

FLORIDA FAMILY LAW RULES OF PROCEDURE
FORM 12.985(b)(1)
COLLABORATIVE LAW PARTICIPATION AGREEMENT
PRINCIPLES AND GUIDELINES (10/20)

_____ and _____, Esquire, {Client's name}'s attorney(s) _____, and {Client's name}'s _____ attorney(s) have chosen to use the principles of the Collaborative Law Process to settle the issues related to the dissolution of their marriage. {Client's name} _____ and {Client's name} _____, hereinafter referred to as the "Clients" or "Client", have been apprised by their respective attorney(s) of possible alternatives and have chosen the Collaborative Law Process to proceed with their divorce. The Clients further understand that the law and the courts may confer certain rights and impose certain obligations with respect to property settlement and support but they are not confined by those laws nor to how a judge might rule. The Clients are free to negotiate and resolve issues in the manner that best suits their own needs and those of their family. This Agreement is being entered into pursuant to, and consistent with, Florida Statutes Sections 61.55-58, Florida Family Law Rules of Procedure 12.745 and Rules Regulating the Florida Bar 4-1.19.

An interdisciplinary collaborative approach will be utilized in this process which integrates the legal, emotional, and financial aspects of the Clients' divorce. This will be accomplished by using collaborative professionals, in particular, a Collaborative Facilitator/Mental Health Professional (MHP), a Collaborative Financial Professional (FP), and two Collaborative attorneys, who comprise the Collaborative Team (the "Team"). The MHP and FP will be retained jointly by the Clients, and they will act as neutral professionals in the process.

The Collaborative Team may also choose to jointly engage additional consultants/experts for purposes of valuation, cash flow analysis, tax issues, retirement programs analysis, child development needs, and any other issue that the Clients agree requires expert advice and/or recommendations. If, in addition, either Client desires to consult with an outside expert on his or her own, he or she may do so, but will advise the rest of the Team prior to consulting with the outside expert.

1. GOALS

The Collaborative Team and Clients acknowledge that the essence of the Collaborative Law Process is the shared belief by the participants that it is in the best interests of the Clients and their family to commit themselves to avoiding litigation. We, therefore, adopt this conflict resolution process, which does not rely on a court-imposed resolution, but relies on an atmosphere of honesty, cooperation, transparency, integrity, and professionalism geared toward the future well-being of the family. The goal is to minimize, if not eliminate, the negative economic, social, and emotional consequences of litigation to the Clients and their family. All parties commit ourselves to the Collaborative Law Process and agree to seek a resolution outside of litigation.

2. NO COURT OR OTHER INTERVENTION

- The Clients acknowledge that they have mutually and voluntarily chosen to use the Collaborative Law Process and they understand that their participation in the process is voluntary and either Client may terminate the process at any time, with or without cause.
- The Clients commit to resolving this matter without court intervention.
- The Clients agree to engage in informal discussions and conferences to negotiate the settlement of all issues.
- The Clients agree to direct all attorneys, financial professionals, mental health professionals, consultants, and other experts retained by the Clients to work in a cooperative effort to resolve issues without resort to litigation or any other external decision-making process, except as agreed to by the Collaborative Team and the Clients.
- Unless otherwise agreed, no summons or petition will be served or filed, nor will any other motion or document be filed that would initiate court intervention prior to the signing of a Collaborative Marital Settlement Agreement.
- In the rare event that a petition has been filed prior to the case becoming a Collaborative case, a motion for abatement will be filed with the court to obtain a stay of those proceedings while the Clients participate in the Collaborative Law Process.
- The Clients understand that if either of them unilaterally seeks court action in a pending dissolution of marriage case, the Collaborative Law Process will be automatically terminated.
- When the Clients have reached a final agreement, a Joint Petition for Dissolution of Marriage and Answer will be filed. One or both of the Clients will appear with counsel at the uncontested final hearing at which time it will be requested that the court enter a Final Judgment of Dissolution of Marriage ratifying the Clients' agreement. This is the only time an appearance in court will be required, if the Clients resolve everything through the Collaborative Law Process.

