

DRAFT
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UNIFORM COLLABORATIVE LAW ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

Interim Draft, March 2009

Without Prefatory Notes or Comments

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ON UNIFORM STATE LAWS

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March 10, 2009

DRAFTING COMMITTEE ON UNIFORM COLLABORATIVE LAW ACT

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in drafting this Act consists of the following individuals:

PETER K. MUNSON, 123 S. Travis St., Sherman, TX 75090, *Chair*

ROBERT G. BAILEY, University of Missouri-Columbia, 217 Hulston Hall, Columbia, MO 65211

MICHAEL A. FERRY, 200 N. Broadway, Suite 950, St. Louis, MO 63102

ELIZABETH KENT, Center for Alternative Dispute Resolution, 417 S. King St., Room 207, Honolulu, HI 96813

BYRON D. SHER, 1000 Fruitridge Rd., Placerville, CA 95667

HARRY L. TINDALL, 1300 Post Oak Blvd., Suite 1550, Houston, TX 77056-3081

CAM WARD, 124 Newgate Rd., Alabaster, AL 35007

ANDREW SCHEPARD, Hofstra University School of Law, 121 Hofstra University, Hempstead, NY 11549-1210, *Reporter**

EX OFFICIO

MARTHA LEE WALTERS, Oregon Supreme Court, 1163 State St., Salem, OR 97301-2563, *President*

JACK DAVIES, 1201 Yale Place, Unit #2004, Minneapolis, MN 55403-1961, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISOR

CARLTON D. STANSBURY, 10850 W. Park Pl., Suite 530, Milwaukee, WI 53224-3636, *ABA Advisor*

LAWRENCE R. MAXWELL, JR., Douglas Plaza, 8226 Douglas Ave., Suite 550, Dallas, TX 75225-5945, *ABA Section Advisor*

CHARLA BIZIOS STEVENS, McLane, Graf, Raulerson & Middleton, P.A., 900 Elm St., P.O. Box 326, Manchester, NH, 03105-0326, *ABA Section Advisor*

GRETCHEN WALTHER, 6501 Americas Pkwy. NE, Suite 620, Albuquerque, NM 87110-8166, *ABA Section Advisor*

EXECUTIVE DIRECTOR

JOHN A. SEBERT, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, *Executive Director*

Copies of this Act may be obtained from:

**NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS**

111 N. Wabash Ave., Suite 1010

Chicago, Illinois 60602

312/450-6600

www.nccusl.org

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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) “Collaborative law” or a “collaborative law process” means a procedure to attempt to
6 resolve a matter without intervention by a tribunal in which parties:

- 7 (A) voluntarily enter into a collaborative law participation agreement; and
- 8 (B) are represented by collaborative lawyers.

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

- 11 (A) occurs after the parties enter into a collaborative law participation agreement
12 and before the parties have or should have a reasonable belief that a collaborative law process is
13 terminated or is concluded by negotiated resolution of a matter; and

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

16 (3) “Collaborative law participation agreement” means an agreement by persons to
17 participate in collaborative law.

18 (4) “Collaborative lawyer” means a lawyer who represents a party in collaborative law.

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

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

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

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

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

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

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

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

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

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

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

22 (14) “Substantially related” means involving the same transaction or occurrence, nucleus
23 of operative fact, claim, issue, or dispute as a matter.

1 (15) “Tribunal” means a court, arbitrator, legislative body, administrative agency, or
2 other body acting in an adjudicative capacity that, after presentation of evidence or legal
3 argument, has jurisdiction to render a decision affecting a party’s interests in a matter.

4 **SECTION 3. COLLABORATIVE LAW PARTICIPATION AGREEMENT;**
5 **REQUIREMENTS.**

6 (a) A collaborative law participation agreement must:

7 (1) be in a record;

8 (2) be signed by the parties;

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

10 (4) state the parties’ intention to resolve the matter through collaborative law;

11 (5) identify the collaborative lawyer who represents each party in the

12 collaborative law process; and

13 (6) contain a signed acknowledgment by each party’s lawyer confirming the
14 lawyer’s representation.

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

16 (1) may agree to include additional provisions not inconsistent with this [act];

17 and

18 (2) may not agree to waive or vary subsection (a) and Sections 8, 11, and 12.

