



What Is Collaborative Law?

The traditional method of resolving issues between a couple who are divorcing, usually involves going through Court proceedings. For some couples, this can seem very slow. For other couples, it can seem all too quick. Collaborative law enables the couple themselves to determine how fast or how slowly they want to resolve their own individual issues.

The Collaborative Law process involves a couple and their Solicitors negotiating face-to-face, rather than through correspondence and Court proceedings. At the beginning of the process, both parties sign an Agreement which sets out the ground rules. The parties agree not to start proceedings, but to negotiate fairly, constructively and openly, face-to-face. Both Solicitors and clients have a series of four-way meetings, at which the issues to be resolved are identified, and then resolved by agreement. The aim of the process is to ensure the parties set their own agenda, and set the pace at which the issues are talked through.

To collaborate, means to work in partnership, to act as a team and to cooperate with each other. The collaborative process therefore can only

work with couples who wish to and can work as a team. It is a particularly effective process for couples with children, as in those cases, the couples' relationship will last for their lifetime. Working out an agreed solution of issues relating to children of the relationship, at the time the couple separate, on terms the couple are each happy with, can make for a solid basis for a couple's future relationship. It can also avoid very costly Court proceedings later on, if issues arise regarding the children's schools, or religious upbringing.

The collaborative process is not for everyone; it is also not just for couples who wish to divorce. Unmarried partners who separate, and who have children of their relationship, may have issues regarding the children's welfare and upbringing which they cannot resolve between them. The collaborative process will enable those differences to be aired and resolved constructively, cost-effectively, and in a non-confrontational setting.

A couple soon to marry who wish to have a Pre-Marital Agreement drawn up, are more than able to sit around a table and discuss face to face what they would like to include in a Pre-Marital Agreement.

The number of four-way meetings in the collaborative process is governed by the parties themselves. The more complex the issues, the more meetings may be involved. One of the key benefits is that the decisions which are made at the end of the process, are decisions which are made by the couple themselves and not by a Judge who has never met the couple before, and will never see them again. The Collaborative process is not a one-size-fits-all remedy. It is a framework which enables a couple to negotiate a bespoke agreement which they are each happy with, and which works for their particular circumstances. It isn't an easy option by any means; it can be very challenging for all the participants. It is one of a number of means of resolving problems between couples whose relationship is ending.

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PLANNING HOME IMPROVEMENTS

Since the recession hit the property market, many home owners have decided to stay put and extend/improve their homes rather than moving. VAT will return to 17.5% at the end of 2009, and many home owners are taking the opportunity to undertake home improvements now, while VAT holds at 15%. Bear the following in mind when considering home improvements:

Front gardens and drives

Planning Permission is necessary for hard-surfacing of more than 5 metres of domestic front gardens/driveways, unless the surface to be laid is permeable and all surface water is kept within the home owner's property.

Roofs and Loft Conversions

Providing roof alterations and loft conversions are not undertaken in conservation areas or areas of outstanding natural beauty

and providing they meet strict size/volume regulations, these home improvements do not need planning consent.

Extensions and Additions

As with roof and loft conversions, providing strict guidelines concerning size are adhered to, planning consent is not necessary.

Regardless of whether or not you need Planning Permission or Building Regulations Approval, all home owners should check

their Title Deeds carefully, to see whether any alteration or additions to the property may be in breach of a covenant on the legal title, and particularly whether they require a previous owner's written consent before work can begin. This is commonly overlooked by home owners, and it can cause additional expense and delay when a property comes to be sold, because retrospective consent has to be obtained from the former owner.

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CHILDREN

Who Decides?

What happens when parents cannot agree on an important step in a child's upbringing or welfare? For example:

- Which school should the child attend?
- Should the child receive immunisation (for example MMR vaccination)?
- Which religion should the child adopt?
- Should the child go on a foreign holiday with one or other parent?
- Can the child's surname be changed, e.g. if one parent re-marries?

None of these decisions can be made by one parent acting alone; the other parent with parental responsibility for the child, must give their consent. If the parents cannot agree, the Court must decide by making a Specific Issue Order, in the course of proceedings brought under the Children Act 1989.

If one parent has threatened to make a unilateral decision e.g. to take the child on

holiday, the other parent can apply to the Court for a Prohibited Steps Order, which will stop the holiday (for example) unless and until the Court approves it, having heard evidence from the parties as to the pros and cons.

When a Judge is asked to make a Specific Issue Order or a Prohibited Steps Order, the welfare of the child is the Court's paramount consideration and the Court will take into account the ascertainable wishes and feelings of the child concerned,



as well as all other relevant factors known to the parties. There is a great deal of case law which provides guidance to Judges in these circumstances. Each case is decided on the individual circumstances of the particular child.

Holiday Tip:

If you are divorced or separated, and planning a foreign holiday with your child/children, always inform your ex early, and provide him/her with as many details about the proposed trip as you can. This should include flight details, contact telephone numbers at your accommodation, an e mail address (if available), and a copy of a travel brochure showing details of the accommodation itself. Always ask for the consent of your ex, and preferably get their consent in writing. Don't leave it until you have already booked and paid for the holiday, just in case of problems!

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Commercial Law Update – A Sign of The Times

Rent – Pay as you Go

Many tenants are asking their landlord if they can pay rent monthly rather than quarterly; if the landlord agrees then he must act very carefully to ensure that this is not a permanent binding agreement. If monthly payments or indeed part payments are accepted, then there's a real risk that landlords will lose remedies. Check your Lease to see if there's a guarantee, and whether its terms allow the landlord to modify the tenant's rent obligations.

If the landlord is willing to agree such an arrangement then make sure that it's in writing, that it's temporary, that it can be revoked at will and that it will not adversely affect any rent review clauses, guarantors or Authorised Guarantee Agreements.

Rent Arrears

A common method used by landlords is to send in a Court Certified Bailiff prior to forfeiting the Lease, thus gaining priority over all creditors on seizing goods within the demised premises. The new Commercial Rent Arrears Recovery Regime (CRAR) was intended to

replace this ancient remedy – but the CRAR has now been delayed until April 2012. Good news for landlords.

Business Rates and Insolvent Tenants

The three or six month period of rates relief for empty properties begins to run from the moment the property becomes unoccupied. A liquidator is exempt from rates liability but the time period still runs so that both reliefs are contemporaneous. If a tenant goes into liquidation and vacates an industrial property, with the liquidator then disclaiming the Lease five months later, the landlord will only benefit from the one month left of the six months' rate relief window.

Accordingly landlords must carefully examine liquidator's notices of disclaimer for any possible flaws that might render the disclaimer invalid.

In the case of a solvent tenant, then the landlord should protect himself by an indemnity clause in the Lease ensuring that he can claim loss of rates relief from that tenant who has claimed rates relief and then vacated.

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