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Splintering Couples Are Trying 'Collaborative Divorce' Process

By DIYA GULLAPALLI

Staff Reporter of THE WALL STREET JOURNAL

It took Dawn and Tim Allen just 10 hours to end their 15-year marriage, resolving everything from child custody to finances in three calm meetings. They achieved it through what is called "collaborative divorce," an oxymoron describing an increasingly popular process that is often faster, cheaper and more private than standard courtroom divorces, not to mention less emotionally taxing. To do it, a couple and their lawyers sign a contract agreeing to dissolve the marriage without litigation -- and if they fail, the lawyers pledge to drop out of the case before it goes to court. That's a big incentive to settle, but if negotiations breakdown a couple can end up hiring new attorneys (with steep retainers) and essentially starting over again.

Collaborative divorce is part of a continuing, and sometimes futile, effort to accomplish the seemingly impossible: smooth, pain-free divorces. No-fault divorces, Internet divorces, even divorce ceremonies are available to estranged couples, but the reality remains that ending a marriage is, more often than not, acrimonious and difficult. Still, collaborative divorce, scorned by some lawyers as a holistic, New Age approach, is going mainstream. Nearly 3,000 lawyers in 25 states offer it. In March, Texas became the first state to codify the collaborative divorce, adopting a law spelling out the process. California lawmakers are considering drafting similar legislation. The approach has become especially popular in San Francisco, Atlanta, Dallas, Boston and Miami. The American Institute of Collaborative Professionals (AICP), a San Francisco group that offers training in the procedure, says it listed 68 law firms in its directory this year, up from 16 in 1999. In Cincinnati, 66 of the city's 110 divorce lawyers practice the approach, first developed by Minnesota family lawyer Stu Webb, according to the Collaborative Law Center, a local group that trains attorneys.

Attorneys in a collaborative divorce often get about a \$1,000 retainer (compared with roughly \$5,000 to \$10,000 in standard divorce cases) and end up, based on billable hours, pocketing an average of \$3,000 per spouse compared with an average of between \$10,000 and \$25,000 per spouse in standard divorces. (People seeking lawyers for a collaborative divorce can contact a local collaborative law institute or family lawyers in their community who can refer them to collaborative practitioners.) But anyone considering it should take a hard, realistic look at their issues because if the process breaks down, it can end up being more expensive and time-consuming than starting on the traditional courtroom route. Dan and Elizabeth Blackstone of Sonoma, Calif., spent six months "in collaboration" before giving up and going to court. Four years and \$120,000 later, they still are embroiled in litigation and still are arguing over whether Ms. Blackstone is entitled to share in the appreciation on their ranch and home as well as on Mr. Blackstone's insurance business. "If people just think 'This is a great way to save money,' they shouldn't do collaborative," Mr. Blackstone says. "They have to be willing to negotiate and compromise, or else it doesn't work."

When to Avoid It

Collaborative divorce also isn't ideal in situations involving drug or alcohol addiction or domestic

abuse. "Many batterers use nonverbal and verbal cues to convey fear to the spouse that outside parties don't even pick up on," says Loretta Frederick, head of the Battered Women's Justice Project, a domestic-violence resource center in Minneapolis. "We advocate never even putting these couples in the same room during the proceedings, so negotiating like in collaborative divorce is out of the question."

But it can be effective for people who value their privacy because the proceedings are kept private. "You don't want your personal life bleeding for the world to see," says Pauline Tessler, a San Francisco attorney who practices only collaborative divorce. In divorce court, hearings and filings are often available to the public. The process differs from mediation or arbitration because there is no third party. The main distinction is the couple and their lawyers try to resolve all issues themselves, then present their agreement to a judge for approval. That makes for a relatively brief process -- about three months, compared with an average of 20 months for a courtroom divorce.

'Wimpy Law'

Other professionals are often called upon to assist in collaborative negotiations, including parenting coaches, accountants, mental-health practitioners, even clergy, leading to criticism that the practice is inappropriately touchy-feely. "When I started, some lawyers asked why I was practicing 'wimpy law,'" says Bill van Zyverden, President of the International Alliance of Holistic Lawyers in Middlebury Vermont, a 300-member organization which promotes spirituality and peacemaking in family law. His articles for the group's Web site include "Spirit," and "Justice in the Age of Aquarius," which he co-authored with an astrologer. "Sometimes during cases, the four of us will just sit and cry together, and it's so healing for the couple," he says.

That was the experience of Ms. Allen, who shared sentimental tears with the two other lawyers and had to take a 10-minute break when discussing her soon-to-be ex-husband's inheritance of the family vacation home in Minnesota from his father. She says she became emotional because her father-in-law had stayed with the family for six months in hospice care prior to the collaborative process. But, she says, "The lawyers work with your emotions rather than manipulate them."

Write to Diya Gullapalli at diya.gullapalli@wsj.com

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