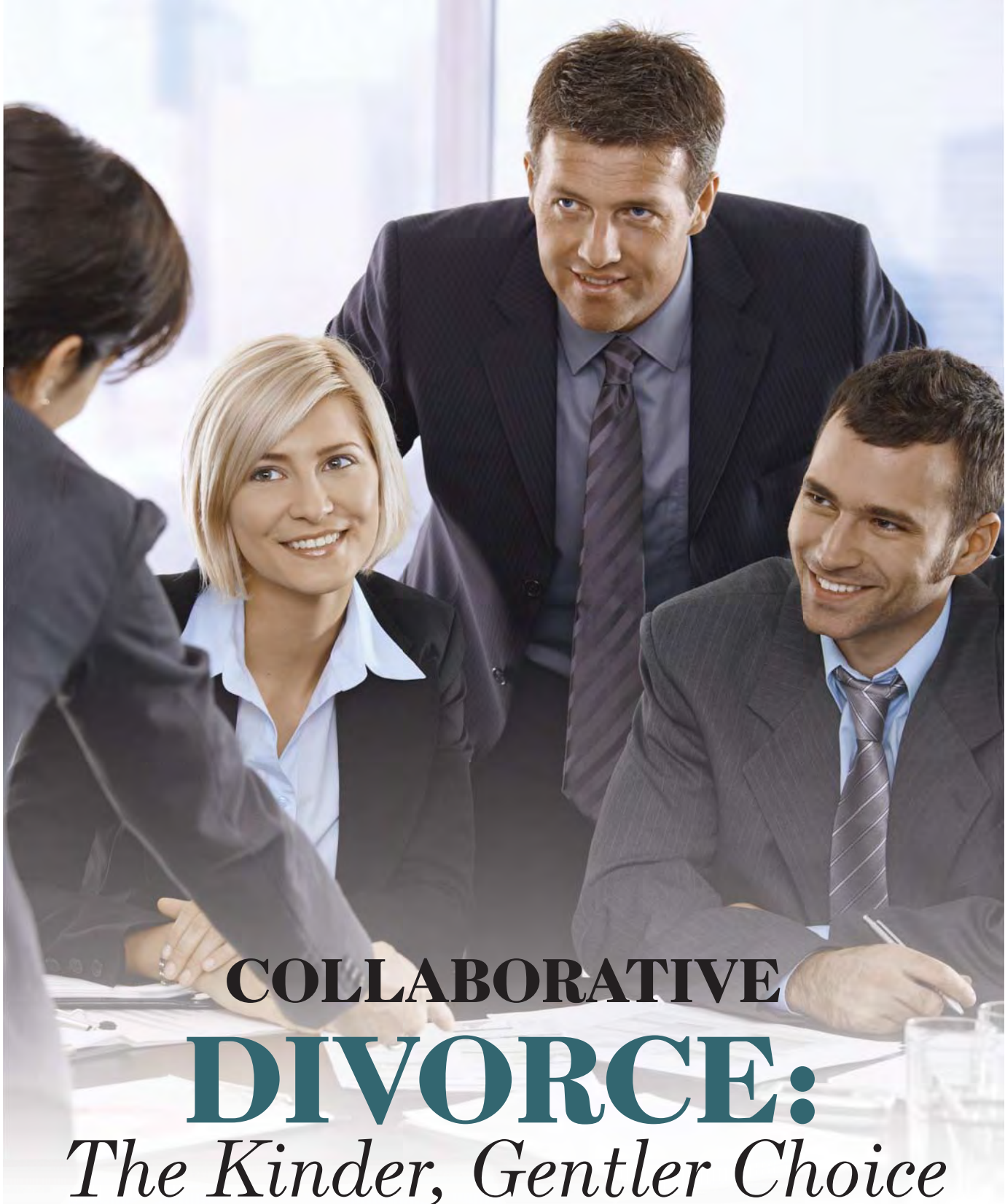
Divorce-related anger can literally make you crazy, causing you to say and do things you'd never dream of if you were thinking clearly.

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# **COLLABORATIVE** **DIVORCE:** *The Kinder, Gentler Choice*

By Marcy M. Jones (JD)

Collaborative Divorce is an alternative to traditional litigation that brings together a team of professionals dedicated to helping resolve your divorce issues as amicably as possible.

**C**ollaborative Divorce is often referred to as the “kinder, gentler” way to divorce. If you and your spouse decide that the collaborative process is the best option for you, your next step is to hire your collaborative lawyer and other team members as needed. What you’ll find is a group of professionals who are thrilled you’ve chosen this process. They are excited to help you navigate your divorce in a way that allows you to maintain your dignity and integrity, while you are actually learning new and better ways of communicating with your spouse. You’ll find that you, your spouse, and your children are all supported in ways that are simply not possible in any other divorce process.

## What is Collaborative Divorce?

Collaborative Divorce is the newest divorce dispute-resolution process. The key difference between collaborative divorce and conventional divorce is the clients’ pledge to reach an agreement without going to court. It’s a *client-centered* and *client-controlled* process that focuses on interest-based negotiation rather than the traditional positional bargaining process. The goal of collaboration is to develop respectful relationships, solve problems together, and prevent a battle in court. In order to accomplish this, the parties agree in writing that they *will not* go to court. No one may go to court or even threaten to do so; otherwise, the process terminates and both collaborative lawyers are disqualified from further involvement in the case.

## What is the Collaborative Divorce Team?

An emerging field of collaborative divorce provides a collaborative divorce team consisting of two lawyers, one or two divorce coaches, a child specialist, and a financial specialist to help the couple. Believe it or not, this team of five or six can be more cost-effective than the conventional method of divorce. The involvement of these professionals improves the flow of the

case as well as the understanding and satisfaction of the clients.

Divorce is a complex event involving legal, financial, social, and emotional considerations. When children are involved, there are the additional needs of developing appropriate parenting plans and learning communication skills so the couple can effectively co-parent their children. In conventional divorce, lawyers handle all of these tasks. But since most lawyers are not also therapists, accountants, or child specialists, many issues remain unresolved and often continue to be litigated and re-litigated for years. The Collaborative Divorce Team model uses a team of experts from different fields to maximize the benefit to the family.

## Who are the Collaborative Team members and what are their roles?

- **Collaborative Lawyer:** has specialized training in the collaborative process and interest-based negotiation, serves to educate the client through the process, advocates for the client, provides legal advice, and helps the client to generate and evaluate options for resolution.
- **Divorce Coach:** a licensed mental-health professional, with specialized training in collaborative practice, who helps clients and collaborative professionals communicate effectively within the process. This person does not act as a therapist but helps to manage emotional and psychological issues so the process can move along smoothly.
- **Child Specialist:** a licensed mental-health professional with specific training in family systems and child development. This person helps the parents and professionals involved to stay focused on the needs of any children involved, and to develop an effective co-parenting plan.
- **Financial Counselor:** a neutral financial specialist who helps clients gather, organize, value, and

understand their financial information and clarify their financial interests and goals. This person is a Certified Divorce Financial Analyst and/or a Certified Financial Planner, Chartered Financial Consultant, or Certified Public Accountant (in Canada, a Chartered Accountant or Certified General Accountant) with additional training in divorce and family-law issues.

## Why is the Collaborative Divorce process one of the best methods to resolve a divorce?

The collaborative process helps the clients to come up with their own marital separation agreement that is specific to their needs and concerns. The result is more creative than anything they would achieve in an adversarial process, and it addresses and meets the needs of *both* parties. In this process, the clients and the lawyers take a reasonable approach to all issues. Where there is disagreement, all parties brainstorm options that would meet the fundamental needs as expressed by each party. Ultimately, there is compromise on both sides to find an acceptable solution.

## How is Collaborative Divorce different from Mediation?

In mediation, there is one neutral professional who meets with the parties to help reach a resolution. The mediator *may not* give either party legal advice and cannot help either side advocate his or her position. This can be difficult when there is an imbalance of power. If the mediator tries to assist one party, he or she may be seen as aligning with that party, resulting in a breakdown in the process. Collaborative practice was devised to address these problems. Like mediation, settlement is still the *only* agenda of the process; however, with collaboration, each party has a legal advocate and advisor at all times during the process. For some couples, this levels the playing field and provides opportunity for a balanced and acceptable settlement to both parties.

## How is Collaborative Divorce different from Divorce Litigation?

In collaborative divorce, you and your spouse control the process and make final decisions. In divorce litigation, the judge controls the process and makes the final decisions.

In collaboration, you and your spouse pledge to be respectful and open on all the issues. Litigation is based on an adversarial process.

In collaboration, the costs are manageable and usually less expensive than litigation. In litigation, the costs are unpredictable and can escalate very quickly. The fees you pay to your collaborative lawyer are primarily for time spent *with* your lawyer in the collaborative meetings. The fees you pay to your litigation lawyer are often for hours spent reviewing financial documents and preparing for trial.

In collaboration, you and your spouse determine the timetable and the average case can be completed in three to eight months. In litigation, your case length depends on the court system and can take one to three years to complete.

In collaboration, your lawyer works with you to achieve a mutually acceptable settlement. In litigation, the lawyers fight to win, which means that someone loses. The truth is there are no winners in litigation, as the cost in terms of time, money, and stress is devastating to both parties, regardless of who eventually “wins.”

## What happens if one side has a hidden agenda or is dishonest in some way?

There are never any guarantees with collaboration that both parties will act with integrity. There are also no guarantees of this happening in conventional divorce. The difference with collaborative law is that a lawyer in this process is *required to withdraw* upon becoming

aware that his or her client has not disclosed necessary information, has been dishonest, or is not participating in the process in good faith. This is usually an effective deterrent for most clients to stay true to the process.

Unfortunately, we all know there are dishonest people who will do everything they can to conceal assets or money. You’re the best judge of your spouse’s honesty. If you know your spouse would lie on an income-tax return or financial documents, the collaborative process may not be the best choice for you since that basic honesty would be lacking. You must make the choice that is best for you.

## How can I find a Collaborative Practitioner?

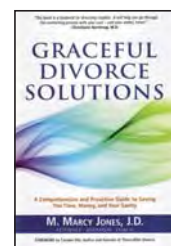
Do an Internet search or contact your local bar association for listings of collaborative lawyers. Most collaborative professionals have their own websites, so you can read about their work online.

You can also go to the website for the International Academy of Collaborative Professionals (IACP) – [www.CollaborativePractice.com](http://www.CollaborativePractice.com) – to find a listing of collaborative lawyers and practice groups near you. The IACP is an international group of lawyers, mental-health professionals, and financial professionals who work together to help clients resolve conflicts. It provides a central resource for training, networking, and implementing standards of practice for collaborative professionals.

Make an effort to find the best collaborative practitioners you can. Ask how many collaborative cases they have handled and how many terminated without agreements. Ask what training they’ve had in the collaborative process, alternate dispute resolution, and conflict management. Finally, ask family, friends, and other local professionals for recommendations and referrals to experienced collaborative practitioners.

