

## NEW JERSEY FAMILY COLLABORATIVE LAW ACT

An Act concerning family collaborative law and supplementing Title 2A of the New Jersey Statutes.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. This act shall be known and may be cited as the “New Jersey Family Collaborative Law Act.”

2. The Legislature finds and declares:

a. Since at least 2005, attorneys in New Jersey have participated in the dispute resolution method known as family collaborative law, in which an attorney is retained for the limited purpose of assisting his client in resolving family<sup>1</sup>disputes in a voluntary, non-adversarial manner, without court intervention.

b. The family collaborative law process is distinct from other dispute resolution mechanisms because the parties intend to resolve their dispute without litigation. Instead, each party, represented by his attorney, meets together with the other party to the dispute, that party’s attorney, and, as needed, one or more nonparty participants who are not attorneys but are professionals in their fields, such as certified financial planners, certified public accountants, licensed clinical social workers, psychologists, licensed professional counselors, licensed marriage and family therapists, and psychiatrists. All participants in the family collaborative law process understand and agree that the process is intended to replace litigation and that the process will terminate if either party or either attorney commences a proceeding related to the subject matter to be addressed through the family collaborative process before a court or other tribunal other than to seek incorporation of a settlement agreement into a final judgment.

c. In order to facilitate full and fair disclosure by the parties to the family collaborative law process, the parties must have an evidentiary privilege to protect them from disclosure of any collaborative law communication. The nonparty participants in the family collaborative law process, who serve as neutral experts, need a privilege from disclosure of communications made by them during the process similar to the privilege created for mediators in the “Uniform Mediation Act,” P.L.2004, c.157 (C.2A:23C-1 et seq.). This will enable nonparty participants to participate candidly in the process and thereby facilitate resolution of the family law dispute.

3. As used in this act:

a. “Family collaborative” law communication” means a statement, whether oral or in a record, that is made in the course of a family collaborative law process and occurs after the parties sign a family collaborative law participation agreement but before the family collaborative law process is concluded.

b. "Family collaborative participation agreement" means a written agreement by the parties to participate in a family collaborative law process, in accordance with section 5 of this act in order to resolve their family law dispute.

c. "Family collaborative law process" means a procedure intended to resolve the family law dispute without intervention by a tribunal provided that the individuals in the dispute: (1) sign a family collaborative law participation agreement; and (2) are represented by family collaborative lawyers.

d. "Family collaborative lawyer" means a lawyer who represents a party in a family collaborative law process and whom the party acknowledges is retained for that limited purpose.

e. "Family law dispute" means a dispute, claim or issue which is described in a participation agreement and arises under the family or domestic relations law of this State, including but not limited to:

(1) marriage, civil union, domestic partnership, divorce, dissolution, annulment, or property distribution;

(2) child custody, visitation, or parenting time;

(3) alimony, maintenance, or child support; or

(4) premarital, marital or post-marital agreements, or comparable agreements affecting civil unions or domestic partnerships.

f. "Nonparty participant" means a person, other than a party and the party's family collaborative lawyer, who participates in a family collaborative law process. This includes, but is not limited to, financial practitioners, including certified financial planners and certified public accountants, and mental health professionals, including licensed clinical social workers, psychologists, licensed professional counselors, licensed marriage and family therapists, and psychiatrists.

g. "Party" means an individual who signs a family collaborative law participation agreement and whose consent is necessary to resolve a family law dispute under this act.

h. "Proceeding" means a judicial or arbitral or adjudicative process before a tribunal.

i. "Prospective party" means an individual who discusses with a prospective family collaborative lawyer the possibility of signing a family collaborative law participation agreement.

j. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

k. "Related to the family law dispute" means involving the same parties, transaction or occurrence, nucleus of operative fact, claim, matter or issue as the family law dispute.

l. "Settlement agreement" means a signed agreement entered into by the parties to a family collaborative law participation agreement that sets forth a resolution of the parties' family law dispute.

m. "Sign" means, with present intent to authenticate or adopt a record to execute or adopt a tangible symbol; or attach to or logically associate with the record an electronic symbol, sound, or process.

n. "Tribunal" means a court, arbitrator, or administrative agency, as applicable, that after presentation of evidence or legal argument, has jurisdiction to render a decision affecting a party's interests in a matter.

4. This act applies to a family collaborative law process that is subject to a family collaborative law participation agreement, meets the requirements set forth in section 5 of this act, and is signed on or after the effective date of this act. This act does not apply to any other collaborative law process or any other collaborative law participation agreement.

