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WIN-WIN DIVORCE BY JORYN JENKINS

GOALS AND INTERESTS ©

When the collaborative team members meet with the clients for the first time, the neutral facilitator begins by asking the participants to describe their goals, what they would like to accomplish in their divorce. Then she explains and emphasizes the importance of understanding the difference between a position and a goal or an interest. An example of a position is, “I want the house,” while the actual goals or interests are, “I want the kids to be near their friends; I want them in the best school system; I need a house that has room for my office in it.” Another example of a position is “I want permanent alimony,” while the true goal or interest is, “I want financial stability.”

A position is a specific demand. An interest is the reason at the heart of the position taken. Increased stress often masks the true motives that influence people to take the positions that they do. The interest is the underlying concern or need, more general than a position, and therefore open to interpretation. Interest-based negotiation is a collaborative method which encourages the clients to understand where the other spouse is “coming from.”

Position-based negotiation is an adversarial approach that considers only one side, “what I want.” It limits each person to considering only his or her wants and needs, and restricts the negotiation process like blinders inhibit the eyesight of a horse.

Focusing on positions, rather than on interests, hampers settlement options. A collaborative team focuses the participants on achieving their goals, rather than on demanding their positions. By helping each person define his or her goals, the team can generate multiple settlement options to accomplish each one. Articulating goals expands the bargaining parameters and enables spouses to understand that there is more than one way to resolve their divorce issues. By prioritizing goals, the team can work towards achieving each person’s most important objectives and can then agree to compromise on less important ones.

Also, couples who spend time identifying their big-picture goals at the outset will be likely to see that they share many common interests and concerns, which will play an important role in achieving the best possible outcome for both of them.

Although people undergoing a divorce are, by definition, in conflict, by focusing on interests rather than on positions, they are able to negotiate reasonably, without using threats, intimidation, or ultimatums. If one of them insists on a specific outcome, she is taking a position, rather than negotiating an interest. If the other person takes the opposite position, which they almost always do, the participants inevitably deadlock. However, if they discuss each other’s fundamental interests, they are likely to uncover different outcomes. They will identify goals and



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brainstorm several options to achieve them, rather than adhering to a single choice that satisfies only one position.

Consider the many layers of an onion. Positions are the outer skin and the superficial layers close to the outer skin. They are shallow and not as connected to the core because of their obvious proximity to the surface. They are simply too accessible to be useful. Like the onion, the strong and real flavor of a party's interests is found deep, many layers below the surface, closer to the heart. By actively listening to the participants, asking questions, and reframing their comments, the facilitator peels the onion, coming to the heart of the matter and their core interests, rather than their superficial positions.

Once goals have been defined, the collaborative professionals will remind the participating couple of these routinely, throughout the process. Each full team meeting will begin by reviewing them. Participants will each be asked to focus on the other's goals. When one person gets stuck on a position, or when the negotiations are not proceeding as effectively as they should, the team will remind the participants' of their goals and will brainstorm options to achieve those goals.

By negotiating interests rather than positions, couples are more likely to reach a mutually satisfying settlement agreement that they can and will abide by going forward.

Contact Open Palm Law now. We can help you resolve your disputes.