

DIVORCE NEGOTIATION BASICS

Odds are that you have never been involved in a divorce negotiation. It's different from most other negotiations. When thinking about negotiation, you are likely thinking about bartering—such as making offers and counteroffers like when buying a car or visiting a market. While bartering can work great when buying a car, it is usually ineffective (and can be counterproductive) in divorce because the context is different. Here are some basic guidelines for divorce negotiation:

The Paradox.	Divorce usually does not end a relationship, but merely changes it. Especially if you have children, you will need to rely on your spouse to coordinate and work with you in the future. Your actions during the divorce will help define that future relationship. You and your spouse chose this process to arrive at an agreement. To be successful in achieving that goal, your ideas must be acceptable to your spouse. You would likely never sign an agreement that does not adequately address what's important to you; the same is so for your spouse. Your spouse will also need to have addressed what is important to him or her.
The Hardest Parts.	If you can consistently do these things, you are well underway: <ul style="list-style-type: none">(a) Listening to and considering your spouse's concerns.(b) Holding onto yourself—keeping reactivity at bay.(c) Learning about the situation and the different options.(d) Focusing on the future.(e) Giving everyone (yourself included) some slack.(f) Establishing new boundaries.(g) Accepting realistic solutions.
How to Speak.	Whatever you can do—and however you can speak—so your spouse feels (and is) genuinely respected and heard will reduce the likelihood of your spouse becoming defensive. Working to understand both your own and your spouse's concerns can help break power struggles. Doing so will help you get to your objective of reaching an agreement. In all interactions with your spouse, the “golden rule” applies. If you're in a moment of being unable to be productive, then take a break. Feeling a little stuck? Your Collaborative lawyer and other professional team members are available to help.
What's To Be Expected.	Divorce is difficult, regardless of the process. You can expect that you (and your spouse) will experience extreme emotions, including anger, shame, depression, elation, fear, excitability, nervousness, hopelessness, anxiety, and more. There are times when you will want to run away screaming. (This is so for any divorce process.) That is the time to call your Collaborative lawyer (or other team member) for help. Try to remember that intense emotions are normal for everyone going through divorce and that they will normally pass. Most people find individual therapy invaluable.
Take the Long-Term View.	No one likes uncertainty, but it can take some time to arrive at a good divorce agreement. Your divorce will probably involve more decisions, take longer, and cost more than you imagined. There will probably be times when things just don't seem to go as you expected or hoped. To reach a durable agreement—one that does not unravel and that does not contain the seeds for future problems—take the time and effort to do the necessary groundwork so you and your spouse can both make good decisions. A divorce agreement that is carefully considered is more likely to be more satisfactory and last longer, and costs less over the long-term.

The Law.	The lawyers will provide information about the law so you are fully informed. While this information is important and ensures you have the understanding needed for informed decisions, remember that the purpose of most divorce law is to provide guidance so judges can make decisions <i>for those who can't come to their own agreements</i> —in other words, not you. The law differs in different states, and you'd probably get a different answer if you were to move to another state for your divorce. Which state's law is correct? What is certain is that the law was not written with you in mind. If your goal is to reach a good agreement, then your own priorities and values, and the practicalities of your specific situation, are what will really matter in the end.
Fairness.	Most people want to know “what’s fair.” Unfortunately, there is no answer to the question, because the concept of fairness is inherently subjective—no two people (including lawyers and judges) have the same idea about what may be “fair.” And, if you tell your spouse that all you want is what is “fair,” it could come across to your spouse that you think they are unfair—and thereby create some unhelpful resistance. Instead of asking “what is fair?” perhaps ask “what is agreeable?” based on your and your spouse’s own values.
A Good Agreement.	<p>Focus your energy on reaching a good agreement—one that is good for you over the long term. While you are the only person who can judge what might be a good agreement for you, you may wish to consider these questions:</p> <ul style="list-style-type: none"> (a) Will you be able to look back at your divorce and honestly say that you reached your agreement knowing that you reached it with integrity and with actions consistent with how you would like to have behaved? Or will you carry shame or guilt over your behavior or decision? (b) Does the agreement address all that it needs to, considering whether the details in the agreement truly solve the real-world questions that need to be addressed within the resources available? (c) Is the agreement likely to preserve important working relationships? Will it have an adverse impact on the relationship with your co-parent? Or on other relationships, such as friends and family? (d) Did you take the time to think through whether the agreement might have unintended consequences to yourself, your spouse, and others? (e) Does the agreement avoid planting seeds for future disagreements or, worse, future failures? (f) Can your agreement actually be carried out, as a practical matter? Have impediments to carrying it out been addressed? (g) Have budgetary, tax and legal considerations been sufficiently addressed in your agreement? (h) Does the agreement allow you and your spouse be able to disentangle emotionally and to each be set up for as much success as circumstances will allow?