

COLLABORATIVE DIVORCE PARTICIPATION AGREEMENT

I. Goal

We acknowledge that the essence of Collaborative Divorce is the shared belief by participants that it is in the best interests of parties and their families in family matters to commit themselves to avoiding litigation.

We adopt the Collaborative Divorce conflict resolution process, which involves negotiation in an atmosphere of honesty, cooperation, integrity and professionalism, rather than relying on a court-imposed resolution.

Our goal is to eliminate the negative economic, social, and emotional consequences to the participants and their families of protracted litigation.

We commit ourselves to the Collaborative Divorce process and agree to use this process to resolve our differences fairly and equitably.

II. Disqualification By Court Intervention

We commit to settling our case without court intervention.

We understand that our attorney's representation is limited to the Collaborative Divorce process, and that neither of our attorneys, nor other attorneys from the same firm, can ever represent us in court in a proceeding against the other spouse.

In the event a court filing is unavoidable prior to settlement, both attorneys will be disqualified from representing either client, except for filing and assenting to uncontested applicable motions, stipulations, petitions, or orders to which both parties agree.

Any resort to litigation prior to settlement shall result in the automatic termination of the Collaborative Divorce process on the date that either party or his or her attorney unilaterally seeks court intervention.

In the event that the Collaborative Divorce process terminates, all consultants and experts will be disqualified as witnesses, and their work product will be inadmissible as evidence, unless the parties agree otherwise in writing. See also Sections IX, XI, and XII.

We acknowledge that, following settlement, our attorneys may represent us as counsel of record for purposes of filing a joint petition for an uncontested, no-fault divorce.

III. Participation With Integrity

We agree to give full, prompt, honest and open disclosure of all information pertinent to our case, whether requested or not, and to exchange Rule 1.25 A Mandatory Disclosures including financial affidavits, and any other relevant and material financial documents in a timely manner.

We will work to protect the privacy and dignity of all involved, including parties, children, collaborative professionals and consultants.

We shall 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 acknowledge and correct them.

We have each been fully informed and understand, that the Collaborative Divorce process allows for communication between the professionals on the Collaborative Divorce team including in electronic form, and that communications by the parties with team members are not confidential and can be shared with all team members, except for communications protected by the attorney-client privilege and as further described below under “Cautions”.

IV. Negotiations In Good Faith

We understand that the process, even with full and honest disclosure, will involve vigorous good-faith negotiation.

We are expected to take a reasoned approach to all disputes. Even when 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 the parties and, if necessary, to compromise in reaching a settlement of all issues.

Written and oral communications will be respectful and constructive. The parties intend to discuss and explore the interests they have in achieving a mutually agreeable settlement.

We agree that communication during settlement meetings will be focused on the economic and parenting issues in the divorce and resolution of those issues. Each will speak freely and express his or her own needs, desires, and opinions without criticism or judgment by the other.

Although we may discuss the likely outcome of a litigated result, none of us will use the threat of litigation as a way of forcing settlement.

V. Maintenance Of Status Quo

We agree that, commencing immediately, each party is restrained from selling, transferring, encumbering, concealing or in any manner whatsoever disposing of any property, real or personal, belonging to either or both parties except (1) by agreement of both parties, the agreement needs to be confirmed either in the confidential minutes of a meeting or in a confirming email between the parties, or (2) for reasonable and necessary living expenses, or (3) in the ordinary and usual course of business.

Neither party will borrow against, cancel, transfer, dispose of, or change the beneficiaries of any pension, retirement plan or insurance policy or permit any existing coverage to lapse, including life, health, dental, automobile and/or disability held for the benefit of either party or the child without the prior agreement of the other party, to be confirmed either in the confidential minutes of a meeting or in a confirming email between the parties. The parties shall maintain all insurance coverage in full force and effect.

We agree that commencing immediately, neither party will change any provisions of any existing trust or will or execute a new trust or will without the prior consent of the other party, to be confirmed either in the confidential minutes of a meeting, or in a confirming email between the parties.

We agree that neither party will incur any further debts that would burden the credit of the other, including but not limited to further borrowing against any credit line secured by the marital residence, or unreasonably using credit cards or cash advances against credit or bank cards or incurring any liabilities for which the other may be responsible, other than in the ordinary course of business or for the necessities of life without the prior consent of the other, to be confirmed either in the confidential minutes of a meeting, or in a confirming email between the parties.