3. INFORMATION GATHERING/DISCOVERY

The Clients agree to deal with each other in good faith and to promptly provide all necessary and reasonable information requested. No formal discovery procedures will be used. By using informal discovery, the Clients are giving up certain investigative procedures and methods that would be available in litigation. The Clients do this with the specific understanding that both of the Clients will make full financial disclosure of all income, assets, liabilities, and other information necessary for an equitable settlement. If a Client or a Collaborative Professional requests that a Client provide a document or information, the Client from whom the document or information is requested will provide it in a timely manner, no more than thirty days after the request is made, unless otherwise agreed to by the other Client or Collaborative Team, including taking reasonable steps to obtain the document or information from a third party.

The Clients agree to give full, honest, and open disclosure of all information, whether requested or not. The Clients shall provide each other with any written authorizations requested which may be necessary

to obtain information and documentation or to prepare Qualified Domestic Relations Orders or other documents.

The Clients understand that participation in the Collaborative Law Process and the settlement reached are based upon the assumption that both Clients have acted in good faith and have provided complete and accurate information to the best of their ability. Each Client will sign a sworn Financial Affidavit making full and fair disclosure of their income, expenses, assets, and liabilities in accordance with Florida law. The Clients have a continuing duty during the Collaborative Law Process to supplement the disclosure made as their circumstances change or as additional information becomes available, including, but not limited to, providing an amended sworn Financial Affidavit.

4. GENERAL PRINCIPLES OF THE COLLABORATIVE LAW PROCESS

- The Clients understand that there is no guarantee that the Collaborative Law Process will result in the Clients resolving all of their differences.
- The Clients acknowledge that each of the Collaborative attorneys is independent from the other, represents only one Client in this Collaborative Law Process, and that neither Client is a third-party beneficiary of the other Client's attorney's work for his or her own Client. The Clients acknowledge that each Collaborative attorney is only in privity of contract with, and only owes a duty to, his or her individual Client and that the Collaborative attorney is not in privity of contract with, or owe a duty to, the other Client.
- The Clients understand that the Collaborative Law Process cannot eliminate concerns about the disharmony, distrust, and irreconcilable differences that have led to the current conflicts between the Clients.
- The Clients understand that they are still expected to assert their respective interests and that their respective attorneys will help her or him do so.
- The Clients understand that while the Collaborative attorneys share a commitment to the process described in this document, each of them has a professional duty to represent his or her Client diligently, and is not the attorney for the other Client.

5. TEMPORARY AGREEMENTS

In the event that either Client requires a temporary agreement for any purpose or enters into a partial agreement on any matter, the agreement will be put in writing and signed by the Clients. If either Client withdraws from the Collaborative Law Process, the written agreement may be presented to the court as a basis for the entry of an order recognizing and enforcing those agreements, which the court shall make retroactive to the date of the written agreement.

6. PROFESSIONALS' FEES AND COSTS

The Clients agree the Collaborative Professionals are entitled to be paid for their services and their costs, and the Clients agree to make funds available for this purpose initially and throughout the Collaborative Law Process. The payment of the professionals' fees and costs will be an issue to be resolved during one or more of our joint meetings, as necessary. The initial determination of how the professionals' fees and costs will be paid is not necessarily a determination of the ultimate responsibility to pay the Collaborative Florida Family Law Rules of Procedure Form 12.985(b)(1), Collaborative Law Participation Agreement Principles and Guidelines (10/20)

Professionals' fees and costs, which can be negotiated by the parties as part of a comprehensive settlement.

7. PARTICIPATION WITH INTEGRITY

- The Collaborative Team and the Clients will work to protect the privacy, respect, and dignity of all involved, including the Clients, attorneys, other Collaborative Professionals and any experts/consultants.
- The Collaborative Team and the Clients will maintain a high standard of integrity and specifically shall not take advantage of each other or of the miscalculations or inadvertent mistakes of others, but shall identify and correct such mistakes.
- The Collaborative Team and the Clients will respect each other, which includes all of their communications with each other, whether written or verbal.

8. EXPERTS AND CONSULTANTS

- If consultants or experts are needed, the Clients will retain them jointly unless both of the Clients and their attorneys agree otherwise in writing. The payment of the consultants' or experts' fees, which will be the responsibility of the Clients, will be resolved so as to ensure that they will be paid throughout the Collaborative Law Process.
- If the Collaborative Law Process terminates, any new consultants or experts subsequently hired will be permitted to review the work product and reports of prior consultants or experts to facilitate the transition to litigation, but only if the Clients mutually agree.

