

Executive Summary of the Uniform Collaborative Law Act

The Uniform Law Commission (formerly the National Conference of Commissioners on Uniform State Laws) has drafted more than 250 uniform laws on numerous subjects and in various fields of law where uniformity is desirable and practicable. The signature product of the Commission, the Uniform Commercial Code, is a prime example of how the work of the Uniform Law Commission has simplified the legal life of businesses and individuals by providing rules and procedures that are consistent from state to state.

The collaborative dispute resolution process (commonly known as “Collaborative Law”) is a voluntary, non-adversarial dispute resolution process for parties represented by counsel. As is the case with mediation, collaborative law has its roots in the area of family law, and the process is rapidly expanding for resolving disputes in many areas of civil law. A number of states have enacted statutes of varying length and complexity that recognize collaborative law, and a number of courts have taken similar action through the enactment of court rules.

Collaborative Law agreements are crossing state lines as more individuals and businesses are utilizing the collaborative process. As the use of the process continues to grow, the Uniform Collaborative Law Act (the “Act”) will provide consistency from state to state regarding enforceability of collaborative law agreements, confidentiality of communications in the process, an automatic stay of court proceedings and the privilege against disclosure should the process not result in settlement.

Beginning in February, 2007 a Drafting Committee of the Uniform Law Commission has conducted a series of conferences for the purpose of drafting an act to codify collaborative law procedures into a uniform act. In July, 2009, meeting in its one-hundred and eighteenth year, the Commission unanimously approved a Uniform Collaborative Law Act. This paper provides a section-by-section summary of the Act, as approved by the Commission.

Section 1 sets forth the title: Uniform Collaborative Law Act.

Section 2 sets forth definitions of terms used in the Act.

Section 3 makes the Act applicable to a collaborative law participation agreement signed after the effective date of the Act and emphasizes that a tribunal cannot order a party to participate in the collaborative law process over that party’s objection.

Section 4 establishes minimum requirements for a collaborative law participation agreement, which is the agreement that parties sign to initiate the collaborative law process. The agreement must be in writing, state the parties intention to resolve the matter (issue for resolution) through collaborative law, contain a description of the matter and identify and confirm engagement of the collaborative lawyers. The Section further provides that the parties may include other provisions not inconsistent with the Act.

Section 5 specifies when and how the collaborative law process begins, and how the process is concluded or terminated. The process begins when parties sign a participation agreement, and any party may unilaterally terminate the process at any time without specifying a reason. The process is concluded by a negotiated, signed agreement resolving all or a portion of the matter, or a portion of the matter and the parties' agreement that the remaining portions of the matter will not be resolved in the process.

Several actions will terminate the process, such as a party giving notice that the process is terminated, beginning a proceeding, filing motions or pleadings, requesting a hearing in an adjudicatory proceeding without the agreement of all parties, or the discharge or withdrawal of a collaborative lawyer. The Section further provides that under certain conditions the collaborative process may continue with a successor collaborative lawyer in the event of the withdrawal or discharge of a collaborative lawyer. The party's participation agreement may provide additional methods of terminating the process.

Section 6 creates a stay of proceedings before a tribunal (court, arbitrator, legislative body, administrative agency, or other body acting in an adjudicative capacity) once the parties file a notice of collaborative law with the tribunal. A tribunal may require status reports while the proceeding is stayed; however, the scope of the information that can be requested is limited to insure confidentiality of the collaborative law process.

Section 7 creates an exception to the stay of proceedings by authorizing a tribunal to issue emergency orders to protect the health, safety, welfare or interests of a party or family or household member; or, to protect financial or other interests of a party in any critical area in any civil dispute.

Section 8 authorizes a tribunal to approve an agreement resulting from a collaborative law process.

Section 9 sets forth a core element and the fundamental defining characteristic of the collaborative law process. Should the collaborative law process terminate without the matter being settled, the collaborative lawyer and lawyers in a law firm with which the collaborative lawyer is associated, are disqualified from representing a party in a proceeding before a tribunal in the collaborative matter, except to seek emergency orders (**Section 7**) or to approve an agreement resulting from the collaborative law process (**Section 8**). The disqualification requirement is further modified regarding collaborative lawyers representing low-income parties (**Section 10**) and governmental entities as parties (**Section 11**).

