

Uniform Collaborative Law Act

This Act establishes minimum requirements for collaborative law participation agreements, including written agreements, description of the matter submitted to a collaborative law process, and designation of collaborative lawyers. It requires that the collaborative law process be voluntary. It specifies when and how a collaborative law process begins and is terminated and creates a stay of proceedings when parties sign a participation agreement to attempt to resolve a matter related to a proceeding pending before a tribunal while allowing the tribunal to ask for periodic status reports. The legislation creates an exception to the stay of proceedings for a collaborative law process for emergency orders to protect health, safety, welfare, or interests of a party, a family member, or a dependent.

This Act authorizes courts to approve settlements arising out of a collaborative law process. It codifies the disqualification requirement of collaborative lawyers if a collaborative law process terminates and defines the scope of the disqualification requirement to both the matter specified in the collaborative law participation agreement and to matters related to the collaborative matter. The bill extends the disqualification requirement to lawyers in a law firm with which the collaborative lawyer is associated. It requires parties to a collaborative law participation agreement to voluntarily disclose relevant information during the collaborative law process without formal discovery requests and update information previously disclosed that has materially changed.

The legislation acknowledges that standards of professional responsibility and child abuse reporting for lawyers and other professionals are not changed by their participation in a collaborative law process and requires that lawyers disclose and discuss the material risks and benefits of a collaborative law process to help insure parties enter into collaborative law participation agreements with informed consent. This legislation creates an obligation on collaborative lawyers to screen clients for domestic violence and, if present, to participate in a collaborative law process only if the victim consents and the lawyer is reasonably confident that the victim will be safe and authorizes parties to reach an agreement on the scope of confidentiality of their collaborative law communications.

Submitted as:

Utah

[HB 284 \(Enrolled version\)](#)

Status: Enacted into law in 2010.

Suggested State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Short Title.*] This Act may be cited as the “Uniform Collaborative Law Act.”
- 2
- 3 Section 2. [*Definitions.*] In this chapter:
- 4 (1) “Collaborative law communication” means a statement, whether oral or in a record, or
- 5 verbal or nonverbal, that:
- 6 (a) is made to conduct, participate in, continue, or reconvene a collaborative law
- 7 process; and
- 8 (b) occurs after the parties sign a collaborative law participation agreement and
- 9 before the collaborative law process is concluded.

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

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

- 14 (a) sign a collaborative law participation agreement; and
- 15 (b) are represented by collaborative lawyers.

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

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

20 (6) “Law firm” means:

- 21 (a) lawyers who practice law together in a partnership, professional corporation,
22 sole proprietorship, limited liability company, or association;
- 23 (b) lawyers employed in a legal services organization;
- 24 (c) the legal department of a corporation or other organization; or
- 25 (d) the legal department of a government or governmental subdivision, agency, or
26 instrumentality.

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

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

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

34 (10) “Proceeding” means:

- 35 (a) a judicial, administrative, arbitral, or other adjudicative process before a
36 tribunal, including related pre-hearing and post-hearing motions, conferences, and discovery; or
- 37 (b) a legislative hearing or similar process.

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

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

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

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

- 45 (a) to execute or adopt a tangible symbol; or
- 46 (b) to attach to or logically associate with the record an electronic symbol, sound,
47 or process.

48 (15) “Tribunal” means:

- 49 (a) a court, arbitrator, administrative agency, or other body acting in an
50 adjudicative capacity which, after presentation of evidence or legal argument, has jurisdiction to
51 render a decision affecting a party's interests in a matter; or
- 52 (b) a legislative body conducting a hearing or similar process.

54 Section 3. [*Applicability.*] This chapter applies to a collaborative law participation
55 agreement that meets the requirements of Section 4 of this Act.

57 Section 4. [*Collaborative Law Participation Agreement -- Requirements.*]

58 (1) A collaborative law participation agreement must:

- 59 (a) be in a record;
60 (b) be signed by the parties;
61 (c) state the parties' intention to resolve a collaborative matter through a
62 collaborative law process under this chapter;
63 (d) describe the nature and scope of the matter;
64 (e) identify the collaborative lawyer who represents each party in the process; and
65 (f) contain a statement by each collaborative lawyer confirming the lawyer's
66 representation of a party in the collaborative law process.

67 (2) Parties may agree to include in a collaborative law participation agreement additional
68 provisions not inconsistent with this chapter.

69
70 Section 5. [*Beginning and Concluding a Collaborative Law Process.*]

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

73 (2) A tribunal may not order a party to participate in a collaborative law process over that
74 party's objection.

75 (3) A collaborative law process is concluded by a:

- 76 (a) resolution of a collaborative matter as evidenced by a signed record;
77 (b) resolution of a part of the collaborative matter, evidenced by a signed record,
78 in which the parties agree that the remaining parts of the matter will not be resolved in the
79 process; or
80 (c) termination of the process.

81 (4) A collaborative law process terminates:

82 (a) when a party gives notice to other parties in a record that the process is ended;
83 or

84 (b) when a party:
85 (i) begins a proceeding related to a collaborative matter without the
86 agreement of all parties; or

87 (ii) in a pending proceeding related to the matter:
88 (A) initiates a pleading, motion, order to show cause, or request for
89 a conference with the tribunal;

90 (B) requests that the proceeding be put on the tribunal's calendar;
91 or

92 (C) takes similar action requiring notice to be sent to the parties; or
93 (c) except as otherwise provided by Subsection (5), when a party discharges a
94 collaborative lawyer or a collaborative lawyer withdraws from further representation of a party.

95 (5) A party's collaborative lawyer shall give prompt notice to all other parties of a
96 discharge or withdrawal, in accordance with the Rules of Civil Procedure.

