

DRAFT
FOR DISCUSSION ONLY

UNIFORM COLLABORATIVE LAW ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

January 2009 Draft

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ON UNIFORM STATE LAWS

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January 5, 2009

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UNIFORM COLLABORATIVE LAW ACT

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1 **UNIFORM COLLABORATIVE LAW ACT**

2 **SECTION 1. SHORT TITLE.** This [act] may be cited as the Uniform Collaborative
3 Law Act.

4 **SECTION 2. DEFINITIONS.** In this [act]:

5 (1) A “collaborative law process” means parties represented by collaborative lawyers
6 voluntarily enter into a collaborative law participation agreement to attempt to resolve a matter
7 without the intervention of a tribunal.

8 (2) “Collaborative law communication” means a statement, whether oral or in a record or
9 verbal or nonverbal, that:

10 (A) occurs between the time the parties enter into a collaborative law participation
11 agreement and the time when the parties have a reasonable belief that a collaborative law process
12 is terminated or is concluded by negotiated resolution of a matter; and

13 (B) is made for the purposes of conducting, participating in, continuing, or
14 reconvening a collaborative law process.

15 (3) “Collaborative law participation agreement” means an agreement by persons to
16 participate in a collaborative law process to attempt to resolve a matter.

17 (4) “Collaborative lawyer” means a lawyer identified in a collaborative law participation
18 agreement as engaged to represent a party in a collaborative law process and who is disqualified
19 from representing a party in the matter and substantially related matters under section 8 if the
20 collaborative law process terminates.

21 (5) “Law firm” means lawyers who practice together in a partnership, professional
22 corporation, sole proprietorship, limited liability corporation, or other association authorized to
23 practice law or lawyers employed in a legal services organization or the legal department of a

1 corporation or other organization.

2 (6) “Matter” means a dispute, transaction, claim, problem or issue for resolution as
3 described in a collaborative law participation agreement. The term includes a claim, issue, or
4 dispute in a proceeding.

5 (7) “Nonparty participant” means a person, other than a party and the party’s
6 collaborative lawyer, that participates in a collaborative law process.

7 (8) “Party” means a person that enters into a collaborative law participation agreement
8 and whose consent is necessary to resolve the matter.

9 (9) “Person” means an individual, corporation, business trust, estate, trust, partnership,
10 limited liability company, association, joint venture, public corporation, government or
11 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

12 (10) “Proceeding” means a judicial, administrative, arbitral, legislative or other
13 adjudicative process before a tribunal, including related pre-hearing and post-hearing motions,
14 conferences, and discovery.

15 (11) “Prospective party” means a person who discusses the possibility of entering into a
16 collaborative law participation agreement with a potential collaborative lawyer.

17 (12) “Record” means information that is inscribed on a tangible medium or that is stored
18 in an electronic or other medium and is retrievable in perceivable form.

19 (13) “Sign” means, with present intent to authenticate or adopt a record:

20 (A) to execute or adopt a tangible symbol; or

21 (B) to attach to or logically associate with the record an electronic symbol, sound
22 or process.

23 (14) “Substantially related” means involving the same transaction or occurrence, nucleus

1 of operative fact, claim, issue, or dispute as a matter.

2 (15) “Tribunal” means a court, an arbitrator, or a legislative body, administrative agency,
3 or other body acting in an adjudicative capacity in which a neutral official, after presentation of
4 evidence or legal argument, renders a binding decision directly affecting a party’s interests in a
5 matter.

6 **SECTION 3. COLLABORATIVE LAW PARTICIPATION AGREEMENT**
7 **REQUIREMENTS.**

8 (a) A collaborative law participation agreement must:

9 (1) be in a record;

10 (2) be signed by the parties;

11 (3) describe the nature and scope of a matter;

12 (4) state the parties’ intention to attempt to resolve the matter through a
13 collaborative law process;

14 (5) identify the collaborative lawyer engaged by each party to represent the party
15 in the collaborative law process; and

16 (6) contain a signed acknowledgment by each party’s collaborative lawyer
17 confirming the lawyer’s engagement.

18 (b) Parties to a collaborative law participation agreement:

19 (1) may agree to include additional provisions not inconsistent with the provisions
20 of this act; and

21 (2) may not agree to waive or vary the effect of the requirements of this act.

22 **SECTION 4. BEGINNING AND TERMINATING A COLLABORATIVE LAW**
23 **PROCESS.**

1 (a) A collaborative law process begins when parties sign a collaborative law participation
2 agreement.

3 (b) A party may unilaterally terminate a collaborative law process with or without cause.

