

## **ABOUT COLLABORATIVE LAW**

### **What is Collaborative Law?**

Minnesota attorney, Stu Webb, developed this alternative process for resolving family issues in 1990 to give spouses a way to end their marriages cooperatively, face-to-face, with the help and guidance of attorneys, but without going to court. He has said, "Collaborative law is the art and practice of settling cases with legal counsel, but without court intervention at any stage."

All negotiations take place in four-way conferences between parties and their attorneys. Each party has built-in legal advice and advocacy during negotiations and each attorney is committed to guiding the parties toward a reasonable settlement. Because no one, neither the parties and nor the attorneys, can go to court or threaten to go to court, settlement is the only goal. The parties are encouraged and helped to communicate their real needs and interests. Through safe and focussed discussions, each of the parties is encouraged to recognize the needs of their children and the needs and interests of the other party.

## **THE PRINCIPLES OF COLLABORATIVE LAW**

### **Goals**

All acknowledge that the essence of "Collaborative Law" is the shared belief by the participants that it is in the best interests of parties and their families in typical family law matters to commit themselves to avoiding litigation. Therefore they adopt this conflict resolution process, which does not rely on a court-imposed resolution, but relies on an atmosphere of honesty, cooperation, integrity and professionalism geared toward the future well-being of the family.

The goal is to minimize, if not eliminate, the negative economic, social and emotional consequences of protracted litigation to the participants and their families. The participants commit themselves to the collaborative law process and agree to seek a better way to resolve differences justly and equitably.

### **No Court or Other Intervention**

Issues will be resolved without court intervention.

The parties will give full, honest and open disclosure of all information, whether requested or not.

There will be informal discussions and conferences to settle all issues.

The parties direct all attorneys, accountants, therapists, appraisers and other consultants to work in a cooperative effort to resolve issues without resort to litigation or any other external decision-making process except as agreed upon.

### **Cautions**

The parties understand there is no guarantee that the process will be successful in resolving their case and that the process cannot eliminate concerns about the disharmony, distrust and irreconcilable differences which have led to the current conflict.

The parties understand that they are still expected to assert their respective interests and that their attorneys will help them do so. They understand that they should not lapse into a false sense of security that the process will protect each of them, fully.

The parties understand that while their collaborative attorneys share a commitment to the

collaborative law process, each of them has a professional duty to represent his or her own client diligently, and is not the attorney for the other party.

### **Attorney's Fees and Costs**

The parties understand that their attorneys are entitled to be paid for their services, and that one of the first tasks in a collaborative law matter is to ensure parity of payment to each of them. The parties agree to make funds available for this purpose.

### **Participation With Integrity**

The participants will work to protect the privacy, respect and dignity of all involved, including parties, attorneys and consultants. All shall maintain a high standard of integrity and specifically shall not take advantage of each other or of the miscalculations or inadvertent mistakes of others, but shall identify and correct them.

### **Experts and Consultants**

If experts are needed, they will be retained jointly unless all parties and their attorneys agree otherwise in writing.

### **Children's Issues**

In resolving issues about sharing the enjoyment of and responsibility for their children, the parties, their attorneys and therapists shall make every effort to reach amicable solutions that promote the children's best interests.

All agree to act quickly to discuss and resolve differences related to the children to promote a caring, loving and involved relationship between the children and both parents.

The parties agree to insulate their children from involvement in the family law disputes and agree to attend the A.C.T. Program (Acting for Children Through Transition) or similar parenting education program in a county where a program is available.

### **Negotiation in Good Faith**

The parties acknowledge that each of their attorneys is independent from the other, and represents only one party in the collaborative law process.

All understand that the process, even with full and honest disclosure, will involve vigorous good faith negotiation.

Each of the parties will be expected to make a reasoned statement of legitimate needs and interests in all disputes. Where such legitimate needs and interests differ, each of the parties will be encouraged to use their best efforts to create proposals that meet the fundamental needs of both of the parties and the family to reach a settlement of all issues.

Although the participants may discuss the likely outcome of a litigated result, no one will use threats of litigation as a way of forcing settlement.

### **Abuse of The Collaborative Law Process**

The parties understand that their collaborative law attorneys will withdraw from a case and/or will terminate the collaborative law process as soon as possible upon learning that a party has withheld or misrepresented information or otherwise acted so as to undermine or take unfair advantage of the collaborative law process. Examples of such violations of the process are: the secret disposition of property, failing to disclose the existence or the true nature of assets and/or obligations, failure to participate in the true spirit of the collaborative process, abusing the minor children of the parties, or planning to flee the jurisdiction of the court with the children.

**Disqualification By Court Intervention**

The parties understand that their attorneys' representation is limited to the Collaborative Law process and that neither of the attorneys can ever represent them in court in a proceeding against the other party. In the event a court filing is unavoidable, both attorneys will be disqualified from representing either client.

In the event that the collaborative law process terminates, all consultants will be disqualified as witnesses and their work product will be inadmissible as evidence unless the parties agree otherwise in writing.

**Pledge**

Both parties and both attorneys pledge to comply with and to promote the spirit and written word of the "Principles of Collaborative Law".

©2002 Association of Collaborative Family Law Attorneys. Rochester, NY. All Rights Reserved

Site hosting by DSM Electronics, Inc.

7-2-04