

# COLLABORATIVE

“frustrating and infuriating” is how Marty S. describes communication with his ex-wife and her attorney throughout their divorce. “Tense and horrific” is what Tama B. remembers about hers. Both went through traditional divorces. Compare their experiences with that of Nancie Handy who, with her ex, chose another option, called Collaborative Divorce.

“Fairness. That was the focal point,” says Handy.

“It didn’t get ugly. I call him my ‘was-band,’ not my ‘ex,’ because we’re not married anymore but still supportive of each other personally as well as with our children, despite ups and downs. We felt Collaborative Divorce was the best choice for us because we wanted to work together with our lawyers rather than as adversaries.” While it is distressing to end a marriage, working out the issues did not add to their pain. On the day their divorce was finalized, the newly former spouses left the courthouse, had lunch together, and toasted “new beginnings.”

So what is Collaborative Divorce?

“In Collaborative Law, the results are custom-designed,” says Handy’s attorney, Lisa J. Smith. Unlike conventional, or litigated, divorce cases, the parties involved pledge in writing to reach an agreement before going to court. Instead of leaving decisions up to a judge, the two spouses retain control of the outcome. Each has an attorney trained in Collaborative Law. All discussions are held in open meetings, alternating between the two attorneys’ offices, involving a team that includes a divorce coach who works with both spouses, individually, to help them identify ‘hot button’ issues that may arise. By recognizing issues likely to spike emotional reactions, the coach helps diffuse potential verbal bombshells peacefully before they explode. The team may also

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# DIVORCE

JANET MENDELSON **writer**





# Divorce Decree

include a financial specialist, a real estate attorney, and an appraiser for homes and businesses; and if children are involved, a child specialist or, if appropriate, an attorney specializing in special needs.

“Relationships between spouses are redefined in a healthy way and, if there are children, negative spillover is minimized,” Smith says.

The process is based on mutual respect and cooperation rather than endlessly airing grievances. The goal is to take constructive steps that lead to an agreement everyone can live with. Even couples who are angry, confused, or conflicted may find the collaborative approach can support them to make decisions for their future while maintaining their privacy.

“The Collaborative Law process requires honesty in financial and other relevant disclosures. It is a contractual obligation. People don’t have to be friends but they must be open to thinking about what’s

important to themselves and their spouse,” says Smith, a Wellesley resident who graduated from Weston High School and whose law office is in Natick. “One doesn’t have to agree with the other’s interests, just be able to understand them. Frankly, this empowers clients to set up good methods of communication which they can continue after the divorce. It enables people to more effectively co-parent.”

“For me,” Smith continues, “it is privacy and dignity that’s important. Most people don’t realize that when you go before a judge, almost every affidavit, court record, and court order is public record. Anyone, even your children when they become adults, can review them. In general, only the financial statement forms are private. In Collaborative Divorce, you get to decide what’s public and what’s not by carefully preparing the final agreement and filing documents to reflect clients’ decisions.”

“As they say, ‘you can’t un-ring a bell,’” says Smith. “If you start litigation and make hurtful public statements, it is hard for your spouse to both forgive and forget.” One of the advantages to Collaborative Law is that the meetings create a safe environment for communication. “In a