4 (c) A collaborative law process terminates when all parties have a reasonable belief that
5 the process is over because:

6 (1) a party:

7 (A) terminates the process;

8 (B) begins a proceeding substantially related to the matter without the
9 agreement of all other parties;

10 (C) initiates a pleading, motion, order to show cause, request for a
11 conference with the tribunal, request that the proceeding be put on a tribunal's active calendar or
12 takes similar action in a pending proceeding substantially related to the matter without the
13 agreement of all other parties; or

14 (2) except as qualified by subsection (d), a party discharges a collaborative lawyer
15 or a collaborative lawyers withdraws from further representation of a party.

16 (d) Notwithstanding the discharge or withdrawal of a collaborative lawyer, a
17 collaborative law process continues without termination if within 30 days of the date written
18 notice of termination is received by the parties:

19 (1) the unrepresented party engages a successor collaborative lawyer;

20 (2) all parties consent to continuation of process by reaffirming the collaborative
21 law participation agreement in a signed record;

22 (3) the collaborative law participation agreement is amended to identify the
23 successor collaborative lawyer in a signed record; and

1 (4) the successor collaborative lawyer acknowledges the engagement in a signed
2 record.

3 (e) The collaborative lawyer for a party that terminates a collaborative law process or a
4 collaborative lawyer who withdraws from further representation of a party shall provide prompt
5 written notice of the termination of the process to all other parties and collaborative lawyers. The
6 notice need not specify a reason for terminating the process.

7 (f) All parties may agree that a party may initiate an appropriate procedure such as
8 commencing a proceeding or filing a motion in a pending proceeding to ask a tribunal to approve
9 an agreement or sign orders to effectuate an agreement that results from the process without
10 terminating the collaborative law process.

11 (g) A collaborative law participation agreement may provide additional methods of
12 terminating a collaborative law process.

13 **SECTION 5. COLLABORATIVE LAW PROCESS AND PROCEEDINGS**
14 **PENDING BEFORE A TRIBUNAL.**

15 (a) Parties to a proceeding pending before a tribunal may sign a collaborative law
16 participation agreement to resolve a matter substantially related to the proceeding.

17 (1) Parties and their collaborative lawyers must promptly file a notice of
18 collaborative law process with the tribunal after the collaborative law participation agreement is
19 signed.

20 (2) The filing of a notice of collaborative law process shall operate as a stay of the
21 proceeding.

22 (b) Parties and collaborative lawyers shall promptly file a written notice of termination
23 with the tribunal when a collaborative law process terminates.

1 (1) The stay of the proceeding created by subsection (a) (2) terminates when the
2 notice of termination of a collaborative law process is filed with the tribunal.

3 (2) The notice of termination shall not specify any reason for the termination.

4 (c) Notwithstanding the filing of a notice of collaborative law process, a tribunal may
5 require parties and collaborative lawyers to provide status reports on the proceeding.

6 (1) Except as required in subsection (2), a status report to a tribunal may not include
7 a report, assessment, evaluation, recommendation, finding, or other communication regarding a
8 collaborative law process.

9 (2) A status report to a tribunal may require parties and collaborative lawyers to
10 disclose:

11 (A) whether the collaborative law process occurred or has terminated,
12 whether an agreement was reached, and attendance;

13 (B) a collaborative law communication as permitted under Section 16
14 (exceptions to privilege); or

15 (C) a collaborative law communication evidencing abuse, neglect,
16 abandonment, or exploitation of an individual to a public agency responsible for protecting
17 individuals against such mistreatment.

18 (3) A communication made in violation of subsection (c)(1) may not be considered
19 by a tribunal.

20 (d) A tribunal shall not dismiss a pending proceeding in which a notice of a collaborative
21 law process is filed based on failure to prosecute or delay without providing parties and
22 collaborative lawyers appropriate notice and an opportunity to be heard.

23 **SECTION 6. COLLABORATIVE LAW PROCESS AND EMERGENCY**

1 **ORDERS.** Notwithstanding the stay of proceedings created by section 5(a) (2), a tribunal may
2 issue emergency orders to protect the health, safety, welfare or interests of a party or family or
3 household member as defined in [the state civil protection order statute].

4 **SECTION 7. COLLABORATIVE LAW PROCESS AND TRIBUNAL**

5 **APPROVAL OF AGREEMENTS.** If requested by all parties through appropriate procedure, a
6 tribunal may approve an agreement and sign orders to effectuate an agreement resulting from a
7 collaborative law process.

