



THE NEW HAMPSHIRE COLLABORATIVE DIVORCE PROCESS ROADMAP WITH PRACTICE TIPS

Careful preparation and good communication will facilitate and shorten the process, save professional fees, and help both parties achieve a satisfactory outcome. We have developed this Roadmap to assist you, the parties to a divorce, to achieve your goals efficiently and effectively, and to let you know where you are in the process at any given time.

The precise course of your particular case will vary depending upon several factors, including your individual needs, the complexity of your financial situation, whether you have children, and if so, the needs of your children. This Roadmap emphasizes the financial aspect of your divorce, but includes general references to creating a Parenting Plan.

Key Points of the Roadmap:

- Following this Roadmap will enhance the efficiency and effectiveness of the Collaborative process.
- Using the Coach and the Financial Professional throughout the process will result in earlier, more lasting settlements.

STATEMENT OF PRINCIPLES FOR DEVELOPMENT OF A FINANCIAL PLAN

We agree in good faith to create a fair and equitable Financial Plan. We pledge to keep an open mind, avoid preconceptions, be creative and flexible, and focus on interests instead of taking positions. In order to advance each party's [and the children's] interests we will:

1. Take personal responsibility for maximizing our financial potentials, and work to the extent that we reasonably can.
2. Acknowledge each spouse's contributions to the marriage [and to raising the children].
3. Respect each other's [as well as our children's] authentic needs and dignity, considering our lifestyle during the marriage, and with regard for the financial realities associated with operating two households.
4. Disclose fully and promptly financial records as required under the circumstances of the case, using Family Division Rule 1.25-A as a guide.

Below is a checklist, organized into stages, to help you follow this Roadmap.

Please note that various practice tips are included in the Roadmap. The Roadmap is available with and without the practice tips. These tips are geared to the professional team helping you with your case. Feel free to review these tips to help you understand more about the collaborative process you have chosen to settle the terms of your divorce.

Stage One: Signing on to the Process and Assembling the Team

- _____ 1.0 Clients meet and hire attorneys. Attorneys prepare and review the collaborative participation agreement and share it with clients. Attorneys provide clients with an overview of the collaborative process, discuss the risks and benefits, and contrast this process with other dispute resolution processes. Attorneys review Rule 1.25-A with clients and ask them to gather the documents; attorneys give clients Financial Affidavit forms to work on and discuss the requirement of full disclosure of financial documents and information. Attorneys manage expectations by discussing with their respective clients the role of the law and policies behind the law. Attorneys share New Hampshire alimony statute factors, child support factors, and property division factors with clients to open up possibilities for consideration.

PRACTICE TIP: This can be an anxious time for clients, who want to get started on their budgets. Clients often want to know “what alimony is going to be,” during their initial meetings with the lawyer. Attorneys need to help clients remain open-minded about financial settlement outcomes. Advise the client that both parties will need to be okay financially for the ultimate agreement to be mutually acceptable. As attorneys work with clients on their budgets, ask clients to be realistic so as not to underestimate or overestimate current and future expenses. If income is at all complex or irregular, perform your due diligence well before the client goes to the Financial Professional, so that the data will be correct. Help clients to prioritize what budget items are essential to well-being versus what are non-essential. Remind clients that, beyond taxes, “essential” as well as other “authentic” needs are often subjective and that the other party’s buy-in will be important to achieving a lasting settlement.

- _____ 1.1 Attorneys confer regarding assembling the team and create an understanding between them regarding the Roadmap and statement of principles, role of the law, laws that will applied, prospects for rehabilitation, retirement and lifestyle issues.
- _____ 1.2 Attorneys select Coach and Financial Professional and confer generally with each one about the case.
- _____ 1.3 The Coach is retained by the clients with an agreement that the attorneys have reviewed and approved. The attorneys ensure proper agreement between the Coach and clients, preserving confidentiality of communications and providing that the Coach may not be called as a witness or participate in any future litigation between the parties.