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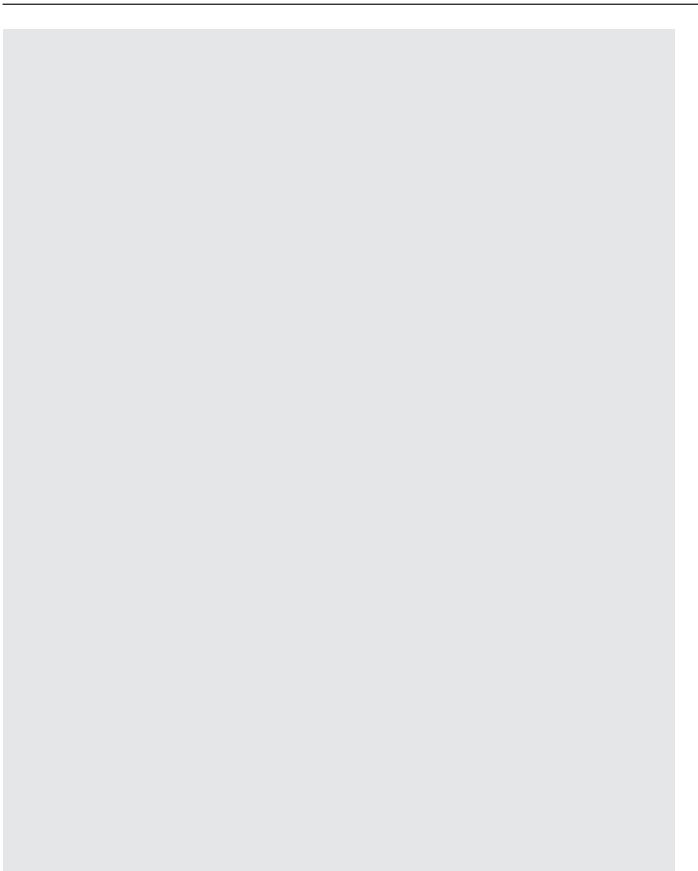




To learn more about resolving divorce and family disputes without going to court, see:

■ **INTERNATIONAL ACADEMY OF COLLABORATIVE PROFESSIONALS**  
(Members in 24 countries)  
[www.collaborativepractice.com](http://www.collaborativepractice.com)

■ **THE MASSACHUSETTS COLLABORATIVE LAW COUNCIL**  
[www.MassCLC.org](http://www.MassCLC.org)



CL meeting, you know that the other attorney in the room will never be cross-examining you and it provides an incentive to settlement,” Smith continues.

Other advantages may be time and money. In traditional divorce, generally the trial occurs more than a year after filing; then the clients wait for a decision, after which there might be an appeal. Collaborative Law cases usually take three to eight sessions over six to ten months, says Smith. It’s more difficult to generalize fees. According to John Lande, Isidor Loeb Professor and Director of the LLM Program in Dispute Resolution, University of Missouri School of Law, fees vary by whether there are children and the level of difficulty of the case, requiring additional neutral experts in such fields as pension valuation or real estate appraisal. Lande cited a 2007-2009 study by the International Academy of Collaborative Professionals that reported the average cost of a Collaborative case for both parties was \$23,963, but there are significant regional differences, he said. The average cost in Minnesota was \$14,431 compared with \$41,056 in California the same year. Still, contrast that with Marty S., in New York, who said his divorce cost him well over \$100,000: “a college education.”

When I met Lisa J. Smith in her office, she had prepared the setting to illustrate how the atmosphere differs depending on divorce option chosen. We brought mugs of hot coffee to the meeting room where generous plates of cookies and fruit were offered. An easel displayed a handwritten list of goals we (spouses and attorneys) might have developed together last time we met—*financial security for both...be on good*

*terms at end of divorce...maintain children's connections to extended families...provide for the children's education...to both find happiness after divorce.* This was the setting for a Collaborative Law case. Then she removed all the food as well as the list of goals. The bare-bones room was now ready for attorneys and clients to meet for formal negotiation in litigation, the process of traditional divorce.