## Is the Collaborative Divorce process expensive?

Collaborative lawyers generally charge by the hour, as do conventional family lawyers, and rates vary according to experience. Since every case is different, there’s no way to predict cost. It will depend on how simple or complex your issues are, how much time is spent in reaching agreement on each issue, the emotional stages of each of the parties, and whether you and your spouse have already reached many of the agreements. A rule of thumb is that a collaborative case will cost you 50% to 60% of the cost of a fully litigated case. It’s fair to say that collaboration is the most efficient and economical conflict-resolution process for the broadest range of clients, and that litigation is, quite simply, the most expensive way of resolving a dispute. ■



*This article has been edited and excerpted from Graceful Divorce Solutions, A Comprehensive and Proactive Guide to Saving you Time, Money, and Your Sanity (Balboa Press,*

*2014).* M. Marcy Jones is an author, speaker, lawyer, and advocate for change. She has practiced family law since 1995, and is a settlement expert and conflict resolution advocate, specializing in collaborative practice. [www.GracefulDivorceSolutions.com](http://www.GracefulDivorceSolutions.com)

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# How Collaborative Divorce Works: An Interview with Pauline Tesler



The co-founder of the International Academy of Collaborative professionals, Pauline H. Tesler is one of the most recognized authorities on Collaborative Divorce. A Certified Family Law Specialist who has practiced law since 1981, Tesler specialized in divorce litigation until she learned about Collaborative Divorce in the early '90s. Today, she devotes her practice exclusively to the collaborative model. Recently, *Divorce Magazine* publisher Dan Couvrette asked Tesler some questions about this alternative method of dispute resolution.

## **Dan Couvrette: What's your definition of Collaborative Divorce?**

**Pauline Tesler:** Collaborative Divorce is a way of handling all divorce-related issues (dissolving the marriage itself, dividing property, and handling issues related to children) entirely outside the court system, using a specially trained team of professionals. The team includes lawyers, of course, but also mental-health and financial professionals, who work together to help a couple understand what matters most to them and create durable solutions that will work for every member of the family after the divorce – including the children.

## **DC: How does it work?**

**PT:** Each spouse chooses a collaborative lawyer who has had special training to do this, because it doesn't come naturally to lawyers to work this way. Everybody signs an agreement – the lawyers *and* the clients – that nobody will take any matters to court, or even *threaten* to, as long as the collaborative process is working for everyone. If the process should break down – which

happens in roughly 5–10% of cases – you and your partner can take your issues to court and resolve them, but the collaborative lawyers cannot go to court with you. So these lawyers are hired to work *solely* toward a settlement that works for you.

## **DC: Why do you promote Collaborative Divorce?**

**PT:** I'm committed to this model because it's the most powerful way I've encountered to help people do a self-determined, problem-solving process in which the results are carefully thought through. Everybody's interests, concerns, needs, priorities, and values are considered. There's a genuine good-faith effort made by all parties and professionals to reach creative solutions that will last. We're not looking for quick fixes, but solutions that meet the needs of everybody in the restructuring family – regardless of whether a judge is allowed to make orders about the matters of concern. In a Collaborative Divorce, you and your spouse make the decisions, and the lawyers and other professionals

on the team help you gather the facts, hear one another's concerns, and consider a broad range of options and consequences. In my community, I work with collaborative lawyers from all over the San Francisco Bay area. I work in an interdisciplinary team model when my clients choose it, and I always urge that they consider it. With rare exceptions, my colleagues and I ask that the parties have initial interviews with coaches and a financial neutral, and the lawyers benefit from their input about how well suited the parties are for a collaborative process and what special challenges may be involved in the divorce. Right now, about 95% of my cases include a full, integrated interdisciplinary team. An interdisciplinary team includes mental-health professionals working both as divorce coaches and as child specialists, as well as a financial consultant who gathers all of the financial information and helps us evaluate solutions and come up with creative alternatives. I like doing this work because I find that my clients are satisfied with the results.

**DC: Does the team work together, in person, or separately?**

**PT:** The collaborative lawyers always sit down face-to-face with our clients in four-way meetings to do all the work in the collaborative case; the lawyers don't try to make deals for you when you're outside the room. And we don't even get to solutions until all of the questions have been answered about the facts. So you're not going to be asked to make any decisions about financial matters, for example, until every single question that you have about the money and the property has been answered. Then we brainstorm solutions and the most creative options from which to choose, so that we come up with solutions that last for the long haul – solutions that look good not just now, but five or ten years downstream. Each client meets privately with his/her own lawyer to prepare for the four-way meetings and to debrief. Similarly, the coaches meet privately and in four-way meetings to address parenting and communications issues. Where emotions run high or issues are especially challenging to discuss, the whole team may be present for negotiating meetings.

**DC: Is it anything like traditional divorce litigation?**

**PT:** Nothing could be more different than Collaborative Divorce and litigation. Litigation is based on gladiators fighting in the courtroom and having a judge make all the decisions for you – issuing orders and telling you that this is how it's going to be. In Collaborative Divorce, on the other hand, nothing is agreed to unless you and your partner think it's an acceptable solution. We (the lawyers) don't tell you how it should be resolved; with the help of the collaborative team, you figure out how you want to resolve each issue, and it's done respectfully, according to your own values and priorities. So when our clients reach resolution, it's *real* resolution. It's not somebody else who doesn't know or care about you telling you what you should do with your lives, your property, and your children.

In litigation, the lawyers are in charge. You take your problems to the lawyers, and they say, "Don't worry, we'll handle it." And the way lawyers are trained to handle divorce-related problems, for the most part, is to take them to judges. That's the most expensive way we have in the legal system of resolving issues. It takes a great deal of your money to resolve problems that way. And worse, it causes emotional damage to families to take issues into the court system, which is adversarial by nature. In Collaborative Divorce, on the other hand, you participate actively in every step of the process and no solution is adopted unless it is acceptable to both you and your partner.

**DC: How is Collaborative Divorce different from divorce mediation?**

**PT:** In mediation, one neutral mediator sits with you and your partner and tries to help you reach solutions. It's just the three of you, and if there are lawyers giving you advice, often those lawyers are not in the room. You may get that advice separately from somewhere else. The lawyers are not, in other words, centrally engaged in the process of negotiating to reach settlement. And they can advise you to reject proposals or even to stop the mediation and take matters to court. In the Collaborative Divorce process, every professional is committed solely to resolution. And each of you has your own lawyer at your side at all times, giving you advice, counsel, and advocacy aimed solely at constructive solutions. We build into the process the services of mental-health professionals who can coach you and your spouse in better communication skills and anger management, and who provide information to the children and help you understand the children's issues. The team also includes a financial professional who will help answer all money questions. So it's a much richer process in terms of professional resources. And lawyers are completely aligned with settlement in the collaborative process, whereas in mediation, they may not be.

**DC: Do you consider Collaborative Divorce more effective than mediation?**

**PT:** Collaborative Divorce and mediation are cousins, and I've done both. But in my experience, the most powerful model in terms of getting creative, lasting solutions that work for kids as well as adults is Collaborative Divorce. Mediators can be very effective in helping motivated people to compromise and get to a deal efficiently. But no single mediator can do the work of a fully staffed, interdisciplinary Collaborative Divorce team. In mediation, you don't have mental-health professionals helping you build better communication skills, which you need after the divorce if you've got kids; there is no one whose job is to speak for, and with, your children; and there is no one whose job includes helping a temporarily distressed or unreasonable partner to return to constructive problem solving. In addition, most mediators don't have the financial skills to help you understand complicated money and property issues and come up with creative solutions that can be evaluated for long-term consequences.

The other main difference is that if your spouse hires a litigious lawyer, the mediation process might fall apart. So Collaborative Divorce is a more protective and solution-oriented process than mediation can be – not because mediators aren't working toward solutions, but because they're only one person who can't possibly provide the same range of services as a Collaborative Divorce team of up to five professional helpers.

**DC: How do I find out if this model will suit my spouse and me?**

**PT:** The best way to find out if this is going to work for you is to talk with a trained collaborative lawyer, who will discuss with you in great depth what each conflict-resolution option is like and how effectively Collaborative Divorce can address your main concerns in the divorce as compared to the other options available to you. Your



interview with the lawyer might be more focused and efficient if you first read the book that my colleague Peggy Thompson and I wrote, *Collaborative Divorce: The Revolutionary New Way to Restructure Your Family, Resolve Legal Issues, and Move on with Your Life* (Regan Books, 2006).

### **DC: Is Collaborative Divorce expensive?**

**PT:** Well, it's not nearly as expensive as litigation, and it's far less expensive than a mediation process that fails because it could not provide enough support for a couple to reach resolution. But you should understand that you're going to have well-trained professional helpers, and you'll need to pay them. Most families don't have a budget for the legal services associated with divorce, so even the most reasonably-priced professional services can be difficult to pay for. And while Collaborative Divorce is efficient and contained, I can't tell you that it's going to be cheap. No professional services are. But the difference between this kind of divorce service and litigation or "quick fix" settlement negotiations is that you're getting real value for your money. You're not just getting a piece of paper – a divorce judgment or settlement agreement – that resolves legal issues but may ignore conflicts that keep on causing controversy long after the divorce judgment is entered. In a Collaborative Divorce, the conversation continues until both spouses are content with the information and the results. This is a process that can teach you and your spouse a great deal about communicating better, about parenting your children after the divorce, and about managing financial resources effectively so that all members of the family have their major needs met to the greatest extent possible. This process can yield a deep resolution that tends to last because you and your spouse are both satisfied with it, or else you don't sign it. While you are going to have to pay for the services you receive, it's going to be worth the money – or at least, that's what most of our clients tell us.

**“In a Collaborative Divorce, the conversation continues until both spouses are content with the information and the results.”**

### **DC: If I've already decided to resolve my divorce collaboratively, can I still litigate if I change my mind?**

**PT:** Yes, you can. You never give up your right to take issues to court, if that's what you want. But then the collaborative process has to terminate. The lawyers cannot go to court with you, and therefore, they have to resign and help you make the transition to lawyers who *will* take matters to court for you. This can be done at any point that you determine that the process is not working as you expected. But this doesn't happen very often in our experience.

### **DC: Who would be on my Collaborative Divorce team?**

**PT:** On a Collaborative Divorce team, usually the first professionals hired are the collaborative lawyers; each of you has your own separate, specially trained lawyer representing you. I represent only my client, and the other collaborative lawyer represents only his or her client. But we're committed to working together in a collegial way that pulls in the same direction of solving problems rather than bumping heads, and we've put in a lot of unpaid time – often years – learning to cooperate and to agree on a roadmap for how to do the work of a divorce. The other professionals on a fully staffed team would include licensed mental-health professionals, who have chosen to work as Collaborative Divorce coaches; a child specialist (if you have children) who will be the voice of your children and also a wise counselor to them, answering the questions that they never want to ask their parents; and a financial consultant, a neutral who helps marshal information about what's there in terms of income, assets, debts, and expenses. The financial professional, can also project the financial consequences of any settlement scenario we might consider so we know if it's going to work

– not just today, but in 15 or 20 years. Not every couple has all these team members helping them, and not every community has the trained professional resources to provide this kind of fully staffed team, but this configuration has proved uniquely powerful and effective in helping couples really resolve divorce-related conflict in a lasting and creative way.

