

Ask an Expert

Divorce Without the Courtroom: Rolling out the Family Collaborative Law

A recent Oklahoma case pitting a billionaire energy tycoon against his wife resulted in one of the largest divorce settlements in history. After over a year of contentious litigation and a nine week trial, Sue Ann Hamm could walk away with nearly \$1 billion of Harold Hamm's estimated \$18 billion fortune. I say could because she will likely appeal the result to seek an even higher payout, thereby prolonging the litigation. Even though the Hamms are far from your typical New Jersey couple, divorce litigation for ordinary citizens can still be lengthy, expensive, and destructive to their relationships, especially with their children. New Jersey recently expanded options for divorcing couples to avoid such litigation.

The New Jersey Family Collaborative Law, effective December 9, 2014, offers an alternative to traditional divorce litigation and has been somewhat overlooked because of the new alimony statute signed by Governor Christie on September 10, 2014. At the beginning of the process, the parties must sign a family collaborative law participation agreement stating, among other things, their intention to resolve the family law dispute. The law allows divorcing parties to work collaboratively with attorneys and joint experts, including accountants, certified financial planners, licensed clinical social workers, psychologists, and licensed professional counselors to reach a comprehensive settlement while saving time, money, and, hopefully, important relationships in the process. All communications of the parties and non-parties, whether written or oral, made in the course of the family collaborative law process are privileged and confidential unless waived, i.e., communications cannot be used in a subsequent litigation or other proceeding should a settlement not be reached.

Goals of the Law

One goal of the law is to incentivize the lawyers to work diligently toward an early resolution and at a lower cost to the parties. How is this accomplished? The law prohibits the family collaborative lawyer, as well as others in that lawyer's firm, from representing the client in litigation should the collaborative process not result in a judgment resolving the family law dispute. Costs are reduced and time is saved by not having to participate in the formal discovery process and the litigation timeline set by the backlogged court in traditional litigation. The damage to the parties' relationships and/

or children should be lessened by the couple collaborating to reach a settlement in an informal setting rather than being adversaries in a courtroom.

Is the law right for me?

The collaborative process is best suited for parties who have full knowledge of their spouse's assets. The law requires "timely, full and candid disclosure" of relevant information in good faith without formal discovery or an enforcement mechanism should information be withheld. However, as in business, assets are often hidden and attorneys

often must use the power of the New Jersey courts to pry the information related to the family law dispute from the parties. More innocently, the net worth of your spouse may not be readily determinable. For example, each spouse is likely to assign a very different valuation for a closely-held business, medical practice, or intangible asset. Therefore, an individual with a high net worth or complex business arrangement, or who is married to such an individual, may find the collaborative process less useful.

Another advantage of the

collaborative process is flexibility. If the parties are prepared to make a quick and comprehensive settlement, then scheduling a time for the professionals to meet and work together is often easier procedurally and temporally than scheduling a court date on the merits of the case. If the divorce involves issues

of hidden assets or sophisticated valuation, then counsel may recommend a different approach.

In either scenario, a new alternative to family law litigation is available in New Jersey.

If you have any questions about the New Jersey Family Collaborative Law or family law in general, contact Steven H. Doto, Esq. at 856-210-5873 or sdoto@lauletta.com



Steven H. Doto, Esq.

WHEN THE NATURE OF YOUR BUSINESS REQUIRES MORE THAN JUST A DIVORCE ATTORNEY

Divorce is delicate, especially when privately held businesses or non-liquid assets are marital property. Such matters require a unique combination of commercial litigators and corporate attorneys to navigate these unique and complicated situations and to avoid costly mistakes. That's where we come in. Our experienced team understands the complexities of these divorces including matters involving shareholder disputes, business valuations and financial fraud. We work with business owners or spouses to safeguard the future.

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