Stage Two: Information Gathering

- _____ 2.0 Clients have a three-way meeting with the Coach for two hours to determine the couple's dynamics and communication style. Coach explains that all relevant information will be shared with the team and that no secrets will be kept. Coach explains the role as a neutral facilitator and Coach. Coach assesses each party's style for coping with conflict, their capacity for doing so, and the way each party best processes information. Coach assesses each party's emotional state and at what pace they can reasonably be expected to proceed. Coach emphasizes the role's neutrality, that the Coach does not express his/her own values and opinions and gives no legal advice.

- _____ 2.1 Clients meet separately with the Coach for one hour each to determine hot button issues and how best to deal with them.

- _____ 2.2 Coach de-briefs attorneys on couple's dynamics and areas of concern; an agenda for the first group meeting is prepared by the team and shared with the clients.

- _____ 2.3 Clients, attorneys and the Coach have their first group meeting to review the statement of principles and assign homework to the clients. The following is normally accomplished at this meeting:
 - a. Review the Statement of Principles.
 - b. Discuss the Roadmap and reasons behind the Roadmap.
 - c. Finalize plans to retain the Financial Professional.
 - d. Review and sign the Participation Agreement.
 - e. Discuss the concept of the "marital estate," and "valuation date" and any legal principles that are relevant to the case.
 - f. Discuss the cost of the collaborative process and how the professionals will be paid, including whether one party's process may be more expensive than the other's.
 - g. Address any urgent needs.

Assigned homework often asks the clients to:

- a. Consider how the Statement of Principles relates to their family circumstances.
- b. Reflect on how they and the other person may have contributed to the marriage over time, to include both financial and other contributions.
- c. Consider their personal values and beliefs surrounding their future financial lives.

- d. Imagine their own and their spouse’s financial futures.
- e. Continue to gather asset values and statements. Lawyers determine if formal appraisals are needed and costs of same.
- f. Consider how to maximize their financial potentials.
- g. Work on their [and the children’s] respective budgets.
- h. Consider family dynamics, co-parenting concerns, and emotional “hot buttons.”
- i. Consider productive communication strategies.

PRACTICE TIP: The first meeting should be two hours at most and should leave time for a debriefing session among the professionals following the meeting. Keeping minutes and preparing an agenda is critical for all meetings. It is also helpful to keep a list of communication expectations in front of the clients and the team at all meetings; this list can be done on a white board or on a separate sheet of paper, and should be referenced as needed throughout the case.

- _____ 2.4 Attorneys confer generally with the Financial Professional regarding the case if they have not done so at 1.2.
- _____ 2.5 Clients retain the Financial Professional.
- _____ 2.6 All professionals have a team meeting (without clients) by phone or in person to do the following:
 - a. Lawyers provide further case background to the other professionals.
 - b. Lawyers further explain the Roadmap, Statement of Principles, Role of Law, Presumptions, Range of Outcomes, and the statutory factors relating to Alimony, Property Division, and Child Support.
 - c. Team defines the roles of team members and the importance of neutrality for the Coach and the Financial Professional.
 - d. Team establishes feedback expectations and methods of communication regarding pre-briefs and de-briefs before and after meetings.
 - e. Team discusses payment of their fees.
 - f. Team accepts the Roadmap as their guide for the case.
- _____ 2.7 Clients complete Financial Affidavits with their attorneys, exchange them, and provide them to Financial Professional. The other 1.25-A discovery is exchanged between attorneys and relevant documents are provided to the Financial Professional.

PRACTICE TIP: The Financial Professional may request additional records from clients if deemed advisable by him/her and the attorneys. In the first instance the attorneys should decide how to gather the Rule 1.25-A documents most efficiently to avoid duplication of efforts.

PRACTICE TIP: When it appears that a QDRO, COAP or other documents to divide retirement assets will be needed, the attorneys should consider obtaining advice from a retirement division specialist. The specialist can be used to explain options and issues and draft the division documents. Either the attorneys or the retained specialist should obtain templates from the Plan Administrator and review available retirement plan summaries to better understand the issues to be negotiated (e.g., separate versus shared interest, survivor benefits, and unique aspects of government retirement plans). With early attention to the retirement division, the attorneys will be better prepared to file the documents in a timely manner. If it is necessary to add the date of divorce to the division documents this addition can be made to the signed documents after receipt of the Decree from the Court and the QDROs, etc. can be promptly filed for approval. Frontloading work on the division documents reduces the risks of potential adverse consequences such as the death of a party or disputes over the language of the division documents after the Final Order is issued.