9. CHILDREN'S ISSUES

- The Clients agree to maintain the children's interests as their highest priority.
- In resolving issues about sharing the enjoyment of and responsibility for the children, the Clients, with the assistance of the Collaborative Professionals, will make every effort to reach amicable solutions that promote the children's best interests.
- The Clients agree to act quickly to resolve differences related to the children to promote a caring, loving, and involved relationship between the children and both the Clients.
- The Clients agree not to seek a custody evaluation while in the Collaborative Law Process.
- The Clients agree to isolate the children from involvement in the disputes and not to engage in inappropriate communications regarding the dissolution of the Clients' marriage or this process in the presence of the children. Nothing will be discussed with the children about this process without the mutual agreement of the Clients.

10. NEGOTIATION IN GOOD FAITH

- The Clients understand that the process, even with full and honest disclosure, will involve vigorous good faith negotiations.

- The Clients agree that each of them will negotiate in good faith. Each of them will be expected to take a reasoned position in all disputes. Where such positions differ, each of them will be encouraged to use their best efforts to create proposals that meet the Clients' fundamental needs and if necessary to compromise to reach a settlement of all issues.
- Although each Client may discuss the likely outcome of litigation, neither the Clients nor the Collaborative Team will use threats of abandoning the Collaborative Law Process or of litigation as a way of imposing a settlement on one or both of the Clients.

11. ABUSE OF THE COLLABORATIVE LAW PROCESS

We understand that a Collaborative attorney will withdraw from representing his or her Client as soon as possible upon learning that the Client has withheld or misrepresented information or otherwise acted so as to undermine or take unfair advantage of the Collaborative Law Process. Examples of such violations of the process are: abusing the Clients' minor children, planning to remove a minor child from the state without the prior written consent of the other Client, or failure to participate in the spirit of the Collaborative Law Process. In addition:

NEITHER CLIENT WILL DISPOSE OF ANY ASSETS EXCEPT AS AGREED TO IN WRITING BY BOTH CLIENTS. NEITHER CLIENT WILL FAIL TO DISCLOSE THE EXISTENCE OF ANY ASSETS OR LIABILITIES TO THE OTHER CLIENT. ALL CURRENTLY AVAILABLE INSURANCE COVERAGE WILL BE MAINTAINED AND CONTINUED. NEITHER CLIENT SHALL BORROW AGAINST, CANCEL, TRANSFER, DISPOSE OF OR CHANGE BENEFICIARIES OF ANY INSURANCE OR OTHER COVERAGE INCLUDING LIFE, HEALTH, AUTOMOBILE, AND DISABILITY, HELD FOR THE BENEFIT OF THE CLIENTS OR THEIR MINOR CHILDREN, WITHOUT WRITTEN PERMISSION OF THE OTHER CLIENT.

NEITHER CLIENT WILL, WITHOUT THE WRITTEN PERMISSION OF THE OTHER CLIENT, INCUR ANY DEBTS OR LIABILITIES FOR WHICH THE OTHER CLIENT MAY BE HELD RESPONSIBLE.

12. DISQUALIFICATION BY COURT INTERVENTION

The Clients understand that each attorney's representation of his or her Client with respect to the subject of this matter is limited to the Collaborative Law Process and other non-adversarial dispute resolution methods, and that neither of the attorneys can ever represent his or her Client in litigation against the other Client related to the issues in this matter other than for an uncontested hearing. Once the Clients settle all of their issues related to this matter, the attorneys will prepare all required papers to be filed with the court to obtain an uncontested final judgment. Each of the Collaborative attorneys and any attorney "in association" with that attorney is forever disqualified from appearing as attorney of record for any party to litigation or in any other contested family law matter in litigation involving the Clients and the subject matter of this Process, such as a proceeding or action for dissolution of marriage or for modification or enforcement of judgment or order, writs and/or appeals. An attorney will be deemed "in association" with a Collaborative attorney if, at any time during the pendency of a proceeding for dissolution of marriage or future family law proceedings between the Clients that is related to the subject matter of this Collaborative matter, such attorney is the employer or employee of, co-employee with, or partner in the firm or shares a relationship of independent contractor status with either of the Collaborative attorneys.

