

SAMPLE
PARTICIPATION AGREEMENT FOR
COLLABORATIVE FAMILY LAW PROCESS

I. COLLABORATIVE TEAM PARTICIPANTS

This Collaborative Participation Agreement (the "Agreement") is signed to resolve the following matter(s) without resort to contested court proceedings: _____
_____.

Collaborative Lawyer. _____ ("Wife") is represented by _____, Esquire. _____ ("Husband") is represented by _____, Esquire (Husband and Wife are collectively referred to as the "Clients"). Each collaborative lawyer is individually retained and advises only his or her client in the Process, no matter which party actually paid the lawyer's retainer. A collaborative lawyer may be substituted for another collaborative lawyer. If this happens, an addendum will be added to the Agreement to indicate who the new attorney is and who they are representing.

Neutral Facilitator. _____, is the Neutral Facilitator, a jointly retained team member who will assist everyone with communication and problem solving. The Neutral Facilitator is responsible for:

1. Helping the Clients identify their goals, interests and concerns;
2. Teaching or assisting the Clients in negotiation and problem-solving skills;
3. Teaching effective communication skills;
4. Helping the Collaborative Team members meet their responsibilities;
5. Assisting the Clients in recognizing and coordinating their parenting styles to enhance their future co-parenting relationship;
6. Assisting the Clients in making decisions that are based on their expressed goals, interests, and concerns, including decisions which address the best interests of their adult children.

Neutral Financial Professional. _____, is the Neutral Financial Professional, a jointly retained team member. The objective of a Neutral Financial Professional (the "Neutral FP") is to help gather financial information and help solve problems. A Neutral FP's may:

1. Help Clients identify their goals, interests and concerns;
2. Help Clients gather and organize financial information;
3. Prepare a draft of an inventory of assets and liabilities;
4. Assist Clients with developing budgets;
5. Assist Clients to better understand their financial issues;
6. Assist the Collaborative Lawyers and Clients to address separate property and reimbursement claim issues;
7. Assist Clients with understanding options for property valuation; and

8. Assist Clients with developing, evaluating and negotiating options for financial settlement.

Others. Other consultants or experts may be jointly retained as agreed upon by the Clients and their lawyers.

II. GOAL

We understand that "Collaborative Law" is the shared belief by participants that it is in the best interests of Clients in typical Family Law matters to commit themselves to avoiding litigation. We, therefore, agree to the Collaborative Law conflict resolution process, which relies on an atmosphere of honesty, cooperation, integrity and professionalism, geared toward ensuring the future well-being of the participants, rather than relying on a court-imposed resolution.

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

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

III. PROCESS

We will make every reasonable effort to settle our case without court intervention.

We agree to give full, prompt, honest and open disclosure of all information pertinent to our case, whether requested or not, in a timely manner.

We agree to engage in discussions, conferences, and negotiations with the goal of settling all issues.

IV. PRESERVATION OF STATUS QUO

We agree that starting immediately, neither Client 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 change or lapse, including life, health, automobile and/or disability held for the benefit of either Client (or the child(ren)), without the prior written consent of the other Client.

We agree that starting immediately, neither Client will change any provisions of any existing trust or will or execute a new trust or will without the prior written consent of the other Client.

We agree that starting immediately, neither Client will sell, transfer, encumber, conceal, assign, remove or in any way dispose of any property, real or personal, belonging to or acquired by either Client, without the prior written consent of the other Client, except in the

usual course of business or investing, payment of reasonable attorneys' fees and costs, or for the necessities of life.

We agree that neither Client will incur any further debts that would burden the credit of the other, including but not limited to borrowing against any credit line secured by the marital residence, 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 written consent of the other.

V. CAUTIONS

We understand that 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 recognize that, while the attorneys share a commitment to the process described in this Agreement, (a) each of the lawyers has an attorney-client relationship solely with, and a professional duty to diligently represent, his or her client and not the other Client; (b) each of us must rely solely on the advice of our own lawyers and not the other Client's lawyer; (c) each of the lawyers may have confidential and privileged communications with his/her client; and (d) such communications are not inconsistent with the collaborative process.

We understand that there are advantages as well as disadvantages to the Collaborative Law Process. Among the disadvantages are that (a) if the process breaks down and litigation ensues, the Clients will likely incur additional expense because of the need to hire new counsel; (b) by agreeing not to go to court, the Clients cannot use formal discovery procedures and therefore must trust in each other's good faith about exchanging relevant documents and information; and (c) without the ability to use the authority of the court to prevent the transfer or dissipation of marital assets, the Clients must trust in each other's honesty with regard to those assets.