8 *Legislative Note: In states where judicial procedures for management of proceedings can be*
9 *prescribed only by court rule or administrative guideline and not by legislative act, the duties of*
10 *courts and other tribunals listed in sections 5-7 should be adopted by the appropriate measure.*
11

12 **SECTION 8. DISQUALIFICATION OF COLLABORATIVE LAWYER AND**
13 **LAWYERS IN COLLABORATIVE LAWYER’S LAW FIRM AFTER TERMINATION**
14 **OF COLLABORATIVE LAW PROCESS.**

15 (a) Except as otherwise provided in subsection (c), if a collaborative law process
16 terminates, a collaborative lawyer is disqualified from representing a party in the matter or any
17 substantially related matter and may not appear before a tribunal to represent a party in a
18 proceeding substantially related to the matter.

19 (b) A lawyer in a law firm with which the collaborative lawyer is associated shall not
20 knowingly represent a party in the matter or a substantially related matter and may not appear
21 before a tribunal to represent a party in a proceeding substantially related to the matter if the
22 collaborative lawyer is disqualified from doing so by subsection (a).

23 (c) Notwithstanding subsections (a) and (b), a collaborative lawyer or a lawyer in the
24 collaborative lawyer’s law firm may represent a party and appear before a tribunal for the
25 purpose of:

1 (1) if agreed to by all parties, using appropriate procedure such as commencing a
2 proceeding or filing a motion in a pending proceeding to ask a tribunal to approve an agreement
3 or sign orders to effectuate an agreement resulting from a collaborative law process; or

4 (2) seeking emergency orders to protect the health, safety, welfare or interests of a
5 party or family or household member as defined in [the state civil protection order statute] if
6 successor counsel is not immediately available to represent the threatened party. In that event,
7 the provisions of subsections (a) and (b) take effect when the party engages a successor lawyer or
8 reasonable measures are taken to adequately protect the health, safety, welfare or interests of a
9 party or family or household member.

10 **SECTION 9. COLLABORATIVE LAW PROCESS AND LOW INCOME**

11 **PARTIES.**

12 (a) This section is applicable to a collaborative law participation agreement where a party
13 has an annual income which does not exceed one hundred and twenty five percent (125%) of the
14 current Federal Poverty Guidelines amounts and the collaborative lawyer represents the party
15 without fee.

16 *Legislative Note: States should modify the above description of the scope of this section as*
17 *appropriate to include their own definition of low income clients who are eligible for free legal*
18 *representation by legal aid societies in civil matters.*

19
20 (b) The disqualification requirements of subsection 8 (a) are applicable to the
21 collaborative lawyer for a party described in subsection (a).

22 (c) Notwithstanding subsection 8 (b), after a collaborative law process terminates a
23 lawyer in a law firm with which the collaborative lawyer is associated may represent a party
24 described in subsection (a) in the matter or a substantially related matter and may appear before a
25 tribunal to represent a party in a proceeding substantially related to a matter if:

1 (1) the collaborative law participation agreement so provides; and

2 (2) the collaborative lawyer is isolated from any participation in the matter or
3 substantially related matters through the timely imposition of procedures within the law firm that
4 are reasonably adequate under the circumstances for the intended purpose.

5 **SECTION 10. COLLABORATIVE LAW PROCESS AND GOVERNMENT**
6 **ENTITIES AS PARTIES.**

7 (a) This section is applicable to a collaborative law participation agreement when one of
8 the parties is a government or governmental subdivision, agency, or instrumentality.

9 (b) The disqualification requirement of subsection 8 (a) is applicable to the collaborative
10 lawyer for a party described in subsection (a).

11 (c) Notwithstanding subsection 8 (b), after a collaborative law process terminates, a
12 lawyer in a law firm with which the collaborative lawyer is associated may represent a party
13 described in subsection (a) in the matter or a substantially related matter and may appear before a
14 tribunal to represent a party in a proceeding substantially related to a matter if:

15 (1) the collaborative law participation agreement so provides; and

16 (2) the collaborative lawyer is isolated from any participation in the matter or
17 substantially related matters through the timely imposition of procedures within the law firm that
18 are reasonably adequate under the circumstances for the intended purpose.

19 **SECTION 11. DISCLOSURE OF INFORMATION IN THE COLLABORATIVE**
20 **LAW PROCESS.** During a collaborative law process a party shall make timely, full, candid,
21 and informal disclosure of information reasonably related to the matter upon request of a party,
22 but without formal discovery, and shall promptly update information which has materially
23 changed.