### **DC: Will Collaborative Divorce protect my children's best interests?**

**PT:** There is no way to go through a divorce that is more protective of children, and more focused on their needs and interests, than Collaborative Divorce. *None.* The child specialist is a very skilled and experienced mental-health professional who knows about child development and what happens to children during divorce. Every child has issues during a divorce. Think about it: you are an adult with an adult's understanding and experience, yet you need professional advisors to help you through the stresses and challenges of a divorce. You can't do it alone; you need experienced helpers. Who's helping your children? They need somebody to talk to who's safe, who's not a parent, and who can bring their concerns in an even-handed way into the decision-making process. That's what the Collaborative Divorce team model offers, and there's nothing like it anywhere else, and it's remarkable. We don't have custody battles in Collaborative Divorce: we have solutions.

### **DC: What if I don't trust my spouse and I think he or she is hiding assets?**

**PT:** It's common at the end of a marriage for suspicion to run high, and a great deal of money can be spent doing expensive forensic audit trails

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# Is Collaborative Divorce RIGHT FOR YOU?

**10** questions to help you and your spouse figure out whether you're good candidates for Collaborative Divorce.

By Diana Shepherd, CDFA™

In Collaborative Divorce, both parties hire a collaborative lawyer to offer legal advice and assist in negotiation; both lawyers and divorcing parties sign an agreement to resolve their divorce without resorting to litigation. A Collaborative Divorce “team” usually includes a financial expert (to help the couple create an equitable division of property) and a mental-health professional (to act as a coach to help

one or both parties work through the emotional issues that are preventing the couple from reaching settlement). The team may include other experts as needed – such as a co-parenting specialist, business valuator, forensic accountant, etc. All team members are committed to helping the divorcing couple reach a mutually-agreeable, workable settlement. If the process doesn't work, then the whole

collaborative team must resign and the parties have to hire new lawyers, financial experts, etc. to resolve their differences in court.

Even if you and your spouse aren't getting along well these days, Collaborative Divorce is still a viable option if both of you are willing and able to put your personal feelings aside for the sake of resolving your issues in a mutually beneficial way. If you dedicate yourselves to negotiating solutions that are in the best interests of your family – both you and your children – then the collaborative model could be a good choice.

**Here are ten questions to help you determine if you're a good candidate for Collaborative Divorce:**

**1. Do you trust your ex to give full and open disclosure of financial and other important matters?**

Especially if there was infidelity, you may no longer trust your spouse with your heart, but is he/she an otherwise honest person? Do you believe he/she would not try to hide or misrepresent assets in order to prevent you from getting your fair share of marital property or your children from getting the support to which they're entitled?

**2. Are you committed to resolving your differences in a cooperative manner?**

If one of you is more interested in punishing the other or "winning" at all costs, Collaborative Divorce may not be a good fit for you.

**3. Are you willing and able to put the good of your family above whatever hurt and anger you're feeling right now?**

If you're using the team approach, you'll have a divorce coach available to help you work through the emotional issues that might otherwise prevent you from reaching an agreement.

**Even if you and your spouse aren't getting along well these days, Collaborative Divorce is still a viable option if both of you are willing to put your personal feelings aside for the sake of resolving your issues.**

**4. Was your marriage free from serious alcohol or drug abuse, domestic violence, or mental-health issues?**

These kinds of issues – especially if they are still ongoing – may mean one spouse is not a good candidate for this process.

**5. Do you feel safe being in the same room with your spouse?**

Are you willing and able to speak up – with the help of the divorce coach or collaborative lawyer, if necessary – regarding the issues most important to you?

**6. Is creating your own solutions to the problems you and your spouse have identified important to you?**

Do you want to retain ownership of the process and avoid having to "roll the dice" with a judge in court?

**7. Are you committed to reducing the time, financial, and emotional costs of going to court?**

According to the International Academy of Collaborative Professionals, "Experience shows that Collaborative Practice cases generally take less time than litigated cases." In a divorce case, less time usually equals lower cost.

**8. Do you like the idea of receiving neutral information about how the financial decisions you make today might impact**

**you in the short-term and in the long-term?**

The financial neutral on the Collaborative team will not advocate for one side or the other; he/she will present objective data showing the impact of various settlement proposals on both parties.

**9. Are you interested in receiving neutral information about co-parenting after divorce?**

The parenting/child expert on the Collaborative Team can help you create a parenting plan that is in your children's best interest based on a number of factors unique to your situation.

**10. Does the idea of modeling how to resolve disputes in a mature, respectful manner for your children appeal to you?**

Some parents don't seem to recognize what terrible role models they're being for their children when they're "fighting dirty" and being unwilling to compromise on the most insignificant of issues.

If you answered "yes" to most or all of these questions, you may be a good candidate for Collaborative Divorce. The next step is for you and your spouse to each consult with a Collaborative Lawyer to discuss your unique situation. ■

*Diana Shepherd is the co-founder of Divorce Magazine and a Certified Divorce Financial Analyst® (CDFA™).*



# DIVORCE

## *Without Fighting*



Your active participation in settling your divorce is the single most important factor in getting an outcome you can live with. Negotiating is not about fighting, nor is it about winning – it is about refining viable options that incorporate needs as well as values into the final settlement.

By Eva Sachs (B. Comm., CFP®, CDFATM) and Marion Korn, (LL.B, LL.M, AccFM)

The most common question asked by our clients who are contemplating separation and divorce is whether they will be okay at the end of the day. They usually start with their concerns about finances and family. However, when asked specifically if they are worried about how they will get from where they are now to a final settlement with their partner or spouse, most express anxiety.

We forget that in life we are constantly negotiating, and over the years we have developed that skill in many areas. Driving requires negotiation. Maintaining friendships, raising children, buying and selling houses, and getting along with the neighbors are all aspects of our lives that require us to negotiate agreement.

Some negotiations are based on reactive responses. A perfect example

is how we might respond to a driver who waits until the last minute to cut into a busy lane, seconds ahead of us at a major turn onto a freeway entrance ramp. Chances are we might take an offensive attitude, our blood pressure rising as we squeeze out the other car. In this situation, we have almost no information; the other driver may be stressed because he has a long drive ahead and is worried about missing his child's soccer game. So now your reaction is: "I got

here first and you are out of luck. Next time get in the turning lane earlier!” Meanwhile, the other driver is responding: “I’m stressed and in a hurry, and now I’m angry you won’t let me in!” If we base negotiations on unreflective feelings rather than on information, we are more likely to negotiate in a positional manner.

The other negotiation option is to work towards an outcome in which each person’s concerns are taken into account and everyone has the same information. The driving example would look quite different. Studies on merging traffic suggest that the more cooperative the behavior of all drivers, the earlier everyone gets to their destination. Giving way to accommodate a family situation – in this case, a dad rushing to get to his child’s soccer game – is easier when the details are known. For the accommodating drivers, the stress is lessened by the knowledge that they are not really losing travel time.

### How should we approach the settlement process?

It is one thing to make a driving decision or to negotiate bedtime with a child; it is another entirely to face the prospect of ending a marriage, with all the worries of financial realities and uncertain futures. The prospect of entering into these life-altering discussions with a long-time partner, co-parent, and companion is even more daunting when coupled with the realization that both are now thinking of themselves as *me* and no longer as *we*. The possibility that instinctive self-preservation might override obligation causes tension and fear. What was predictable about each other is now not so certain.

Even when separating couples have a vague idea of what they think will be fair for both of them, certain aspects of any separation contract are complicated.

We often see frustration in the faces of couples who took the high road and worked out their best and

**Negotiating is not about fighting, nor is it about winning – it is about refining viable options that have been developed with the help of divorce professionals.**

fairest solution, only to be told that they needed legal and other professional advice and more information. This message, although delivered with the best of intentions, contains a new uncertainty: *How do we get this done without fighting?*

### What does it mean to negotiate?

Here is the starting place: your active participation in settling your divorce is the single most important factor in getting an outcome you can live with. Whatever the final process, there comes a time when negotiations will take place. Whether they are carried on through lawyers or at the table in settlement meetings, mediation, or collaboration, the goal is to reach agreement.

Couples have to understand how negotiations happen. Negotiating is not about fighting, nor is it about winning – it is about refining viable options that have been developed with the help of divorce professionals. A viable option incorporates needs as well as values. Here are some examples:

- Support paid to one spouse by the other so that both have enough to live on with dignity.
- Recognition that a person paying support will retire one day and that both spouses need a plan to go forward after that.
- Division of property that does not necessarily follow the legal model so that both persons will be able to meet expenses for the rest of their lives. As an example, in most places, inheritances may not be considered part of the assets available

for sharing. If you are separating after a long marriage, those assets may mean the difference between a viable financial future for both as opposed to security for only one. Likely this money was considered part of a joint retirement plan for decades. Does it make sense to re-characterize the funds because of a late-in-life separation?

- Trading off other benefits by one spouse to realize a goal – such as remaining in the family home.
- Division of household contents in a way that recognizes each person’s needs and preferences.
- Putting aside money for the children’s education, weddings, or major purchases such as first homes.

Each of the above options has multiple details that can be negotiated. Take, for example, the contribution to children’s future expenses. Each parent may have a different amount in mind. Refinement of the options is based on presenting a proposal that meets the other person’s needs. One spouse might offer to put \$20,000 into a fund for an upcoming wedding if the other agrees to accept slightly less support for a few years, to allow the other to rebuild the investment fund from which the money will be withdrawn.

### What is needed to negotiate effectively?

Information is the most important element of a successful negotiation. In the above example, one spouse offers to put aside money for a child’s wedding if the other (the support recipient) will

forego some support. Here is a (non-exhaustive) list of what is needed by both negotiators in order to refine their responses:

- The interest rate the wedding fund will earn.
- The expected costs of the wedding.
- The amount the recipient will contribute to the wedding.
- The expenses the recipient can cut from his or her budget and for how long.
- A contingency plan if the contributing spouse loses her/his job and cannot recover the amount invested in the fund.
- The contribution expected from the child.
- The effect of the transfer of funds on the contributing spouse's ability to buy a property after separation.

### What is the most effective approach to negotiations?

When separation happens, it is normal to have concerns about the future, whether you are the person asking to separate or the person being asked. Keeping those concerns bottled up is a natural human response; we often don't talk about our fears. However, those fears and worries must be managed. One spouse may worry about health problems causing the end of her working life, and the other may worry that he will have to work harder and may not feel up to the task.

An atmosphere of silent worry is not a good starting place for negotiations. Discussions should start with openness about individual goals. Here are some examples:

- I would like to know what the future will look like if I can't work because of poor health.
- I would like to understand what will happen when our savings are divided, and how long the money will last.
- I would like to know whether it is a good idea for me to buy the house from my spouse or whether it is best for us to sell it.

- If we sell the house, I want to know if I should buy another house or a condo or just save the money.
- I want to know that we will listen to each other while we are negotiating.
- It is important to me that you look after your assets so that I can stop supporting you at some point.

