

Parting with



HILL

It is possible to ease the pain and cost of divorce, as Katherine Towers reports

ROBYN MOORE — wife of superstar Mel Gibson — won't be the only person eyeing off her husband's \$1.2 billion in their upcoming divorce — their lawyers will also be after a slice of the spoils as they negotiate the tricky division of a 28-year marriage.

But for those who aren't looking at a potential \$500 million payout to keep us focused on the future, a marriage breakdown can be emotionally and financially devastating.

Unless a property and custody dispute is amicably and independently agreed between the couple — and let's be honest, that's rare — then often the only winners in a family split are the lawyers.

Even a relatively straightforward divorce with a run-of-the-mill disagreement over property and child custody can cost \$50,000 in legal fees.

It takes just one of the parties to get stubborn for that cost to double — making it a \$100,000 bill to extricate yourselves from a "till-death-do-us-part" commitment.

The cost of divorce in Australia has blown out to almost \$6 billion a year. With Australians now registering one of the highest rates of divorce in the world, the federal and state governments are looking at revolutionary ways to reduce the financial and emotional impact on those involved as well as the overall cost to the taxpayer.

One such way is through the use of collaborative law.

It's been used in the United States and Canada for about 15 years and was recently introduced in Europe.

While the process does still involve lawyers, it takes a dispute and its resolution out of the court system.

Which means bickering couples and their legal teams are often forced to resolve their differences in a quick, cost-effective and amicable manner.

Basically, the goal is to keep couples out of court.

"The lawyers are involved, but they become the managers and facilitators of the process," said Cathy Gale, a collaborative law specialist who is leading the national

push to have the practice introduced into Australia.

"The job of the lawyer in collaborative law is not to direct the process or do the negotiating. The job of the lawyer is to coach and support their client to do the negotiating themselves."

The existing system

In Australia, family law disputes and settlements are dealt with by the Family Court and the Federal Magistrates' Court.

The system is court-based, rights-based and confrontational.

Yet there is a requirement under the existing system to try to mediate a settlement between parties to avoid an expensive and acrimonious trial.

But of course it doesn't always work.

The problem is that couples are fully aware, even during mediation, that if they don't like the way the negotiations are going they can ask to let a judge decide.

The other problem is that preparation for a court battle still has to continue during mediation, so the legal costs mount up even if it does not get to court.

And while solicitors and barristers are generally committed to resolving disputes before they reach court, there really is no incentive for them to do so. After all, if it goes to trial, they get paid more.

How collaborative law works

At the start of the collaborative law process, the lawyers and their clients sign a contract called a Collaboration Contract.

This is where the parties agree not to go to court and not to threaten court or legal action to coerce their former partner.

However, an essential part of the contract is the disqualification clause.

This states that the lawyers in the collaborative process are

dignity

disqualified from acting for either party if the negotiations fail or the matter proceeds to court.

Basically, it acts as an incentive for the lawyers to make it work, as well as for the disputing parties.

"The contract is the glue that sticks the process together," Ms Gale says.

"When you take the threat of litigation off the table it changes the dynamics of the negotiation."

"In a traditional negotiation, when the going gets tough, there's always a tendency to throw your papers down on the table and say, 'well, we'll see you in court'."

"In this process, when the going gets tough you can still do that, but it will force a client to start all over again with new lawyers."

"It's a time imposition, it's a huge financial cost and suddenly the client finds themselves back to square one."

"So in collaborative law people really stop and think about the best way to resolve an impasse."

"The disqualification clause assists in their creativity — they think about the best solution to try and deal with an issue that they are stuck on."

the presence of the client," Ms Gale says.

"There is no lawyer-to-lawyer work undertaken in the absence of the client."

The clients control how many meetings are held and how the negotiations are run. According to Ms Gale, the process so far has a 99 per cent success rate.

"It is an interest-based negotiation where the parties feel heard, where they have taken responsibility for their own outcome and where they are still supported by lawyers and other professionals," she says.

"It has great 'stickability'. The people involved don't feel that the outcome has been imposed on them by a third person or it has been negotiated by their lawyers behind closed doors outside of their control."

The process also encourages other non-legal professionals to become involved in the four-way meetings.

For example, where the parties become stuck in an emotional issue, they might agree to an independent psychologist to provide support and advice.

