

UNIFORM COLLABORATIVE LAW ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

AS APPROVED BY THE UNIFORM LAW COMMISSION
WITH RECOMMENDED CHANGES IN STYLE
AND COMMENTS BY THE REPORTER

FOR CONSIDERATION BY THE DRAFTING COMMITTEE
AUGUST 1, 2009

1 organization, or the legal department of a government or governmental subdivision, agency, or
2 instrumentality.

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

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

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

10 (10) “Proceeding” means:

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

13 (B) a legislative hearing or similar process.

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

Comment [A1]: Change suggested by Peter Munson as a grammatical improvement. I agree.

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

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

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

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

1 or process.

2 (15) “Tribunal” means

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

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

7 **SECTION 3. APPLICABILITY; SCOPE.**

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

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

12 **SECTION 4. COLLABORATIVE LAW PARTICIPATION AGREEMENT;**
13 **REQUIREMENTS.**

14 (a) A collaborative law participation agreement must:

15 (1) be in a record;

16 (2) be signed by the parties;

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

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

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

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

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

Comment [A2]: If the Committee decides to include the recommended choice of law provision (see separate memo) a new subsection 15 would be inserted here defining “State” as described in the memo on choice of law. The next section would be renumbered (16).

1 provisions not inconsistent with this [act].

2 **SECTION 5. BEGINNING AND CONCLUDING A COLLABORATIVE LAW**
3 **PROCESS.**

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

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

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

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

11 (3) termination of the process.

12 (c) A collaborative law process terminates:

13 (1) when a party gives notice **to other parties** in a record that the collaborative
14 law process is ended; or

Comment [A3]: I suggest that the new language be added to clarify to whom notice must be given.

15 (2) when a party:

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

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

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

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

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

24 or

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

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

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

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

12 (2) in a signed record:

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

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

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

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

22 (g) A collaborative law participation agreement may provide additional methods of

23 ~~terminating~~ concluding a collaborative law process.

Comment [A4]: On reflection, the broader term "concluding" seems more appropriate here.

24 **SECTION 6. PROCEEDINGS PENDING BEFORE TRIBUNAL; STATUS**

1 **REPORT.**

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

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

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

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

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

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

20 (g) ~~If a notice of a collaborative law process is filed in a pending proceeding, a tribunal~~
21 ~~may not dismiss the proceeding based on delay or failure to prosecute without providing parties~~
22 ~~and their collaborative lawyers appropriate notice and an opportunity to be heard. A tribunal~~
23 shall provide parties and their collaborative lawyers appropriate notice and an opportunity to be
24 heard before dismissing a proceeding in which a notice of collaborative process is filed based on

Comment [A5]: Peter Munson made the suggestion to combine the highlighted four sections into a single subsection (c) with subparts (d), (e) and (f) renumbered (1) (2) and (3). This suggestion makes sense to me. I would then renumber section (g) to be section (d) and change the reference in current (f) to (c) 1.

1 delay or failure to prosecute.

Comment [A6]: Peter Munson suggested that section (g) (which could be renumbered (d)) would be better phrased as a positive statement rather than a negative statement. The proposed revision is more consistent with ULC drafting rules.

2 **SECTION 7. EMERGENCY ORDER.** During the collaborative law process a tribunal

3 may issue emergency orders to protect the health, safety, welfare, or interests of a party or [insert

4 term for family or household member as defined in [state civil protection order statute]]. The

5 collaborative lawyer is authorized to seek or defend an emergency order under section 9(c)(2).

6 **SECTION 8. APPROVAL OF AGREEMENT BY TRIBUNAL.** A tribunal may

7 approve an agreement resulting from a collaborative law process.

8 *Legislative Note: In states where judicial procedures for management of proceedings may 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 6 through 8 should be adopted by the appropriate*
11 *measure.*

13 **SECTION 9. DISQUALIFICATION OF COLLABORATIVE LAWYER AND**

14 **LAWYERS IN ASSOCIATED LAW FIRM.**

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

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

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

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

25 (2) to seek or defend an emergency order to protect the health, safety, welfare, or
26 interests of a party, or [insert term for family or household member as defined in [state civil

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

5 **SECTION 10. LOW INCOME PARTIES.**

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

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

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

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

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

17 **SECTION 11. GOVERNMENTAL ENTITIES AS PARTIES.**

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

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

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

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

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

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

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

13 (b) the obligation of a person to report abuse or neglect of a child or adult ~~under the law~~
14 ~~of this state~~ as provided by law other than this [act].

Comment [A7]: Fred Glassman points out that we use the broader highlighted term in the addition made to section 12 at the ULC meeting. I have checked throughout the statute for consistent usage and made the same change in other section.

