

1 AN ACT relating to the Uniform Collaborative Law Act.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO
4 READ AS FOLLOWS:

5 *These rules apply to a collaborative law participation agreement that meets the*
6 *requirements of Sections 1 to 16 of this Act signed on or after the effective date of the*
7 *Act.*

8 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO
9 READ AS FOLLOWS:

10 *As used in Sections 1 to 16 of this Act:*

11 *(1) "Collaborative law communication" means a statement, whether verbal or*
12 *nonverbal, that:*

13 *(a) Is made to conduct, participate in, continue, or reconvene a collaborative*
14 *law process; and*

15 *(b) Occurs after the parties sign a collaborative law participation agreement*
16 *and before the collaborative law process is concluded;*

17 *(2) "Collaborative law participation agreement" means an agreement by persons to*
18 *participate in a collaborative law process;*

19 *(3) "Collaborative law process" means a procedure intended to resolve a*
20 *collaborative matter without intervention by a court in which persons:*

21 *(a) Sign a collaborative law participation agreement; and*

22 *(b) Are represented by collaborative lawyers;*

23 *(4) "Collaborative lawyer" means a lawyer who represents a party in a collaborative*
24 *law process;*

25 *(5) "Collaborative matter" means a dispute, transaction, claim, problem, or issue for*
26 *resolution, including a dispute, claim, or issue in a proceeding, which is*
27 *described in a collaborative law participation agreement and arises under the*

1 family or domestic relations law of this state, including:

2 (a) Marriage, divorce, dissolution, annulment, and property distribution;

3 (b) Child custody, visitation, and parenting time;

4 (c) Alimony, maintenance, and child support;

5 (d) Adoption;

6 (e) Parentage; and

7 (f) Premarital, marital, and post-marital agreements;

8 (6) "Immediate family member" has the same meaning as in KRS 205.8451;

9 (7) "Law firm" means:

10 (a) Lawyers who practice law together in a:

11 1. Partnership;

12 2. Professional corporation;

13 3. Sole proprietorship;

14 4. Limited liability company; or

15 5. Association; and

16 (b) Lawyers employed in a:

17 1. Legal services organization;

18 2. Legal department of a corporation;

19 3. Other organization; or

20 4. Legal department of a:

21 a. Government;

22 b. Governmental subdivision;

23 c. Agency; or

24 d. Instrumentality;

25 (8) "Nonparty participant" means a person, other than a party and the party's
26 collaborative lawyer, that participates in a collaborative law process;

27 (9) "Party" means a person that signs a collaborative law participation agreement

- 1 and whose consent is necessary to resolve a collaborative matter;
- 2 (10) "Person" means an individual, corporation, business trust, estate, trust,
- 3 partnership, limited liability company, association, joint venture, public
- 4 corporation, government or governmental subdivision, agency, or
- 5 instrumentality, or any other legal or commercial entity;
- 6 (11) "Proceeding" means:
- 7 (a) A judicial, administrative, arbitral, or other adjudicative process before a
- 8 court, including related prehearing and post-hearing motions, conferences,
- 9 and discovery; or
- 10 (b) A legislative hearing or similar process;
- 11 (12) "Prospective party" means a person that discusses with a prospective
- 12 collaborative lawyer the possibility of signing a collaborative law participation
- 13 agreement;
- 14 (13) "Record" means information that is inscribed on a tangible medium or that is
- 15 stored in an electronic or other medium and is retrievable in perceivable form;
- 16 (14) "Related to a collaborative matter" means involving the same parties, transaction
- 17 or occurrence, nucleus of operative fact, dispute, claim, or issue as the
- 18 collaborative matter; and
- 19 (15) "Sign" means, with present intent to authenticate or adopt a record:
- 20 (a) To execute or adopt a tangible symbol; or
- 21 (b) To attach to or logically associate with the record an electronic symbol,
- 22 sound, or process.

23 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO
24 READ AS FOLLOWS:

- 25 (1) A collaborative law participation agreement must:
- 26 (a) Be in a record;
- 27 (b) Be signed by the parties;

1 (c) State the parties' intention to resolve a collaborative matter through a
 2 collaborative law process under these rules;

3 (d) Describe the nature and scope of the matter;

4 (e) Identify the collaborative lawyer who represents each party in the process;
 5 and

6 (f) Contain a statement by each collaborative lawyer confirming the lawyer's
 7 representation of a party in the collaborative law process.

8 (2) Parties may agree to include additional provisions in a collaborative law
 9 participation agreement not inconsistent with Section 1 to 16 of this Act.