Or a financial point of difference might require an independent financial adviser to be called in.

The process also avoids people engaging in "positional bargaining". This is often — generally at the instigation of the adversarial lawyer — when someone overestimates their needs and interests and uses the threat of a court outcome to bully the other side into an agreement.

"The people involved don't feel that the outcome has been imposed on them by a third person."

Is it right for you?

If you and your former partner want to maintain an agreeable relationship beyond the divorce, then collaborative law is a good approach.

It avoids the financial and emotional cost of going to court, helps control the process and enables you to make your own decisions and maintain your privacy.

Collaborative law settlements are organised through a series of face-to-face discussions known as "four-way meetings".

These meetings are attended by both parties and their lawyers and, significantly, there is no parallel litigation or preparation for litigation running at the same time. So it can take some of the heat out of the battle.

A settlement — whether over custody, finances or who will provide a home for the family dog — is thrashed out during the meetings.

This effectively wipes out the expensive pre-negotiation arm-bargy such as legal letters, telephone calls and lawyer-only conferences that quickly ratchet up the legal bills.

"All the negotiations are done in

Not for everyone

But collaborative law is not for everyone.

If you are out for revenge, then forget it. It won't work.

If you are in a high-conflict situation and feel extreme hostility towards your former partner, it is similarly going to be pointless.

It doesn't work if you have poor communication skills, are involved in family violence, or have experienced extreme power imbalances within the relationship.

There are 55 registered Collaborative Law lawyers in Victoria but for it to work the former partner also has to use a registered collaborative lawyer.

For more information: www.collaborativelaw.am.au

the emotion

very good at focusing on the issues, not the emotion," she said.

"That helped you to detach from the emotional side of it and helped you stop and think without just going for the throat."

"The process gives you the opportunity to reflect. During the whole process I had time to think, 'Am I being fair?', 'Am I being honest with myself?', 'Can I look at myself in the mirror?'. And I think that was true for both of us."

"That said, the meetings were still quite traumatic."

"But while the collaborative lawyers were sympathetic on a human level, they kept us moving forward towards a resolution on a practical level. They kept us on track and on target."

"It could have gotten very acrimonious. To the credit of his lawyer and to the credit of my lawyer, it didn't."

— Katherine Towers



YOUR MONEY DEPOSIT WATCH

TERM DEPOSITS	3 months		1 year		2 years		3 years	
	\$2000	\$10,000	\$2000	\$10,000	\$2000	\$10,000	\$2000	\$10,000
IAMP	3.80	3.80	3.35	3.35	3.55	3.55	2.60	2.60
ANZ	2.50	2.50	3.25	3.25	3.25	3.25	3.25	3.25
Arab Bank	0.55	2.80	0.30	2.80	0.30	2.80	0.30	5.20
Bank of Queensland	1.00	2.00	1.55	4.00	1.25	3.00	1.25	3.00
Bankwest	4.01	4.01	3.61	3.61	4.30	4.30	5.10	5.10
Bendigo Bank	0.50	4.00	1.25	3.50	1.50	4.30		
Chilbank	1.27	1.27	1.63	1.63	1.92	1.92		
Commonwealth Bank	1.50	1.50	1.50	1.50	4.00	4.00	5.00	5.00
CUA	3.25	4.25	3.45	4.25	3.45	4.25	3.80	4.60
HSBC	2.26	2.26	2.13	2.13	2.09	2.09	2.20	2.20
IMB	1.75	3.80	2.00	3.80				
mecu	2.50	3.50	1.00	3.50	1.00	4.10		
NAB	3.00	3.00	3.40	3.40	4.25	4.25		
Rabobank	2.60	2.60	2.85	2.85	3.80	3.80	4.80	4.80
RegionalOne Credit Union	0.25	2.75	2.50	2.50	3.25	3.25		
St. George Bank	1.00	1.00	3.00	3.50	3.20	3.70	4.25	4.75
Suncorp	3.75	3.75	4.50	4.50	1.10	3.10	3.70	4.50
Transcom Credit Union	2.00	3.00	2.00	2.75	2.00	2.75		
Victoria Teachers Credit Union	3.50	3.50	3.10	3.10	3.10	3.10		
Westpac Banking Corporation			3.70	3.50		3.50		4.75