Each of the above goals and wishes can be taken into account when looking at options for settlement. Financial professionals working with divorcing couples commonly use computer programs to create projections of what the financial future will look like for both parties. Such tools offer guidance and can be used to introduce refinements until the outcomes are acceptable to everyone. If things change unexpectedly over time, the financial professional who created the projections can revisit them, make adjustments, and discuss new options.

The most effective way to negotiate is with the assistance of divorce professionals you trust. They work with you until you understand the value of what you have. They help you create options to explore possible financial outcomes that will meet needs. They have your best interests in mind and help you explore what those best interests are. They manage the process of negotiation while fully appreciating that time and money are important. They respect your family values. They guide you through legal principles. A good divorce professional is a good negotiation coach. Finally, they work as hard as they can to get the job done and an agreement signed.

### Final Thoughts

- Negotiating does not mean fighting. It means participating in a process where everyone has the same information and options are created and tweaked until a settlement emerges that everyone is able to live with.
- You should expect to give up things to get things.
- The more you are directly involved

in your settlement negotiations, the more closely your final agreement will meet your future needs. ■



This article has been excerpted from *When Harry Left Sally* (MS Publications, 2013) by Eva Sachs (B. Comm., CFP®, CDFATM) and Marion Korn, (LL.B, LL.M, AccFM). This book shows you how to work out your divorce without fighting and without court, end your marriage with an understanding that each of you will be okay, and earn – and keep – the respect of your children.

*Financial planner and Certified Divorce Financial Analyst® Eva Sachs brings her years of financial analysis to separating couples. A family lawyer and a skilled family mediator, Marion Korn has made her name locally and internationally as an educator and trainer in conflict resolution techniques to legal, family, and financial professionals.* [www.whenharryleftsally.ca](http://www.whenharryleftsally.ca)

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# KEEP YOUR COOL

**Tips for keeping your cool during heated divorce-related negotiations or conversations.**

By Carolyn Ellis

*Rose was negotiating a separation agreement with her soon-to-be ex-husband using the Collaborative Divorce process. After months of four-way meetings and mounting divorce-related bills, she felt like abandoning the negotiations and taking her ex to court. “I don’t even recognize who Dave is anymore. Why did I ever think that having children with him was a good idea?” she asked during one of our coaching sessions. “All I’m trying to do is what’s in the best interest of our kids – but Dave refuses every suggestion without even giving it a fair hearing. He’s so rude and belligerent to me in every meeting that I’m starting to dread them!”*

*At this point, Rose was too upset to be able to negotiate calmly; she wanted to “give Dave a taste of his own medicine” by becoming equally belligerent and disrespectful to him. This could have derailed the collaborative process and ended with the two of them slugging it out in court. Instead, Rose worked on not letting her emotions and the heat of the moment undermine her long-term goals; because she did not escalate the conflict, she and Dave were able to negotiate a settlement that both of them could live with.*

**T**here aren’t many people who jump for joy at the prospect of having a potentially contentious and heated conversation with someone they used to love. It can be very unsettling, profoundly frustrating, and deeply disappointing. The unfortunate reality for the vast majority of divorcing couples is that tense moments, conflicts, and arguments are inevitable your divorce journey; how you handle the conflict will help to determine how long and how difficult the process will be.

Negotiating your separation agreement requires you to make decisions about crucial factors that will impact you and your family for years to come – such as division of marital assets, child custody, and financial support. When emotions run high, intelligence tends to run low. During divorce, you're asked to make decisions about your life when you're least equipped to do so.

Brain science helps to explain why it's so hard to make complex and challenging decisions when you're in a place of emotional upset. When faced with situations that create fear or insecurity, the amygdala in the limbic brain is triggered and sets off the "flight or fight" response. Adrenalin floods through your body, creating physiological responses to ensure your physical survival. For example, breathing and heart rates increase sending blood to your limbs so you can run or go into battle.

Instead of being able to respond, you can only react when you are hijacked by your amygdala. The cerebral cortex, the part of your brain that governs reasoning and logic, is hard to access. This is what you'll need to call upon the most when you're in the midst of finalizing your divorce or co-parenting agreement with your ex.

Use these ten simple tips to help you keep your cool when the conversations get heated.

### Tip 1: Take Some Deep Belly Breaths

To help you stop spiraling into emotional reactivity, nothing beats taking a few deep breaths. Plus, this strategy is free, easy, and something you can do any place, any time.

Studies show that taking deep, conscious breaths for even one minute can help you feel more grounded quickly. Breathing like this helps to dial-down the amygdala response that triggers the "fight or flight" response so you can better access the part of your brain that governs rational thought.

Most of us tend to breathe more shallowly, using primarily the chest cavity. It can take a bit of an adjustment to learn how to breathe more deeply, using your full lung capacity. To help you get the deep breaths going, place your hand on your navel and breathe deeply right down into your diaphragm. When you inhale, imagine you're sending your breath right down to your hand. You're on the right track when you see your hand moving outwards with your inhale, and then back in towards your body on the exhale.

**When emotions run high, intelligence tends to run low. During divorce, you're asked to make decisions about your life when you're least equipped to do so.**

### Tip 2: Move Your Energy

To help you get clear in your negotiations, it's important to get your energy clear. Past upsets and grievances, unexpressed emotions, worries about the future, or feelings of anger, sadness, guilt, or fear create static that can make it harder to get your point across effectively.

If you're feeling angry, write an angry letter (don't send it, however!), write about your feelings in a journal, take your dog for a walk, or work up a sweat at the gym. If you're feeling sad, spend time with people you love or do some yoga. To get a fresh perspective, take a nature walk or get creative in the kitchen or with a hobby. Finding ways to move and release pent-up emotions before you have your tough conversations makes it easier to speak your truth when it really counts.

### Tip 3: Get the Big Picture

When you're deep in the trenches of negotiating your divorce settlement, it's

so easy to lose perspective. Everything feels urgent and high-stakes. It's important to take the time to get the big picture.

One of the most effective ways to do this is to look out into the future: imagine what you want your life to look and feel like 20 years from now. Do you want to be upset and resentful still about your ex, or do you want to feel more peace and clarity in your life from all the wisdom you're getting from this divorce experience? If you have children, what do you want the day when they graduate college or get married to be like? Keep the big picture in mind and do your best to let it pull you through the stress and conflict you might feel today.

### Tip 4: Don't Give Away Your Power

When it comes to a divorce, everyone has an opinion for you. We hire lawyers; we talk with therapists or coaches; we poll friends, family, and neighbors for their experiences and suggestions. We devour self-help books and attend workshops to try and find our way through the divorce maze. But at the end of the day, *you* are the world's best expert on you and what's right for your life.

When you decide to take responsibility for your choices, you put yourself in the driver's seat of your life. When the heat is on and the conversation gets tough, it's tempting to give your power away to others in order to avoid conflict. Your lawyer may be an expert on the law, but you and your family are the ones who will have to live with the consequences of your legal decisions. Your ex-partner will know what buttons to push to upset you. During your marriage, you may have backed down when he/she pushed those buttons; today, don't take the bait. You have both the power and the responsibility to give input on decisions that will affect the rest of your lives.

### Tip 5: Pick Your Battles

What tends to surprise most people is how grueling it is to actually implement the decision to end your divorce. Especially if you have children, there

are a lot of major issues that need to be negotiated – such as child support and custody, spousal support, and division of assets and debts.

It's crucial to pick your battles. You'll get exhausted if you go to the wall on every single issue that arises. Brainstorm a list of all the issues that you can think of – holiday schedules, education choices for the kids, what happens when one of you loses a job or when a new partner comes on the scene, and how to handle it when your teenager wants to get tattoos and a few piercings. What's negotiable for you? What's a deal-breaker issue for you?

Get clear on your core issues and set some priorities. You'll need to have some give and take in your relationship with your ex, particularly if you are co-parents. Learn to become strategic and identify where you're willing to get creative or compromise in order to build good-will for the long run.

### Tip 6: It's Not Personal

One big trap that is so easy to fall into is taking interactions and choices made by your ex-spouse personally. Especially in situations of conflict, people will inevitably have different opinions and strong emotional reactions. Allow others to have their own emotional upsets. Doing your own emotional homework with a therapist or coach can help you defuse some of those "hot buttons" that ex-partners are so skilled at pushing.

Realize that what your ex-partner thinks of you is no longer any of your business. The degree to which you continue to respond and react to what your ex thinks, says or does is the degree to which you help create your own suffering. In the words of spiritual teacher Matt Kahn, "What others think of you is their journey. What you think of yourself is yours."

### Tip 7: Own Your Part

We are human beings, not saints. Particularly when under stress, we're

likely to do or say things that we'll regret later. Help keep your negotiations moving in the right direction by taking responsibility for your actions and how you may have contributed to the conflicts you're trying to resolve.

In negotiations, take ownership for your feelings when you speak. Avoid blaming statements such as: "You're being unfair!" Instead, take responsibility for your feelings by using "I" statements, such as: "I feel upset when XYZ happens."

When you do find yourself making a misstep or losing your cool, show yourself compassion. See these "mistakes" as enormous learning opportunities.

### Tip 8: Get Support

Einstein said that problems cannot be solved at the level of thinking that created them in the first place. Learn to ask for help and support; if you don't ask, the answer will always be no. If you *do* ask, chances are great you'll be able to break through whatever problem is keeping you stuck.

If you reach an impasse with your ex-spouse, get help when you need it. You may need to enlist a third party (counselor, mediator, lawyer, etc.) to help you resolve difficult issues. It's critical you find effective support in your social network during your divorce process. Find a trusted friend or divorce "buddy," a divorce coach, therapist, or a community support group.

### Tip 9: Talk It Out

When you have big stakes on the line, it's best to not just "wing it" and hope it all turns out the way you want. Taking time to prepare yourself in advance helps give you confidence and clarity that can make all the difference.

One way to do this is to write down all the key points you want to make. Get some of those nervous jitters and hesitations out of the way before the meeting even starts by practicing out loud. You

can even do this in front of a mirror to take your "talk it out" strategy to an even deeper level.

### Tip 10: Surrender

Anyone who has ever tried to paddle a canoe or swim upstream can confirm that going against the current can be exhausting. When you make the choice to surrender, you let go of needing to know or control everything all the time. Surrender isn't a sign of weakness: it doesn't mean you're giving up your position or your beliefs. Sometimes, the best choice about "what to do" is simply to breathe and stay in the present moment; stay open to learning what wisdom this situation has to offer you.

Before you head in to your next tough conversation, take a moment to close your eyes and get centered. Create an intention to center yourself that you can come back to when you feel challenged or unsettled, such as: "Let this be resolved in the highest and best interests of all involved" or "Let me speak my truth powerfully and clearly today." You can even anchor this intention by holding a small object, such as a small crystal or stone, in your hand. Bring this object with you to your meeting to help you stay centered and remind you of your intention to surrender your desire to control every aspect of the negotiation. ■



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# Four-Way Meetings

By Stuart G. Webb and Ronald D. Ousk

The goals you establish and the critical interests you define in four-way meetings form the foundation for your success in this process.