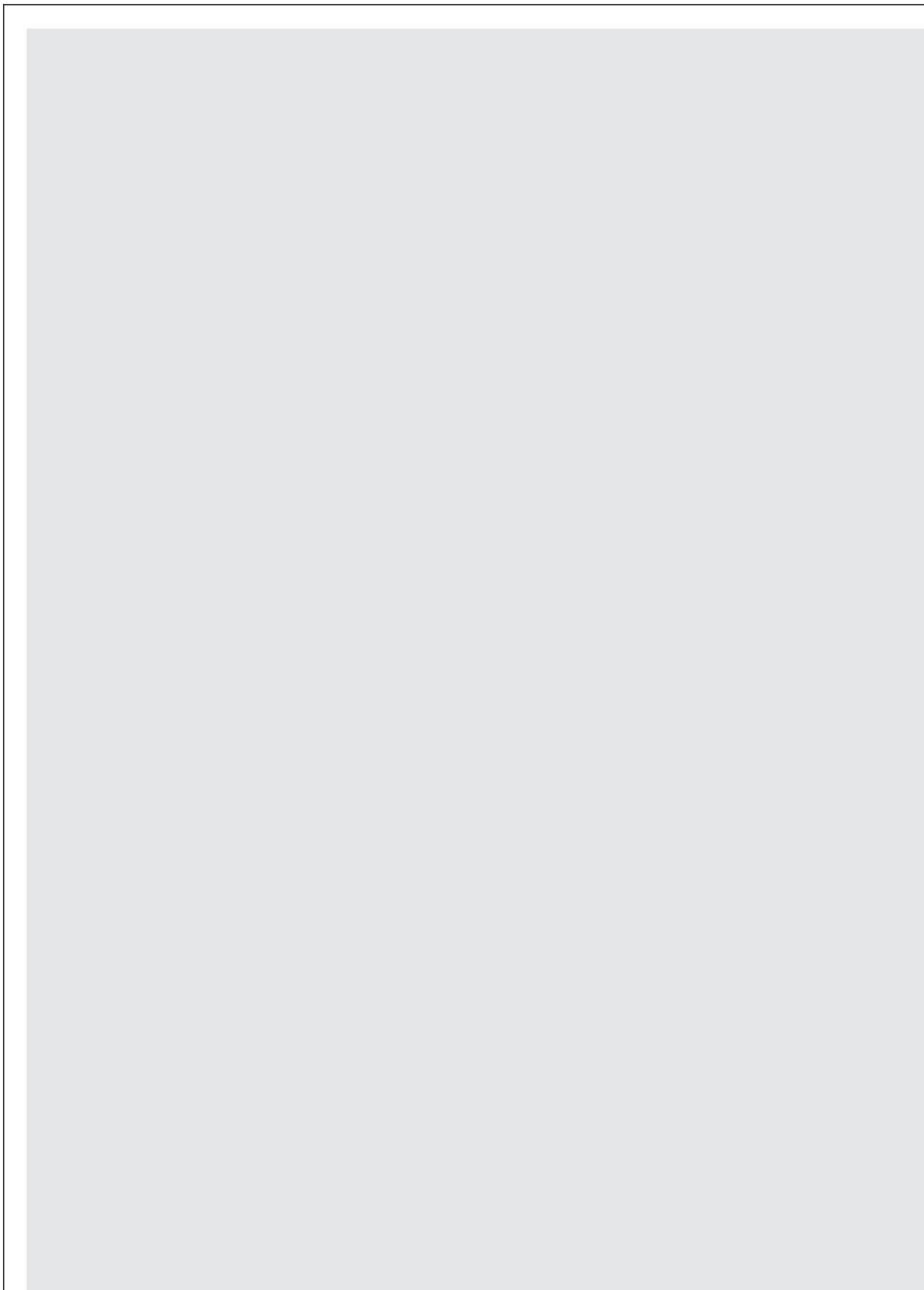
“Mediation is another wonderful alternative,” said Smith, who is also a divorce mediator. “If clients choose mediation, as a mediator I facilitate the settlement discussions, provide information, and suggest that they meet with their own attorneys before finalizing the agreement. They make important decisions about their divorce in the mediation room and later meet with their own attorneys elsewhere.”

In contrast, in Collaborative Law, clients have their attorneys in the room with them when all important decisions are made, including what information needs to be shared and what should be done with the marital home, health concerns, retirement, family businesses, and raising the children.