PRACTICE TIP: After each group meeting with the clients, build in thirty minutes or so to de-brief the professional team. It is helpful to discuss the things that went well, and how to do things differently next time to improve the process.

- _____ 2.8 Clients meet with the Financial Professional and accomplish the following work:
- a. Financial Professional describes his/her role and how he/she functions as a neutral.
 - b. Review the parties' Financial Affidavits and other discovery documents. The Financial Professional requests any needed clarifications and answers to any questions he/she may have and, if the parties still reside together, attempts to reconcile differing expense figures and any questions about income figures.
 - c. If parties are now separated, reconstruct their pre-separation expenses, if appropriate to the case.
 - d. Prepare a list of assets and debts and determine what information or appraisals and assessments may be missing.

PRACTICE TIP: Before this first meeting with the parties, the Financial Professional should be briefed by the Coach regarding the parties' communication dynamics, triggers and hot button issues. The coach may need to be present during this meeting if the dynamics between the parties are particularly challenging.

_____ 2.9 Financial Professional de-briefs professional team following meeting(s) with clients and discusses Financial Professional's questions and suggestions about the Financial Affidavits prepared by the attorneys, so they can be appropriately revised or supplemented.

_____ 2.10 The Financial Professional provides attorneys with drafts of the budget(s), the parties' incomes and their assets and debts. Attorneys share these with clients and discuss with them and the other attorney the revisions and supplementations to the Financial Affidavits which were made during the process of the parties' work with the Financial Professional.

Stage Three: Identifying Interests and Concerns for the Future

Both of you want an outcome that meets your most important concerns; in this stage, we take the time to further explore your values, your concerns, your goals, and your priorities for the future, so that we will be better able to find a mutually acceptable resolution to your divorce.

_____ 3.0 Attorneys review their clients' homework assigned in step 2.3 and confer separately with their clients to prepare for a three-way meeting with Coach (without the attorneys) to explore their values, concerns and priorities. Attorneys also explain the law and the underlying policies in an effort to re-orient clients so they may engage more productively in their three-way meeting.

PRACTICE TIP: Attorneys should assure their clients that, although the focus is now on the future and what that might look like, no settlement decisions will be made until later. Clients need not fear engaging in open explorations with the Coach and their spouse at this stage in the process.

_____ 3.1 Clients meet with the Coach together to discuss their homework from the first meeting at stage 2.3 and work on identifying:

- a. Shared values and principles concerning finances [and parenting].
- b. Their individual and their spouse's authentic needs, goals and concerns.
- c. How they can maximize their financial potentials.
- d. [Parenting issues and arrangements, including the answers to parenting questionnaires provided by the coach.]

PRACTICE TIP: The use of “curious [and neutral] questions” is recommended, without the presumption of solutions, in order to ensure that clients clearly experience the neutrality of the Coach. This is only an information-gathering stage, and solutions will evolve during the process set forth in the Roadmap, especially in stage four. Questions may concern the clients’ individual and shared visions and goals about where to live, the type of housing, retirement prospects and concerns, health insurance, hobbies, recreational activities, and the like which are considered important to the parties’ quality of life, and jobs or training they may want to pursue. If rehabilitation is feasible, the Coach should encourage the party to research possibilities for training and education, including the duration and cost thereof. This is important work, because the answers to these questions will inform the clients’ potential for consensus on each other’s projected budgets at the negotiation stage of the process.