Outside of the collaborative process, the phrase “four-way meeting” could be used to describe any meeting of four people. However, when we use the phrase *collaborative four-way meeting*, we’re referring to a specific type of meeting that typically involves four people, but sometimes more.

## The Collaborative Four-Way Is Different from Other Four-Way Meetings

Settlement meetings between clients and their lawyers sometimes occur even in the traditional litigation approach to divorce. However, the rules and the style of these meetings are completely different from the collaborative four-way meetings.

In many ways, your commitment to the collaborative process will depend on the strength of your commitment to make these four-way meetings as effective as possible. They likely will be your greatest challenge, and they require much preparation. But they present unlimited opportunities to find solutions that will help you achieve your most important goals.

Although the analogy is often overused, the collaborative process is similar to building a house. Your long-term goals and interests are the foundation. The more secure you are in the goals you have established, the more likely you are to achieve the successful and durable outcomes that you want.

Collaborative four-ways are like the frame of the house. Within that framework, you will create the outcome that will make up your actual divorce



agreement. The quality of the outcome likely will depend on the foundation and the framework that supports it.

One of the reasons it’s valuable to compare the collaborative process to the process of building a home is that it will prepare you to be patient during the early stages of the four-way meetings. Much of the time spent in these early meetings will be for the purpose of setting the foundation and framing the issues. During these early stages, you may find yourself tempted to want to jump ahead to final decisions before you are ready to do so. So please carefully read the sections that follow. We strongly believe that the better you understand how four-way meetings work, the more likely you will be able to use them effectively.

## Practical Aspects of Meetings

Let’s turn to the practical task of explaining what actually happens in these meetings:

- **Who** attends these meetings? Usually, these meetings will include you, your spouse, and both lawyers.

- **Where** do these meetings take place? Generally at the offices (or conference rooms) of one of the lawyers.
- **When** do these meetings take place? They’re generally scheduled about two to four weeks apart, at a time when all the participants can be there.
- **What** happens during these meetings? Typically:
  - **Introductions** are made and a **tone** is set for the meetings
  - **Ground rules** are established for how to conduct the meetings
  - The collaborative process is **explained** and discussed
  - **Reasons for choosing** the collaborative method are discussed
  - If it is the first meeting, the **Participation Agreement** is reviewed and signed
  - **Goals and interests** are identified
  - **Information** is fully disclosed
  - **Issues and interests** are identified
  - **Questions** are answered
  - **Homework** is determined
  - Issues are **prioritized**
  - **Alternatives** are identified and evaluated

- **Agreements** are reached
- **Agendas** are set for future meetings
- **Documents** are signed
- Decisions are made about whether to include other **team members**
- Decisions are made about whether to retain **experts**
- **Final steps** for completing the process are outlined.

The goals you establish and the critical interests you define in the early four-way meetings form the foundation for your success in this process.

## Identifying Goals and Interests

All of the steps in the collaborative process exist for one purpose: to help you achieve your most important legitimate goals. But you can't achieve them if you haven't first carefully considered what they are. There's a natural tendency to become absorbed in the immediate problems that you are facing and to focus only on narrow ideas about how you might resolve these urgent concerns. Your success in the collaborative process will depend a great deal on your ability to pause in the middle of the chaos to truly think about your long-term goals. Keeping

**All of the steps in the collaborative process exist for one purpose: to help you achieve your most important legitimate goals.**

these crucial goals in mind will make it easier to make compromises or let go of less significant issues in order to preserve the things that matter the most to you.

The other reason for you and your spouse to identify your overall goals is that you're likely to find that you share a number of them. Identifying these common interests will provide greater opportunities to find solutions for accomplishing these goals.

## The Conflict-Resolution Process

The framework of collaborative four-ways is generally developed around the following four steps:

- Identifying issues
- Gathering facts
- Developing options
- Negotiating solutions.

Your lawyer will explain to you why each of these stages is important and will help you avoid one of the most common mistakes that people in the collaborative process make: skipping the preliminaries and jumping right into negotiating solutions.

### Identifying Issues: You Can't Find the Answers Unless You Know the Questions

You may believe that you already know all the issues that you need to resolve, but chances are there are quite a few that would never occur to you unless you were a practicing collaborative lawyer. In addition, your list may not include concerns or issues that your spouse may have. Before you can begin working on any specific issue, it is important to identify as many as you can so you can get a better sense of how to prioritize the next steps.

### Gathering Facts: Making Sure You Have All of the Pieces of the Puzzle

Once you have identified the issues, the next step is to gather information. You can't make good decisions unless you're confident that you have all of the information you need to do so. The collaborative model uses an informal process that's designed to collect the facts as quickly as possible. During the four-way meetings, the lawyers help the clients identify what kind of information they may need to help them make

decisions. Generally, one or more of the participants will agree to take responsibility for obtaining the information, and the requested information is distributed to the other members of the group prior to the next four-way meeting.

### Developing Options: Imagining the Unimaginable

Now you're ready to consider your alternatives. In many instances, you may believe you have already considered every possible way of resolving the issues at hand. However, if you spend time considering other possibilities, you'll be surprised at how many more you can generate.

### Negotiating Solutions: Finding the Right Answers

If you've done a thorough job with the first three steps, you'll find it easy to negotiate workable solutions. If you reach an impasse in resolving any of the issues, your lawyers (and any other professionals who may be assisting you) will help you identify ways of getting around it.

## Roles of the Parties and the Lawyers during the Meeting

While you and your spouse are ultimately responsible for the outcomes of the four-way meetings, your lawyers are primarily responsible for keeping the process on track and for creating a safe and effective environment for reaching solutions. You and your spouse also play a role in creating and maintaining an environment that is conducive to problem-solving.

### Addressing the Emotional & Financial Challenges of Four-Way Meetings

We feel confident that you will see just how effective four-way meetings can be if you choose to pursue a Collaborative Divorce. However, your success in these meetings may depend on your ability to address the emotional and financial challenges that may arise.

### The Emotional Challenge

Collaborative four-way meetings, while effective, can often be emotionally

difficult. The thought of sitting in the same room as your spouse and his or her lawyer might cause you a great deal of discomfort. If that's true, it's important that you communicate with your lawyer or other professionals about your discomfort, so that they can help you develop specific strategies that will work for you.

### Special Situations

There are some cases in which the emotional challenges are so great that special accommodations need to be made. If, for example, you and/or your spouse are having tremendous difficulty accepting the divorce, direct interaction with one another could trigger strong feelings that make it difficult to create a safe and effective environment during the four-way meetings. And certainly in cases where there has been a history of abuse or where there is a strong power imbalance, adjustments may need to be made, and it may not even be possible for the spouses to have direct interaction.

If you find your four-way meetings to be emotionally challenging, you and your lawyer may want to consider the following options.

1. Add specific ground rules to ensure that discussions avoid triggering strong emotional responses.
2. Work with divorce coaches or divorce-closure counselors to do your part in creating a better environment.
3. Meet in two separate rooms for all or part of the four-way meetings and have the lawyers move back and forth between the two rooms. In these situations, the four-way meetings are often replaced by three-way meetings, with the lawyers meeting with each client individually.
4. Slow down the process to allow the parties more time to make the emotional adjustment necessary for more effective four-way meetings.
5. Spend additional time preparing for these meetings with your lawyers.

Following these suggestions is not going to magically make your four-way

meeting fun and enjoyable. Even in the best situations, you'll probably feel a little uncomfortable. As a general rule, four-way meetings are hard work for all participants. However, in almost all cases, the benefits gained by directly participating in your solutions will justify your commitment and hard work.

### The Financial Challenge

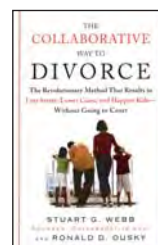
Much of the expense of your case will be related to these meetings. Your lawyers will spend time preparing for them, attending them, and summarizing or debriefing them. As a result, you may be worried about how much they're costing. If you're worrying about your bills, you're not going to be fully present for the meetings, and the meetings won't be nearly as effective. As with the emotional challenge, running from the problem may only make it worse, so it's important to address this financial challenge.

1. Consider whether the amount you are spending will have an impact on the quality of your outcome.
2. Be as thorough as you can in gathering and organizing the information that you need for the meetings. This can reduce your legal fees dramatically in two ways: first, you avoid having your lawyer charge you for doing legwork you could have done on your own; second, the four-way meetings are more productive because all of the information you need is readily available and organized in a useful way.
3. Create a structure for safe and effective two-way meetings with your spouse, so that you can address as many issues as possible outside the four-ways.
4. Talk with your lawyer about how you can make the four-way meetings more effective.
5. Make sure that there is enough time between the four-way meetings so everyone is prepared. It can be tempting to rush the process by asking that meetings be scheduled close together. This may seem like a way of getting more done more quickly, but if busy schedules prevent the parties or the lawyers from completing

the necessary homework between meetings, the four-ways will be less productive and more of them will be needed.

6. Finally, think about whether you need to let go of some smaller issues that could be bogging down the progress of the meetings. Even people who are very cost-conscious can lose perspective and spend a disproportionate amount of time on minor issue. Between meetings, when there is time to reflect, think about whether the cost of holding onto that issue is really worth the resources and emotional energy that you are investing in it.

Four-way meetings are the building blocks of the collaborative process. Successful four-way meetings can help you reach agreements that will allow both spouses to achieve their goals and create a groundwork for communication after the divorce. ■



*This article was excerpted and edited with permission from The Collaborative Way to Divorce: The Revolutionary Method that Results in Less Stress, Lower Costs, and Happier Kids – Without Going to Court (Plume Books, 2007) by Stuart G. Webb and Ronald D. Ouskey. Webb, a family lawyer in Minneapolis, invented Collaborative Divorce in 1990 and has practiced exclusively in the collaborative method ever since. Ouskey is a frequent speaker and writer on collaborative practice (in which he is a pioneer) and also practices in Minnesota.*

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# A Fair Negotiation



Negotiation skills will help you achieve many goals without alienating or angering the other parties involved. Here's how to use negotiation to resolve disputes and build better interpersonal relationships.

By Jeffrey Cottrill

**W**e've all heard about those nightmarish divorces that drag on in court for months or years because one or both parties is determined to get his or her way in the final outcome no matter the cost. There are also cases in which one party gets "cleaned out" by the other because of a failure to communicate an inability to stand against the more powerful personality's demands.

Adversarial litigation is a costly, damaging process that often results in at least one party getting shafted: the adversarial "win-lose" contest inevitably results in bitterness and dissatisfaction for somebody. That's one reason why mediation and collaborative law have become more popular as cooperative "win-win" methods of settling divorce. Rather than duking it out until one party wins, it's more constructive to work out an agreement together through the art of negotiation. Negotiation is an important personal-relations skill that enables you to get what you want without running roughshod over those around you. Whether you're dealing with your ex-spouse, friends, relatives, neighbors, co-workers and supervisors, professionals, or even your children, you have to be able to put everybody's point of view in clear perspective, so

that you can create a solution that works for both of you.

