

Chicago Daily Law Bulletin®

Volume 159, No. 164

Collaborative law isn't just for divorces

There is a common misconception among legal professionals and parties involved in divorce that collaborative law can only be applied in the divorce context. By controlling the outcome, studies show the parties fight far less on post-decree issues as a result of crafting their own outcome, rather than having attorneys negotiate an agreement or a judge dictate a result.

All of the collaborative concepts may be applied in many different areas of law and are often best utilized in a business- or family-related dispute. Collaborative professionals utilize mediation skills in assisting the parties with negotiating and achieving an outcome which ultimately meets each of their client's goals. A needs-based negotiation is very different than traditional positional bargaining.

What business owner would not want to maintain control over the outcome of his or her business dispute? What family member would not want to maintain control over the cost of attorney fees in resolving their probate matter? What managing partner in a law firm would not want to ensure that a legal proceeding is never filed when a member of the firm decides to change firms?

In each of these situations, just like in the divorce context, coaches would be essential to the process because emotions are at the root of all of these legal matters. Coaches would assist the team in framing and memorializing the client's goals and concerns, which would be referred to throughout the entire process, as well as taken into consideration in determining the final outcome. The client's goals and concerns will be frequently revisited and discussed by the team as the lawyers and coaches guide the parties through the

process.

Just like in the divorce context, a financial neutral will be essential if money is at issue. Virtually all legal disputes have a financial component, and the financial neutral will be essential in assisting the team in determining various scenarios for settlement, which the clients will ultimately consider. These scenarios serve as a springboard for the parties to brainstorm possible solutions without judgment, as the team persists in refocusing the parties on their interests and reinforces the flexibility and control they have to design durable solutions that accomplish their goals.

The financial neutral, with the attorney's input, will narrow the number of possible scenarios. The professionals must repeatedly tell the parties that these are only a few possible financial outcomes to begin the discussion. The expectation is that the parties will begin a dialogue once they see a set of possible outcomes. In framing the discussions between the parties, it must be noted that the possible financial outcomes are not always concrete and are flexible, as they are ultimately based upon each of the client's goals and concerns.

There is the looming question of the role of the attorneys in collaboration in the family, business or commercial dispute. Debra Weinfield Horberg, a collaborative attorney and facilitator of dispute resolution, worked with a family-owned commercial real estate business. The founder and father died, leaving the ownership of several buildings to his three children. The siblings had varying needs for the income generated by the properties and each felt differently about co-owning real estate with his siblings.

One sibling wanted the properties divided. His goal was to have his daughter manage

COLLABORATIVE CONCEPTS



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several of the buildings in order to learn the business and he did not want to work with his siblings in the business. In contrast, the other siblings expected the properties to remain as a package, since that is the way it had always been. One sibling earned his living by managing all of the buildings.

Working together in the collaborative model, the siblings met with their attorneys to discuss their individual goals in terms of income and involvement as co-owners. Horberg noted that a pivotal point in the joint sessions came when the siblings learned their best alternative to a negotiated agreement (BANTA) might be a partition suit, where a court could order the properties to be sold.

The siblings agreed they were in a better position to decide among themselves whether to sell any of the buildings, whether to buy out a sibling and by what means, without a judge dictating the result. The team assisted the parties in designing a buyout for one sibling by using a variety of strategies, including selling several of the properties and using cash. From the buyout, the first sibling helped his child purchase a property that the

child could learn to manage.

The other siblings retained selected properties, which were consistent with their need not to get "stuck" with underperforming properties and properties located out of state. By strategically choosing which properties to retain with the assistance of a financial neutral, they could afford to continue paying one of the siblings to manage the properties.

Can you imagine the benefit to the founder and his children had he engaged collaborative attorneys and initiated this process as part of the succession and estate-planning process?

Horberg believes the negotiation was successful because the parties used the collaborative model, as it allowed the siblings to retain control of their inheritance and negotiate a resolution that served their individual goals, some of which included generating income, helping a child and continuing in a relationship as business partners for two of the siblings, while concluding that part of the relationship for the third sibling.

Where business owners have a history of positive dealings and experience a breach in a business relationship, the benefit to the parties in attempting to work through their differences with professionals trained to assist them is invaluable. The collaborative team, skilled in refocusing the parties on solutions which meet their needs, ultimately helps the parties preserve their relationship for future successful business dealings. This can be measured both in dollars and in goodwill moving forward.

"Self-determination is a hallmark of collaborative law," Horberg states. "My goal is to advocate for and support clients to make informed decisions that meet their goals and serve their relationships, whether business or personal."