VI. ATTORNEY'S FEES AND COSTS

We agree that both Clients' attorneys and the other professionals 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 from marital or separate property, as needed, for this purpose.

VII. PARTICIPATION WITH INTEGRITY

We will work to protect the privacy and dignity of all involved, including Clients, children, attorneys and consultants.

We shall provide all documents requested, and we shall not destroy, remove, conceal, falsify, or otherwise impede access to requested documents. Further, we shall volunteer the existence of pertinent documents, even if not requested, and aid in the production of such documents.

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.

VIII. NEGOTIATION IN GOOD FAITH

The Clients acknowledge that each of our attorneys is independent from the other and represents only one Client in the Collaborative Law process.

We understand that the process, even with full and honest disclosure of all information pertinent to the resolution of our case, will involve vigorous good-faith negotiation.

We will take a reasoned position on all disputes. We will use our best efforts to create proposals that meet the fundamental needs of both of the Clients. We recognize that compromise may be needed in order to reach a settlement of all issues.

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.

IX. THE CHILD/CHILDREN (If Applicable)

The Clients agree to make every effort to reach amicable solutions about sharing the enjoyment of and responsibility for the child/children that promote the child's/children's best interests. The Clients agree to act quickly to mediate and resolve differences related to the child/children to promote a caring, loving, and involved relationship between the child/children and both parents.

The Clients acknowledge that inappropriate communications regarding their divorce can be harmful to their child/children. They agree that settlement issues will not be discussed in the presence of their child/children, or that communication with the child/children regarding these issues will occur only if it is appropriate and done by mutual agreement, or with the assistance of the neutral facilitator or a child specialist. The Clients agree not to make any changes to the residence of the child/children without first obtaining the written agreement of the other Client.

X. IDENTIFICATION AND VALUATION DATE (If Applicable)

In recognition of the fact that the Parties are by agreement delaying the date of the filing of a Petition for Dissolution of Marriage, the Parties acknowledge and agree, with the intent to bind themselves and their attorneys now and in the future, that _____(DATE), shall be used by them, their attorneys, and the Court in lieu of the actual date of filing of a Petition for Dissolution of Marriage. Accordingly, this date will be used for the identification of their marital assets and liabilities; for the valuation of those marital assets and liabilities unless another date for the valuation of a particular asset or liability is agreed upon by the parties; or for any other purpose set forth in Chapter 61 and the case law interpreting same.

XI. CONFIDENTIALITY

The Clients agree that the entire Collaborative Law process, including all written submissions and communications, is confidential and without prejudice, and shall be treated as a compromise negotiation for the purposes of the rules of evidence and other relevant provisions of state and federal law. The Clients and Counsel will not disclose any information including offers, promises, conduct, statements or settlement terms whether oral or written, made by any of the Clients, their attorneys or any experts in connection with the Collaborative Law process, except where disclosure is required by law or court rule, and all such information shall be inadmissible at trial, provided however that no such information which is independently obtained and admissible shall be rendered confidential or inadmissible because it is referred to in the Collaborative Law process. The Clients and their counsel or the other jointly retained professionals may, however, disclose to appropriate authorities information obtained in the course of the Collaborative Law process concerning (a) child or elder abuse or neglect, (b) the risk of serious harm to an individual, or (c) the planned commission of a crime. The confidentiality provided for in this section of the Agreement also shall not apply to evidence relating to the liability of the attorneys or other team members in a subsequent suit against them or disciplinary proceedings against them; information which all Clients to the Collaborative Law process agree in writing, after the conclusion of the case, may be disclosed; and information about payment and payment arrangements for the Collaborative Law engagement. Further, this Participation Agreement is not confidential and may ultimately be filed with the Court.

The Clients agree that professional observers or collaborative assistants may be present during the Process for the purpose of training or aiding the process and will be held to the same confidentiality standards as the Collaborative Team. The Clients also agree that details of the case may be used for research, education, or training (or any combination of these), but only if information which might identify the family has been removed.