1 **SECTION 12. REQUIRED DISCLOSURES CONCERNING COLLABORATIVE**
2 **LAW PROCESS.**

3 (a) Before a prospective party executes a collaborative law participation agreement, a
4 prospective collaborative lawyer shall:

5 (1) provide the prospective party with sufficient information to make an informed
6 decision about the material benefits and risks of a collaborative law process as compared to the
7 material benefits and risks of other reasonably available alternatives for resolving the matter such
8 as litigation, mediation, arbitration, or expert evaluation;

9 (2) advise the prospective party that:

10 (A) a party may not initiate a proceeding or seek tribunal intervention in a
11 pending proceeding substantially related to the matter until the collaborative law process
12 terminates except to seek an emergency order to protect the health, safety, welfare or interests of
13 a party or family or household member as defined in [the state civil protection order statute];

14 (B) any party has the right to unilaterally terminate a collaborative law
15 process with or without cause;

16 (C) if a collaborative law process terminates, a collaborative lawyer and
17 the lawyers in a collaborative lawyer's law firm are disqualified from further representation of a
18 party in the matter or substantially related matters and may not appear before a tribunal to
19 represent a party in a proceeding substantially related to the matter as described in section 8, and

20 (D) if appropriate for the prospective party, the exceptions to the
21 disqualification requirement allowing continued representation by a lawyer in the collaborative
22 lawyer's law firm described in sections 9 and 10.

23 (3) inquire about and discuss with the prospective party factors relevant to

1 whether a collaborative law process is appropriate for the prospective party's matter.

2 (b) A collaborative lawyer shall make reasonable efforts to determine whether a
3 prospective party has a history of domestic violence with another prospective party before a
4 prospective party signs a collaborative law participation agreement and shall continue throughout
5 the collaborative law process to assess for the presence of domestic violence.

6 (c) If a collaborative lawyer reasonably believes that a prospective party or party has a
7 history of domestic violence with another party or prospective party, the collaborative lawyer
8 shall not begin or continue a collaborative law process unless:

9 (1) the prospective party or party requests beginning or continuing a collaborative
10 law process;

11 (2) the lawyer reasonably believes that the prospective party or party's safety can
12 be adequately protected during a collaborative law process; and

13 (3) the lawyer is familiar with the American Bar Association's Standards of
14 Practice for Representing Victims of Domestic Violence, Sexual Assault and Stalking in Civil
15 Protection Order Cases; for Lawyers Who Represent Children in Abuse and Neglect Cases and
16 for Lawyers Who Represent Parents in Abuse and Neglect Cases.

17 **SECTION 13. CONFIDENTIALITY OF COLLABORATIVE LAW**

18 **COMMUNICATION.** A collaborative law communication is confidential to the extent agreed
19 by the parties in a signed record or as provided by law or rule of this state other than this [act].

20 **SECTION 14. PRIVILEGE AGAINST DISCLOSURE FOR COLLABORATIVE**
21 **LAW COMMUNICATIONS; ADMISSIBILITY; DISCOVERY.**

22 (a) Except as otherwise provided in section 16, a collaborative law communication is
23 privileged as provided in subsection (b) and is not subject to discovery or admissible in evidence

1 in a proceeding unless the privilege is waived or precluded as provided by section 15.

2 (b) In a proceeding, the following privileges apply:

3 (1) A party may refuse to disclose, and may prevent any other person from
4 disclosing, a collaborative law communication.

5 (2) A nonparty participant may refuse to disclose, and may prevent any other
6 person from disclosing, a collaborative law communication of the nonparty participant.

7 (c) Evidence or information that is otherwise admissible or subject to discovery does not
8 become inadmissible or protected from discovery solely by reason of its disclosure or use in a
9 collaborative law process.

10 **SECTION 15. WAIVER AND PRECLUSION OF PRIVILEGE.**

11 (a) A privilege under section 14 may be waived in a record or orally during a proceeding
12 if it is expressly waived by all parties and, in the case of the privilege of a nonparty participant, it
13 is also expressly waived by the nonparty participant.

14 (b) A person that discloses or makes a representation about a collaborative law
15 communication that prejudices another person in a proceeding is precluded from asserting a
16 privilege under section 14, but only to the extent necessary for the person prejudiced to respond
17 to the representation or disclosure.

18 (c) A person that intentionally uses a collaborative law process to commit, or attempt to
19 commit, or to plan a crime, or to conceal an ongoing crime or ongoing criminal activity is
20 precluded from asserting a privilege under section 14.