Lisa J. Smith warns people to be wary of someone who uses “collaborative” merely as an adjective. “Collaborative Law is a clearly defined approach that begins with a Process Agreement, signed by the clients, the attorneys and the divorce coach, containing protections for the process,” she says. One such protection is to keep the professionals focused

on the settlement. If the process breaks down, Collaborative lawyers will withdraw and transition the case to litigation counsel.

Marty S. said his ex-wife’s attorney “kept dancing around, selling her a bill of goods about what she was going to get so she wouldn’t settle or compromise, which racked up his bill, but in the end everything was split down the middle.” Nancie Handy and her ex-husband had none of that.



“We had really creative lawyers who were able to craft our divorce to fit us in a way that wouldn’t have been possible if we’d gone before a judge who didn’t know us,” says Handy of their divorce in 2011. “I hadn’t been working because I had dedicated myself to raising our children who at the time were nine and twelve. I wanted to stay in our home but the house and mortgage were in his name. Usually you buy out the other spouse but I couldn’t qualify for a mortgage since I was unemployed. The attorneys worked things out so eventually I would qual-

ify to take over the mortgage and there are other options if I don’t.

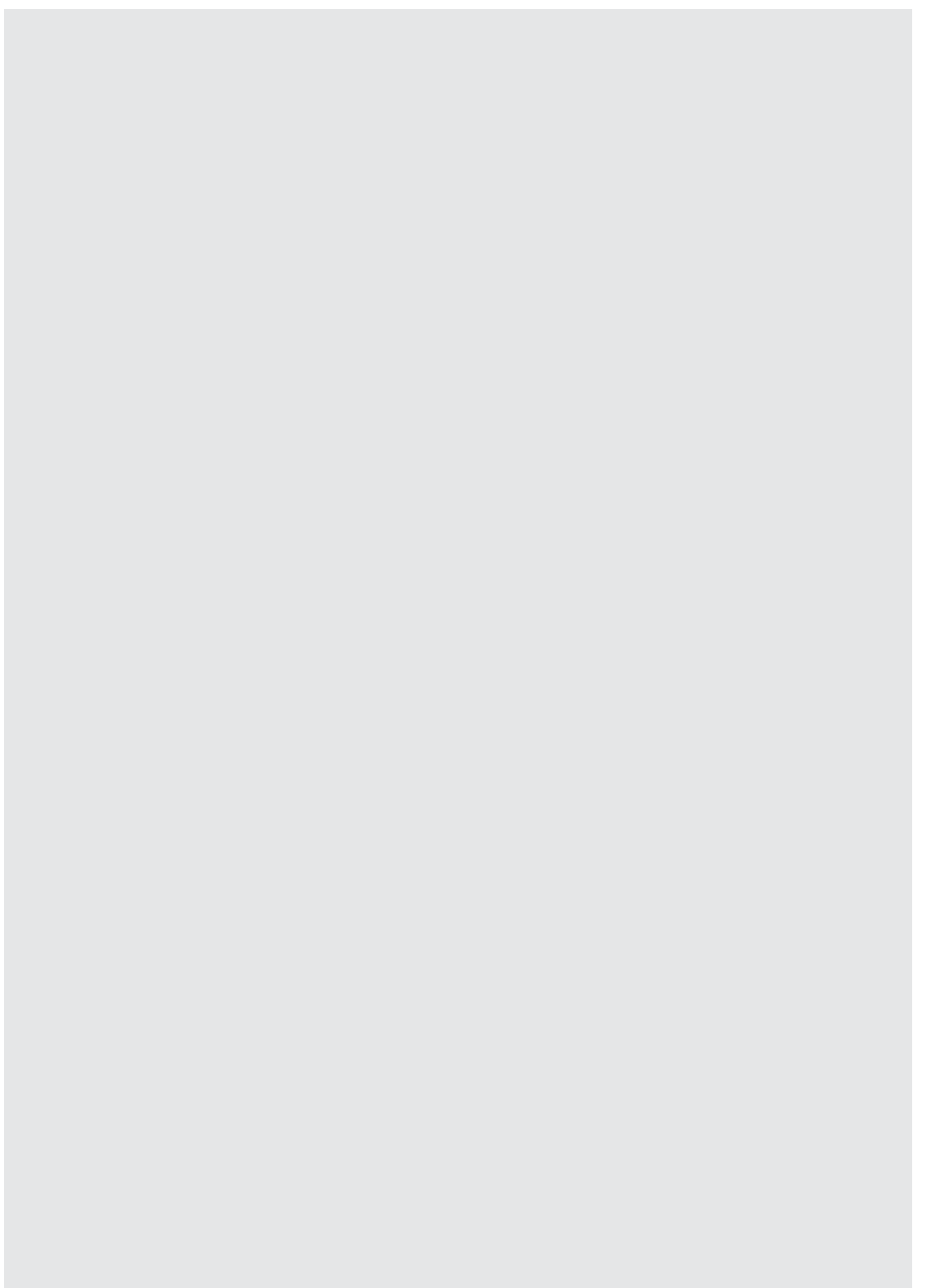
“If parents are going through a stressful time, children will feel it and this process allowed us to have less stress, less angst, and they benefitted from it,” Handy says.