## Be Fair to the Other Party

You know what *you* want, of course. That's the easy part. It's when you show respect for what the other person wants that you move toward fair negotiation. Sometimes a solution that addresses both parties' goals is possible, and sometimes both parties' goals directly conflict with each other. But once both parties understand and empathize with each other's point of view, the situation can change from an adversarial deadlock to a resolvable dispute.

One of the most difficult barriers to successful bargaining is when at least one party chooses a fixed position or "bottom line" and stubbornly sticks to it without considering its fairness to the other. For example, if both spouses in a divorce want sole custody of the children and completely refuse to compromise, the process won't go anywhere. But if both agree on joint custody, then the process can move toward resolution. Smart negotiators know that they will have to compromise on some issues to a certain extent and that they're highly unlikely to get everything they want.

Sometimes, however, a party will be immovable not because of needs or wants but out of a personal desire to "get back" at the other party. This only leads to escalated conflict and the kind of expensive, draining, adversarial mudslinging that you're trying to avoid. Don't give in to anger or hate. Even if you're still carrying hostility toward the other person over past issues, keep it out of the negotiation process. Remember that the goal is a fair agreement, not revenge or "teaching a lesson."

Negotiation is about working together, not competing against each other. So if you want the other party to understand your needs and make a few compromises in your favor, you will have to do the same for him or her. Listen to the other person. Give the other party the space and time to make his or her needs clear. Try honestly to understand how the situation looks from the other side's point of view; this may be the most valuable skill you can master in bargaining with others in any dispute situation. Listen to the other side in the way you would like them to listen to you. The more respect and attention you show, the more likely the other person will be to let down his or her defensive guard and show you the same respect.

Even if you know that something the other side wants is impossible or unfair to you, don't immediately criticize the person for it. That's a good way to burn down the bridge of understanding you're trying to build. Instead, hear the other party out first and then deal with how to reconcile your conflicting wants. Is there a solution that leaves both of you satisfied, as opposed to having one happy and the other unhappy? Also ask yourself if this particular issue is as important to you as you think it is. Would it really be that much of a loss if you made a sacrifice in this area, or just gave way a little? Or maybe there's a way both of you can "share" the benefits.

This will require you to "take the high road" and leave the past in the past. You can't drag old hurts and resentments into your negotiation and expect it to succeed. Find somewhere else to vent your anger and frustration – with a counselor or a support group, for instance – so that you can be as calm and cooperative as possible under the circumstances. A complete understanding of the other person's perspective as well as your own is essential to negotiating a fair resolution to any problem.

## Be Fair to Yourself

Negotiation is about give-and-take. While it's important to let the other party feel that his or her needs are being addressed, be sure that you're being heard equally. As admirable as it is to give way on issues, a deal can't be truly fair unless you're receiving the same generosity and respect in return. Remember, the saying isn't "do unto others *better than* you would have them do unto you."

There are instances in which one party may give in too much to the other because of a power imbalance: the former may feel threatened or simply be too much in the habit of giving in. For example, this may happen for a marriage in which one spouse has always been dominant; sadly, this pattern often continues when the couple breaks up.

There are also instances in which one party may want to give away the farm to ease guilt, particularly if the other party has been very vocal about supposed injustices done by the former. But the object is not to right past wrongs or to keep the other person quiet: it's to achieve a fair resolution for both. This is where a neutral third party (such as an experienced divorce coach or mediator) may help in assuring that all get their say in a negotiation; he or she would be able to spot when one person is getting the short end of the stick or just isn't being heard.

If no neutral third party is available, you may have to stand up for yourself when dealing with somebody who tries to take advantage of your guilt or generosity. Listen to the other party's needs and concerns, but don't let them completely override your own. Be firm if you know for sure that you're not being treated fairly; don't give in to guilt or feelings of inferiority. If the person you're trying to negotiate with continues to be unreasonable, a fair final agreement may be impossible without the assistance of a trained mediator or collaborative lawyers. Sometimes, a more firm, confident attitude in bargaining can work wonders. A normally domineering or stubborn person may be baffled by your refusal to back down and eventually find no other alternative than to give in on the issue.

When the other party agrees to let you have something your way, accept it graciously. In exchange, of course, assure the other person that some other issue will go his or her way. Accepting the other party's concessions is just as important to negotiation as offering concessions: both reinforce the fact that you are aiming at a "win-win" solution rather than either of you being short-changed.

As important as it is to understand the other party's needs, he or she has a duty to do the same for you. Negotiation is a cooperative process: it won't work if either of you is still trying to get the better of the other.

## A Better Outcome

There are many benefits to bargaining instead of arguing or fighting to the bitter end over an issue. Negotiation turns your opponent into a partner – even, potentially, an enemy into a friend – because you're working together to benefit both of you. You can avoid the increased hostility and awkwardness that result from continued antagonism – the wasted energy, stress, and emotional strain involved in clinging to your position and pursuing your wants at all costs – and wind up with an outcome that's fair, pleasing, and the result of your own empowerment.

Master negotiation skills and you'll be assured success in many situations. Follow the tips we've provided, and you can reap benefits without having to risk being defeated in any "battles." ■

### Negotiating Dos and Don'ts

Here are some things to do and not to do when negotiating with someone:

- Do listen attentively.
- Do demonstrate respect for the other person's point of view.
- Do make your own point of view clear without blaming or whining.
- Do separate your "non-negotiables" from areas where you're willing to compromise.
- Do look for "happy medium" solutions that satisfy both parties.
- Don't drag past disputes into this one.
- Don't be rude to, interrupt, blame, or patronize the other party.
- Don't back the other party into a corner with absolute demands; these inflexible statements usually begin with phrases such as "You must..." or "You will never..."
- Don't give in to demands out of intimidation or guilt.
- Don't expect to get everything you want.



# Getting SETTLED

By Nancy Kurn (CPA, JD, MBA)

## What you need to know before creating a settlement agreement.

**Y**ou've sat down with your spouse and hammered out what you think is a pretty great settlement: you get to keep all of the property you really wanted, and your ex gets stuck with all of the debt. But whether or not that agreement will hold up in court depends on a number of factors, including how it is worded, whether or not there was full financial disclosure by both parties, and possibly whether both parties had independent legal counsel.

That being said, you should make every effort to negotiate your settlement agreement rather than fight over every item in court. Such agreements have several benefits over a judge's ruling, including: they take less time;

they reduce the financial and emotional costs; and the parties are more likely to abide by the terms of the agreement.

If you're able to put aside your emotions and focus on the issues at hand, your chances of negotiating a settlement are extremely high. A courtroom is simply not the right venue to express your feelings of anger or loss, so find a counselor or a support group to help you work through your emotions so you can be as clear-headed and as practical as possible during negotiations with your spouse. Some couples will be able to settle all issues; others will be able to settle some issues and have to litigate the rest.

This article will cover property issues only; your settlement agreement will need to thoroughly address spousal or child support as well as custody and visitation issues. As always, you should consult with your lawyer and/

or mediator to make certain your best interests, and those of your family, are protected.

Your settlement agreement should be very comprehensive – particularly with regard to how the property is divided. Once you sign an agreement regarding property division, it cannot be changed unless both of you agree to the changes, or there is some legal basis, such as fraud, for setting aside the agreement. It's up to you to make sure that your lawyer doesn't leave any assets out of your settlement agreement (unless it's something that you're going to litigate in court).

You don't necessarily have to list every single personal possession in your settlement agreement, but you should list personal items that are important to you. You should also list financial assets, including retirement assets and real estate.



Your agreement should state who gets each asset or how the asset or the proceeds from its sale will be divided. Let's take a look at the most common categories.

## Financial Assets

Financial assets include cash, savings accounts, checking accounts, Certificates of Deposit, money-market accounts, stocks, bonds, Real Estate Investment Trusts (REIT), mutual funds, and savings bonds. These assets may be more important to the non-working or lower-income-earning spouse. He or she may need to use these assets to cover some of his or her living expenses.

## Retirement Assets

Not all assets have the same tax consequences; retirement assets are generally before-tax assets. This means that in order to access the money, you have to pay income tax on any distributions you receive. In some cases, you may also have to pay a penalty on the distribution in addition to any income tax that you pay. For example: Mary suggested to Gus, "You keep your retirement assets, valued at \$100,000, and I'll take the money-market account, valued at \$100,000." Gus agreed because it was an equal division of the assets. However, when Gus retires in 2009, he will pay tax on the distributions. So if Gus paid tax at a rate of 25%, then he

– will be divided between you and your spouse. This is generally spelled out as a percentage of the retirement benefit at the time of the divorce. It is also imperative for the agreement to state if the employee's spouse will be entitled to survivor's benefits if the employee dies. It is important to make sure that the non-employee in fact qualifies for survivor benefits; otherwise, he or she may be better off with another asset.

Defined contribution plans include 401(k) plans, profit-sharing plans, simple IRAs, and other types of contributory plans. Generally, these can be divided today, and the non-employee spouse can take the percentage that is awarded and roll it over to an IRA or perhaps maintain it as a separate account in the same plan. The agreement should specify the percentage that you and your spouse will receive.

IRAs or Roth IRAs are also easily divisible. Remember that distributions from Roth IRAs will generally not be taxed, while distributions from IRAs will generally be taxed. As a result, \$10,000 from a Roth IRA is probably a better asset than \$10,000 from an IRA.

In Canada, there are two basic types of pension plans: "Defined Contribution Plans" and "Defined Benefit Plans." The first type defines who is to make the contributions to fund the plan, how much they are to contribute, and when

are not at all related to the amount of contributions that have been made) that must be valued.

Depending on the type of plan and which province you live in, a portion of the pension (usually the portion accumulated during your marriage) may be subject to division like any other family asset. If one or both spouses have Registered Retirement Savings Plans (RRSPs), the portion accumulated during marriage will also be subject to division.

Some people will want to divide the pension into two separate pensions: one for each person. Not all pension plans permit division of the pensions. In any case, it is still important to have the pension valued properly: dividing one pension into two is not a way to avoid the cost of a valuation (or to avoid arguing over which value is the right value for the pension).

Federal government pensions qualify for division under the Pension Benefits Division Act (PBDA). This Act provides that the member may transfer a portion of the value of the pension to a retirement vehicle for the spouse. This is known as the Maximum Transferable Amount (MTA).

The Canada Pension Plan (CPP) recognizes that married persons, common-law couples, and same-sex partners share in the building of their assets and entitlements, including their CPP credits. When a relationship ends, CPP credits built up by the individuals during the time they lived together can be combined and then divided equally between them by means of "credit splitting". As a result, the person with fewer credits – that would normally be the lower income earner – receives some credits earned by the other – normally the higher income earner – so that they both have the same number of credits accumulated during the marriage or other relationship.

You should be aware that there is more than one way to value a pension; if the amounts are significant, you

**Make every effort to negotiate your settlement agreement rather than fight over every item in court**

would end up with only \$75,000 versus the \$100,000 that Mary received.