- _____ 3.2 Coach debriefs and informs the professional team regarding areas of understanding and areas of discord. This can be done via a brief, factual, and informative email to the rest of the team.
- _____ 3.3 Clients meet with their attorneys to re-group on financial [and parenting] issues.
- _____ 3.4 Professional team teleconferences to discuss:
 - a. The parties’ progress towards reaching consensus on financial values and philosophies.
 - b. [The parties’ progress towards reaching consensus on parenting issues].
 - c. If the parties are in alignment regarding shared big-picture values and are ready to work on projected budgets and incomes, then proceed to Step 3.6.
 - d. If the parties have substantial differences in their values/beliefs regarding their future financial lives and/or parenting, then discuss how best to encourage parties’ evolution towards consensus, including further meetings with either or both neutrals and/or the attorneys.

PRACTICE TIP: The Coach can be particularly helpful in assisting the clients to move through the emotions often associated with difficult financial and parenting conflicts. These emotional impasses can cause the settlement to stall unless they are managed with the professional expertise provided by the Coach.

- _____ 3.5 Clients meet with their attorneys to review values and shared financial visions to develop realistic projected budgets for the next 6-12 months. The attorneys work with their clients to ensure the projected expenses are reasonable to meet their expected essential and authentic needs with consideration of their lifestyle during the marriage, and considering the parties’ shared ideas and visions for their lifestyles going forward.

PRACTICE TIP: When preparing budgets, sometimes the notion of discretionary versus non-discretionary expenses is confusing. Lawyers often have different definitions of these two terms. It is helpful to understand that from the standpoint of the financial professional’s divorce planning software, non-discretionary expenses only include taxes.

For clarity we recommend that non-discretionary expenses be named “essential” expenses, as defined by the parties – both for themselves and for the other [and for the children]. If agreement can be reached on what is “essential,” the next inquiry regards how much is “required” to be allocated to that expense. In some cases, the parties will need to prioritize their needs if they lack the income to cover the essential expenses now or in the near future. In other cases, they may just be looking at each other’s authentic, but otherwise non-essential expenses, if there is enough money to fund both households, but decisions need to be made regarding creating a lifestyle balance.

_____ 3.6 Clients meet with the Financial Professional to work on anticipated future incomes (including during and after period of rehabilitation, if applicable) and projected budgets, including for a period of years, if needed and feasible. This process continues until the clients have final numbers.

PRACTICE TIP: Especially where alimony and child support are concerned, the clients must reach consensus on each other’s projected budgets in order to have a productive meeting to brainstorm settlement options. The discussions over projected budgets need to remain non-adversarial and can occur via client meetings with just the neutral(s) or include the lawyers, depending on the dynamics between the parties. In any event, the numbers need to be finalized before alimony negotiations can begin in earnest, and it is recommended that this work be done behind the scenes, rather than in a six-way meeting.

PRACTICE TIP: The financial neutral’s process works best if the financial data are accurate and if current budgets are complete. In other words all the assets and liabilities have been accounted for, valuation dates have been chosen, incomes and expenses are correct and nothing else needs to be added.

_____ 3.7 The Financial Professional provides reports of projected incomes and budgets to the attorneys who share and discuss with clients.

_____ 3.8 If the Coach and parties have worked on parenting issues , the Coach provides the information to the attorneys for discussions with their clients to prepare for the six-way meeting.

_____ 3.9 Attorneys confer to discuss whether the clients are sufficiently aligned and are prepared to brainstorm towards making decisions. If so, a six-way meeting is scheduled. If not, they plan further meetings amongst clients and one or more professionals, as deemed advisable.

- _____ 3.10 When the clients are sufficiently aligned and are prepared to brainstorm solutions, a six-way meeting is scheduled. Client and attorney confer to prepare for the six-way meeting. Clients should ascertain their goals and interests for the future in preparation for the negotiation. Attorneys should continue to help their clients understand the difference between positions and interests, and help them develop interests that are broad enough to generate more than one option in the resolution process.

Stage Four: Six-Way Meeting to Generate Options and Create Financial Plan

Having worked with the Coach and Financial Professional on parenting and financial issues, we are ready to meet to develop your Financial Plan and Parenting Plan (if more work is needed regarding parenting issues). These plans will be generated through collaborative brainstorming of options to see how these options meet your goals. To do this, we need to have an orderly exchange of ideas and proposals, and continue the conversation until we find a result that both of you will accept.

