

## **WHAT IS THE DIFFERENCE BETWEEN *DIVORCE MEDIATION* AND A *COLLABORATIVE DIVORCE*?**

### **Mediation:**

In mediation, a neutral party (the mediator) facilitates the negotiations of the couple and tries to help them settle their case. The mediator cannot give either party legal advice, nor be an advocate for either side. If the couple has lawyers, they may or may not be present at the mediation sessions. The couple is free to consult their lawyers between mediation sessions. Once the couple has reached an agreement, the couple may bring the agreement to their lawyers for review.

If the parties do not reach a settlement through mediation they are free to choose to use the mediator or their lawyers in litigation, depending upon any previous agreements that may have been made.

### **Collaborative Divorce:**

In a collaborative divorce the clients have their lawyers with them during the negotiation process. The commitment to settlement is the same as in mediation. The lawyers work with their clients and each other to assure that the process stays balanced, positive, and productive. Once an agreement is reached it is drafted and reviewed by the lawyers until an agreement is reached that is satisfactory to both of the participants.

If the parties do not reach a settlement through a collaborative divorce, the lawyers and other involved professionals are precluded from participating in any subsequent litigation.

### **Similarities:**

Both mediation and collaborative divorce are voluntary, confidential and rely on full disclosure by both parties and their commitment to resolve their issues on their own.

## **DIVORCE MEDIATION**

Divorce Mediation is an **alternative to a traditional litigated court divorce**. As a mediator, I am a neutral party who helps you work through the issues of your divorce in order to reach a mutually agreeable settlement-one you both can live with. As a mediator I am also an educator, providing information on the legal system and how courts and lawyers might view these issues. If there are property or assets that need to be valued, I may refer you to third parties who are experts in their particular fields. The process is voluntary which allows you to make decisions yourself and determine your own outcome, instead of leaving it to a third party (judge or lawyer.)

The **benefits** of using a mediator are that the process is **less adversarial**, often **saves time**, and is more **cost-effective** than a litigated divorce. The process is **confidential** and based on **settling disputes rather than placing the blame** with one particular person. It is shown that where parties work together toward a mutual agreement, the likelihood of compliance with the agreement and future cooperation is much better.

In mediation you can **discuss and reach agreements** on such issues as: custody, visitation, parenting plans, support, and division of your assets and debts.

You will be **advised to seek legal advice** ( a mediator may supply you with *legal information*, but *not legal advice*) so that you fully understand the legal ramifications of the decisions you are making and discuss any questions or concerns regarding the mediation agreement. It is ultimately up to you whether or not you wish to seek legal advice. You would be best advised to have a lawyer review the proposed agreement before it is signed and finalized.

Many couples ask "**Is mediation for me?**" If both of you approach the process with an open mind and respect for the other person and the process, you will most likely benefit from mediation.

However, in situations where there has been abuse or one of the participants feels intimidated by the other this may not be the proper venue for you. **Open communication is vital in crafting a mediation agreement. Both parties must be able to freely express their opinions.**

By working together, you may be able to save a lot of time and money as compared to a traditional litigated divorce. An added benefit is that **you both control the outcome.** Instead of becoming part of the adversarial system, you become part of a healing system.

## **COLLABORATIVE DIVORCE**

If you decide to pursue a collaborative divorce, each of you will hire a collaborative lawyer. Each of you, the lawyers and any other professions involved will agree, in writing, that you will not go to court. Then, each of you will meet both privately with your lawyers and in face-to-face discussions. Additional experts, such as divorce coaches, child and financial specialists, may join the process, or in many cases, be the first professional that you may see. The sessions between you and your team are intended to produce an honest exchange of information and expression of your needs and expectations. The well-being of your children is especially stressed. Mutual problem-solving by both of you leads to the final divorce agreement.

**A collaborative divorce is a method of resolving issues pertaining to divorce with a team of professionals in which you craft your own agreement. You must agree to work together in a respectful way. You make your own decisions without involving a judge or third party.**

The process is geared to helping you reach a mutually agreeable solution to your problems. You work together with professionals, with respect and in good faith, gathering the information that is needed to reach an agreement. Unlike a litigated case, where there is a winner and a loser, **collaborative divorce allows for a win/win outcome for both of you.**

A team is assembled based on your needs and can include attorneys, divorce coaches, child specialists, financial experts, and any other professional as they are needed. It is a very holistic approach, blending everyone into one "team." The information that is gathered is then shared with your spouse and team members. **All communications (written and oral) made during the collaborative process remain confidential** and may not be used as evidence in any future disputes.

You then work on a settlement until you come up with one that you both agree on. This process is **designed to minimize conflict and allow you to continue an amicable relationship in the future.**

One of the **essential elements of a collaborative divorce** is that all the participants, including the attorneys and other professionals, agree from the beginning that the **case will be settled, not contested.** If the case cannot be settled, the attorney and other professionals must withdraw. The attorneys will assist the couple in finding new attorneys to help them settle through the court system.