In the U.S., there are many different types of retirement assets, including defined benefit plans, defined contribution plans, IRAs, and Roth IRAs. It is important that you determine how defined benefit plans – such as pensions

they are to make the contributions. The second will also specify who is to make what contributions, how much they are to contribute, and when. However, a defined benefit pension plan will also have a formula for determining the amount of annual pension that the member has earned. It is the projection of these future pension payments (which

should consider having an expert valuation done.

## Employee Benefits

In addition to retirement plans, many employers provide other fringe benefits and incentives to their employees. These benefits include year-end bonuses, accrued vacation time, accrued sick time, health insurance, life insurance, disability insurance, expense accounts, stock options, and more unusual benefits such as Phantom Stock, Stock Appreciation Rights, and Restricted Stock.

Some of these benefits may be included in your list of assets; other benefits may be included as income, and some may not be included at all. Determining if a benefit should be treated as a marital asset, income, or nothing at all can be very subjective. Different jurisdictions and judges may view the benefits differently. As a rule of thumb, if the benefit is guaranteed, then it should be included as an asset or as income. A year-end bonus could arguably be an asset, an income item, or nothing at all if it is not guaranteed. For example: Barbara and Jeremy were married for 15 years. Jeremy, the

employee-spouse, received a bonus every year. Barbara could certainly make a reasonable argument that it is an asset or income for purposes of calculating child support and alimony. Vested stock options would also be an asset; with the changes in the market, they may not have any value, while unvested stock options, on the other hand, may not be an asset.

## Personal Property

List your personal possessions, particularly those that are important to you, and note how they are going to be divided. This would include big-ticket items – such as cars, boats, and motor homes – as well as items such as jewelry, furniture, photos, and personal papers.

Keep the value of these assets in perspective – and recognize when it’s time to give up the fight. We’ve all heard of those cases where parties spend thousands of dollars fighting over an asset that’s worth less than \$100.

Each spouse should keep copies of joint tax returns. We recommend that you keep at least the past five years; in addition, you will need records to

calculate the cost basis for any assets that you keep.

## Real Estate

Real estate includes your marital home and any other homes, vacation properties, timeshares, and rental properties – commercial and residential – as well as any business property. The properties should be listed, and the settlement agreement should address how they are going to be divided.

If the property is going to be sold, the following issues need to be addressed:

- Who is going to pay the expenses until the property is sold?
- How will the proceeds be divided?
- If one spouse pays the expenses, will he or she be reimbursed, from the proceeds, before they are divided?

## Debts

Generally, the person who takes the property will be expected to pay the mortgage or debt related to the property. Does this mean that the other spouse has no financial obligation for a joint debt? Absolutely not. Unless the spouse who takes the property refinances the mortgage, both spouses will still be obligated to pay the debt. The divorce decree cannot terminate your financial obligation to your creditor. For example, Bob and Amy are dividing their assets as shown in “Table One”.

After the divorce, Bob would be liable for the car payment and Amy would be liable for the mortgage. If either failed to make these payments, the other spouse would still be liable. But if Amy or Bob refinance after the divorce, the other spouse will no longer be liable for the debt.

Requiring the other spouse to refinance after the divorce is something that should be put in the settlement agreement. They could, for instance, allow a certain time period to refinance. If they do not refinance or do not qualify to refinance, then the asset could be

TABLE ONE:		Equity	Value	Bob	Amy
Cash and Checking			\$ 13,000	\$ 13,000	
Mutual Funds			\$ 17,000	\$ 17,000	
Amy’s Car			\$ 5,000		\$ 5,000
Bob’s Car	\$ 25,000				
Debt on Bob’s Car	<u>(\$ 10,000)</u>				
	Car Equity		\$ 15,000	\$ 15,000	
Home	\$200,000				
Mortgage	<u>(\$160,000)</u>				
	Home Equity		\$ 40,000		\$ 40,000
<b>Total Value</b>			<b>\$ 90,000</b>	<b>\$ 45,000</b>	<b>\$ 45,000</b>

TABLE TWO:		Value	Mike	Julie
Home (Equity)		\$ 40,000		\$ 40,000
Cash and Checking		\$ 3,000		\$ 3,000
Mutual Funds		\$ 7,000		\$ 7,000
Mike’s Business		\$150,000	\$150,000	
Total Value		\$200,000	\$150,000	\$ 50,000
Property Settlement Note			<u>(\$50,000)</u>	\$ 50,000
<b>Revised Total</b>			<b>\$100,000</b>	<b>\$100,000</b>

sold and the loan could be paid off with the proceeds from the sale. If only one spouse is obligated on the debt during the marriage, then the other spouse cannot be held liable. This occurs most frequently with credit-card debt. However, if you have a credit card that is a joint debt, then just like the mortgage, if one spouse is responsible for paying the joint credit-card debt pursuant to the terms of the settlement agreement, this does not mean that the other spouse is no longer responsible for the debt. Unfortunately, both spouses will remain liable to the creditor. If one spouse refuses to pay, then the other spouse will have to pay off the debt. If you can afford it, paying off credit-card debt with liquid assets is the best way to deal with unsecured debt.

## Closely Held Business

A closely held business can be in the form of a sole proprietorship, corporation, general or limited partnership, or limited liability company. Before one spouse agrees to take a business interest, he or she has to make sure there are no restrictions on owning the interest. There could be legal or contractual restrictions on which spouse could own the business interest.

If the business, for instance, is a professional corporation, as defined by state or provincial law, then one spouse may be legally restricted from maintaining an ownership interest. For instance, if Joe is a physician and Barb is an accountant, in many states or provinces, only Joe could own his medical practice and only Barb could own her accountancy practice. Another restriction may exist if there is a liquor license or taxicab medallion that is only transferable with government approval.

A “buy-sell” agreement is an example of a contractual restriction that may preclude a transfer to a spouse. If the “non-owner” spouse is awarded the business interest in the divorce, then the spouse may be forced to sell the business interest at a substantial discount.

For example: Joe owns 25% of a business that has a total value of \$100,000; his share is valued at \$25,000. If the buy-sell agreement requires Barb to sell her interest at 50% of the value, and if she were awarded the stock in the divorce, she would be required to sell her interest for \$12,500.

## Property Settlement Note

A property settlement note is generally used to equalize the assets. For instance, Mizke and Julie have the following assets (shown in “Table Two,” below).

To equalize the division of assets, Mike should pay Julie an additional \$50,000. This can be structured as a note payable to Julie in the amount of \$50,000 at an agreed-upon interest rate. If Mike and Julie agree that the note would be payable over five years at a 5% interest rate, then the annual principal and interest payments would be \$11,549.

A property settlement note has some significant drawbacks, however, including:

- If the agreement isn’t followed, it becomes another issue to fight over.
- What happens if Mike doesn’t pay?
- Should Mike pay interest on the note?
- If the note is unsecured, it would probably be discharged in bankruptcy.
- What happens if Mike dies or becomes disabled before the note is paid in full?

## Life Insurance

Some life-insurance policies have cash value. This means that the owner could borrow money from the policy or trade the promise to pay a future sum at death for the current cash value, less any costs or charges.

Other policies, such as term insurance, have no cash value. Term insurance may still be valuable, though, particularly if the insured person is now uninsurable.

The settlement agreement should address who will own the existing life insurance policies. Naming an ex-spouse or child as the irrevocable beneficiary of a group policy is minimally effective, since the designation can be changed unilaterally by the employee when the carrier changes, or indeed at any other time. If the non-insured spouse is supposed to be the beneficiary, then the best way to protect his or her interest is to have the non-insured spouse own the policy. Using the above example, if Mike owns a policy and is the insured, and they agree that Julie should be the beneficiary, then he should transfer ownership of the policy to Julie. She should verify that she is the beneficiary of the policy. They can structure it so that he pays her the premiums as alimony. That way, she can be sure that the payments are made and that she remains the beneficiary. Otherwise, she is at risk if he lets the policy lapse or changes the beneficiary.

## Other Assets

Some other assets to address in the settlement agreement include: Frequent Flyer Miles, lottery winnings or other prize winnings, club dues and annual membership fees, inheritance and gifts, and trusts naming one spouse as a current beneficiary.

Keep in mind the assets listed in this article are not by any means exhaustive; you and your spouse may have assets in addition to those listed in this article. They can make a huge difference in your post-divorce life, so take the time to list them carefully and discuss them fully before you settle things, once and for all. ■

*The Institute for Divorce Financial Analysts (IDFA) is the premier national organization dedicated to the certification, education, and promotion of the use of financial professionals in the divorce arena. For more information about how a Certified Divorce Financial Analyst (CDFA) can help with the financial aspects of your divorce, call (800) 875-1760, or visit [www.InstituteDFA.com](http://www.InstituteDFA.com).*



# 10

## Stress-Busting Tips

Here are ten stress-busting tips you can incorporate into your daily life right now.

By Dorothy Henry

- 1. Start the day right.** Wake to music on a favorite CD or radio station. Allow yourself a minute or two to open your eyes, breathe deeply, and adjust to being awake. Take a precious ten minutes for quiet meditation or prayer; this can save you an enormous amount of frustration later in the day.
- 2. Breathe away your stress.** Several times a day, slowly inhale through your nose, feel the air pass deep into your diaphragm, let your abdomen expand to greet it, and feel the invigoration of that fresh breath. Exhale slowly through your mouth and imagine that you are breathing out your stress. Many experts feel the practice of deep breathing (greatly simplified here) is the basis of the relaxation response. There are many CDs and DVDs that train you to breathe healthfully.
- 3. Hang on to your humor.** What you're going through now may not seem very funny, but that's no reason to lose your sense of humor. This is the time to maintain a sane perspective, and exploring what you find funny will help. Look for the ridiculous and incongruous rather than the tragic in your life. Limit your exposure to negative/sad people whenever possible.
- 4. Keep in touch with those you care about.** Pick up the phone and chat with a congenial friend or relative: suddenly you're not isolated with your problems any longer. Send an e-mail or card to an old friend.
- 5. Don't neglect your spiritual life.** Renew or create ties with the spiritual institution of your choice – whether it be church, synagogue, or Zen temple. (Don't choose one that doesn't sanction divorce – or will shame you rather than support you.) Music and ritual, together with the act of group worship or meditation, can bring you peace and deep satisfaction.
- 6. Try a therapeutic massage.** Massage therapy is the manipulation of the soft tissues of the body for a therapeutic effect. It's recommended for general relaxation and stress reduction, back and neck pain, headaches, and athletic injuries. If you're on a tight budget, some clinics offer student massage therapy at reduced rates.
- 7. Turn off the TV and computer.** An evening of television or surfing the 'net can actually be stressful. Consciously limit the amount of time you spend watching: choose the shows that interest you, watch them, then turn off the set and walk away. Walking away is also a good strategy if others want to watch a show that doesn't appeal to you. Here are some relaxing alternatives to TV/Internet:
  - **Music.** Experiment with soothing music, such as the "Music for Relaxation" series. There are also some good apps and Internet radio stations with peaceful music and sounds of nature to help you relax or sleep.
  - **Books.** Save a book for a time when you're unlikely to be interrupted, settle down in a comfortable chair with a drink that cheers but doesn't inebriate, and lose yourself in another world. Audio-books can help ease the stress of your daily commute. And read to your kids: this is a wonderful, inexpensive family activity they will never forget.
- 8. Take a hike.** Researchers at West Virginia University have discovered that stress is more likely to be relieved by outdoor than by indoor exercise. Head for a calming, restorative environment for walking, cycling, horseback riding, golfing, or tennis. Choose to exercise when your physical energy level is at its highest – if you punish your body with push-ups when it's tired, your mind could go into a stress-spin.
- 9. Garden of Eden.** Stroll through a public garden to relieve stress, or become a gardener yourself – you may find that while you nurture the garden, it nurtures you. Gardening brings not only solace and satisfaction but daily excitement as seeds shoot into plants and buds into flowers and fruit. Allow yourself to fully enjoy the sights, sounds, and smells that you share with the birds and butterflies as you dig and water.
- 10. Go back to the water.** If you have access to a hot tub, pool, lake, or the sea, use it. If you're stuck on dry land, pamper yourself at home with a 20-minute bath. If your muscles are sore from exercise, throw some Epsom or sea salts into warm – not scalding hot – bathwater. For a truly sybaritic experience, try aromatherapy or herbal oils offered by retailers such as The Body Shop. Light a few candles, turn off the lights, and wash your troubles down the drain. ■

*Dorothy Henry knows all about stress: after separating from her husband, she raised two teenagers while teaching high-school English and math.*

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#### Beating Stress – Before It Beats You

Here are some tips to help reduce your anxiety levels and stress during divorce.