5. a. A family collaborative law participation agreement shall:

(1) be in a record;

(2) be signed by the parties;

(3) state the parties' intention to resolve a family law dispute through a family collaborative law process pursuant to this act;

(4) describe the nature and scope of the family law dispute;

(5) identify the family collaborative lawyer who represents each party in the process;

(6) contain a statement that a family collaborative lawyer's role is limited as defined in this act, consistent with the Rules of Professional Conduct promulgated by the Supreme Court of New Jersey;

(7) set forth the manner by which a family collaborative law process begins and the manner by which it terminates or concludes in accordance with sections 6 and 7 of this act;

(8) state that any family collaborative law communication of a party or a nonparty participant is confidential and subject to an evidentiary privilege under section 13 of this act, and that the privilege may be waived only expressly and by both parties or in the case of a nonparty participant, by the nonparty participant having the right to exercise the privilege; and

(9) state that the conduct of the family collaborative lawyer is governed by this act, the Rules of Court adopted by the Supreme Court of New Jersey, and the Rules of Professional Conduct promulgated by the Supreme Court of New Jersey and that this act does not alter the family collaborative lawyer's responsibilities to the client under the Rules of Professional Conduct and any other applicable Rules of Court.

b. Parties may agree to include in a family collaborative law participation agreement additional provisions not inconsistent with this act or other applicable law.

6. a. A family collaborative law process begins when the parties sign a family collaborative law participation agreement.

b. Participation in a family collaborative law process is voluntary and may not be compelled by a tribunal.

7. a. A family collaborative law process is concluded by either:

(1) resolution of a family law dispute as evidenced by a signed settlement agreement; or

(2) termination of the process.

b. A family collaborative law process terminates when:

(1) a party gives notice to other parties in a record that the process is ended, which a party may do with or without cause; or

(2) a party files a document without the agreement of all parties that initiates a proceeding related to the family law dispute; or

(3) either party is subject to, or obtains, a temporary or final restraining order against the other party in accordance with the "Prevention of Domestic Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et seq.); or

(4) an action is commenced requesting that a tribunal issue emergency relief to protect the health, safety, welfare, or interests of a party or the defense against such a request is commenced; or

(5) except as provided by section 9 of this act, a party discharges a family collaborative lawyer; or

(6) a party fails to provide information pursuant to section 10 of this act that is necessary to address the issues in dispute, and one of the parties chooses to terminate the collaborative process as a result; or

(7) a family collaborative lawyer ceases further representation of a party.

c. A family collaborative law process does not terminate if, with the consent of the parties, a party, or the party's family collaborative lawyer on the party's behalf, requests a tribunal to incorporate a settlement agreement into a final judgment.

d. A family collaborative law participation agreement may provide additional methods of terminating or concluding a family collaborative law process consistent with this act and the Rules of Professional Conduct promulgated by the Supreme Court of New Jersey.

e. In the event the family collaborative law process does not result in a judgment resolving the family law dispute and the dispute is, instead, submitted to a tribunal for adjudication, the family collaborative lawyer and the lawyers in the law firm with whom the collaborative family lawyer is associated shall not continue to represent the party in that family law dispute.

8. A lawyer in a law firm with which the family collaborative lawyer is associated in a partnership, professional corporation, sole proprietorship, limited liability company, or law association is disqualified from appearing before a tribunal to represent a party in a proceeding related to a family collaborative law matter if the family collaborative lawyer is disqualified from doing so in subsection e. of section 7 of this act).

9. a. If a family collaborative lawyer ceases or is disqualified from representation of a party, prompt notice of the cessation of representation or discharge shall be given to all parties in a record.

b. Notwithstanding the provisions of paragraph (5) of subsection b. of section 7 of this act), and subject to this subsection, if a family collaborative lawyer is discharged or ceases representation of a party, the family collaborative law process continues if, not later than 30 days after the date of notice of the discharge or cessation of representation is sent to the parties pursuant to subsection a. of this section, the unrepresented party:

(1) retains a successor family collaborative lawyer who is identified in an amended family collaborative law participation agreement; and

(2) in that amended family collaborative law participation agreement, the parties consent to continue the process and the successor lawyer confirms representation of the party.

