

Principles and Guidelines for Collaborative Family Law

This document is not the Participation Agreement and differs in many respects from the Participation Agreement that Collaborative Professionals in Illinois use in Collaborative Practice. This document only illustrates some of the principles of Collaborative Practice and Collaborative Divorce.

I. Goals

- We acknowledge that the essence of "Collaborative Family Law" is the shared belief by all participants that it is in the best interests of the parties and their families in typical family law matters to voluntarily commit themselves to avoiding adversarial proceedings.
- We therefore adopt this conflict resolution process, which does not rely on a court-imposed resolution, but relies on an atmosphere of honesty, cooperation, integrity, and professionalism geared toward the future well-being of the family.
- Our goals are to maximize settlement options for the benefit of all participants, to increase the abilities of the parties to communicate in a post-divorce relationship, and to minimize, if not eliminate, the negative economic, social, and emotional consequences of adversarial court proceedings to the parties and their families.
- We voluntarily commit ourselves to the Collaborative Law process, agree to seek a better way to resolve our differences justly and equitably, and strive for shared solutions and self-determination to resolve the issues surrounding the dissolution of our marriage.

II. No Court or Other Intervention

- We agree to give full, honest, and open disclosure of all information, whether requested or not.
- We agree to engage in informal discussions and conferences to settle all marital dissolution issues.
- We agree to direct all attorneys and all other experts we retain or involve, to work in a cooperative effort to resolve issues without resort to adversarial court proceedings or any other any other external decision-making processes, except as we may agree upon.
- We commit ourselves to settling our case without court intervention.

III. Limitations of the Collaborative Law Process

- We understand there is no guarantee that the Collaborative Law process will be successful in resolving our case. While we are intent on striving to reach a cooperative and open solution, success will ultimately depend on our own commitment to making the Collaborative Law process work.
- We understand that the Collaborative Law process cannot eliminate concerns about the disharmony, distrust, and irreconcilable differences, which have led to our current conflict; and we understand that we are responsible for the decisions we make in resolving our differences.
- We understand that we are still expected to assert our own interests and that our respective attorneys will help each of us to do so. Cooperation does not mean that a party must put the interests of the other party ahead of his or her own interests.
- We understand that we should not lapse into a false sense of security that the Collaborative Law process will protect each of us.
- We understand that while our attorneys share a commitment to the Collaborative Law process described in this document, each of them has a professional duty to represent diligently and advocate solely for his or her own client, and is not the attorney for the other party, and that no attorney-client relationship exists between one party's attorney and the other party by virtue of the Collaborative Law process.
- We understand that once the four-way Participation Agreement is executed by all four participants, in the event of the commencement of contested, unilateral pleadings, it will be necessary for both attorneys to withdraw and new counsel be retained.

IV. Attorneys' Role and Fees

- We understand that each attorney is independent from the other attorney and has been retained solely by his or her client in the Collaborative Law process.
- We agree that our attorneys are entitled to be paid for their services, and that the allocation of marital assets to compensate our attorneys will be resolved in this Collaborative Law process. We agree to make funds available for this purpose.
- We understand that the attorneys' role is to provide is to provide an organized framework that will facilitate and assist us in reaching agreements. That the attorneys will help us communicate with each other, identify issues, collect and help interpret data, locate experts, ask questions, make observations, suggest options, help us express our needs, goals, interests, and feelings, check the workability of proposed solutions, and prepare and file all documents for the court.

V. Participation with Integrity

- We will work to protect and uphold the privacy, respect, and dignity of all involved, including parties, children, attorneys, and consulting experts.
- We shall maintain a high standard of integrity and specifically shall not take advantage of each other or of any inconsistencies, misperceptions, misstatements of fact or law, or mistakes of others, but rather shall disclose them and strive to identify and correct them.

