

COLLABORATIVE PRACTICE PARTICIPATION AGREEMENT

I. Purpose

_____, and his/her attorney, _____, Esq. and _____, and his/her attorney, _____, Esq., have chosen to use the principles of Collaborative Practice to resolve their legal matters. In this agreement, _____ and _____ are referred to as the “parties”. In this agreement, the parties and their attorneys are referred to collectively as “participants”.

The essence of the Collaborative Process is the shared belief that it is in the best interests of the parties and their family to resolve their differences with minimal conflict. The participants agree to seek a resolution of legal matters directly, without the threat of litigation or intervention by the Courts. The process relies on honesty, cooperation, integrity and professionalism.

II. Communication During the Process

A. The participants shall communicate with each other to efficiently and economically settle their issues. Written and verbal communications by the parties and their attorneys will be respectful and constructive. It is agreed that communication during settlement meetings will be focused on the economic and parenting issues and the constructive resolution of those issues.

B. To maintain an objective and constructive settlement process, the parties agree to discuss settlement of their issues only in the settlement conference setting. Discussions outside of the conference setting must be agreed to in advance by the parties and their attorneys.

C. The parties authorize their attorneys and any collaborative consultant retained in the collaborative process to share information, opinions or communications regarding this matter with each other. However, professional privileged communication that a party specifically instructs his or her collaborative attorney not to reveal will be kept confidential.

III. Children’s Issues

The parties shall make every effort to reach amicable solutions that promote the children's best interests. Because inappropriate communications regarding issues can be harmful to the children, settlement issues will not be discussed in the presence or hearing of the children and communication with the children regarding these issues will occur only if it is appropriate and done by mutual agreement or with the advice of a child specialist.

IV. Participation With Integrity

Each participant shall uphold a high standard of integrity, and specifically shall not take advantage of mistakes, errors of fact or law, miscalculations or inconsistencies, but shall disclose them and have them corrected. Integrity includes keeping commitments and agreements made and respecting each other’s privacy throughout the collaborative process.

V. Negotiation in Good Faith

A. The parties and their attorneys shall deal with each other in good faith and shall promptly provide all relevant and reasonable information. The parties shall provide sworn statements of net worth and supporting documentation making full and fair disclosure of their income, assets and debts.

B. By using an informal exchange of information and signed authorization forms, the parties are setting aside certain procedures for the duration of the collaborative process including, but not limited to, formal discovery proceedings, restraining orders, subpoenas and formal court hearings.

C. The parties may seek an opinion from an attorney outside this process; however, the party doing so needs to promptly disclose to the participants only that an outside opinion has been sought.

VI. Collaborative Consultants

When appropriate, the parties will jointly employ a valuation expert, a mediator-facilitator, child specialist, mental health professional, financial specialist, or other consultant(s) for purposes of improving communication, valuation of assets, cash flow analysis, parenting issues or any other issue for which expert assistance may be helpful. Professionals hired for this purpose are referred to in this agreement as “collaborative consultant(s)” The parties will agree in advance as to how the collaborative consultant will be paid.

Unless the parties agree otherwise, if the parties jointly select and retain a collaborative consultant to assist in the collaborative process, neither party may retain such collaborative consultant(s), nor may such collaborative consultant participate in any subsequent litigation between the parties.

VII. Attorneys in the Collaborative Process

While the collaborative attorneys share a commitment to the process as described in this agreement, each has a professional duty to represent his or her own client diligently, and is not the attorney for the other party.

A. Prohibited Conduct – The attorneys shall not threaten to undertake any contested court procedure related to the collaborative case, nor shall either attorney continue to represent a client who makes such a threat in a manner that undermines the collaborative process.

B. Disqualification by Court Intervention – The attorneys are prohibited from representing either party against the other in any contested court proceeding, now or in the future. The attorneys may submit documents comprising a judgment of divorce, qualified domestic relations order, or family court order to a court upon agreement.

C. Withdrawal of an Attorney from the Collaborative Process – If either attorney withdraws from the collaborative case for any reason except those set out in paragraph VIII herein, the attorney shall do so promptly by a written notice to all. This may be done without terminating the status of the case as a collaborative case. The party whose attorney has withdrawn may elect to continue in the collaborative process with a new collaborative attorney and shall give prompt written notice of this intention as to all participants.

VIII. Termination of the Collaborative Process

A. Party’s Termination – If a party decides to terminate the collaborative process, prompt written notice will be given to the other party through his or her lawyer. After termination, there will be a 30-day period before any court hearing unless there is an emergency. All temporary written agreements will remain in full force and effect during this period. The intent of this provision is to permit the other party to retain another lawyer, make an orderly transition and to avoid surprise and prejudice to the rights of the other party. Either party may bring this provision to the attention of the court in requesting a postponement of a hearing.

B. Attorney's Termination – A collaborative attorney must terminate the collaborative process in the event the attorney learns that his or her client has withheld or misrepresented relevant information and continues to do so, or otherwise has acted so as to undermine or take unfair advantage of the collaborative process. The attorney terminating the case shall advise the other participants that the collaborative process is terminated.

C. Automatic Termination – Undertaking any contested court procedure automatically terminates the collaborative process.

IX. Confidentiality

Except as set forth below, all communication exchanged within the collaborative process shall be confidential and without prejudice. If subsequent litigation occurs between the parties:

A. Neither party shall be permitted to introduce as evidence in court information disclosed or documents prepared (including notes, minutes, records, etc) during the collaborative process, except any sworn statements of net worth and supporting financial documentation;

B. Neither party shall be permitted to introduce as evidence in court information about the content of discussions during collaborative meetings or either party's behavior with respect to collaborative meetings;

C. Neither party shall be permitted to request, subpoena or bring an application for discovery of any document or request testimony in any court proceeding from an attorney or collaborative consultant used during the collaborative process; and

D. Unless otherwise agreed between the parties, neither party shall be permitted to introduce as evidence in court information disclosed to, or documents prepared (including opinions, notes, records, etc.) by a collaborative consultant used during the collaborative process.

X. Rights and Obligations Pending Settlement

During the collaborative process, except in the usual course of business consistent with their past practice or for payment of usual and customary household expenses, or upon mutual agreement:

A. Neither party shall sell, transfer, or in any way dispose of any property, individually or jointly held by them;

B. Neither party shall incur debts after the signing of this agreement, including but not limited to: further borrowing against any credit lines, using credit cards or cash advances against credit cards; and

C. The health, automobile, life, property and other insurance shall be maintained in its present form and there shall be no changes to beneficiaries of insurance policies or pensions.

This provision shall remain in full force and effect during these negotiations, unless terminated, modified or amended by agreement of the parties.

XI. Enforceability of Agreements

In the event that either party requires a formal temporary agreement for any purpose, the agreement will be put in writing and signed by the parties and their lawyers. Any temporary written agreement

which states that it survives the termination of the collaborative process may be presented to a court as a basis for an order.

If a temporary written agreement does not state that it survives the termination of the collaborative process, then said temporary written agreement shall expire 30 days after the termination of the collaborative process.

XII. Pledge

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

STATE OF NEW YORK)
COUNTY OF TOMPKINS)

On the ____ day of _____, 200_ before me, the undersigned, a Notary Public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC
TOMPKINS COUNTY NEW YORK
COMMISSION EXPIRES

STATE OF NEW YORK)
COUNTY OF TOMPKINS)

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NOTARY PUBLIC
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Attorney for

Attorney for