10 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO
 11 READ AS FOLLOWS:

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

14 (2) A court may not order a party to participate in a collaborative law process over
 15 that party's objection.

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

17 (a) Resolution of a collaborative matter as evidenced by a signed record;

18 (b) Resolution of a part of the collaborative matter, evidenced by a signed
 19 record, in which the parties agree that the remaining parts of the matter will
 20 not be resolved in the process; or

21 (c) Termination of the process.

22 (4) A collaborative law process terminates:

23 (a) When a party gives notice to other parties in a record that the process is
 24 ended; or

25 (b) When a party:

26 1. Begins a proceeding related to a collaborative matter without the
 27 agreement of all parties; or

- 1 2. In a pending proceeding related to the matter:
- 2 a. Initiates a pleading, motion, order to show cause, or request for
- 3 a conference with the court;
- 4 b. Requests that the proceeding be put on the court's active
- 5 calendar;
- 6 c. Takes similar action requiring notice to be sent to the parties; or
- 7 d. Except as otherwise provided by subsection (7) of this section,
- 8 discharges a collaborative lawyer or a collaborative lawyer
- 9 withdraws from further representation of a party.
- 10 (5) A party's collaborative lawyer shall give prompt notice to all other parties in a
- 11 record of a discharge or withdrawal.
- 12 (6) A party may terminate a collaborative law process with or without cause.
- 13 (7) Notwithstanding the discharge or withdrawal of a collaborative lawyer, a
- 14 collaborative law process continues if, not later than thirty (30) days after the
- 15 date that the notice of the discharge or withdrawal of a collaborative lawyer
- 16 required by subsection (5) of this section is sent to the parties:
- 17 (a) The unrepresented party engages a successor collaborative lawyer; and
- 18 (b) In a signed record:
- 19 1. The parties' consent to continue the process by reaffirming the
- 20 collaborative law participation agreement;
- 21 2. The agreement is amended to identify the successor collaborative
- 22 lawyer; and
- 23 3. The successor collaborative lawyer confirms the lawyer's
- 24 representation of a party in the collaborative process.
- 25 (8) A collaborative law process does not conclude if, with the consent of the parties, a
- 26 party requests a court to approve a resolution of the collaborative matter or any
- 27 part thereof as evidenced by a signed record.

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

3 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO
4 READ AS FOLLOWS:

5 (1) Persons in a proceeding pending before a court may sign a collaborative law
6 participation agreement to seek to resolve a collaborative matter related to the
7 proceeding. The parties shall file promptly with the court a notice of the
8 agreement after it is signed. Subject to subsections (3) and (6) of this section , the
9 filing operates as an application for a stay of the proceeding.

10 (2) The parties shall file promptly with the court notice in a record when a
11 collaborative law process concludes. The stay of the proceeding under subsection
12 (1) of this section is lifted when the notice is filed. The notice shall not specify any
13 reason for termination of the process.

14 (3) A court in which a proceeding is stayed under subsection (1) of this section may
15 require the parties and collaborative lawyers to provide a status report on the
16 collaborative law process and the proceeding. A status report may include only
17 information on whether the process is ongoing or concluded. It may not include a
18 report, assessment, evaluation, recommendation, finding, or other
19 communication regarding a collaborative law process or collaborative law matter.

20 (4) A court may not consider a communication made in violation of subsection (3) of
21 this section.

22 (5) A court shall provide parties notice and an opportunity to be heard before
23 dismissing a proceeding in which a notice of collaborative process is filed based
24 on delay or failure to prosecute.

25 (6) During a collaborative law process, a court may issue emergency orders to protect
26 the health, safety, welfare, or interest of a party or an immediate family member
27 that resides in the party's home.

1 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO
2 READ AS FOLLOWS:

3 (1) Except as otherwise provided in subsection (3) of this section, a collaborative
4 lawyer is disqualified from appearing before a court to represent a party in a
5 proceeding related to the collaborative matter.

6 (2) Except as otherwise provided in subsection (3) of this section and Sections 7 and
7 8 of this Act, a lawyer in a law firm with which the collaborative lawyer is
8 associated is disqualified from appearing before a court to represent a party in a
9 proceeding related to the collaborative matter if the collaborative lawyer is
10 disqualified from doing so under subsection (1) of this section.

11 (3) A collaborative lawyer or a lawyer in a law firm with which the collaborative
12 lawyer is associated may represent a party:

13 (a) To ask a court to approve an agreement resulting from the collaborative law
14 process; or

15 (b) To seek or defend an emergency order to protect the health, safety, welfare,
16 or interest of a party, or an immediate family member that resides in the
17 party's home if a successor lawyer is not immediately available to represent
18 that person.