Sections 10 creates an exception to the disqualification for lawyers representing low income parties in a legal aid office, law school clinic or a law firm providing free legal services to low income parties. If the process terminates without settlement, a lawyer in the organization or law firm with which the collaborative lawyer is associated may represent the low income party in an adjudicatory proceeding involving the matter in the collaborative law process,

provided that the participation agreement so provides, and the representation is without fee, and the individual collaborative lawyer is appropriately isolated from any participation in the collaborative matter before a tribunal.

Section 11 creates a similar exception to the disqualification requirement for lawyers representing a party that is a government or governmental subdivision, agency or instrumentality.

Section 12 sets forth another core element of collaborative law. Parties in the process must, upon request of a party, make timely, full, candid, and informal disclosure of information substantially related to the collaborative matter without formal discovery, and promptly update information that has materially changed. Parties are free to define the scope of disclosure in the collaborative process, so long as they do not violate another other law, such as an Open Records Act.

Section 13 acknowledges that standards of professional responsibility of lawyers and abuse reporting obligations of lawyers and all licensed professionals are not changed by their participation in the collaborative law process.

Section 14 deals with appropriateness of the collaborative law process. Prior to the parties signing a participation agreement, a collaborative lawyer is required to discuss with a prospective client factors that the collaborative lawyer reasonably believes relate to the appropriateness of the prospective client's matter for the collaborative process, and provide sufficient information for the client to make an informed decision about the material benefits and risks of the process as compared to the benefit and risks of other reasonably available processes, such as litigation, arbitration, mediation or expert evaluation. Further, a prospective party must be informed of the events that will terminate the process and the effect of the disqualification requirement.

Section 15 obligates a collaborative lawyer to make a reasonable effort to determine if a prospective client has a history of a coercive or violent relationship with another prospective party, and if such circumstances exist, establishes criteria for beginning and continuing the process and providing safeguards.

Section 16 provides that oral and written communications developed in the collaborative process are confidential to the extent agreed by the parties or as provided by state law, other than the Act.

Section 17 creates a broad privilege prohibiting disclosure of communications developed in the process in legal proceedings. The provisions are similar to those in the Uniform Mediation Act and apply to party and non-party participants in the process.

Sections 18 and 19 provide for the possibility of waiver of privilege by all parties, and certain exceptions to the privilege based on important countervailing public policies such as preventing threats to commit bodily harm or a crime, abuse or neglect of a child or adult, or

information available under an open records act, or to prove or disprove professional misconduct or malpractice. Parties may agree that all or part of the process is not privileged.

Section 20 deals with enforcement of an agreement made in a collaborative process that fails to meet the mandatory requirements for a participation agreement (Section 4), or a collaborative lawyer who has not fully complied with the disclosure requirements (Section 14). When the interests of justice so require, a tribunal is given discretion to enforce an agreement resulting from a flawed participation agreement, if the tribunal finds that the parties intended to enter into a participation agreement, and reasonably believed that they were participating in the collaborative process.

Section 21 emphasizes the need to promote uniformity in applying and construing the Act among states that adopt it.

Section 22 provides that the Act may modify, limit or supersede certain provisions of the Federal Electronic Signatures in Global and National Commerce Act.

Section 23 is a severability clause; and **Section 24** establishes an effective date for the Act.

The ABA Section of Dispute Resolution has endorsed the Uniform Collaborative Law Act, and other Sections and entities of the ABA are encouraged to do so. The Act will be presented to the ABA House of Delegates in February 2010, and should be available for consideration by state legislatures in mid-2010. ABA members and all collaborative practitioners are encouraged to contact their state delegates to the House of Delegates and encourage their support of the Uniform Collaborative Law Act.

Collaborative Law is a rapidly developing process for managing conflicts and resolving disputes outside of the courthouse. Voluntary early settlement increases party satisfaction, reduces unnecessary expenditure of personal and business resources for dispute resolution, and promotes a more civil society. The future growth and development of Collaborative Law has significant benefits for clients and the legal profession.

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