

UNIFORM COLLABORATIVE LAW ACT*

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-EIGHTEENTH YEAR
SANTA FE, NEW MEXICO
JULY 9 - JULY 16, 2009

WITHOUT PREFATORY NOTE OR COMMENTS

COPYRIGHT © 2009

By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

July 15, 2009

*The following text is subject to revision by the Committee on Style of the National Conference of Commissioners on Uniform State Laws.

UNIFORM COLLABORATIVE LAW ACT

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

SECTION 2. DEFINITIONS. In this [act]:

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

(A) occurs after the parties sign a collaborative law participation agreement and before the collaborative law process is concluded; and

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

(2) “Collaborative law participation agreement” means an agreement by persons to participate in a collaborative law process.

(3) “Collaborative law process” means a procedure intended to resolve a matter without intervention by a tribunal in which parties:

(A) sign a collaborative law participation agreement; and

(B) are represented by collaborative lawyers.

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

(5) “Collaborative matter” or “matter” means a dispute, transaction, claim, problem, or issue for resolution described in a collaborative law participation agreement. The term includes a dispute, claim, or issue in a proceeding.

(6) “Law firm” means lawyers who practice law together in a partnership, professional corporation, sole proprietorship, limited liability company, or other association, or lawyers

employed in a legal services organization, or the legal department of a corporation or other organization, or the legal department of a government or governmental subdivision, agency, or instrumentality.

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

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

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

(10) “Proceeding” means:

(A) a judicial, administrative, arbitral, or other adjudicative process before a tribunal, including related pre-hearing and post-hearing motions, conferences, and discovery; or

(B) a legislative hearing or similar process.

(11) “Prospective party” means a person that discusses the possibility of signing a collaborative law participation agreement with a prospective collaborative lawyer.

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

(13) “Related to a collaborative matter” or “related to a matter” means involving the same parties, transaction or occurrence, nucleus of operative fact, claim, issue, or dispute as a matter.

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

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

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

or process.

(15) “Tribunal” means

(A) a court, arbitrator, administrative agency or other body acting in an adjudicative capacity that, after presentation of evidence or legal argument, has jurisdiction to render a decision affecting a party’s interests in a matter; or

(B) a legislative body conducting a hearing or similar process.

SECTION 3. APPLICABILITY; SCOPE.

(a) This [act] applies to a collaborative law participation agreement that meets the requirements of section 4 signed [on or] after [the effective date of this [act]].

(b) A tribunal may not order a party to participate in a collaborative law process over that party’s objection.

SECTION 4. COLLABORATIVE LAW PARTICIPATION AGREEMENT; REQUIREMENTS.

(a) A collaborative law participation agreement must:

(1) be in a record;

(2) be signed by the parties;

(3) state the parties’ intention to resolve a matter through a collaborative law process under this [act];

(4) describe the nature and scope of the matter;

(5) identify the collaborative lawyer who represents each party in the collaborative law process; and

(6) contain a statement by each collaborative lawyer confirming the lawyer’s representation of a party in the collaborative law process.

(b) Parties to a collaborative law participation agreement may agree to include additional

provisions not inconsistent with this [act].

SECTION 5. BEGINNING AND CONCLUDING A COLLABORATIVE LAW PROCESS.

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

(b) A collaborative law process is concluded by a:

(1) negotiated resolution of the matter as evidenced by a signed record;

(2) negotiated resolution of a portion of the matter as evidenced by a signed record where the parties agree that the remaining portions of the matter will not be resolved in the collaborative law process; or

(3) termination of the process.

(c) A collaborative law process terminates:

(1) when a party gives notice in a record that the collaborative law process is ended; or

(2) when a party:

(A) begins a proceeding related to the collaborative matter without the agreement of all parties; or

(B) in a pending proceeding related to the collaborative matter:

(i) initiates a pleading, motion, order to show cause, or request for a conference with the tribunal;

(ii) requests that the proceeding be put on the [tribunal's active calendar]; or

(iii) takes similar action requiring notice to be sent to the parties;

or

(3) except as otherwise provided by subsection (e), when a party discharges a collaborative lawyer or a collaborative lawyer withdraws from further representation of a party. The party's collaborative lawyer shall give prompt notice in a record of such discharge or withdrawal to all other parties.

(d) A party may terminate a collaborative law process with or without cause. A notice of termination need not specify a reason for terminating the process.

(e) Notwithstanding the discharge or withdrawal of a collaborative lawyer, a collaborative law process continues if not later than 30 days after the date that the notice of the discharge or withdrawal of a collaborative lawyer required by subsection (c)(3) is sent to the parties:

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

(2) in a signed record:

(A) all parties consent to continue the process by reaffirming the collaborative law participation agreement;

(B) the collaborative law participation agreement is amended to identify the successor collaborative lawyer; and

(C) the successor collaborative lawyer confirms the lawyer's representation of a party in the collaborative process.