- _____ 4.0 Professional Team pre-briefs before the six-way meeting and circulates the agenda to the clients.

PRACTICE TIP: This pre-brief is critical because the team needs to be coordinated regarding the agenda, the applicable law, the issues, hot buttons, areas of continued conflict, the collaborative process, and dynamics of both the clients and the team.

- _____ 4.1 Six-way meeting:

PRACTICE TIP: For the six-way meeting, having the Coach facilitate the meeting is recommended. The facilitator should, with the collaboration of all, write goals, interests, options and agreements on the white board. The six-way meeting is not the best time to be arguing about values or about projected expenses. There needs to have been a foundation of substantial alignment in values, as established by the prior stages in this process, for a six-way meeting to be most productive. In fact, unless the parties have reached a substantial alignment, a six-way meeting is unlikely to be productive or a prudent use of resources.

- a. Reaffirm and clarify shared visions concerning children and finances.
- b. [Work on the Parenting Plan].
- c. Discuss financial reports.
- d. List goals and interests and brainstorm options for the parties' Financial Plan; use the financial software to display the different options for the division of assets and debts and to display cash flow scenarios.

- e. Negotiate any terms and provisions of QDROs, COAPS and IRA division documents not already agreed upon.
- f. Decide which attorney will draft which documents for review and create a timetable for this task.

PRACTICE TIP: The Financial Professional should facilitate the discussion on financial issues. Before the six-way meeting is held, financial data should be correct, valuation dates and amounts certain, projected budgets approved by the parties and they should have worked through their emotions enough to be able to create reasonable and mutually-acceptable solutions.

PRACTICE TIP: The parties' shared financial vision should be memorialized either in the minutes or in a separate document for everyone to see and keep in front of them and which can be used in subsequent meetings. If additional meetings are needed, it is useful to start the meetings by reviewing and reaffirming the shared visions.

PRACTICE TIP: By this stage of the process, there should be a draft QDRO, COAP or IRA division documents conforming to the Plan Administrator's approved template. Negotiations should be finalized on issues such as survivor benefits and the actual terms of the QDRO, COAP or IRA division (whether, for example, the Hodgins formula will be used and the percentages or dollar amounts of the respective awards of defined contribution plans). If not already finalized, the retirement plan division documents should be completed to reflect the parties' agreement.

- _____ 4.2 De-brief for professional team immediately following meeting.
- _____ 4.3 After the six-way meeting and any other meetings where there are financial negotiations, the FP checks the financial data being relied upon to ensure that it is accurate.
- _____ 4.4 Optional Meetings: If agreement is not reached at stage 4.1, other meetings should be scheduled in whatever configuration is deemed advisable by the parties and the professional team.

Stage Five: Finalizing and Implementing the Divorce Agreement

To complete the divorce process, decisions may need to be made about the timing and the implementation of the agreement. In order to complete our work, appropriate documents need to be signed by both parties.

- _____ 5.1 Documents are drawn up by the attorneys and reviewed by all participants before the signing meeting.

- _____ 5.2 Attorneys review the drafts first between the two of them and then review the drafts with the clients, providing adequate time for review prior to the signing meeting.

- _____ 5.2 Attorneys and clients meet to revise as needed and sign the Stipulated Final Decree, [Parenting Plan and Uniform Support Order], and discuss any ancillary documents (deeds, titles, QDROs, petition, personal data sheet, child support guidelines worksheet, etc.) and other recommendations from the team. All professionals should be paid in full before the signing occurs.

- _____ 5.3 The divorce, and if the company plan allows, the retirement division documents, are filed with the Court. If the Plan Administrator requires a decree of divorce before approval of the retirement division documents, the documents should be filed promptly after issuance of the divorce decree. As stated above in the Practice Tip following Step 2.7, if it is necessary to include the date of divorce in the retirement division documents, they should be signed when the other divorce documents are signed.

- _____ 5.4 After the divorce is approved by the Court, clients execute any supplemental documents to complete the legal requirements (house deed, titles, QDRO's mailed to Plan Administrator, etc.).