



Chris and Misty Powell of Arlington opened Little Giggles, a children's resale shop, after Chris was laid off from a construction job for the seventh time. **29A**



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## Ending the marriage, not the business

Divorce is often the kiss of death for a business.

"Sit down with any experienced family law trial lawyer and you'll hear war stories of courtroom shootouts where warring families ended up destroying the very wealth they were trying to divide," says Kevin Fuller, a partner with Koons, Fuller, Vanden Eykel & Robertson PC.

"Air your assets in open court and, if your spouse doesn't get you, your competitors will. They'll pick every bit of meat off the business bone."

But there's a smarter way, he says. Embattled couples can settle marital disputes out of court through collaborative law and save the business from collateral damage.

"It's about getting the business through the divorce without destroying it or the owner," says Fuller, who is also president of

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## Can this business be saved?

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the Collaborative Law Institute of Texas. "It's a benefit to the spouse because you don't kill the goose that's laying the golden eggs — even if you're mad at the goose."

Hard economic times call for creative solutions, Fuller says. He's arranged settlements where the spouse — typically the wife — gets to share in any



**KEVIN FULLER**



**MIKE McCURLEY**

business recovery down the road.

He's also worked out agreements where the owner keeps the business intact while the spouse gets cash, stocks and bonds, and perhaps an alimony package. "The trade-off is: security now for the wife vs.

potential upside or disaster for the business owner. People trade for what they most need or want."

Collaborative divorces involve written legal rules. Both parties enter an agreement not to go to court while going through the process, which can be lengthy. But either can opt out at any time. Their attorneys can't represent them if they wind up in court.

Most cases involve a neutral financial professional, and both sides agree to fully disclose all pertinent information.

"It's the golden rule of disclosure," says Fuller, former chairman of the Dallas Bar Association's family law council. "That means: 'If I were on the other side, would this information have a material effect on my decision to settle or not?' This is far different from



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**Prominent divorce lawyer** Ike Vanden Eykel of Koons, Fuller, Vanden Eykel & Robertson PC says the high-end divorce business is booming.

### Divorce, collaborative-style

Divorcing couples and their lawyers sign an agreement with five key components:

**Settle** if possible without going to court.

**Disclose** all pertinent information.

**Focus** on solving problems, not assessing blame.

**Use neutral experts** jointly selected by the husband and wife when valuation, tax or accounting experts are needed or for issues concerning the children.

**Lawyers** cannot represent the parties in a courthouse battle if the process breaks down.

SOURCE: Kevin Fuller

litigation, where the game is often 'hide the ball.'"

### IPO salvaged

The information is kept strictly confidential. That's a biggie.

When large business deals are in the wind, even the hint of divorce can scotch the deal. Fuller had a recent case where a company's initial public offering could have been detonated if the wife's attorneys had deposed investment bankers, big investors and upper management in the company.

"By taking a collaborative approach, the IPO went through and both husband and wife profited millions they might have lost had the case been aggressively litigated," says Fuller, who represented the husband.

That businessman, bound by divorce confidentiality agreements not to publicly

disclose his name, says the process was long and arduous but worth it.

"It could have been devastating to the company," the ex-husband says. "It provided an opportunity to keep a private matter private. It could have derailed something much bigger than both of us."

### Durable deals

Both sides must have attorneys, who usually charge their typical hourly rates. Fuller charges \$450 an hour. But the fees lawyers charge are all for finding solutions, not stirring up litigation trouble.

In 2007, Fuller handled two particularly nasty high-net-worth divorce cases. "The fees my clients incurred in these two cases exceeded the fees incurred by my 42 collaborative clients combined through that date," he says.

The average estate in those

42 cases was \$5 million-plus. They took from a few months to a year and a half to settle, he says. "Those same cases at the courthouse can be two-, three-, four-year adventures."

Mike McCurley, a partner with McCurley Orsinger McCurley Nelson & Downing LLP, says he's seen some fall-off in his collaborative cases because people worry that one spouse will opt out and they'll have to find new attorneys for the courtroom battle.

"That means you start over. Nobody wants to do that in this economy. We are seeing more people do cooperative law, which is a collaborative law approach without invoking the statute that kicks out the lawyers should the case not settle."

Fuller says 90 percent of his cases have gone from start to finish. And five of the six that didn't were settled without going to court.

But there's no doubt that this is a labor of un-love.

"People think it's magic and that everyone's going to be wonderfully nice to each other," he says with a scoff. "It's people getting a divorce, and it's not fun. It's people dividing up money that they don't want to divide up."

"But the idea is to create a durable deal in which people aren't snookered. You put all the cards on the table to come up with the best deal you can for everybody."