(f) A collaborative law process does not terminate if, with the consent of all parties, a party requests a tribunal to approve a negotiated resolution of the matter or any portion thereof as evidenced by a signed record.

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

SECTION 6. PROCEEDINGS PENDING BEFORE TRIBUNAL; STATUS

REPORT.

(a) Parties to a proceeding pending before a tribunal may sign a collaborative law participation agreement to seek to resolve a matter related to the proceeding. Parties shall file promptly a notice of the agreement with the tribunal after the collaborative law participation agreement is signed. Subject to subsection (c) and Section 7 and 8, the filing operates as a stay of the proceeding.

(b) Parties shall file promptly a notice of termination in a record with the tribunal when a collaborative law process terminates. The stay of the proceeding under subsection (a) is lifted when the notice is filed with the tribunal. The notice may not specify any reason for the termination.

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

(d) Except as authorized by subsection (e), a status report may not include a report, assessment, evaluation, recommendation, finding, or other communication regarding a collaborative law process.

(e) A tribunal may require parties and lawyers to disclose in a status report whether the process is ongoing or concluded.

(f) A communication made in violation of subsection (d) may not be considered by a tribunal.

(g) If a notice of a collaborative law process is filed in a pending proceeding, a tribunal may not dismiss the proceeding based on delay or failure to prosecute without providing parties and their collaborative lawyers appropriate notice and an opportunity to be heard.

SECTION 7. EMERGENCY ORDER. During the collaborative law process a tribunal may issue emergency orders to protect the health, safety, welfare, or interests of a party or [insert

term for family or household member as defined in [state civil protection order statute]]. The collaborative lawyer is authorized to seek or defend an emergency order under section 9(c)(2).

SECTION 8. APPROVAL OF AGREEMENT BY TRIBUNAL. A tribunal may approve an agreement resulting from a collaborative law process.

Legislative Note: *In states where judicial procedures for management of proceedings may be prescribed only by court rule or administrative guideline and not by legislative act, the duties of courts and other tribunals listed in Sections 6 through 8 should be adopted by the appropriate measure.*

SECTION 9. DISQUALIFICATION OF COLLABORATIVE LAWYER AND LAWYERS IN ASSOCIATED LAW FIRM.

(a) Except as otherwise provided in subsection (c), a collaborative lawyer may not appear before a tribunal to represent a party in a proceeding related to the collaborative matter.

(b) Except as otherwise provided in subsection (c) and Sections 10 and 11, a lawyer in a law firm with which the collaborative lawyer is associated may not appear before a tribunal to represent a party in a proceeding related to the collaborative matter if the collaborative lawyer is disqualified from doing so under subsection (a).

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

(1) to ask a tribunal to approve an agreement resulting from the collaborative law process; or

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

protect the health, safety, welfare, or interests of that person.

SECTION 10. LOW INCOME PARTIES.

(a) The disqualification of Section 9(a) applies to a collaborative lawyer representing a party without fee.

(b) After a collaborative law process concludes, another lawyer in a law firm with which the collaborative lawyer is associated may represent the party without fee in the collaborative matter or a matter related to the collaborative matter if:

(1) the party has an annual income which qualifies the party for free legal representation under the criteria established by the law firm for free legal representation;

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

(3) the collaborative lawyer is isolated from any participation in the collaborative matter or a matter related to the collaborative matter through procedures within the law firm which are reasonably calculated to isolate the collaborative lawyer from such participation.

SECTION 11. GOVERNMENTAL ENTITIES AS PARTIES.

(a) The disqualification of Section 9(a) applies to a collaborative lawyer representing a party that is a government or governmental subdivision, agency, or instrumentality.

(b) After a collaborative law process concludes, another lawyer in a law firm with which the collaborative lawyer is associated may represent the government or governmental subdivision, agency, or instrumentality in the collaborative matter or a matter related to the collaborative matter if:

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

(2) the collaborative lawyer is isolated from any participation in the collaborative matter or matter related to the collaborative matter through procedures within the law firm which are reasonably calculated to isolate the collaborative lawyer from such participation.

SECTION 12. DISCLOSURE OF INFORMATION. During the collaborative law process on the request of another party, a party shall make timely, full, candid, and informal disclosure of information related to the collaborative matter without formal discovery, and shall update promptly information that has materially changed. Parties may define the scope of disclosure, except as provided by law other than this [act].

