

Collaborative Divorce in the Fast Lane: Negotiating an Agreement, Start to Finish, in Ten Days

By David Hoffman and Vicki Shemin

[Note: The names of the parties in this case study have been changed to protect the privacy of the clients, who have given their permission for this article to be published. This case study was published in the first issue of the MCLC's Collaborative Law Journal.]

Collaborative Law (CL) has become an increasingly visible form of practice in the past decade – particularly in the area of divorce. CL involves an agreement by counsel (and by their clients) to negotiate cooperatively, without resort to the court, to exchange needed information freely, and for counsel to withdraw from the case in the event that impasse is reached and litigation is needed.

The impetus for CL came from the frustrations, cost, and delay often associated with litigated divorces. But most CL cases, like other divorce cases, take at least a few months – more typically, the better part of a year, and not infrequently more than a year. And so we were more than somewhat taken aback when a new client asked us “Is it possible to do this in 10 days?”

We scratched our heads and said, “maybe.” Plying our client with questions, we learned that he and his wife (we’ll call them Sam and Martha – not their real names) have been married for more than 20 years and have two daughters, one in a private high school and the other in a prestigious college. Sam has a modest-sized business, and the family lives comfortably, but they have never owned a house – they have always rented.

Sam and Martha had talked about separation and divorce for several months. They had tried couples counseling, but the wife ultimately concluded that the marriage was over.

Martha had found a house that she wanted to buy in the suburbs of Boston, and she had made an offer. The acceptance of that offer catapulted Sam and Martha into negotiations that they both wanted to complete in time for the signing of a purchase and sale agreement on the house.

The reason for haste was that the down payment on the house was going to require virtually all of the cash available to this couple. Our client was willing to turn all of that cash over to his wife in exchange for a signed Separation Agreement providing a definite and non-modifiable structure for his post-divorce obligations. He wanted to know, for example, that he could grow his business without having to worry about whether success would mean an open-ended liability for more alimony.

Martha, on the other hand, was less worried about the future – she was confident that her computer-related job skills would enable her to make a living, and she was willing to move very quickly to reach a deal. She was more concerned about buying a house when interest rates were at historic lows.

Sam first learned about collaborative law when Martha told him that she had hired Laurie Udell, a divorce lawyer and mediator and member of the Massachusetts Collaborative Law Council (MCLC). Martha gave him a list of CL attorneys, and, after reviewing the list of lawyers on the MCLC web site (<http://www.massclc.org>), Sam gave us a call.

Our first task was scheduling a series of meetings and coordinating everyone’s schedules. A CL process agreement was signed at the first meeting, and we began divvying up tasks. We needed values for the husband’s business and the commercial real estate on which it was built. Working together, the parties talked with two independent real estate brokers for an opinion of value on the commercial property. Instead of hiring an appraiser to value the business, they jointly interviewed some of its competitors, and found out what the competitors might be willing to pay for it. Martha felt comfortable with this method since she had been working in her husband’s business and knew the industry. They also prepared financial statements and gathered other documents (such as bank records and tax returns).

One of the critical breakthroughs for the negotiation came from a series of conversations that Sam and Martha had with their accountant. The parties both trusted him, and he proposed an arrangement that would allow Sam’s business to employ both daughters, earning them tax-advantaged funds for college. Another critical breakthrough was the parties’ agreement that the cost of the high school and college should be treated as a current liability, and therefore, in exchange for the husband taking on the entire responsibility for those expenses, Sam would retain 100% of the ownership in his business.

The collaborative process, of course, played a critical role in keeping this negotiation moving smoothly. A series of productive four-way meetings (ranging from two to seven hours), held approximately every other day for a week and a half, provided the forum for sharing perspectives – often sharply differing – about the fairness of various arrangements. Each of the lawyers worked hard to forge a relationship and feeling of rapport with the spouse on the other side of the table. (The lawyers already knew each other fairly well, which contributed to our ability to work efficiently with each other.)

Ultimately, the parties agreed to a 50/50 division of assets and a matrix for support payments that takes into account variations in both the husband’s and the wife’s incomes – i.e., support payments go up with increases in Sam’s income and go down when Martha’s income increases.

The Separation Agreement was signed on time, on the day when the very substantial P&S deposit was due. Our client and his wife deserve enormous credit for their ability to work together – when issues arose between four-way meetings, they quickly conferred and worked them out. Their strong motivation, resourcefulness, and commitment to the process sustained our momentum and kept us all on track. Their agreement was approved a few days later by the Probate and Family Court, with both parties expressing appreciation to the lawyers for the collaborative process. Our client reports that Martha succeeded in closing on the house and the two of them are still getting along.

Their children, of course, will be the beneficiaries of their success with the collaborative process. The experience also provided the collaborative lawyers in this case with an important learning experience – i.e., operating on the basis of trust and cooperation, while still taking professionally appropriate precautions to verify information, can move mountains and do so with amazing speed.

David A. Hoffman, Esq. is an attorney, mediator, and arbitrator at Boston Law Collaborative, LLC. He was the co-founder (along with Rita Pollak) of the Massachusetts Collaborative Law Council and currently serves as chair of the ABA Section of Dispute Resolution.

Vicki L. Shemin, Esq., LICSW, is of counsel at Boston Law Collaborative, LLC, where she also serves as a guardian ad litem and parenting coordinator. She is on the board of the Massachusetts Association of Guardians ad Litem.

© 2005 Massachusetts Collaborative Law Council

www.massclc.org