In the event that the Collaborative Law Process terminates, the Clients agree that, except upon mutual written agreement of the Clients to the contrary, all consultants or experts retained by either Client or attorney, or whose work product is used by either Client or attorney during the term of this Agreement, will be disqualified as an expert witness for either Client to testify as to any matter related to the consultant's or expert's work product in the Collaborative Law Process. However, if the Collaborative Law Process is terminated and the Clients participate in subsequent litigation of the matters that are the subject of this process, the Clients can mutually agree in writing to use the work product of the MHP, FP, a consultant, or an expert in the contested litigation with the consent of the MHP, FP, consultant, or an expert.

13. STATEMENTS OF CLIENTS AND ATTORNEYS

- All communications, whether verbal, written, or otherwise, among the Clients and any of the Collaborative Professionals in the Collaborative Law Process are deemed settlement discussions and will be confidential and privileged under Florida law, and may not be offered as evidence in any subsequent proceedings, except as provided by Florida law. Nonetheless, statements by any Client that indicate an intent or disposition to endanger the health or safety of either Client, child abuse or neglect, elder abuse, the commission of a crime or fraud or as part of a plan to commit a crime or a fraud, or to create a public hazard, will not be privileged or deemed confidential and, in fact, must be disclosed to appropriate authorities under Florida law.
- All documents expressly identified and entitled "For Settlement Purposes Only" in the Collaborative Law Process shall be inadmissible and not a waiver of privilege, for any purpose in any subsequent proceeding except as otherwise mutually agreed to by the Clients and Collaborative Professionals, and no such communications will be deemed to be a waiver of any privilege or confidentiality of any Client.
- The Clients understand that some of the communications between the Collaborative professionals will be intended to facilitate the negotiation between the Clients of a mutually acceptable settlement and may not be shared with the Clients. Each Collaborative attorney will provide information to the Client as the attorney deems appropriate under the circumstances, always mindful of the attorney's ethical obligation that the Client receives sufficient information to provide informed consent to any agreements to be entered into through the Collaborative Law Process.

14. TERMINATION OF COLLABORATIVE LAW PROCESS

- If the Collaborative Team is unable to resolve any matters within this process, the Clients agree that a mediator will be retained by the Clients, chosen by the attorneys and the Clients, in an attempt to help the Clients resolve the dispute prior to the Clients taking any action before a court of competent jurisdiction, except in emergency situations.
- After mediation, if the case is still not resolved, either Client may unilaterally terminate the Collaborative Law Process by giving written notice to the other Client and his or her attorney of the decision to terminate the process. Either attorney may withdraw from this matter unilaterally by giving 10 days written notice of such election to the other Client and his or her attorney. This election does not terminate the Collaborative Law Process if the Client whose attorney withdraws

retains a new attorney who agrees in writing to be bound by this Agreement and the other Client and the Collaborative professionals consent to the new attorney participating in this process within thirty (30) days of the notices of withdrawal being sent by the attorney who withdrew.

- Upon termination of the Collaborative Law Process, there will be a 30-day waiting period (unless there is an emergency) before any court hearing, to permit both Clients to retain litigation attorneys and to make an orderly transition to litigation, as it is mandatory that both Collaborative attorneys withdraw from representing his or her Client upon the termination of the Collaborative Law Process. The intent of this provision is to avoid surprise and prejudice to the rights of the other Client. It is therefore mutually agreed that either Client may bring this provision to the attention of a court in requesting a postponement of a hearing scheduled within thirty (30) days of the termination of the Collaborative Law Process.

WE HEREBY PLEDGE TO COMPLY WITH AND TO PROMOTE THE SPIRIT AND WRITTEN WORD OF THIS AGREEMENT.

Dated: _____

Dated: _____

PARTICIPANT
{Name of Client 1}

PARTICIPANT
{Name of Client 2}

{Name of Attorney for Client 1}

{Name of Attorney for Client 2}

{Name of Financial Professional}

{Name of Neutral Facilitator}