

Uniform Collaborative Law Act	North Carolina Law <i>(Provisions similar to Uniform Act are highlighted)</i>	Analysis of Substantive Differences
<p>SECTION 1. SHORT TITLE.</p> <p>This [act] may be cited as the Uniform Collaborative Law Act.</p>	<p>None</p>	
<p>SECTION 2. DEFINITIONS.</p> <p>In this [act]:</p> <p>(1) “Collaborative law communication” means a statement, whether oral or in a record, or verbal or nonverbal, that:</p> <p style="padding-left: 40px;">(A) is made to conduct, participate in, continue, or reconvene a collaborative law process; and</p> <p style="padding-left: 40px;">(B) occurs after the parties sign a collaborative law participation agreement and before the collaborative law process is concluded.</p> <p>(2) “Collaborative law participation agreement” means an agreement by persons to participate in a collaborative law process.</p> <p>(3) “Collaborative law process” means a procedure intended to resolve a collaborative matter without intervention by a tribunal in which persons:</p> <p style="padding-left: 40px;">(A) sign a collaborative law participation agreement; and</p> <p style="padding-left: 40px;">(B) are represented by collaborative lawyers.</p> <p>(4) “Collaborative lawyer” means a lawyer who represents a party in a collaborative law process.</p> <p>(5) “Collaborative matter” means a dispute, transaction, claim, problem, or issue for resolution, including a dispute,</p>	<p>§ 50-70. Collaborative law.</p> <p>As an alternative to judicial disposition of issues arising in a civil action under this Article, except for a claim for absolute divorce, on a written agreement of the parties and their attorneys, a civil action may be conducted under collaborative law procedures as set forth in this Article.</p> <p>§ 50-71. Definitions.</p> <p>As used in this article, the following terms mean:</p> <p>(1) Collaborative law. – A procedure in which a husband and wife who are separated and are seeking a divorce, or are contemplating separation and divorce, and their attorneys agree to use their best efforts and make a good faith attempt to resolve their disputes arising from the marital relationship on an agreed basis. The procedure shall include an agreement by the parties to attempt to resolve their disputes without having to resort to judicial intervention, except to have the court approve the settlement agreement and sign the orders required by law to effectuate the agreement of the parties as the court deems appropriate. The procedure shall also include an agreement where the parties' attorneys agree not to serve as litigation counsel, except to ask the court to approve the settlement agreement.</p> <p>(2) Collaborative law agreement. – A written agreement, signed by a husband and wife and their attorneys, that contains an acknowledgement by the</p>	<p>The UCLA provides two alternative definitions for "collaborative matter". Alternative A defines it as any matter arising under "family or domestic relations law". Alternative B broadens the definition to include any matter described in the collaborative law participation agreement.</p> <p>Current N.C. law is comparable to Alternative A. It limits collaborative law proceedings to disputes "arising from [a] marital relationship" between a "husband and wife who are separated and are seeking a divorce, or are contemplating separation and divorce," but excludes a claim for absolute divorce.</p>

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<p>claim, or issue in a proceeding, which</p> <p style="text-align: center;">Alternative A</p> <p>is described in a collaborative law participation agreement and arises under the family or domestic relations law of this state, including:</p> <ul style="list-style-type: none"> (A) marriage, divorce, dissolution, annulment, and property distribution; (B) child custody, visitation, and parenting time; (C) alimony, maintenance, and child support; (D) adoption; (E) parentage; and (F) premarital, marital, and post-marital agreements. <p style="text-align: center;">Alternative B</p> <p>is described in a collaborative law participation agreement.</p> <p style="text-align: center;">End of Alternatives</p> <p>(6) “Law firm” means:</p> <ul style="list-style-type: none"> (A) lawyers who practice law together in a partnership, professional corporation, sole proprietorship, limited liability company, or association; and (B) lawyers employed in a legal services organization, or the legal department of a corporation or other organization, or the legal department of a government or 	<p>parties to attempt to resolve the disputes arising from their marriage in accordance with collaborative law procedures.</p> <p>(3) Collaborative law procedures. – The process for attempting to resolve disputes arising from a marriage as set forth in this Article.</p> <p>(4) Collaborative law settlement agreement. – An agreement entered into between a husband and wife as a result of collaborative law procedures that resolves the disputes arising from the marriage of the husband and wife.</p> <p>(5) Third-party expert. – A person, other than the parties to a collaborative law agreement, hired pursuant to a collaborative law agreement to assist the parties in the resolution of their disputes.</p>	