10. Except as otherwise provided by law, during the family collaborative law process a party shall, in good faith, provide timely, full, and candid disclosure of information related to the family law dispute without formal discovery. A party shall also promptly update previously disclosed information that has materially changed. The parties may define the scope of disclosure during the collaborative family law process except as provided by law.

11. This act does not affect, waive or supersede:

a. The professional responsibility obligations and standards applicable to a lawyer or other licensed professional in this State, including but not limited to the Rules of Professional Conduct promulgated by the Supreme Court of New Jersey; or

b. The obligation of a person to report abuse or neglect, abandonment, or exploitation of a child or adult under the law of this State.

12. A family collaborative law communication is confidential to the extent agreed to by the parties in a signed record or as provided by law.

13. a. Subject to sections 14 and 15 of this act), a family collaborative law communication made by a party or any nonparty participant is privileged under subsection b. of this section, is not subject to discovery, and is not admissible in evidence.

b. In a proceeding, and in addition to application of the lawyer-client privilege provided under the laws of this State, the following privileges apply:

(1) A party may refuse to disclose, and may prevent the party's lawyer, or a nonparty participant, or any other person from disclosing, a family collaborative law communication.

(2) A nonparty participant may refuse to disclose, and may prevent a party, a party's lawyer or any other person from disclosing, a family collaborative law communication of the nonparty participant.

c. The privilege created by this section may be claimed by the party or nonparty participant in person, or if the party or nonparty participant is incapacitated or deceased, by his guardian or personal representative. Where a corporation or association or other legal entity is the nonparty participant claiming the privilege, and the corporation, association or other entity has been dissolved, the privilege may be claimed by its successors, assigns or trustees in dissolution.

d. Evidence or information that is otherwise admissible, readily available from other sources, or subject to discovery does not become inadmissible or protected from discovery solely because of its disclosure or use in a family collaborative law process.

14. a. A privilege under section 13 of this act may be waived in a record or orally during a proceeding if it is expressly waived by both parties and, in the case of the privilege of a nonparty participant, it is also expressly waived by the nonparty participant.

b. A person who discloses or makes a representation about a family collaborative law communication that prejudices another person in a proceeding is precluded from asserting a privilege under section 13 of this act, but this preclusion applies only to the extent necessary for the person prejudiced to respond to the disclosure or representation.

15. a. There is no privilege under section 13 of this act for a family collaborative law communication that is:

(1) made during a session of a family collaborative law process that is open, or is required by law to be open, to the public; or

(2) sought, obtained, or used to threaten or plan to inflict bodily injury or a crime, or to commit or attempt to commit a crime, or to conceal an ongoing crime or ongoing criminal activity; or

(3) in a settlement agreement resulting from the family collaborative law process, evidenced by a record signed by both parties to the agreement; or

(4) a disclosure in a report of suspected domestic violence or suspected child abuse to an appropriate agency under the laws of this State.

b. There is no privilege under section 13 of this act if a tribunal finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown the evidence is not otherwise available, the need for the evidence substantially outweighs the interest in protecting confidentiality, and the family collaborative<sup>1</sup> law communication is sought or offered in:

(1) a court proceeding involving a crime; or

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

c. The privileges under section 13 of this act for a family collaborative law communication do not apply to the extent that a communication is:

(1) sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice or the unreasonableness of a family collaborative lawyer's fee arising from or related to a family collaborative law process; or

(2) sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation of a child or adult, unless the appropriate protective services agency is a party to or otherwise participates in the process.

d. If a family collaborative law communication is subject to an exception under subsection b. or c. of this section, only the part of the communication necessary for the application of the exception may be disclosed or admitted.

e. Disclosure or admission of evidence excepted from the privilege under subsection b. or c. of this section does not make the evidence or any other family collaborative law communication discoverable or admissible for any other purpose.

f. The privileges under this act do not apply if the parties agree in advance in a signed record that all or part of a family collaborative law process is not privileged.

16. If a family collaborative law participation agreement fails to meet the requirements of section 5 of this act, the parties may be found to have intended to enter into a family collaborative law participation agreement if they signed a record indicating an intention to enter into a family collaborative<sup>1</sup>law participation agreement and reasonably believed they were participating in a family collaborative law process.

17. In applying and construing this act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact a family collaborative law act.

17. This act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. section 7001 et seq., but this act does not modify, limit, or supersede section

101(c) of that act, or authorize electronic delivery of any of the notices described in section 103(b) of that act.

18. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

19. This act shall take effect on the 90th day after enactment.