SECTION 13. STANDARDS OF PROFESSIONAL RESPONSIBILITY AND MANDATORY REPORTING. This [act] does not affect:

(a) the professional responsibility obligations and standards applicable to a lawyer or other licensed professional; or

(b) the obligation of a person to report abuse or neglect of a child or adult under the law of this state.

SECTION 14. APPROPRIATENESS OF THE COLLABORATIVE LAW PROCESS.

(a) Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall:

(1) discuss with the prospective party factors the prospective collaborative lawyer reasonably believes relate to whether a collaborative law process is appropriate for the prospective party's matter;

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

(3) advise the party that:

(A) after signing an agreement:

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

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

(B) participation in a collaborative law process is voluntary and any party has the right to terminate unilaterally a collaborative law process with or without cause; and

(C) when the process concludes, the collaborative lawyer and any lawyer in a law firm with which the collaborative lawyer is associated may not appear before a tribunal to represent a party in a proceeding related to the collaborative matter, except as authorized by Section 9(c), 10(b), or 11(b).

SECTION 15. COERCIVE OR VIOLENT RELATIONSHIP.

(a) Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall make reasonable inquiry whether the prospective party has a history of a coercive or violent relationship with another prospective party.

(b) A collaborative lawyer shall throughout the collaborative law process continue to reasonably assess whether the party the collaborative lawyer represents has a history of a coercive or violent relationship with another party.

(c) If the collaborative lawyer reasonably believes that the party the lawyer represents or the prospective party who consults the lawyer has a history of a coercive or violent relationship with another party or prospective party, the lawyer may not begin or continue a collaborative law process unless:

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

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

SECTION 16. CONFIDENTIALITY OF COLLABORATIVE LAW

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

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

(a) Subject to Section 18 and 19, a collaborative law communication is privileged under subsection (b), is not subject to discovery, and is not admissible in evidence.

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

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

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

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

SECTION 18. WAIVER AND PRECLUSION OF PRIVILEGE.

(a) A privilege under Section 17 may be waived in a record or orally during a proceeding if it is expressly waived by all parties and, in the case of the privilege of a nonparty participant, it is also expressly waived by the nonparty participant.

(b) A person that discloses or makes a representation about a collaborative law

communication which prejudices another person in a proceeding may not assert a privilege under Section 17, but only to the extent necessary for the person prejudiced to respond to the disclosure or representation.

SECTION 19. LIMITS OF PRIVILEGE.

(a) There is no privilege under Section 17 for a collaborative law communication that is:

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

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

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

(4) in an agreement resulting from the collaborative law process, evidenced by a record signed by all parties to the agreement.

(b) The privileges under Section 17 for a collaborative law communication do not apply to the extent that a communication is:

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

(2) sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation of a child, unless the [child protective services agency or adult protective services agency] is a party to or otherwise participates in the collaborative law process.

(c) There is no privilege under Section 17 if a tribunal finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown the evidence is not otherwise available, the need for the evidence substantially outweighs the interest in protecting confidentiality, and the collaborative law communication is sought or offered in:

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

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

(d) If a collaborative law communication is subject to an exception under subsection (b) or (c), only the portion of the communication necessary for the application of the exception may be disclosed or admitted.

(e) Disclosure or admission of evidence excepted from the privilege under subsection (b) or (c) does not render the evidence or any other collaborative law communication discoverable or admissible for any other purpose.

(f) The privileges under Section 17 do not apply if the parties agree in advance in a signed record, or if a record of a proceeding reflects agreement by the parties, that all or part of a collaborative law process is not privileged. This subsection does not apply to a collaborative law communication made by a person that did not receive actual notice of the agreement before the communication was made.

SECTION 20. COLLABORATIVE LAW PARTICIPATION AGREEMENT NOT MEETING REQUIREMENTS.

(a) Although a collaborative law participation agreement fails to meet the requirements of Section 4 or a lawyer fails to comply with the disclosure requirement of Section 14, a tribunal may find that the parties intended to enter into a collaborative law participation agreement if they:

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

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

(b) If a tribunal makes the findings specified in subsection (a), and the interests of justice

require, the tribunal may:

- (1) enforce an agreement evidenced by a record resulting from the process in which the parties participated;
- (2) apply the disqualification provisions of Section 6, 9, 10, and 11; or
- (3) apply the evidentiary privilege of Section 17.

SECTION 21. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 22. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101 (c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 23. SEVERABILITY CLAUSE. If any provision of this [act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [act] which can be given effect without the invalid provision or application, and to this end the provisions of this [act] are severable.

Legislative Note: Include this section only if the state lacks a general severability statute or a decision by the highest court of this state stating a general rule of severability.

SECTION 24. EFFECTIVE DATE. This [act] takes effect.....

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