

Page Provan

family and fertility lawyers

COLLABORATIVE LAW

Collaborative Law is a form of dispute resolution used by married, de facto or same sex couples when separating to resolve their dispute. Each party works with a collaboratively trained lawyer to co-operatively resolve the legal, financial and emotional issues without going to Court.

Collaborative practice focuses on resolving Family Law disputes with minimal conflict. Collaborative lawyers work together to shape an agreement making considered decisions for the benefit of the family as a whole.

In collaborative cases, each party meets with their respective collaboratively trained lawyer to discuss the collaborative process and identify the issues that are important to them. If both parties agree to use the collaborative process, both partners as well as the collaborative lawyer sign a participation agreement or collaborative contract which requires the parties to:

- a) Behave in a respectful manner towards each other;
- b) Exchange complete financial information;
- c) Maintain absolute confidentiality throughout the process, enabling one another to express frankly their needs and concerns;
- d) Reach a written agreement without the threat of Court proceedings.

To reach agreement, the partners and their lawyers all come together in face-to-face four-way meetings. In these meetings the partners will discuss all issues in an open, non-confrontational manner. The lawyers support the negotiations by providing the partners with not only legal advice. Other professionals such as accountants, financial advisers, mediators, psychologists and counsellors are brought in when necessary to provide advice to assist with any financial, emotional or other issues which may arise in the process. The lawyers facilitate discussions to reach agreement with the benefit of other professionals' skills and advice. If the partners cannot reach an agreement and the Court is the only alternative, both lawyers must withdraw from the case.

In four-way meetings, the parties and their lawyer sit down together and identify each party's issues, concerns and goals and look at ways to shape those into an agreement. These meetings are conducted in an open manner where all the parties voluntarily provide full and frank disclosure of their position and provide any documents necessary to confirm their position.

Collaborative law is different to mediation. Mediation involves an independent neutral professional who facilitates discussions between the parties to help them to reach an agreement. The mediator does not provide legal advice to either party. In collaborative

practice, lawyers provide the clients with advice to help them to assess realistic options. Lawyers will then support them through the negotiation process to reach an agreement.

Because neither party can use the threat of commencing Court proceedings, everyone can remain focused on negotiating a settlement. The underlying principles of collaborative law to reach an agreement through open negotiations while minimising the apprehension and worry that often surround the discussion of issues regarding their children's future and their financial, parental and relationship futures. The collaborative lawyer brings with them their skills and their expertise in problem solving and negotiating and works with them to reach a solution. All negotiations are conducted in the presence of clients and so they and their spouse or partner retain full control of the negotiations.

If parties are able to reach agreement through the collaborative practice process then the agreement may be made into a Court Order or Binding Financial Agreement. If parties choose to make the agreement into a Court Order then the documents are sent to the Court but it is generally not necessary for the parties to attend Court. However if parties are unable to reach an agreement through the collaborative process then it may be necessary for them to commence Court proceedings.

Our Partner, Bruce Provan is a trained collaborative lawyer and a member of the Queensland Association of Collaborative Practitioners.