19 (4) If subsection (3)(b) of this section applies, a collaborative lawyer, or lawyer in a
20 law firm with which the collaborative lawyer is associated, may represent a party
21 or an immediate family member that resides in the party's home only until the
22 person is represented by a successor lawyer or reasonable measures are taken to
23 protect the health, safety, welfare, or interest of the person.

24 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO
25 READ AS FOLLOWS:

26 (1) The disqualification of subsection (1) of Section 6 of this Act applies to a
27 collaborative lawyer representing a party with or without fee.

1 (2) After a collaborative law process concludes, another lawyer in a law firm with
2 which a collaborative lawyer disqualified under subsection (1) of Section 6 of this
3 Act is associated may represent a party without fee in the collaborative matter or
4 a matter related to the collaborative matter if:

5 (a) The party has an annual income that qualifies the party for free legal
6 representation under the criteria established by the law firm for free legal
7 representation;

8 (b) The collaborative law participation agreement so provides; and

9 (c) The collaborative lawyer is isolated from any participation in the
10 collaborative matter or a matter related to the collaborative matter through
11 procedures within the law firm which are reasonably calculated to isolate
12 the collaborative lawyer from such participation.

13 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO
14 READ AS FOLLOWS:

15 (1) The disqualification of subsection (1) of Section 6 of this Act applies to a
16 collaborative lawyer representing a party that is a government or governmental
17 subdivision, agency, or instrumentality.

18 (2) After a collaborative law process concludes, another lawyer in a law firm with
19 which the collaborative lawyer is associated may represent a government or
20 governmental subdivision, agency, or instrumentality in the collaborative matter
21 or a matter related to the collaborative matter if:

22 (a) The collaborative law participation agreement so provides; and

23 (b) The collaborative lawyer is isolated from any participation in the
24 collaborative matter or a matter related to the collaborative matter through
25 procedures within the law firm which are reasonably calculated to isolate
26 the collaborative lawyer from such participation.

27 ➔SECTION 9. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO

1 READ AS FOLLOWS:

2 Notwithstanding any other statute to the contrary, during the collaborative law process,
3 on the request of another party, a party shall make timely, full, candid, and informal
4 disclosure of information related to the collaborative matter without formal discovery.
5 A party also shall update promptly previously disclosed information that has materially
6 changed. The parties may define the scope of disclosure during the collaborative law
7 process.

8 ➔SECTION 10. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO
9 READ AS FOLLOWS:

10 These rules shall not affect:

- 11 (1) The professional responsibility obligations and standards applicable to a lawyer
12 or other licensed professional; or
13 (2) The obligation of a person to report abuse or neglect, abandonment, or
14 exploitation of a child or adult under the laws of this state.

15 ➔SECTION 11. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO
16 READ AS FOLLOWS:

17 Before a prospective party signs a collaborative law participation agreement, a
18 prospective collaborative lawyer shall:

- 19 (1) Assess with the prospective party factors the lawyer reasonably believes relate to
20 whether a collaborative law process is appropriate for the prospective party's
21 matter;
22 (2) Provide the prospective party with information that the lawyer reasonably believes
23 is sufficient for the party to make an informed decision about the material
24 benefits and risks of a collaborative law process as compared to the material
25 benefits and risks of other reasonably available alternatives for resolving the
26 proposed collaborative matter, such as litigation, mediation, arbitration, or expert
27 evaluation; and

1 (3) Advise the prospective party that:

2 (a) After signing an agreement, if a party initiates a proceeding or seeks court
3 intervention in a pending proceeding related to the collaborative matter, the
4 collaborative law process terminates;

5 (b) Participation in a collaborative law process is voluntary and any party has
6 the right to unilaterally terminate a collaborative law process with or
7 without cause; and

8 (c) The collaborative lawyer and any lawyer in a law firm with which the
9 collaborative lawyer is associated may not appear before a court to
10 represent a party in a proceeding related to the collaborative matter, except
11 as authorized by subsection (3) of Section 6 of this Act, subsection (2) of
12 Section 7 of this Act, or subsection (2) of Section 8 of this Act.