VI. Minor Children Issues

In resolving issues about sharing the enjoyment of and the responsibility for our children, the parties, attorneys, case facilitator/coach, and any other Collaborative professionals brought in to assist with the case shall make every effort to craft solutions that promote our child's best interests and that promote a caring, loving and involved relationship between our children and both parents.

We agree to act quickly to resolve differences related to our child.

We agree not to seek parenting orders from the court while the matter is a Collaborative Divorce case, except by mutual agreement. However, this does not preclude the use of a parenting coordinator, co-parenting counselor, mediator, or similar consultant to recommend parenting arrangements for our children.

We acknowledge that inappropriate communications regarding our divorce can be harmful to our children. We agree that settlement issues will not be discussed in the presence of our child and that communication with our children regarding these issues will occur only if appropriate and by our mutual agreement, or with the advice of a mutually selected child specialist. We agree that neither of us will make any changes in the residence of our children without the agreement of the other, to be confirmed either in the confidential minutes of a meeting, or in a confirming email between the parties.

VII. Cautions

We understand there is no guarantee that the process will be successful in resolving our case.

We understand that the process cannot eliminate concerns about the irreconcilable differences that have led to the current conflict. We understand that we are each still expected to assert our own interests and that our respective attorneys will help each of us to do so.

We acknowledge each of our attorneys only represents their individual client, and that the attorneys do not represent both of us. While our attorneys, who are also parties to this agreement, are committed to negotiation in an atmosphere of honesty and integrity, we cannot look to the attorney representing the other party to provide legal advice or information. We know that each of us must rely solely on the advice of our own lawyers. Each lawyer continues to have the obligation to represent his or her respective client diligently and cannot represent the legal interests of the other party. We acknowledge that the transparency of this process between collaborative team professionals is subject to client confidences that are protected by the attorney-client privilege and other privileges provided by law except as specifically waived by a party. The full disclosure of financial information and sharing of other relevant information does not waive the attorney-client privilege or other privileges, but nor should it be used to withhold material information which would impair the collaborative process.

We understand that there are advantages as well as disadvantages to the Collaborative Divorce process. Among the disadvantages are that (a) if the process breaks down and litigation ensues, we will likely incur expense because of the need to hire new counsel; (b) by agreeing not to go to court, we will not be using formal discovery procedures, such as depositions under oath, and therefore we must trust in the principles of this Collaborative Process, as set forth in this Agreement, that require us to provide all relevant documents and information; and (c) without the ability to use the authority of the court to order a party to refrain from the transfer or dissipation of marital assets, we must trust in each other's commitment to the principles set forth in this Agreement.

Among the advantages are that (a) our privacy will be respected and protected, (b) we will be represented every step of the way in a process in which no one can use the threat of litigation as a way to force settlement, (c) we will be supported by other neutral professionals such as a coach and a financial specialist, (d) we will be able to control the pacing of the process and (e) we will only be asked to sign an Agreement that each of us finds acceptable.

VIII. Attorney's And Case Facilitator/Coach's Fees And Costs

We agree that our attorneys and case facilitator/coach and financial neutral are entitled to be paid for their services, and an initial task in a collaborative matter is to ensure payment to each of them. We agree to make funds available for this purpose.

IX. Experts And Consultants

We will retain any appropriate expert or consultant jointly, unless we agree otherwise, to be confirmed either in the confidential minutes of a meeting, or in a confirming email between the parties. We will ensure payment for the services of joint professionals and share their work product. See also sections II, XI, and XII regarding experts and consultants.

If we jointly engage other collaborative professionals to work with us in a team format, such as financial planners, mental health professionals, or child specialists, the persons we engage will not work for either party outside the Collaborative Process. This means they will not act as therapist for any family member or have a business relationship with any party.

If other collaborative professionals are engaged, there shall be an individual participation agreement for each, clearly spelling out the professional's role, signed by parties and all team members.

X. Voluntary Termination Of Collaborative Process And/Or Withdrawal Of Counsel

Either party may unilaterally and without cause terminate the Collaborative Divorce process by giving written notice of such election to his or her attorney and the other party.