CASH MANAGEMENT ACCOUNT	Product name	\$10,000		\$50,000		\$100,000	
		Rate	Rate	Rate	Rate		
ComSec	Investment Account (until 30/6/09)	4.25	4.25	4.25	4.25		
AMP	eASYCash Management	3.75	3.75	3.75	3.75		
Police Department Credit Union	Market Linked	3.70	3.70	3.70	3.70		
NSW Teachers Credit Union	Eziest Cash Management Account	3.55	3.55	3.55	3.55		
NSW Teachers Credit Union	Cash Management Account	3.50	3.50	3.50	3.50		
Agard	CASH Connect (until 31 May)	3.35	3.35	3.35	3.35		
Comtax Credit Union	Maxi-Areas Cash Management Account (\$10)	3.25	3.25	3.25	3.25		
Macquarie	Macquarie Cash XL	3.15	3.15	3.15	3.15		
Victoria Teachers Credit Union	Cash Management	2.60	2.80	3.00	3.00		
Adelaide Bank	Adelaide Cash Management Trust	2.50	2.50	2.50	2.50		
HSBC	Premier Cash Management Account	2.25	2.25	2.25	2.25		
Big Sky Credit Union	Cash Management	2.05	2.05	2.55	2.55		
ANZ	ANZ V2 PLUS	2.00	2.00	2.00	2.00		
Bankstown City Credit Union	MoneyMax Online Plus	2.00	2.00	2.50	2.50		
Maroochatchoo Credit Union	Screen Saver Cash Management Account	2.00	2.00	2.50	2.75		

ONLINE SAVINGS	Product name	Rate	Rate	Deposit	Withdraw	Direct	Direct	SPi
IFCCS Credit Union	Online Saver Account	4.30	4.30	No	No	No	No	Yes
Members Equity Bank	ME Online Savings Account	4.25	4.25	No	No	No	No	No
Rabobank	Rabobank Savings Account	4.00	4.00	No	No	Yes	No	No
ANZ	ANZ SmartSaver Account	4.00	4.00	No	No	No	No	No
one direct	high interest saver	4.00	4.00	No	No	Yes	No	No
Queensland Professional CU	net-saver	4.00	4.00	Yes	No	Yes	No	No
Arab Bank	Online Savings Account	3.85	3.85	Yes	No	Yes	Yes	Yes
ANZ	Online Saver	3.75	3.75	No	No	Yes	No	Yes
Bank of Cyprus	Miles Account	3.75	3.75	Yes	No	Yes	Yes	Yes
Elders Rural Bank	ERB Online Savings	3.75	3.75	Yes	No	Yes	Yes	Yes
Select Credit Union	SelectDIRECT	0.25	3.75	No	No	Yes	No	Yes
Gateway Credit Union	eMax Saver	3.50	3.50	Yes	No	Yes	Yes	Yes
ING DIRECT	Savings Maximizer	3.50	3.50	Yes	No	Yes	No	Yes
Suncorp	eOptions (with flexiRate option)	3.50	3.50	Yes	No	Yes	Yes	Yes
Victoria Teachers Credit Union	Online Saver Account	3.50	3.50	Yes	No	No	No	Yes