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# Managing ANGER

By Jane Zatylny

Divorce-related anger can literally make you crazy, causing you to say and do things you'd never dream of if you were thinking clearly. Even though it's a normal part of the healing process, anger can become a destructive force in your life.

**A**nger is a very familiar emotion for all of us, and in healthy relationships, it can be an overwhelmingly positive force in our lives. Healthy anger can tell us if there's something wrong, painful, or threatening that we need to take care of. It helps us protect ourselves and to know when people are crossing our boundaries.

But for couples who are going through separation or divorce, anger is often anything but healthy. In her informative book *The Good Divorce*, Dr. Constance Ahrons defines divorce-related anger as “an extreme rage, vindictiveness, and over-powering bitterness that is felt when a love relationship is ending. It is a special kind of anger that usually hasn't been experienced before.”

When anger is coupled with divorce, it's often used as a misguided means of hanging onto a failed marriage. After all, for many people, a bad relationship is better than no relationship at all. Divorce anger allows people to punish their ex as often as possible, all the while maintaining an ongoing (bitter) relationship with him/her. It's a situation that leaves both partners in divorce limbo, a perilous situation that obstructs growth and self-awareness. If you wish to move forward, you'll need to learn to handle your anger.

Some people hold onto their anger so tightly – stoking the fires on a daily basis – that their rage takes over their whole lives, coloring and informing all their thoughts and actions. They weigh every action to see how much emotional or

physical harm it will inflict on their ex-spouse (even simply being a nuisance will do “in a pinch”) without seeing the injuries they may be inflicting on innocent victims. Using children as human shields in the divorce battle is a common way to fan the flames of divorce anger. Many scenarios are possible, all of which are damaging and punitive to the children: the custodial parent withholds visitation from the non-custodial parent; the non-custodial parent refuses to pay child support; the custodial parent “forgets” to pick the children up; or the non-custodial parent is hours late in bringing them back. “We forget what’s best for the children because we are so intent on getting back at that other person,” writes Ahrons. But “getting back through the kids is hitting below the belt.”

Divorce anger is also often expressed through the legal process itself. Here, it’s very important to remember that your lawyer is your advocate, not your therapist or your best friend. Expressing anger to your ex-spouse through

**When someone pushes one of your buttons, your response is going to be way out of proportion to the offense.**

the legal process invariably leads to prolonged, emotional proceedings that will ultimately leave you and the family resources drained dry.

Using the court as a venue to vent your anger is a bad idea for a couple of key reasons: it’s the wrong forum, and it’s very expensive (financially and emotionally). Unfortunately, the legal divorce process itself tends to add fuel to the fires of anger. Dividing property (some of which has great sentimental value) and trying to prove your case for custody and/or support can be very emotionally charged because these issues underline what

is being lost or changed because of your divorce. Some degree of upset is inevitable, but driving yourself alongside your ex into bankruptcy is truly cutting off your nose to spite your face.

So how can you cope with this new and intense anger? The key lies in understanding its roots and in finding constructive ways to express the hurt, disappointment, and loss that both you and your former spouse are feeling now as you proceed through separation and divorce.

Here’s some advice about coping with your own and your ex-spouse’s divorce-related anger.

### **If You’re Angry:**

**Write it out.** Work through your anger by keeping a journal or by writing letters you don’t mail. By doing so, you can release your anger without engaging another person. Also, it is possible that you maybe angry with yourself.

**Shout it out.** Roll up the windows in your car, or put your head in a pillow and scream.

**Talk it out.** It’s important when you’re angry to develop your own personal support system. Instead of directing your anger at your ex-spouse, talk to a good friend (or two), or find a therapist who specializes in anger management.

**Get some professional help.** Anger can suppress other emotions, both positive and negative. Talking to a professional can help you begin to feel those emotions you’ve been suppressing and move past the anger. You could also

benefit from a support or anger-management group, where you can share your story of isolation and help people move to a position of growth and development.

**Take responsibility for your part of the marriage break-up.** “It’s a rare couple in which both partners were exactly equal in the breaking of the marriage, but it’s an even rarer couple in which one partner was solely at fault,” writes Constance Ahrons in *The Good Divorce*.

**Do some personal growth work.** Anger is a great motivator toward action and can propel you to take steps in your life to change situations.

**Learn what “pushes your buttons.”** Try to understand your anger – and what triggers it – before you express it. Don’t be afraid to say that you need some time to think about your response.

**Protect your children.** Never make them part of your conflict with your former partner by withholding visitation or support or poisoning their minds against your ex. “For the sake of the children, if for no other reason, learn constructive methods of expressing anger,” Ahrons says.

**Keep conflicts at a moderate level.** Your ex will often match your level of intensity. And be sure to choose your battles carefully. Expressing every little irritation and disagreement provokes resentment. Think about the most important issues and let go of the small stuff.

**Use “I-messages” when expressing anger.** Say: “I feel disappointed when you don’t call,” not: “You stupid idiot, you’re always late!”

**Give yourself time to recover from the loss of your marriage.** On average, experts say that the healing process takes at least two years, and often longer. “It’s important to realize



how sad you are,” says Ahrons. “This won’t necessarily make you more vulnerable to your ex-spouse; your successful handling of your emotions puts you in a more powerful position.”

**Forgive, let go, move on.** Anger can become a comfort, a constant in our lives, but as long as you continue to nurse your anger against your ex, you will never have a happy, fulfilled, post-divorce life. Own your responsibility for the break-up, and realize that you have the power to make the choice to forgive and move on, or stay angry and remain stuck. It doesn’t matter what your ex does; you can still choose forgiveness.

### If Your Ex Is Angry:

**Listen to and validate your ex-spouse’s comments.** By really listening to his or her concerns, you may learn where the anger is coming from and identify what you can do to help. It also really helps to defuse the situation by saying something like, “I understand why you’re angry with me.”

**Don’t be afraid to take a “time-out.”** Walk away from an anger attack if you can’t handle it. You can try saying, “I’m not going to talk to you until you calm down.” Put limits on what you’ll take and how you’ll be treated.

**Get some assertiveness training to boost your self-esteem.** “Anger is like a fire that must be burned up into the ashes of forgiveness,” writes Ahrons. “If we are passive, it is like throwing more logs onto the fire.”

**Try not to take your ex-spouse’s comments too personally.** Remember that anger is a projection of one’s own inner feelings and one’s own world. Accept the fact that this person is angry because they’re going through turmoil.

**Stay calm.** It can really help de-escalate the other person’s anger. Relaxation techniques, such as deep

breathing, can be effective when you’re listening to someone who’s really angry.

**Learn to recognize your own hot buttons.** When someone pushes one of your buttons, your response is going to be way out of proportion to the offense.

**Try to feel a little compassion – no matter how hard that may be.** Your ex may be feeling fearful and threatened, so try to hear what’s underneath the anger; quite often, it’s fear, pain, or shame. Showing empathy or compassion for your ex can go a long way to defusing his or her anger.

**Be honest with yourself.** Recognize that when someone is angry with you, there may be something in what they’re saying. If your ex is yelling at you, you can choose to think he/she’s a jerk and start yelling back, or you can “dig for the gold” in what he/she’s saying. Keep the gold; discard the dirt and rocks.

**Value your safety above all else.** If your former partner’s divorce anger seems to be headed in a dangerous direction, put some boundaries in place and communicate through a third party. Threats should always be taken seriously: remove yourself from the situation and refuse face-to-face contact if you sense any danger at all. ■

*Jane Zatylny is the former Editorial Director of Divorce Magazine.*

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to try to find the Swiss bank accounts. In a Collaborative Divorce, we have all of the same tools available that would be available anywhere to look for hidden assets; we just do it consensually. If you and your collaborative lawyer are not satisfied that a complete investigation and disclosure have taken place, no negotiations will begin until you’re satisfied that you have all the facts. In addition, both collaborative lawyers make a commitment that they won’t come to the table unless they’re convinced that their own client is in complete good faith about full disclosure.

### DC: Why did you write your book Collaborative Divorce?

**PT:** My colleague Peggy Thompson and I wrote *Collaborative Divorce* because we wanted to put out the word as broadly as we could to couples whose marriages seem to be ending, and also to their family members, clergy, psychologists, accountants: all of the people who work with couples and families that are breaking down and restructuring. The book explains in straightforward and accessible ways how the Collaborative Divorce model works. We developed this model, and we know that clients like it because it works so well for the great majority of couples who commit to it. The book is a very good way to get your spouse to consider Collaborative Divorce: it explains why this model is so powerful, how it protects children, and how it helps divorcing adults move through this process with greater health, respect, and creativity. ■

*Pauline H. Tesler is certified by the State Bar of California Board of Legal Specialization and is a fellow of the American Academy of Matrimonial Lawyers. She is co-author of Collaborative Divorce: The Revolutionary New Way to Restructure Your Family, Resolve Legal Issues, and Move on with Your Life. Her firm is Tesler, Sadmann and Fishman. [www.lawtsf.com](http://www.lawtsf.com)*



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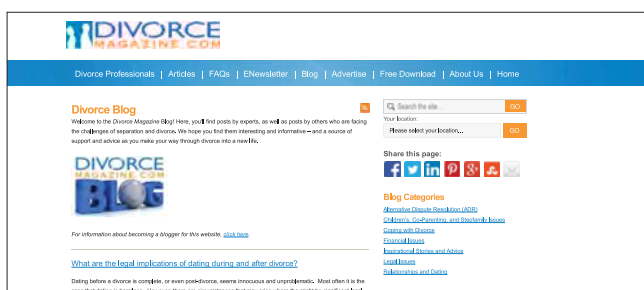
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