If subsequent litigation occurs, the Clients mutually agree that (a) neither Client will introduce as evidence in Court information disclosed during the Collaborative Law Process, offers or proposals for settlement, or other statements by any of the Clients to the Process or their attorneys, except this Agreement or documents that are otherwise discoverable; (b) neither Client will offer as evidence the testimony of either collaborative attorney,

observer, or collaborative assistant, nor will they subpoena either of the lawyers, observers, or collaborative assistants to testify, in connection with this matter; and (c) neither Client will subpoena the production at any Court proceedings of any notes, records, or documents in the lawyer's possession; and (d) subpoena the production at any Court proceedings of any notes, records, or documents in the possession of the Neutral Financial Professional, Neutral Facilitator, or any other expert or consultant retained, unless the Clients otherwise agree in writing.

XII. VOLUNTARY TERMINATION OF COLLABORATIVE PROCESS

Either Client may unilaterally and without cause terminate the Collaborative Law Process by giving written notice of such election to his or her attorney the other Client, and other Team members.

Either attorney may withdraw unilaterally from the Collaborative Law Process by giving thirty (30) days written notice to his or her client and the other attorney. Notice of withdrawal of an attorney does not necessarily terminate the Collaborative Law Process; to continue the process, the Client whose attorney withdraws will seek to retain a new attorney who will agree in writing to be bound by this Agreement.

However, the Process may be ended by one of the collaborative lawyers if a client engages in any of the following behaviors and persists in doing so after counseling by the client's collaborative lawyer:

1. Refuses to disclose information, including the existence of documents, which in the collaborative lawyer's judgment must be provided to the other client or the Collaborative Team;
2. Answers dishonestly to any inquiry made by a client or member of the Collaborative Team;
3. Takes an action that results in compromising the integrity of the Process; or
4. Fails or refuses to take an action which failure or refusal compromises the integrity of the Process.

If the other client is aware of the behaviors or the refusal to disclose and requests continuing the Process, the lawyer may consider continuing the Process.

Upon termination of the collaborative process or withdrawal of either counsel, the withdrawing attorney will promptly cooperate to facilitate the transfer of the client's file and any information needed for continued representation of the client to successor counsel.

Any termination of the process, whether by the clients or a professional, will have a 30 day "cool down" period to give the parties and professionals an opportunity to cure any problems and reengage in the collaborative process before either client files a contested pleading or contested court document. However, this cool down period will not be

required in the event of an emergency or where emergency injunctive relief is required to preserve assets.

XIII. ABUSE OF THE COLLABORATIVE PROCESS

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

Each Client understands that his/her Collaborative Law attorney will withdraw from our case and terminate the process 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 Law Process. Such failure or abuse of the process would include the withholding or misrepresentation of information, the secret disposition of marital property, and the failure to disclose the existence or the true nature of assets, income, and/or obligations, or otherwise acting to undermine or take unfair advantage of the Collaborative Law Process.

XIV. DISQUALIFICATION BY COURT INTERVENTION

We understand that neither of our attorneys, nor other attorneys from the same firm, can ever represent us in court in a contested proceeding against the other spouse in connection with this matter.

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

Any resort to litigation prior to settlement shall result in the automatic termination of the Collaborative Law Process on the date that either Client or his or her attorney unilaterally seeks court intervention, provided however that the provisions of this Agreement relating to confidentiality and disqualification/withdrawal of counsel shall remain in effect and subject to the 30 day cool down period.

In the event that the Collaborative Law Process terminates, all Neutral FPs, Neutral Facilitators, consultants, and experts will be disqualified as witnesses, and their work product will be inadmissible as evidence, unless the Clients agree otherwise in writing.

We acknowledge that, following settlement, our attorneys may represent us as counsel of record for purposes of filing a joint petition for an uncontested final judgment or uncontested temporary relief and at an uncontested hearing on our matter.

Each term in this Agreement is separable. Accordingly, should any term(s) be found to be unenforceable, all other terms shall remain enforceable.

XV. PLEDGE

BOTH CLIENTS PLEDGE TO COMPLY WITH AND TO PROMOTE THE SPIRIT AND LETTER OF THIS AGREEMENT, UNLESS MODIFIED BY WRITTEN AGREEMENT SIGNED BY BOTH CLIENTS AND THEIR ATTORNEYS.

Date:

Date:

Husband

Wife

The following professionals acknowledge that they will participate in the collaborative process:

Date:

Date:

Attorney for Husband

Attorney for Wife

Date:

Date:

Neutral Facilitator

Neutral Financial Professional

Date:

Date:

Collaborative Assistant

Collaborative Assistant