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## WHAT IS COLLABORATIVE LAW?

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Collaborative law is a “process” for resolving legal issues in a non-adversarial way without going to court. It is an alternative to the traditional litigation model, which often results in a win/lose or lose/lose outcome. In collaborative law each side takes a more global view of the issues in an effort to achieve a positive outcome for all concerned, a win/win outcome.

Although collaborative family law is new to Michigan, the concept of working cooperatively in family law cases is not new to Washtenaw County, where the process of mediation is firmly established and encouraged by the courts. Many clients are familiar with the mediation model and seek out mediation as their first choice of process. The goal in both collaborative law and mediation is for the parties to reach their own decisions, instead of having decisions imposed on them by a judge.

What is the difference between collaborative law and mediation?

The most significant difference is that in collaborative law the parties and their specially trained attorneys agree by contract to resolve their issues without resort to the court. While many couples successfully mediate without court intervention, the option of going to court is always in the background. In fact many parties start mediation after filing for divorce at the request of the judge. In those cases the trial date may be looming and the judge is almost a silent third party participant in the process. In collaborative law the specter of the court is removed. This allows the parties and their attorneys to engage in more open and honest negotiations with less of the game-playing that typifies traditional divorce practice.

Another significant difference is that collaborative divorce is based on a multidisciplinary team approach, where each member of the team brings his or her special skills to the process to achieve an optimum outcome. For example, if there are difficult financial issues, a financial expert may be added to the team. If the parties need assistance with parenting or child development issues, a child specialist may join the team. Other team members, such as a mediator, may be added as needed. Each of these experts has specialized training in collaborative law and serves in a neutral capacity. Clients may also have individual divorce coaches to support them through the process. Divorce coaches are usually specially trained mental health professionals, but can also be financial advisors, depending on the specific needs of the client.

The role of the attorney is very different in collaborative divorces from mediated divorces. In collaborative law, the attorneys participate directly in the negotiation process alongside their clients in four-way meetings. Together they identify the issues,

set an agenda for moving forward, and identify other members of the collaborative team. While representing the interests of their own clients, the attorneys also facilitate negotiations to reach an agreement that is fair, realistic, and addresses the other party's concerns as well. In mediation the parties usually work directly with a mediator in 3-way meetings. The mediator, usually an attorney or mental health professional, has a neutral role and serves to facilitate and guide settlement negotiations. The mediator's goal is to help the parties reach an agreement, but not to judge its fairness or offer legal advice. The parties rely on their own attorneys for legal advice, who often serve more as outside consultants to the clients.

Collaborative divorce should not be seen as a cost cutting measure. The parties primarily benefit by:

- Using a model that is designed to result in a consensual settlement that addresses the interests of each party and their children and optimizes their resources
- Using a dignified process that is based on cooperation, not adversarial tactics
- Actively participating in their own settlement, but with the direct assistance of their lawyers in the negotiations
- Investing their financial resources in a skilled team of experts who each contribute toward a successful outcome, instead of litigation costs
- Continuing a good relationship, or improving their relationship, so they can successfully co-parent after the divorce

Collaborative law is not appropriate for every case. Parties must be able to commit to disclose all pertinent financial information, to act in good faith, to communicate respectfully and constructively with each other, and to hear and understand what is important to the other party so that both parties' interests can be addressed.

It is important to note that in collaborative law the parties do not lose the right to go to court, but if the process fails, they lose the right to litigate with their counsel or to use any of the professional members of the collaborative team. Each party starts fresh with litigation counsel and their own trial experts, which is a strong incentive to make the process work.

Collaborative divorce is not a replacement for mediation, but it does give parties one more excellent model for reaching settlement with dignity.

For more information about collaborative law or to locate a collaborative professional, go to the web page for the Collaborative Law Institute of Michigan:  
<http://www.collaborativelawmichigan.com>