YOUR MONEY BORROWING WATCH

MORTGAGES	Basic rate	Intro rate	Variable rate	Monthly repay (\$100,000)	Fixed rates			Home Equity Rate	Total fees
					1 yr	2 yr	3 yr		
MyRate	5.03	\$285.34	4.83	5.53	6.03	6.58	5.50		
one direct	5.04	\$286.92	5.15	5.69	6.09	6.70	5.23	\$310	
MyLexus MyWay	5.05	\$288.09	5.15	5.70	6.15	7.15	5.60	\$0-\$95	
ING DIRECT	5.09	\$289.85	5.39	5.39	5.89	6.69	5.69	\$20-\$710	
QuickDirect	5.10	\$290.43	4.85	5.50	6.05	6.70			
Morgan Brooks DIRECT	3.45v	5.23	\$298.07	5.75	6.47	6.82		\$700-\$200	
Homesave Ltd	5.29	\$301.81	5.63	6.13	6.55	7.09	5.34	\$85-\$980	
Heritage Building Society	4.82	5.30	\$302.20	5.75	5.79	5.99	6.29	\$37-\$800	
Members Equity Bank	5.39	\$307.54	5.85	6.15	6.75				
BMC Mortgage Corp	5.40	\$308.13	5.30	6.55	7.00	7.60	5.65	\$650	
mecu	5.09	5.45	\$311.11	5.49	5.49	5.79	6.55	\$595	
HomeSide Lending	5.33	4.79f	5.47	\$312.30	4.99	5.19	5.44	6.29	\$395-\$300,000
Nationwide Mortgage	4.57v	5.50	\$314.09	5.84	6.56	6.91	5.60	\$710	
CUA	5.19	4.99v	5.52	\$315.28	4.75	5.39	6.09	6.58	\$77-\$795
Aussie	5.55	\$317.08	5.59	5.84	5.99	6.49	5.44	\$600-\$75	
Victoria Teachers Credit Union	5.07	5.57	\$318.27	5.82	6.19	6.39	5.82	\$600	
RAMS Home Loans	4.99	4.59v	5.59	\$319.47	4.99	5.29	5.79	6.49	\$59-\$845
IMB	5.00	4.80v	5.60	\$320.07	5.20	5.49	5.74	6.29	\$70-\$748
RESI Mortgage Corporation	4.57v	6.62	\$321.27	5.95	6.67	7.02	5.69	\$0-\$533	
Commonwealth Bank	5.13	4.61v	5.64	\$322.48	5.39	5.79	6.19	6.84	\$74-\$600
Bankwest	5.58	4.75v	5.70	\$326.09	5.39	5.79	6.19	6.84	\$58-\$950
FCCS Credit Union	5.45	5.70	\$326.09	5.99	5.99	6.01	6.40	\$755-\$90	
Transcom Credit Union	5.70	\$326.09						\$920	
Intech Credit Union Limited	5.72	\$327.29						5.98 \$875-\$1,035	
NAB	5.24	4.65v	5.74	\$328.50	5.09	5.29	5.49	6.29	\$22-\$600
Newcastle Permanent	5.16	4.80v	5.78	\$330.82	4.69	4.94	5.09	5.94	\$76
St George Bank	5.07	4.66v	5.79	\$331.53	5.44	5.44	5.34	5.89	\$100-\$800
Suncorp	5.22	5.79f	5.80	\$332.13	5.79	5.99	6.39	6.99	\$50-\$600
ANZ	5.11	5.81	\$332.74	5.99	5.99	6.19	6.44	\$50-\$600	
Westpac Banking Corporation	5.11	5.81	\$332.74	5.39	5.49	5.79	6.39	\$56-\$600	

CREDIT CARDS	Card name	Card type	Interest rate	Annual fee	Free Days
Community First Credit Union	Visa Credit Card	VISA	10.50	30.00	55
SCU Low Rate Visa Credit Card	Visa	10.64	30.00	55	
Bankwest	Bankwest Lite MasterCard	Mastercard	10.75	59.00	55
BCU Classic Visa	Visa	10.80	49.00	25	
Hunter United Credit Union	Hunter United Visa Credit Card	VISA	10.99	49.00	55
Members Equity Bank	Members Equity MasterCard	Mastercard	10.99	39.00	44
NAB	NAB Low Rate Visa Card	VISA	10.99	49.00	55
St. George Bank	St. George Vertigo MasterCard	Mastercard	10.99	59.00	55
Heritage Building Society	Heritage Visa Classic No Frills	VISA	11.30		
Aussie	Aussie MasterCard	Mastercard	11.49	49.00	55
Intech Credit Union Limited	Intech Credit Union Titanium 55	VISA	11.55	36.00	55
Big Sky Credit Union	Big Sky Low Rate Credit Card	VISA	11.70		45
Commonwealth Bank	Low Rate Credit Card	Mastercard	11.74	45.00	55
Westpac	Low Rate	VISA	11.74	45.00	55

Source: infochoice.com.au Rates current as of 24/4/09

Money and Finance

ACCEPTABLE FUNDS TO 110%

- Residential/commercial
- Line fit and non-factor items
- Construction/owner build
- Self-storage/warehouse
- Reverse mortgages
- Private funds 1st/2nd/3rd/4th
- Trade finance/retail
- Short term and bridging funds
- Leasing MV and equipment
- Business equipment/financial loans
- Bad debt/investment/overseas
- Professional care services
- www.finance.com.au
- (T.A.P.) One Call 03 9521