97 (6) A party may terminate a collaborative law process with or without cause.

98 (7) Notwithstanding the discharge or withdrawal of a collaborative lawyer, a
99 collaborative law process continues, if not later than 30 days after the date that the notice of the
100 discharge or withdrawal of a collaborative lawyer required by Subsection (4)(c) is sent to the
101 parties:

- 102 (a) the unrepresented party engages a successor collaborative lawyer; and
103 (b) in a signed record:
104 (i) the parties consent to continue the process by reaffirming the
105 collaborative law participation agreement;
106 (ii) the agreement is amended to identify the successor collaborative
107 lawyer; and

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

110 (8) A collaborative law process does not conclude if, with the consent of the parties, a
111 party requests a tribunal to approve a resolution of the collaborative matter or any part thereof as
112 evidenced by a signed record.

113 (9) A collaborative law participation agreement may provide additional methods of
114 concluding a collaborative law process.

115
116 Section 6. [*Proceedings Pending Before Tribunal -- Status Report.*]

117 (1) Persons in a proceeding pending before a tribunal may sign a collaborative law
118 participation agreement to seek to resolve a collaborative matter related to the proceeding.
119 Parties shall file promptly with the tribunal a notice of the agreement after it is signed. Subject to
120 Subsection (3) and Sections 7 and 8, the filing shall include a request for a stay of the
121 proceeding.

122 (2) Parties shall file promptly with the tribunal notice in a record when a collaborative
123 law process concludes and request the stay to be lifted. The notice may not specify any reason
124 for termination of the process.

125 (3) A tribunal in which a proceeding is stayed under Subsection (1) may require parties
126 and collaborative lawyers to provide a status report on the collaborative law process and the
127 proceeding. A status report may include only information on whether the process is ongoing or
128 concluded. It may not include a report, assessment, evaluation, recommendation, finding, or
129 other communication regarding a collaborative law process or collaborative law matter.

130 (4) A tribunal shall provide parties notice and an opportunity to be heard before
131 dismissing a proceeding in which a notice of collaborative process is filed based on delay or
132 failure to prosecute.

133
134 Section 7. [*Emergency Orders.*] During a collaborative law process, a court may issue
135 emergency orders, including protective orders in accordance with [insert citation], to protect the
136 health, safety, welfare, or interest of a party or member of a party's household.

137
138 Section 8. [*Approval of Agreement by Tribunal.*] A court may approve an agreement
139 resulting from a collaborative law process.

140
141 Section 9. [*Disclosure of Information.*] Except as provided by law other than this chapter,
142 during the collaborative law process, on the request of another party, a party shall make timely,
143 full, candid, and informal disclosure of information related to the collaborative matter without
144 formal discovery. A party also shall update promptly previously disclosed information that has
145 materially changed. Parties may define the scope of disclosure during the collaborative law
146 process.

147
148 Section 10. [*Standards of Professional Responsibility and Mandatory Reporting Not*
149 *Affected.*] This chapter does not affect:

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

152 (2) the obligation of a person to report abuse or neglect, abandonment, or exploitation of
153 a child or adult under the law of this state.

154
155 Section 11. [*Appropriateness of Collaborative Law Process.*] Before a prospective party
156 signs a collaborative law participation agreement, a prospective collaborative lawyer shall:

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

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

164 (3) advise the prospective party that:
165 (a) after signing an agreement if a party initiates a proceeding or seeks tribunal
166 intervention in a pending proceeding related to the collaborative matter, the collaborative law
167 process terminates;

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

170 (c) the collaborative lawyer and any lawyer in a law firm with which the
171 collaborative lawyer is associated may not appear before a tribunal to represent a party in a
172 proceeding related to the collaborative matter, except as authorized by the Rules of Professional
173 Conduct.

174
175 Section 12. [*Coercive or Violent Relationship.*]

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

179 (2) Throughout a collaborative law process, a collaborative lawyer reasonably and
180 continuously shall assess whether the party the collaborative lawyer represents has a history of a
181 coercive or violent relationship with another party.

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

186 (a) the party or the prospective party requests to begin or to continue a process;
187 and

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

190
191 Section 13. [*Confidentiality of Collaborative Law Communication.*] A collaborative law
192 communication is confidential to the extent agreed by the parties in a signed record or as
193 provided by law of this state other than this chapter.

194
195 Section 14. [*Authority of Tribunal in Case of Noncompliance.*]

196 (1) If an agreement fails to meet the requirements of Section 4, or a lawyer fails to
197 comply with Section 11 or 12, a tribunal may nonetheless find that the parties intended to enter
198 into a collaborative law participation agreement if they:

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

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

202 (2) If a court makes the findings specified in Subsection (1), and the interests of justice
203 require, the court may:

204 (a) enforce an agreement evidenced by a record resulting from the process in
205 which the parties participated;

206 (b) apply the disqualification provisions of Sections 5 and 6; and
207 (c) apply the privileges in the state [Rules of Evidence].
208

209 Section 15. [*Uniformity of Application and Construction.*] In applying and construing this
210 Uniform Act, consideration shall be given to the need to promote uniformity of the law with
211 respect to its subject matter among states that enact it.
212

213 Section 16. [*Relation to Electronic Signatures in Global and National Commerce Act.*]
214 This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and
215 National Commerce Act, 15 U.S.C.A. Sec. 7001 et seq. (2009), but does not modify, limit, or
216 supersede Section 101(c) of that act, 15 U.S.C.A. Sec. 7001(c), or authorize electronic delivery
217 of any of the notices described in Sec. 103(b) of that Act, 15 U.S.C.A. Sec. 294 7003(b).