

Part Six – Memorialize the Agreement

- What does a settlement look like?

A settlement agreement usually takes the form of a written agreement. It is best to clearly state in writing the terms of the agreement so that both parties understand the general terms and details of the agreement to avoid misunderstanding. In general, spelling out the settlement specifically and in detail helps avoid later disputes. Many times it is advisable to use spreadsheets, parenting schedules and similar tools to describe the details of the agreement.

- How does a settlement differ from a divorce decree?

In collaborative cases, usually the final legal documents, such as a divorce decree, constitute the actual settlement agreement that the parties sign. Until then there is no legally binding agreement, just a good faith intention to enter into the agreement. In most family law disputes the agreement is not completely final until a decree or order has been signed by the court. When the parties want to have a binding collaborative law settlement agreement executed before the final documents are drafted, the written settlement agreement usually is a general outline for the more detailed decree or court order. Many times it is impractical to include all the minute details necessary for a court order in the settlement agreement.

If a collaborative law settlement agreement has been signed by the parties, the next step in the process is to prepare the formal decree or other court order, agreement incident to divorce, the pre-marital agreement or the marital partition agreement implementing the settlement agreement. It is not unusual for a settlement agreement of just a few pages to require many more pages to be described in the final documents. In addition, closing documents such as deeds, special orders to divide retirement plans, account transfer instructions, car titles, promissory notes and other similar documents may need to be prepared.

- Can I change my mind or keep my spouse from changing his or her mind?

Certain forms of written settlement agreements such as a “Mediated Settlement Agreement” or a “Collaborative Law Settlement Agreement” are binding and irrevocable when signed if certain legal requirements are met. In general, attempting to change your mind after signing one of these “binding and irrevocable” agreements is extremely difficult. Most other forms of even written settlement agreements are revocable if consent to the agreement is revoked at any time prior to the court signing the formal court order implementing the settlement agreement.

It is important to discuss with your attorney whether or not the settlement agreement you are contemplating signing is revocable or binding. In many situations “it ain’t over till it’s over.”

- How long until this is really over?

Getting from the final negotiations to a written settlement agreement and the court’s signing of the formal court order implementing of the settlement agreement can take time—sometimes a lot of time, especially if the settlement is complicated or involves lots of assets or creative solutions. Many people believe when they have negotiated the agreement, the dispute is “over.” However, it is not unusual for the drafting and revising of the terms of the formal decree or court order and the attendant closing documents to take weeks or in some cases months to conclude. Then, it will be submitted to the court for approval. Only after the judge signs it, will the divorce be officially concluded (and then it will not be final until the time for requesting a re-hearing expires—thirty additional days in Texas). Your patience will make this part of the process easier on you.