Sanford Portnoy, PhD, a psychologist and divorce coach in Newton, has counseled couples and educated lawyers on the psychological aspects of divorce for more than 20 years. He applied his divorce coaching to the collaborative team approach when it came to Massachusetts about 12 years ago.

“Word frequency studies by psychologists indicate that about 25 to 50 percent of words exchanged between lawyers and clients during the divorce are about the clients’ psychological and emotional state,” says Portnoy. “Many believe a more accurate figure would be around 80 percent. Legal divorce is primarily about settling the business of the marriage, so it does nothing to address the emotional component. Collaborative Law expects emotions to be part of the process but not drag it down.

“I’ve been in practice for 44 years and this feels like the most useful work I’ve ever done,” Portnoy says. “It keeps people out of court which is good because, frankly, courtrooms and families in dissolution are a bad mix. Family is all about relationships and courts are all about laws, rules, and remedies.”

Divorce coaching is not therapy. Coaches help both clients get through the process



more successfully, deal with feelings of rejection and abandonment, arrange co-parenting that works, and identify what is really important to them as individuals and as a family. They have to separate feelings about what happened in the marriage from what the law requires, such as alimony. I ask, 'Is that really a rat hole you want to go down?' Divorce is also about compromise—what happens when you both leave the meeting feeling you've given too much." He shares research data with clients, such as the best ways to minimize the negative effects of divorce on children, because "to be informed is to be empowered."

Weston resident Gabrielle Clemens, a certified divorce financial analyst and vice president at UBS Financial Services in Boston, said the biggest financial misconception individuals have when entering into divorce involves the maintenance, expenses, and appreciated value of the marital home.

"With couples who have been married a long time and who have children, it is typical that one spouse works outside the home, handles the finances including retirement planning, college funding, and the mortgage, while the other spouse takes care of the children, their activities, and community activities," Clemens says. "Generally speaking, [the latter] does not have an accurate idea of what they'll need in the future. It is my role as their financial advisor to help them understand their current financial lifestyle including income and expenses, and short-term cash flow requirements, then clarify what they need to meet their long-term financial goals, such as college education and retirement." Because in Collaborative Divorce cases the financial specialist must be neutral and objective, she cannot have either a pre-existing or post-divorce relationship with either client.

Unless there is an emergency situation which the client thinks must be resolved immediately, everyone thinking about ending a marriage should consider a Collaborative Divorce, Smith believes. It begins by meeting with a specially trained Collaborative Law professional to determine if this is the appropriate approach for them and what the benefits might be for their family. 