Either attorney may withdraw unilaterally from the Collaborative Divorce process by giving fifteen (15) days written notice to his or her client and the other attorney. Notice of withdrawal of an attorney does not necessarily terminate the Collaborative Divorce process; to continue the process, the party losing his or her attorney may retain a new attorney who will agree in writing to be bound by this Agreement or any amendment to this Agreement.

Upon termination of the collaborative process or withdrawal of either counsel, such affected attorney will promptly cooperate to facilitate the transfer of the client's matter to successor counsel, if any.

XI. Abuse Of The Collaborative Process

We enter the Collaborative Divorce process with the expectation of honesty and full disclosure in all dealings by all individuals involved in the collaborative process.

We understand that a Collaborative Divorce attorney will withdraw from the case as soon as possible upon learning that his or her client has failed to uphold this Agreement or acted so as to undermine or take unfair advantage of the Collaborative Divorce process. Such abuse of the process would include the withholding or misrepresentation of material and relevant information, the secret disposition of marital property, the failure to disclose the existence or the true nature of assets and or obligations, or otherwise acting to undermine or take unfair advantage of the Collaborative Divorce process.

XII. Confidentiality

We agree that the entire Collaborative Divorce process, including all written submissions and communications, is confidential and without prejudice to either of the parties in a subsequent court proceeding, and shall be treated as settlement discussions or a compromise negotiation for the purposes of the rules of evidence and other relevant provisions of state and federal law. We and our attorneys will not disclose any information including offers, promises, conduct, statements or settlement terms whether oral or written, made by us, our attorneys or any experts in connection with the Collaborative Law Process, except where disclosure is required by law.

If subsequent litigation occurs, we as parties mutually agree that (a) neither party will introduce as evidence information disclosed during the Collaborative Divorce process, offers or proposals for settlement, or other statements by any of the parties to this process or their attorneys, except for information and documents that are otherwise discoverable, and except that documents that the Court may require parties to exchange as part of financial disclosure may be used in litigation; (b) neither party will offer as evidence the testimony of either Collaborative attorney, nor will they subpoena either of the lawyers to testify, in connection with this matter; (c) neither party will offer as evidence the testimony of any other member of the Collaborative team, including but not limited to the divorce coach, or financial neutral, nor will they subpoena any such collaborative team professional to testify, in connection with this matter; and (d) neither party will subpoena the production at any court proceedings of any notes, records, or documents in the lawyer's possession or in the possession of one of the consultants.

We each agree that if either party seeks to compel testimony of counsel or the disclosure of counsel's files in violation of this agreement, that person will indemnify Collaborative counsel for all consequential costs, including both reasonable attorney fees and hourly compensation for Collaborative counsel's time spent to oppose the violation of this provision.

The above provisions are not meant to restrict either party's right to retain his or her own case file and documents. Reports from jointly retained experts may be released only by agreement of the parties.

XIII. Zoom/Remote Protocols

In the event that meetings are conducted remotely via Zoom, FaceTime or any other platform, the parties agree that a) no third parties shall be present nor will there be any persons other than the parties and their attorneys and other team members within earshot or eyeshot of the meetings except as specifically agreed by all; b) no one (or anyone under their control) will take photographs or screenshots of any person or documents shown or exchanged in the meetings, and c) no one (or anyone under their control) will record any part of the meetings including but not limited to doing so by use of any recording software, recording equipment, screen shots, text chat, or file transfer.

XIV. Execution Of Agreement

The parties hereby acknowledge that they have read in full this Participation Agreement and have had the opportunity to fully discuss with their respective counsel, that they understand and have been fully informed about the Collaborative Divorce process, and are signing the Participation Agreement knowingly and voluntarily.

_____	_____
Date of Signature	Spouse 1 Signature
_____	_____
Date of Signature	Spouse 2 Signature

I, _____, Esq., confirm that I represent _____ in the Collaborative process hereunder.

_____, Esq.
Date of signature _____

I, _____, Esq., confirm that I represent _____ in the Collaborative process hereunder.

_____, Esq.
Date of signature _____

I confirm that I am the Case Facilitator/Coach in this Collaborative process.

_____ Case Facilitator/Coach
Date of signature _____

I confirm that I am the Financial Coach in this Collaborative process.

_____ Financial Coach
Date of signature _____