VI. Experts and Consultants

- If we determine that the help of experts is needed, we will retain experts jointly unless both parties and their attorneys agree otherwise in writing.
- We agree that all such experts retained in this Collaborative Law process will be directed to work in a cooperative effort to resolve issues, and shall provide all their findings, conclusions, and results to all parties and attorneys equally. We understand that selection of a joint expert or consultant does not obligate us to accept the findings, conclusions, or opinion of that expert.
- If an expert is retained, assists, or is involved in the Collaborative Law process, unless we agree otherwise in writing, neither of us may retain such expert, nor may such expert participate in any subsequent litigation between us, nor may any of their work product or opinion be admissible as evidence in any subsequent litigation between us.

VII. Children's Issues

- In resolving issues about sharing the enjoyment of and responsibility for our children, the parties, attorneys and other experts shall make every reasonable effort to reach amicable solutions that promote the best interests of the children.
- The Participants agree to act quickly to mediate and resolve all differences related to the children in a matter that will promote a caring, loving, and involved relationship between the children and each parent.
- The Participants agree not to seek a custody evaluation while the matter is a Collaborative Law case.
- We agree: to insulate our children from involvement in our disputes; to attend a requisite parenting class; that settlement discussions will not take place in the presence of our children unless by mutual agreement or with the advice of a child specialist; to be open to resources that will assist us in helping our children deal with our marital dissolution in a positive way and promote a good parenting relationship with each of us.

VIII. Confidentiality

- We understand that any discussion or documents between or amongst a party, an attorney, or an expert retained or involved in this Collaborative Law case is deemed in the nature of settlement discussions, and

unless we agree otherwise in writing shall not be disclosed to any court for any purpose. We understand that this rule is not intended to preclude admissibility of information that is properly obtained through discovery in subsequent litigation.

- We understand that any statement or action indicating an intent to endanger the safety of another person, or that which constitutes a claim or suspicion of child abuse, to conceal or change the residence of the child(ren), to commit irreparable economic damage to the property of either party, or an attorney's violation of the rules of professional conduct, is not privileged.
- We agree that no action or statement of a party or their attorney shall be deemed a waiver of any privilege in any subsequent divorce litigation or any other litigation between the parties.

IX. Enforceability of Agreements

- We understand that temporary agreements may be necessary to provide us with a feeling of confidence, safety and security as we discuss and negotiate via the Collaborative Law process and that in the event that either of us requires a temporary agreement for any purpose, the terms of the agreement will be discussed, mutually agreed upon, and put in writing and signed by our attorneys and us.
- We agree that if either of us withdraws from or terminates the Collaborative Law process, the written temporary agreement may be presented to the Court as a basis for an Order, which the Court may make retroactive to the date of the written temporary agreement.
- We agree that once a final settlement agreement is signed, if either of us should refuse to honor it, the final agreement may be presented to the Court in any subsequent action.

X. Negotiation in Good Faith

- We understand that the Collaborative Law process, even with full and honest disclosure, will involve vigorous good faith negotiation.
- Each of us will be expected to take a reasoned position in all disputes. We are encouraged to speak freely and express our needs, desires, options, and opinions without criticism or judgment by another. Where our positions differ, each of us will be encouraged to use our best efforts to create proposals that meet the fundamental needs of both of us and if necessary to compromise to reach a settlement of all issues.
- Although each of us may discuss the likely outcome of a litigated result, none of us will use threats of litigation as a way of forcing settlement.
- We understand that by utilizing this alternative dispute resolution method of the Collaborative Law process we are waiving the right to formal discovery, which would otherwise be available to us through the litigation process.
- We acknowledge that by using informal discovery, we are giving up certain investigative procedures and methods that would be available to us in the litigation process. We give up these measures with a specific understanding and commitment that both of us must and shall make full, fair, and timely disclosure of all assets, income, debts and other information necessary for a principled and complete settlement.
- We understand that to make informed decisions and to reach agreement and settlement of the issues pertaining to the marital dissolution, we each need complete and accurate information.
- We understand that participation in the Collaborative Law process, and the settlement reached, is based upon the requirement that both parties and our attorneys act in good faith and provide timely, complete and accurate information to the best of our abilities.
- We agree to provide whatever releases or written authorizations may be necessary to obtain required information and we agree that the subpoena power may be necessary to obtain information neither has in his or her possession or control or which cannot be obtained by releases.
- We understand that on request, we will be required to sign a sworn statement/affidavit making fair and full disclosure of our income, assets, and debts and any other relevant information and that any responses to the disclosure of income, assets, and liabilities shall be under penalty of perjury or verified by the party responding.
- We understand that the failure of either of us to fully and honestly disclose all financial or other information and records relevant to the marital dissolution issues could result in legal consequences related to any judgment for dissolution that may be entered as a result of this Collaborative Law process.

