



## **Collaborative Law**

Collaborative Law is a new development in resolving Family Law disputes. It uses an interest based negotiation model where the clients and their lawyers work together to resolve a dispute without going to Court. The aim of Collaborative Law is to reach a fair agreement and focus on solutions that satisfy the needs of both parties while minimising costs, delays and distress.

Collaborative Law differs from mediation and family dispute resolution since your lawyer is with you at all meetings. The collaborative model also allows for other professional to be involved in the negotiation process such as accountants, financial advisors, psychologists and other child welfare experts.

### **How does this Collaborative Law process work?**

Both parties have an initial meeting with their respective lawyers to obtain advice regarding the collaborative process and to identify the issues that are important for them. The parties and their lawyers then come together in four way meetings with the spouse/partner and each of the lawyers to reach a settlement.

In these four way meetings the parties put their “cards on the table” and all issues are discussed in an open non-confrontational manner. The lawyers support the negotiations by providing the parties with not only the structure to facilitate the agreement but also the benefit of their skilled advice and support.

The parties may also draw on the assistance of external experts such as property valuers, business valuers, accountants, child or family counsellors or other experts to assist in the parties reaching agreement. With this assistance, in an atmosphere of openness and honesty, couples can communicate their respective needs and work towards securing the future.

Key elements of the collaborative process include the following:

1. Each party retains a specialist collaborative family lawyer to advise each of the parties throughout the process.
2. Each client, their lawyer and any professionals involved are required to sign a participation agreement which forms a promise that the parties and their lawyers will not take the matter to Court.
3. The participation agreement sets out the ground rules for the collaborative process and stipulates that if either party commences court proceedings, both of the collaborative lawyers will subsequently be disqualified from representing either client.
4. The collaborative process relies on the parties and their lawyers acting in good faith and as well as being open, honest and respectful in their dealings with each other.
5. The majority of the negotiations take place at a four way “face to face” meeting between the parties and their lawyers. There is very little correspondence between the lawyers. The aim of the process is that through the face to face meetings the parties retain the control of the process. In addition the capacity to communicate with each other openly and honestly is maximised and also the opportunity to have non confrontational negotiations is hopefully achieved.
6. Minutes are taken for each of the meetings and plans of action drawn up for the future.

7. Part of the process also involves the parties and the lawyers agreeing to use joint experts, if necessary, with a view to saving costs and time. These experts would be experts such as property valuers, business valuers, health professionals or child psychologists or child or family counsellors or accountants.
8. If the parties are able to reach a settlement then the lawyers draw up a settlement agreement, which is normally drawn up as Consent Orders, so that they may be filed with the Court and the Orders made by the Court.
9. In summary **Collaborative Law** would be an appropriate action if you and your former partner;
  - Want to spare your children from the emotional damage litigation can cause.
  - Are able to accept personal responsibility in moving forward to reach an agreement.
  - Believe it important to create healthy and more holistic solutions for your family.
  - Understand and embrace the necessity to make full and frank disclosure about full financial issues.
10. The collaborative process is not for you if;
  - Your main objective is to seek “revenge” on your partner.
  - You are looking for a soft “option”.
  - You think that the process will allow you to “out manoeuvre” your partner.
  - You are hoping to get away with giving less than a full and frank financial disclosure.
  - In cases that there is a history of domestic violence or other abuse, the collaborative family law specialist will need to consider very carefully if the case is suitable for the collaborative process and are likely to insist on the involvement of other

professionals in the process to ensure that the interests, of you, your partner and any dependent children are adequately protected and represented.

10. If you are interested in investigating how the collaborative process works and whether it is right for you, please call us on 02 9525 8100 for more information.

**Sarah Clarke is an experience Family Lawyer who has specific training as a Collaborative Lawyer.**

**If you think the collaborative process may be an attractive way of resolving a dispute please contact Sarah Clarke on [sclarke@willisbowring.com.au](mailto:sclarke@willisbowring.com.au)**