

# Using Collaborative Law to Resolve Business Disputes - It's Not Just for Divorce Anymore!

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Disputes between members of a family-owned or closely-held business or parties to a long-standing business relationship are similar to divorces in many ways - emotions run high and the parties may need to keep working together, like it or not. Instead of the best interests of the children, the common goal could be to keep a business that's lasted for three generations alive or finish a construction project that will no longer be economically viable if one party pulls out and heads to court.

The collaborative practice approach to resolving conflicts first grew roots in family law cases, but the approach is expanding to business and other civil disputes across the United States. Twenty states have adopted some version of the Uniform Law Commission's Collaborative Law Act, including North Carolina where the Act took effect on October 1, 2020. Yet the process remains unfamiliar to many, even in the legal community.

A party interested in a private, efficient, non-adversarial process for dispute resolution can engage a lawyer trained in collaborative law to propose the process to the other parties involved in the conflict. The process is especially suitable for parties who want or need to restore a continuing, productive businesses relationship with each other. In addition, nothing about the process must appear in a public record, shielding the parties from risks that arise when customers and competitors learn of ongoing disputes that may disrupt business.

If all parties agree and engage their own collaborative practice lawyer, everyone signs a participation agreement outlining the process. Highlights of the process include:

- A commitment by everyone involved to participate in good faith and in a mutually respectful manner to identify the interests, needs and goals of each party, and brainstorm ways to satisfy them without significant detriment to the interests, needs and goals of other parties. The plan is for all participants to meet together at the same table in a series of meetings spread over time (ideally weeks, but longer if needed). This

structure differs from mediation where a neutral mediator shuttles between different rooms to discuss issues and present offers privately to each party and their lawyer.

- A mutual obligation between the participants to candidly exchange all information and documents relevant to the dispute, regardless of whether the information and documents support one's own position or that of another party. Promoting disclosure and honesty allows parties to trust that they're not being asked to make decisions based on limited information, reducing the risk that unknown factors will surface later and reveal they've been tricked into a bad deal.
- Joint engagement and cost-sharing for any neutral, non-lawyer professionals needed to help resolve the dispute. For example, an accountant may be needed to advise regarding tax issues; an intellectual property lawyer may be needed to consult about trademark or patent applications; or a psychologist may be needed to facilitate listening and communication skills between individuals entrenched in a tense relationship. Engaging a neutral collaborative practitioner is also an option when additional help is needed to support the process or navigate through an impasse.
- If the parties are unable to resolve their dispute collaboratively, each party agrees that the lawyer who represented them in the process and that lawyer's firm are prohibited from representing them in any subsequent adversarial proceeding (arbitration or traditional court case) regarding the same dispute. In addition, the parties agree to treat all communications during the process as privileged, confidential and inadmissible in any subsequent adversarial proceeding.

In other words, participants do their best to leave the "us versus them" mentality at the door and give up hiding the ball as a dispute resolution tactic. The non-lawyer participants – who know each other and their business best, after all – are encouraged to come up with their own ideas to work through the issues, and in so doing often develop approaches that would never have been available in a courtroom. For example, if two individuals with 50% ownership interests and no shareholders' or operating agreement become deadlocked over a critical business issue, dissolution may be the only legal remedy available through litigation, but with some assisted collaboration the parties may identify a myriad of creative options worth trying.

The collaborative process can resolve disputes at a fraction of the time, cost and stress involved in traditional litigation. And if, on top of these benefits, the parties are able to sit in the same room comfortably again or even plan more business together, the process has served our community in ways courts were never designed to do.

To learn more about using collaborative practice to resolve civil disputes, contact the North Carolina Civil Collaborative Law Association (<https://nccivilcollaborativelaw.org/>), the Global Collaborative Law Council (<https://globalcollaborativelaw.com/>), or the author.