XI. Rights and Obligations Pending Settlement

- We understand that, although we have agreed to work outside the judicial system, early in the Collaborative Law process, together we shall establish and temporarily agree upon our respective responsibilities and obligations pending settlement (i.e. treatment of assets and/or debts, expenditures, behaviors, matters pertaining to children).

XII. Disqualification by Court Intervention

- We understand that our attorney's representation is limited to resolving our dissolution of marriage issues with cooperative strategies and shared problem-solving techniques. Thus, while each attorney is the advisor solely of his or her client and serves as the client's representative, counselor, advocate, and negotiator, we agree that we will not authorize our attorneys to represent us or appear as counsel for us with respect to this matter in any Court or on any Court filing other than a mutually filed Petition for Dissolution or other mutually agreed to matter.
- We understand that unless we otherwise agree, prior to reaching final agreement on all issues, no Petition will be filed or served, nor will any other motion or document be prepared or filed, which would initiate Court intervention. Neither party, nor the party's attorney, will use Court during the Collaborative Law process unless it is mutually agreed.
- After the four-way Participation Agreement is signed by all four participants, in the event either party or attorney deems it necessary or unavoidable that contested, unilateral pleadings be filed with the Court, the Collaborative Law case shall terminate and both attorneys will be disqualified from continuing to provide representation to such attorney's client or receiving compensation for work performed on behalf of such client after the termination date of the Collaborative Law case. Once attorney is disqualified, that attorney shall not represent a party in any matter related to the underlying proceedings, until the time a final order is entered within this proceeding (as defined by Illinois statutory and case law) except if there is a bona fide emergency, accompanied by an affidavit signed by the attorney setting forth the reason for the emergency, an attorney setting forth the reason for the emergency, an attorney for a party may represent a party only at the first hearing with respect to the purported emergency.
- We understand that once the four-way Participation Agreement is executed, in the event of the commencement of contested, unilateral pleadings, it will be necessary for both parties to select new attorneys and additional fees will likely be required in retaining new counsel and there may be a delay while new attorneys become familiar with the case.
- In the event the Collaborative Law process terminates, all experts retained or involved in the Collaborative Law process terminates, all experts retained or involved in the Collaborative Law case will be disqualified as witnesses and their work product will be inadmissible as evidence, unless the parties agree otherwise in writing.

XIII. Withdrawal of Attorney

- The participants to the collaborative law process understand that either attorney may withdraw at any time during the Collaborative Law process for any reason.
- If either attorney deems it appropriate to withdraw from the Collaborative Law case for any reason, they do so by a written notice to the other party and his or her attorney. This may be done without terminating the status of the case as a Collaborative Law case.
- The participants understand that the party losing his or her attorney may choose to continue in the Collaborative Law process without an attorney or by retaining a new attorney who will agree in writing to be bound by the Principles and Guidelines of Collaborative Family Law.

XIV. Election to Terminate the Collaborative Law Process

- We agree that either party may unilaterally and without cause terminate the Collaborative Law process by giving written notice of such election to the other party and his or her attorney. Upon notification of termination, there will be a thirty (30) day waiting period (unless there is a need for emergency relief) before proceeding with Court hearings, to permit the other party to retain another attorney and make an orderly transition. We agree that all temporary agreements will remain in full force and effect during this period.

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Please refer to our Collaborative Law Glossary for definition of terms used in this document.