19 **SECTION 4. BEGINNING AND TERMINATING COLLABORATIVE LAW.**

20 (a) A collaborative law process begins when parties sign a collaborative law
21 participation agreement.

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

23 (c) A collaborative law process terminates when all parties have or should have a

1 reasonable belief that the process is over because:

2 (1) a party:

3 (A) terminates the process; or

4 (B) without the agreement of all other parties

5 (i) begins a proceeding substantially related to the matter; or

6 (ii) initiates a pleading, motion, order to show cause, request for a

7 conference with the tribunal, request that the proceeding be put on a tribunal's active calendar or

8 takes similar action in a pending proceeding substantially related to the matter; or

9 (2) except as otherwise provided by subsection (e), a party discharges a

10 collaborative lawyer or a collaborative lawyer withdraws from further representation of a party.

11 (d) A party that terminates a collaborative law process or a collaborative lawyer who

12 withdraws from further representation of a party shall provide prompt written notice of the

13 termination to all other parties and collaborative lawyers. The notice must not specify a reason

14 for terminating the process.

15 (e) Notwithstanding the discharge or withdrawal of a collaborative lawyer, a

16 collaborative law process continues if not later than 30 days after the date that the written notice

17 required by subsection (d) is received by the parties:

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

19 (2) all parties in a signed record consent to continue the process by reaffirming

20 the collaborative law participation agreement;

21 (3) the agreement is amended in a signed record to identify the successor

22 collaborative lawyer; and

23 (4) the successor collaborative lawyer accepts the representation in a signed

1 record.

2 (f) A collaborative law process does not terminate if, with the consent of all parties, a
3 party asks a tribunal through appropriate procedures such as commencing a proceeding or filing
4 a motion in a pending proceeding to approve an agreement or sign orders to carry out an
5 agreement that results from the process.

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

8 **SECTION 5. COLLABORATIVE LAW AND PROCEEDINGS PENDING**
9 **BEFORE TRIBUNAL; STATUS REPORTS.**

10 (a) Parties to a proceeding pending before a tribunal may sign a collaborative law
11 participation agreement to negotiate about a matter substantially related to the proceeding.
12 Parties shall promptly file a notice of collaborative law with the tribunal after the collaborative
13 law participation agreement is signed. Subject to subsection (c) and Section 6, the filing shall
14 operate as a stay of the proceeding.

15 (b) Parties shall file promptly a written notice of termination with the tribunal when a
16 collaborative law process terminates. The stay of the proceeding created by subsection (a) is
17 lifted when the notice is filed with the tribunal. The notice must not specify any reason for the
18 termination.

19 (c) A tribunal may require parties and collaborative lawyers to provide status reports on
20 the proceeding.

21 (1) Except as authorized by paragraph (2), a status report may not include a
22 report, assessment, evaluation, recommendation, finding, or other communication regarding a
23 collaborative law process.

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

2 (A) whether the process is occurring or has terminated and whether an
3 agreement was reached; or

4 (B) a collaborative law communication as permitted under Section 16.

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

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

10 **SECTION 6. EMERGENCY ORDERS.** During a collaborative law process a tribunal
11 may issue emergency orders to protect the health, safety, welfare or interests of a party or family
12 or household member as defined in [state civil protection order statute].

13 **SECTION 7. TRIBUNAL APPROVAL OF AGREEMENT.** If requested by all
14 parties, a tribunal may carry out an agreement and sign orders to effectuate an agreement
15 resulting from a collaborative law process.

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

19
20 **SECTION 8. DISQUALIFICATION OF COLLABORATIVE LAWYER AND**
21 **LAWYERS IN ASSOCIATED LAW FIRM.**

22 (a) Except as otherwise provided in subsection (c), after a collaborative law process
23 terminates, a collaborative lawyer may not:

24 (1) appear before a tribunal to represent a party in a proceeding substantially
25 related to the matter; or

1 (2) represent the party in the matter or substantially related matter.

2 (b) Except as otherwise provided in subsection (c) and Sections 9 and 10, a lawyer in a
3 law firm with which the collaborative lawyer is associated may not knowingly represent a party
4 in a matter or substantially related matter and may not appear before a tribunal to represent a
5 party in a proceeding substantially related to a matter if the collaborative lawyer is disqualified
6 from doing so by subsection (a).

