Family Law

Plain English Guide on Collaborative Law

Mills Oakley is pleased to offer collaborative family law as a new and client centred approach to the resolution of family law disputes. Collaborative family law offers a fresh and dignified approach to resolving the issues that arise out of a relationship breakdown without involving the court. This Plain English Guide provides an overview of how the collaborative law process works, but we encourage you to contact one of our family law solicitors to provide you with a more detailed explanation of this new and innovative solution.

What is Collaborative Family Law?

In a collaborative family law process, the clients and their lawyers agree to work together to find a fair solution to whatever financial or child-related issues need to be addressed without involving the court.

A collaborative approach allows for a greater degree of co-operation between a range of professionals involved in helping families. Clients involved in a collaborative process will have access to the skills of child specialists, counsellors, accountants and financial advisers who can bring their expertise to the process when necessary, thereby freeing up the lawyers to concentrate on helping their clients in the negotiations and focusing upon shaping a fair settlement.

Collaborative family law has been practised in the USA and Canada since the early 1990s and more recently in UK, Ireland and Wales. It is now recognised as a successful means of alternative dispute resolution.

What does Collaborative Family Law involve?

You and your partner will each retain a specialist family lawyer to advise you throughout the process.

Your lawyer will discuss with you in your introductory meeting or telephone call whether your case is suitable for the collaborative process.

You, your partner and your lawyers will all sign a Participation Agreement setting out the ground rules for the collaborative process and stipulating that if either client commences court proceedings, both collaborative lawyers will be disqualified from representing either client.

Underpinning the collaborative process is an understanding that you and your partner, (and your respective lawyers), will act in good faith, be open and honest in your dealings with one another and respect the fact that different views will need to be expressed to achieve a fair settlement.

The majority of the negotiations will take place at “4 way” face-to-face meetings between you, your partner and the lawyers. Correspondence between lawyers is kept to a minimum because the advice given to you and your partner by each of your lawyers is given during the “4-way” meetings. By being present throughout the negotiations, you and your partner retain control of the process. The scope for misunderstandings is reduced and you will be assisted in communicating with each other in a non-confrontational way, which is particularly important if you are parenting children together. The collaborative lawyer process is transparent for all parties because the aim of the collaborative law process is to resolve disputes through open communication between all of the parties and their lawyers.

The meetings are minuted and action needed for future meetings agreed upon. Where appropriate, you will be encouraged to draw on the skills of other specialist advisers, such as accountants, to assist with financial disclosure, or child counsellors to discuss an issue which may have arisen in relation to the care of your children.

Once a settlement is reached, the lawyers will draw up a Settlement Agreement which will usually be submitted to the court for approval and made into a consent order.

What about confidentiality?

All professionals involved in the collaborative process are bound by their own professional conduct rules and have a strict duty of client confidentiality. Any discussions or documentation, (with the exception of financial disclosure documentation - see below), are legally privileged and conducted on a "without prejudice" basis which means that they cannot be referred to in court.

This confidentiality will only be overridden where any of the professionals involved has a professional obligation to make a report to a relevant authority, for example, if a child is considered to be at risk.

If the collaborative process fails, you and your partner may not use any of the information or documentation generated for the purpose of court proceedings other than the documents in relation to your financial circumstances (for example, personal tax returns or company returns) that must be disclosed when parties commence proceedings for property settlement.

What happens if my partner/spouse doesn't give a full and frank financial disclosure?

This can of course happen as it does sometimes in mediation or in the conventional legal process. Under the terms of the Participation Agreement, the lawyer must withdraw from acting for their client if the client has withheld or misrepresented information intentionally, or is participating in the process in bad faith. Likewise, it is open to your collaborative family lawyer to advise you to withdraw from the process if they do not consider that your partner, (or indeed their lawyer), is keeping to the terms of the agreement.

If after a settlement agreement has been reached in collaborative law, you discover that your partner has failed to disclose relevant information, then collaborative family law is no different from another negotiated settlement. If the outcome of that settlement would have been different had the information been available, it is possible for you to approach a court to overturn the agreement, even if it was originally approved by a court.

Why can't we go to court if the collaborative process doesn't work?

The reason that collaborative law has been successful in other jurisdictions is that the lawyers are disqualified from acting for the client if collaboration fails. A disqualification agreement underlines the fact that all the parties are attempting to achieve settlement without threatening or being subject to the threat of court proceedings when things become difficult.

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By agreeing at the outset not to go to court everyone is trying to reach a settlement that best meets you and your former partners needs. Of course your lawyer advises you about your entitlements under the law. However, the collaborative process offers an opportunity for issues that may be most important for you and your family to be considered in a way that traditional litigation or negotiation does not allow.

Is my case suitable for the collaborative process?

Collaborative family law is not for everyone. An essential element of collaborative law is the shared willingness of both you and your partner to resolve your dispute.

