

# Pursue Settlements Via Collaborative Law

## Mutual Agreements With Intact Business Relationships

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In business, issues **inevitably** arise and conflicts follow. An employee feels she has been the victim of an unfair termination. The bill from the independent consultant comes in way over budget. Vendors stop shipments. Deliverables are not received in a timely manner, causing business interruption. Upon lease renewals, landlords and tenants have very different ideas as to fair market value. Business partners have a falling out.

While such conflicts are perhaps unavoidable, acrimonious litigation is not. Collaborative law offers savvy businesswomen the opportunity to resolve disputes with more speed, lower cost and less emotional strife.

### How Does Collaborative Law Work?

Collaborative law pursues settlement from the outset. The clients and lawyers sign a participation agreement whereby they agree to negotiate in good faith. The lawyers, who have been trained in collaborative law, and the clients also agree that in the event the collaborative process breaks down, both collaborative lawyers must disqualify themselves from any adversarial process that might ensue. The disqualification requirement gives everyone the incentive to follow the process and reach resolution without “defaulting” to litigation. The parties, with their counsel by their side, meet in one or more four-way meetings to acknowledge, discuss and resolve the issues.

The collaborative process is built upon trust and discourages surprise tactics. Before each four-way meeting, the lawyers, with their clients’ participation, develop an agenda. After each meeting, participants receive a summary that sets forth the minutes of the meeting and the agreed-upon next steps to propel the collaborative resolution process. Everyone agrees to exchange voluntarily all necessary information to resolve the disputes. Lawyers who practice collaborative law comment how quickly their clients exchange the necessary documents without “hiding the ball.” Everyone is present in the room.

The parties and their lawyers focus on interests, not positions, and the goals of each party are articulated and respected. The role of the lawyers in a collaborative process is to facilitate a fair and balanced settlement, not to bully the opposition into submission. The parties might speculate about a court outcome, but the focus is on fairness and mutual interests. Creative, thinking outside the box proposals are greatly encouraged. A collaborative law negotiation is modeled in many ways upon proven and principled negotiation methods.

## Why Use Collaborative Law?

Settlements devised by the disputing parties are preferable to winner-take-all judgments, where at least one party is very unhappy and the other party usually has spent more legal fees than justify her victory. Second, 95 to 98 percent of all civil cases resolve before trial, so why spend money preparing for an event that rarely occurs? Third, settlements negotiated on the courthouse steps coming, as they do, after years of litigation preparation, replete with depositions and mounds of paperwork, have cost yet another fortune in time, energy and emotion. Fourth, a party who negotiates a settlement through a collaborative process, which acknowledges and requires good faith bargaining, is more likely to respect the agreement and live by its terms. Finally, and, *most important*, collaborative negotiation allows the parties to preserve relationships they need to carry on their businesses and friendships.

## Collaborative Law Works

Collaborative law is a natural protocol for women in business to demand when faced with a dispute in their businesses or in their lives. With a collaboratively trained attorney representing each party in the disagreement – and at any stage of the disagreement, even in a preventative model – the process allows the parties to reach a resolution that is unique and equitable in the given circumstances without expending unnecessary amounts of time, energy or money in the litigation track. The well-trained attorneys allow the parties – and who knows best in a dispute what is appropriate, the parties or the attorney-outsiders? – to control the direction of the process. The attorney’s job is to facilitate interest-based negotiations and to steer everyone toward resolution without adhering to any one position or interest.

## Lead New Resolve Charge

For over a decade, collaborative law, the brainchild of a family lawyer in Minnesota, has been successful in resolving heart-wrenching divorces and difficult family situations. From a handful of lawyers in Minneapolis, collaborative law practice groups now exist in virtually every state, in Canada and abroad. Business lawyers throughout the country and in Canada have been quick to see its application to the business arena and have been applying collaborative law principles – focusing on interests, transparent negotiation, open disclosure -- to resolution of business problems. While it has met with some resistance from clients entrenched in the adversary system, those clients who, with their attorneys, have applied the collaborative law principles reach solutions satisfied and unscarred by the court process. It is a natural protocol for any form of business divorce or dispute because it leads to cost-effective outcomes and that is, ultimately, what is best for business.

In their preface to “Women Don’t Ask, Negotiation and the Gender Divide,” Linda Babcock and Sara Laschever, as if presaging this article observe, “Ideas about what make a successful negotiation have changed in recent years. Rather than a battle between adversaries, negotiation has increasingly been seen as, ideally, a collaborative process aimed at finding the best solutions for everyone involved. This not

only makes the process of negotiating less combative, it has been shown to produce superior agreements: Everyone walks away with more of what he or she wants. This change makes negotiation more attractive to women, because many women have disliked the competitive nature of much negotiation.”

Women in business have the choice and can lead the way.

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*The Massachusetts Collaborative Law Council, established in 2000, has provided training to lawyers throughout the state. Find out more information and attorney listings in practice areas through their web site, <http://www.massclc.org>.*