7 (c) A collaborative lawyer or a lawyer in a law firm with which a collaborative lawyer is
8 associated may represent a party:

9 (1) if agreed to by all parties, to ask a tribunal to approve an agreement or sign
10 orders to carry out an agreement resulting from a collaborative law process; or

11 (2) to seek an emergency order to protect the health, safety, welfare, or interests
12 of a party or family or household member as defined in [state civil protection order statute] if a
13 successor lawyer is not immediately available to represent that person. In that event, the
14 provisions of subsections (a) and (b) apply when the party, family or household member is
15 represented by a successor lawyer or reasonable measures are taken to adequately protect the
16 health, safety, welfare, or interests of that person.

17 **SECTION 9. LOW INCOME PARTIES.** After a collaborative law process terminates
18 a lawyer in a law firm with which the collaborative lawyer is associated may represent a party
19 who has an annual income which does not exceed one hundred and twenty-five percent (125%)
20 of the current Federal Poverty Guidelines amounts without fee in the matter or a substantially
21 related matter if:

22 (a) the collaborative law participation agreement so provides; and

23 (b) the collaborative lawyer is isolated from any participation in the matter or

1 substantially related matter through procedures within the law firm which are reasonably
2 calculated to isolate the collaborative lawyer from such participation.

3 *Legislative Note: States may modify the income limitation stated in this Section higher or lower*
4 *than the illustrative figure chosen. They should do so as appropriate in light of their own*
5 *definition of low income clients who are eligible for free legal representation by legal aid*
6 *societies in civil matters*

7

8 **SECTION 10. GOVERNMENT ENTITIES AS PARTIES.**

9 (a) The disqualification requirements of Section 8 (a) apply to a collaborative lawyer
10 representing a party that is a government or governmental subdivision, agency, or
11 instrumentality.

12 (b) After a collaborative law process terminates, a lawyer in a law firm with which the
13 collaborative lawyer is associated may represent a party described in subsection (a) in the matter
14 or a substantially related 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 matter through procedures within the law firm which are reasonably
18 calculated to isolate the collaborative lawyer from such participation.

19 **SECTION 11. DISCLOSURE OF INFORMATION IN COLLABORATIVE LAW.**

20 During a collaborative law process upon the request of another party a party shall make timely,
21 full, candid, and informal disclosure of information substantially related to a matter without
22 formal discovery, and shall update promptly information which has materially changed.

23 **SECTION 12. REQUIRED DISCLOSURES CONCERNING COLLABORATIVE**
24 **LAW; DOMESTIC VIOLENCE.**

25 (a) Before a prospective party executes a collaborative law participation agreement, a
26 prospective collaborative lawyer shall:

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

5 (2) advise the party that:

6 (A) after signing an agreement:

7 (i) if a party initiates a proceeding or seeks tribunal intervention in
8 a pending proceeding substantially related to the matter, the collaborative law process
9 terminates; and

10 (ii) the collaborative lawyer and a lawyer in a law firm with which
11 the collaborative lawyer is associated may not represent a party before a tribunal in such a
12 proceeding except as authorized by Section 8(c), 9, or 10(b);

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

15 (C) if the process terminates, a collaborative lawyer and a lawyer in a law
16 firm with which the collaborative lawyer is associated are disqualified from further
17 representation of a party in the matter or substantially related matter except as authorized by
18 Section 8(c), 9, or 10(b).

19 (3) inquire about and discuss with the prospective party factors relevant to
20 whether collaborative law is appropriate for the prospective party's matter.

21 (b) A collaborative lawyer shall make reasonable efforts to determine whether a
22 prospective party has a history of domestic violence with another prospective party before a
23 prospective party signs a collaborative law participation agreement and shall continue throughout

1 the collaborative law process to assess for the presence of domestic violence.