Collaborative law will be of interest to you if:

- You want a dignified, non-aggressive resolution of the issues;
- You and your partner have children and wish to reach a resolution by agreement with their needs and interests at the forefront;
- You do not wish to incur the delays of up to 18 months associated with court litigation;
- You want to have control over decisions about restructuring your financial arrangements, or arrangements in relation to the children, with help from experts;
- You do not want to hand over decision making either to your lawyer or to a judge;
- You would like on-hand assistance from a lawyer to help you negotiate in face-to-face meetings.
- You and your former partner do not want your private affairs and personal business aired in a public courtroom.

Collaborative family law will not be the right option for you if:

- Your main objective is to “seek revenge” on your partner;
- You are looking for a “soft option”;
- You think that the process will allow you to “out-manoeuvre” your partner;
- You are hoping to get away with giving less than a full and frank financial disclosure!

In cases where there is a history of domestic violence or other abuse, the collaborative family law specialists will need to consider very carefully whether the case is suitable for the collaborative process and are likely to insist on the involvement of other professionals in the process to ensure that the interests of you, your partner and any dependant children are adequately protected and represented.

How much will it cost?

As with the conventional legal process, different lawyers have different charging rates. Mills Oakley will explain to you the basis of our charging structure and will go through our firm’s terms of business with you.

As long as you and your partner act in good faith, provide the information requested of you within the timescales agreed and cooperate in the process, the collaborative process will be quicker than the traditional, court based process.

The issue of how the costs of collaborative process are to be met can be addressed at the first 4 way meeting. Unless there is an agreement to the contrary, however, you and your partner will each be responsible for your own solicitor's costs and will be invoiced monthly so that you receive a regular update as to the costs position.

How can we get a collaborative case started?

Other solicitors in Parramatta, Sydney and in other areas also offer collaborative family law as a part of their family law services. It is essential that both parties have collaboratively trained family lawyers. Most collaborative family lawyers (and other professionals) belong to practice groups.

If you think that your partner may be interested in trying collaborative family law as a way of resolving your dispute, we can write to your partner suggesting collaborative family law and send him/her this Plain English Guide, or you can discuss this with your former partner directly.

How can Mills Oakley help you?

At Mills Oakley we have a number of family lawyers and Accredited Specialists in Family Law who practise exclusively in the area of family law. As well as our practical experience in all aspects of family law, other specialist lawyers in the firm are able to contribute their expertise in areas such as commercial, taxation and property law where such issues need to be considered in dealing with your case.

We aim to provide the service that is right for you, whether that be simply advising you as to your rights and obligations, assisting you in negotiating a resolution of issues in dispute or representing you in contested proceedings in the Family Court. Where appropriate we will work with your other advisers, such as your accountant, so as to achieve a good understanding of all aspects of your case and provide you with the best possible representation.

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Contact us

Susan Warda
Partner | Sydney

T: +61 2 8289 5804
E: swarda@millsoakley.com.au

Martina Thornton-Storgato
Partner | Sydney

T: +61 2 8415 7601
E: mstorgato@millsoakley.com.au

Tracey Middleton
Special Counsel | Sydney

T: +61 2 8035 7995
E: tmiddleton@millsoakley.com.au

John Mazzotta
Partner | Melbourne

T: +61 3 9605 0871
E: jmazzotta@millsoakley.com.au

Sally Baker
Partner | Melbourne

T: +61 3 9605 0946
E: sbaker@millsoakley.com.au

Anastasia Christou
Special Counsel | Perth

T: +61 8 6167 9886
E: achristou@millsoakley.com.au

Rachael Murray
Partner | Brisbane

T: +61 7 3228 0419
E: rmurray@millsoakley.com.au

Sophia Pippos
Special Counsel | Brisbane

T: +61 7 3228 0436
E: spippos@millsoakley.com.au

Jeremy Culshaw
Consultant | Adelaide

T: +61 411 689
E: jculshaw@millsoakley.com.au

Carly Mirza-Price
Partner | Sydney

T: +61 2 8289 5877
E: cmirza-price@millsoakley.com.au

Beth Jarman
Special Counsel | Sydney

T: +61 2 8035 7835
E: bjarman@millsoakley.com.au

Susannah Quinn
Special Counsel | Sydney

T: +61 2 8289 5859
E: squinn@millsoakley.com.au

Damian Harriss
Partner | Melbourne

T: +61 3 9605 0978
E: dharriss@millsoakley.com.au

Kym Kerr
Partner | Perth

T: +61 8 6167 9804
E: kkerr@millsoakley.com.au

Alexandra Moles
Partner | Brisbane

T: +61 7 3228 0424
E: amoles@millsoakley.com.au

Emily Wood
Special Counsel | Brisbane

T: +61 7 3010 8003
E: ewood@millsoakley.com.au

Kate Bishop
Partner | Adelaide

T: +61 8 8330 2912
E: kbishop@millsoakley.com.au