21 **SECTION 16. EXCEPTIONS TO PRIVILEGE.**

22 (a) There is no privilege under Section 14 for a collaborative law communication that is:

23 (1) in an agreement evidenced by a record signed by all parties;

1 (2) available to the public under [insert statutory reference to open records act] or
2 made during a session of a collaborative law process which is open, or is required by law to be
3 open, to the public;

4 (3) a threat or statement of a plan to inflict bodily injury or commit a crime of
5 violence;

6 (4) intentionally used to plan a crime, attempt to commit or commit a crime, or
7 conceal an ongoing crime or ongoing criminal activity;

8 (5) sought or offered to prove or disprove a claim or complaint of professional
9 misconduct or malpractice arising from or related to a collaborative law process; or

10 (6) sought or offered to prove or disprove abuse, neglect, abandonment, or
11 exploitation of a child unless the [State to insert, for example, child or adult protective services
12 agency] is a party to or otherwise participates in a collaborative law process.

13 (b) There is no privilege under section 14 if a tribunal finds, after a hearing in camera,
14 that: the party seeking discovery or the proponent of the evidence has shown the evidence is not
15 otherwise available, the need for the evidence substantially outweighs the interest in protecting
16 confidentiality, and the collaborative law communication is sought or offered in:

17 (1) a court proceeding involving a felony [or misdemeanor]; or

18 (2) a proceeding to prove a claim to rescind or reform or a defense to avoid
19 liability on a contract arising out of the collaborative law process.

20 (c) If a collaborative law communication is not privileged under subsection (a) or (b),
21 only the portion of the communication necessary for the application of the exception from
22 nondisclosure may be admitted.

23 (d) Admission of evidence under subsection (a) or (b) does not render the evidence, or

1 any other collaborative law communication, discoverable or admissible for any other purpose.

2 (e) If the parties agree in advance in a signed record, or if a record of a proceeding
3 reflects agreement by the parties, that all or part of a collaborative law process is not privileged,
4 the privileges under section 14 do not apply to the collaborative law process or the part thereof to
5 which the agreement to waive the privilege applies. However, section 14 applies to a
6 collaborative law communication made by a person that has not received actual notice of the
7 agreement before the communication is made.

8 **SECTION 17. COLLABORATIVE LAW PARTICIPATION AGREEMENTS**

9 **NOT MEETING REQUIREMENTS.** Notwithstanding the failure of a collaborative law
10 participation agreement to meet the requirements of section 3 other than section 3(a)(1) and
11 (a)(4), or a lawyer's failure to comply with the disclosure requirements of section 12, if a tribunal
12 finds that the parties intended to enter into a collaborative law participation agreement, that they
13 reasonably believed they were participating in a collaborative law process, and that the interests
14 of justice require, the tribunal may:

- 15 (1) enforce an agreement resulting from the process in which the parties participated;
16 (2) apply the disqualification provisions of sections 8, 9 or 10; or
17 (3) apply the evidentiary privilege of section 14.

18 **SECTION 18. STANDARDS OF PROFESSIONAL RESPONSIBILITY AND**
19 **MANDATORY REPORTING AND COLLABORATIVE LAW PROCESS.**

20 (a) The professional responsibility obligations and standards of a collaborative lawyer
21 are not changed because of the lawyer's engagement to represent a party in a collaborative law
22 process.

23 (b) The professional responsibility obligations and standards applicable to any licensed

1 professional who participates in a collaborative law process as a nonparty participant are not
2 changed because of that participation.

3 (c) The obligations of any person to report abuse or neglect of a child under the laws of
4 this state are not changed by a person’s participation in a collaborative law process.

5 **SECTION 19. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
6 applying and construing this Uniform Act, consideration must be given to the need to promote
7 uniformity of the law with respect to its subject matter among states that enact it.

8 **SECTION 20. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**
9 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal
10 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et. seq.,
11 but does not modify, limit, or supersede Section 101 (c) of that act, 15 U.S.C. Section 7001(c), or
12 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
13 U.S.C. Section 7003(b).

14 **SECTION 21. SEVERABILITY CLAUSE.** If any provision of this [act] or its
15 application to any person or circumstance is held invalid, the invalidity does not affect other
16 provisions or applications of this [act] which can be given effect without the invalid provision or
17 application, and to this end the provisions of this [act] are severable.

18 **SECTION 22. APPLICATION TO EXISTING AGREEMENTS.** This [act] governs
19 a collaborative law participation agreement signed after [the effective date of this [act]].

20 **SECTION 23. EFFECTIVE DATE.** This [act] takes effect.....

21 *Legislative Note: States should choose an effective date for the act that allows substantial time*
22 *for notice to the bar and the public of its provisions and for the training of collaborative lawyers.*