15 **SECTION 14. APPROPRIATENESS OF THE COLLABORATIVE LAW**
16 **PROCESS.**

Comment [A8]: We have to renumber the subsections, as there is no longer a subsection (b).. Indentation will also have to be changed to conform to ULC formatting rules.

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

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

Comment [A9]: Both Peter and I like the word "assess" better than "discuss" as "assess" leaves room for the lawyer to make a recommendation to the prospective party if the lawyer deems that appropriate.

22 (2) provide the party with information that the lawyer reasonably believes is
23 sufficient for the party to make an informed decision about the material benefits and risks of a
24 collaborative law process as compared to the material benefits and risks of other reasonably

1 available alternatives for resolving the proposed collaborative matter, such as litigation,
2 mediation, arbitration, or expert evaluation; and

3 (3) advise the party that:

4 (A) after signing an agreement:

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

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

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

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

17 **SECTION 15. COERCIVE OR VIOLENT RELATIONSHIP.**

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

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

24 (c) If the collaborative lawyer reasonably believes that the party the lawyer represents or

1 the prospective party who consults the lawyer has a history of a coercive or violent relationship
2 with another party or prospective party, the lawyer may not begin or continue a collaborative law
3 process unless:

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

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

8 **SECTION 16. CONFIDENTIALITY OF COLLABORATIVE LAW**

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

Comment [A10]: See previous comment on this change made in response to a comment by Fred Glassman.

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

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

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

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

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

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

23 **SECTION 18. WAIVER AND PRECLUSION OF PRIVILEGE.**

24 (a) A privilege under Section 17 may be waived in a record or orally during a proceeding

1 if it is expressly waived by all parties and, in the case of the privilege of a nonparty participant, it
2 is also expressly waived by the nonparty participant.

3 (b) A person that discloses or makes a representation about a collaborative law
4 communication which prejudices another person in a proceeding may not assert a privilege under
5 Section 17, but only to the extent necessary for the person prejudiced to respond to the disclosure
6 or representation.

7 **SECTION 19. LIMITS OF PRIVILEGE.**

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

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

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

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

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

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

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

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

24 (c) There is no privilege under Section 17 if a tribunal finds, after a hearing in camera,

1 that the party seeking discovery or the proponent of the evidence has shown the evidence is not
2 otherwise available, the need for the evidence substantially outweighs the interest in protecting
3 confidentiality, and the collaborative law communication is sought or offered in:

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

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

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

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

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

18 **SECTION 20. COLLABORATIVE LAW PARTICIPATION AGREEMENT NOT**
19 **MEETING REQUIREMENTS.**

20 (a) Although a collaborative law participation agreement fails to meet the requirements
21 of Section 4 or a lawyer fails to comply with the disclosure requirement of Section 14, or **the**
22 **inquiry requirements of Section 15,** a tribunal may find that the parties intended to enter into a
23 collaborative law participation agreement if they:

24 (1) signed a record indicating an intention to enter into a collaborative law

Comment [A11]: This phrase was omitted when the former section 14 was broken into two parts, including the new Section 15. It should be included here.

1 participation agreement; and

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

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

5 (1) enforce an agreement evidenced by a record resulting from the process in
6 which the parties participated;

7 (2) apply the disqualification provisions of Section 6, 9, 10, and 11; or

8 (3) apply the evidentiary privilege of Section 17.

9 **SECTION 21. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In

10 applying and construing this uniform act, consideration must be given to the need to promote
11 uniformity of the law with respect to its subject matter among states that enact it.

Comment [A12]: Here is where the proposed new provision on Choice of Law (entitled Governing Law) would be placed. The sections following would be renumbered accordingly. See separate memo on proposed Choice of Law provision..

12 **SECTION 22. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**

13 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal

14 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq.,

15 but does not modify, limit, or supersede Section 101 (c) of that act, 15 U.S.C. Section 7001(c), or

16 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15

17 U.S.C. Section 7003(b).

18 **SECTION 23. SEVERABILITY CLAUSE.** If any provision of this [act] or its

19 application to any person or circumstance is held invalid, the invalidity does not affect other

20 provisions or applications of this [act] which can be given effect without the invalid provision or

21 application, and to this end the provisions of this [act] are severable.

22 *Legislative Note: Include this section only if the state lacks a general severability statute or a*
23 *decision by the highest court of this state stating a general rule of severability.*
24

25 **SECTION 24. EFFECTIVE DATE.** This [act] takes effect.....
26

1 **Legislative Note:** *States should choose an effective date for the act that allows substantial time*
2 *for notice to the bar and the public of its provisions and for the training of collaborative lawyers.*
3