2 (c) If a collaborative lawyer reasonably believes that a prospective party or party has a
3 history of domestic violence with another party or prospective party, the lawyer may not begin or
4 continue a collaborative law process unless:

5 (1) the prospective party or party requests beginning or continuing a collaborative
6 law process;

7 (2) the lawyer reasonably believes that the safety of the prospective party or party
8 can be adequately protected during a collaborative law process; and

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

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

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

17 **SECTION 14. PRIVILEGE AGAINST DISCLOSURE FOR COLLABORATIVE**
18 **LAW COMMUNICATION; ADMISSIBILITY; DISCOVERY.**

19 (a) Subject to Section 15 or 16, a collaborative law communication is privileged as
20 provided in subsection (b) and is not subject to discovery or admissible in evidence in a
21 proceeding.

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

23 (1) A party may refuse to disclose, and may prevent any other person from

1 disclosing, a collaborative law communication.

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

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

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

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

11 (b) A person that discloses or makes a representation about a collaborative law
12 communication that prejudices another person in a proceeding may not assert a privilege under
13 Section 14, but only to the extent necessary for the person prejudiced to respond to the disclosure
14 or representation.

15 (c) A person that intentionally uses a collaborative law process to commit, or attempt to
16 commit, or to plan a crime, or to conceal an ongoing crime or ongoing criminal activity may not
17 assert a privilege under Section 14.

18 **SECTION 16. EXCEPTION TO PRIVILEGE.**

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

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

21 (2) available to the public under [state open records act] or made during a session
22 of a collaborative law process which is open, or is required by law to be open, to the public;

23 (3) a threat or statement of a plan to inflict bodily injury or commit a crime of

1 violence;

2 (4) intentionally used to plan a crime, attempt to commit or commit a crime, or

3 conceal an ongoing crime or ongoing criminal activity;

4 (5) sought or offered to prove or disprove a claim or complaint of professional

5 misconduct or malpractice arising from or related to a collaborative law process; or

6 (6) sought or offered to prove or disprove abuse, neglect, abandonment, or

7 exploitation of a child unless the [child or adult protective services agency] is a party to or

8 otherwise participates in a collaborative law process.

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

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

14 (2) a proceeding seeking rescission or reformation of a contract arising out of the
15 collaborative law process or on which a defense to avoid liability on a contract is asserted.

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

19 (d) Admission of evidence under subsection (a) or (b) does not render the evidence, or
20 any other collaborative law communication, discoverable or admissible for any other purpose.

21 (e) The privileges under Section 14 do not apply if the parties agree in advance in a
22 signed record, or if a record of a proceeding reflects agreement by the parties, that all or part of a
23 collaborative law process is not privileged. Section 14 applies to a collaborative law

1 communication made by a person that has not received actual notice of the agreement before the
2 communication is made.

3 **SECTION 17. COLLABORATIVE LAW PARTICIPATION AGREEMENT NOT**
4 **MEETING REQUIREMENTS.**

5 (a) Although a collaborative law participation agreement fails to meet the requirements
6 of Section 3, or a lawyer's fails to comply with the disclosure requirements of Section 12, a
7 tribunal may find that the parties:

8 (1) signed a record indicating an intention to enter into a collaborative law
9 participation agreement;

10 (2) intended to enter into a collaborative law participation agreement; and

11 (3) reasonably believed they were participating in a collaborative law process.

12 (b) If a tribunal makes the findings specified in subsection (a), and the interests of justice
13 require, the tribunal may:

14 (1) enforce an agreement resulting from the process in which the parties
15 participated;

16 (2) apply the disqualification provisions of Section 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.**

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

22 (b) The professional responsibility obligations and standards applicable to any licensed
23 professional who participates in collaborative law as a nonparty participant are not changed

1 because of that participation.

2 (c) The obligation of a person to report abuse or neglect of a child or adult under the
3 laws of this state is not changed by the person’s participation in collaborative law.

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

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

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

17 *Legislative Note: Include this Section only if the state lacks a general severability statute or a*
18 *decision by the highest court of this state stating a general rule of severability.*
19

20 **SECTION 22. APPLICATION TO EXISTING AGREEMENTS.** This [act] applies
21 to a collaborative law participation agreement signed after [the effective date of this [act]].

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

23
24 *Legislative Note: States should choose an effective date for the act that allows substantial time*
25 *for notice to the bar and the public of its provisions and for the training of collaborative lawyers.*