13 ➔SECTION 12. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO
14 READ AS FOLLOWS:

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

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

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

26 (a) The party or the prospective party requests beginning or continuing a
27 process; and

1 **(b) The collaborative lawyer reasonably believes that the safety of the party or**
2 **prospective party can be protected adequately during a process.**

3 ➔SECTION 13. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO
4 READ AS FOLLOWS:

5 **(1) Subject to Sections 14 and 15 of this Act, a collaborative law communication is:**

6 **(a) Privileged under subsection (2) of this section;**

7 **(b) Not subject to discovery; and**

8 **(c) Not admissible in evidence.**

9 **(2) In a proceeding, the following privileges apply:**

10 **(a) A party may refuse to disclose, and may prevent any other person from**
11 **disclosing, a collaborative law communication; and**

12 **(b) A nonparty participant may refuse to disclose, and may prevent any other**
13 **person from disclosing, a collaborative law communication of the nonparty**
14 **participant.**

15 **(3) Evidence or information that is otherwise admissible or subject to discovery does**
16 **not become inadmissible or protected from discovery solely because of its**
17 **disclosure or use in a collaborative law process.**

18 ➔SECTION 14. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO
19 READ AS FOLLOWS:

20 **(1) A privilege under Section 13 of this Act may be waived in a record or orally**
21 **during a proceeding if it is expressly waived by all parties and, in the case of the**
22 **privilege of a nonparty participant, it is also expressly waived by the nonparty**
23 **participant.**

24 **(2) A person that makes a disclosure or representation about a collaborative law**
25 **communication which prejudices another person in a proceeding may not assert**
26 **a privilege under Section 13 of this Act, but this preclusion applies only to the**
27 **extent necessary for the person prejudiced to respond to the disclosure or**

1 representation.

2 ➔SECTION 15. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO
3 READ AS FOLLOWS:

4 (1) There is no privilege under Section 13 of this Act for a collaborative law
5 communication that is:

6 (a) Available to the public under the Kentucky Open Records Act or made
7 during a session of a collaborative law process that is open, or is required by
8 law to be open, to the public;

9 (b) A threat or statement of a plan to inflict bodily injury or commit a crime of
10 violence;

11 (c) Intentionally used to plan a crime, commit or attempt to commit a crime, or
12 conceal an ongoing crime or ongoing criminal activity; or

13 (d) In an agreement resulting from the collaborative law process, evidenced by
14 a record signed by all parties to the agreement.

15 (2) The privileges under Section 13 of this Act for a collaborative law
16 communication shall not apply to the extent that a communication is sought or
17 offered to prove or disprove:

18 (a) A claim or complaint of professional misconduct or malpractice arising
19 from or related to a collaborative law process; or

20 (b) Abuse, neglect, abandonment, or exploitation of a child or adult, unless the
21 Cabinet for Health and Family Services is a party to or otherwise
22 participates in the process.

23 (3) There shall be no privilege under Section 13 of this Act if a court finds, after a
24 hearing in camera, that the party seeking discovery or the proponent of the
25 evidence has shown the evidence is not otherwise available, the need for the
26 evidence substantially outweighs the interest in protecting confidentiality, and the
27 collaborative law communication is sought or offered in:

- 1 (a) A court proceeding involving a felony; or
 2 (b) A proceeding seeking rescission or reformation of a contract arising out of
 3 the collaborative law process or in which a defense to avoid liability on the
 4 contract is asserted.
- 5 (4) If a collaborative law communication is subject to an exception under subsection
 6 (2) or (3) of this section, only the part of the communication necessary for the
 7 application of the exception may be disclosed or admitted.
- 8 (5) Disclosure or admission of evidence excepted from the privilege under subsection
 9 (2) or (3) of this section does not make the evidence or any other collaborative
 10 law communication discoverable or admissible for any other purpose.
- 11 (6) The privileges under Section 13 of this Act shall not apply if the parties agree in
 12 advance in a signed record, or if a record of a proceeding reflects agreement by
 13 the parties, that all or part of a collaborative law process is not privileged. This
 14 subsection shall not apply to a collaborative law communication made by a
 15 person that did not receive actual notice of the agreement before the
 16 communication was made.

17 ➔SECTION 16. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO
 18 READ AS FOLLOWS:

- 19 (1) If an agreement fails to meet the requirements of Section 3 of this Act, or a
 20 lawyer fails to comply with Sections 11 or 12 of this Act, a court may nonetheless
 21 find that the parties intended to enter into a collaborative law participation
 22 agreement if they:
- 23 (a) Signed a record indicating an intention to enter into a collaborative law
 24 participation agreement; and
- 25 (b) Reasonably believed they were participating in a collaborative law process.
- 26 (2) If a court makes the findings specified in subsection (1) of this section, and the
 27 interests of justice require, the court may:

1 (a) Enforce an agreement evidenced by a record resulting from the process in
2 which the parties participated;

3 (b) Apply the disqualification provisions of Sections 6, 7, and 8 of this Act; and

4 (c) Apply a privilege under Section 13 of this Act.

5 ➔Section 17. This Act may be cited as the Uniform Collaborative Law Act.