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<p>governmental subdivision, agency, or instrumentality.</p> <p>(7) “Nonparty participant” means a person, other than a party and the party’s collaborative lawyer, that participates in a collaborative law process.</p> <p>(8) “Party” means a person that signs a collaborative law participation agreement and whose consent is necessary to resolve a collaborative matter.</p> <p>(9) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.</p> <p>(10) “Proceeding” means:</p> <p style="padding-left: 40px;">(A) a judicial, administrative, arbitral, or other adjudicative process before a tribunal, including related prehearing and post-hearing motions, conferences, and discovery; or</p> <p style="padding-left: 40px;">(B) a legislative hearing or similar process.</p> <p>(11) “Prospective party” means a person that discusses with a prospective collaborative lawyer the possibility of signing a collaborative law participation agreement.</p> <p>(12) “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.</p> <p>(13) “Related to a collaborative matter” means involving the same parties, transaction or occurrence, nucleus of operative fact, dispute, claim, or issue as the collaborative</p>		

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<p>matter.</p> <p>(14) “Sign” means, with present intent to authenticate or adopt a record:</p> <p style="padding-left: 40px;">(A) to execute or adopt a tangible symbol; or</p> <p style="padding-left: 40px;">(B) to attach to or logically associate with the record an electronic symbol, sound, or process.</p> <p>(15) “Tribunal” means:</p> <p style="padding-left: 40px;">(A) a court, arbitrator, administrative agency, or other body acting in an adjudicative capacity which, after presentation of evidence or legal argument, has jurisdiction to render a decision affecting a party’s interests in a matter; or</p> <p style="padding-left: 40px;">(B) a legislative body conducting a hearing or similar process.</p>		
<p>SECTION 3. APPLICABILITY.</p> <p>This [act] applies to a collaborative law participation agreement that meets the requirements of Section 4 signed [on or] after [the effective date of this [act]].</p>	<p>S.L. 2003-371, which added Article 4 of Chapter 50, became effective October 1, 2003. Article 4 includes G.S. 50-70 through G.S. 50-79.</p>	
<p>SECTION 4. COLLABORATIVE LAW PARTICIPATION AGREEMENT; REQUIREMENTS.</p> <p>(a) A collaborative law participation agreement must:</p> <p style="padding-left: 40px;">(1) be in a record;</p> <p style="padding-left: 40px;">(2) be signed by the parties;</p> <p style="padding-left: 40px;">(3) state the parties’ intention to resolve a collaborative matter through a collaborative law process under this [act];</p>	<p>§ 50-72. Agreement requirements.</p> <p>A collaborative law agreement must be in writing, signed by all the parties to the agreement and their attorneys, and must include provisions for the withdrawal of all attorneys involved in the collaborative law procedure if the collaborative law procedure does not result in settlement of the dispute.</p>	<p>The UCLA requires only the parties to sign the collaborative law participation agreement. The collaborative lawyers must confirm in a statement that they represent the parties in the collaborative law process.</p> <p>Current N.C. law requires</p>

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<p>(4) describe the nature and scope of the matter;</p> <p>(5) identify the collaborative lawyer who represents each party in the process; and</p> <p>(6) contain a statement by each collaborative lawyer confirming the lawyer’s representation of a party in the collaborative law process.</p> <p>(b) Parties may agree to include in a collaborative law participation agreement additional provisions not inconsistent with this [act].</p>		<p>both the parties and the attorneys to sign the collaborative law participation agreement and requires the agreement to include a provision for the withdrawal of the attorneys in the event that that the dispute is not settled.</p>
<p>SECTION 5. BEGINNING AND CONCLUDING COLLABORATIVE LAW PROCESS.</p> <p>(a) A collaborative law process begins when the parties sign a collaborative law participation agreement.</p> <p>(b) A tribunal may not order a party to participate in a collaborative law process over that party’s objection.</p> <p>(c) A collaborative law process is concluded by a:</p> <p>(1) resolution of a collaborative matter as evidenced by a signed record;</p> <p>(2) resolution of a part of the collaborative matter, evidenced by a signed record, in which the parties agree that the remaining parts of the matter will not be resolved in the process; or</p> <p>(3) termination of the process.</p> <p>(d) A collaborative law process terminates:</p>	<p>§ 50-74. Notice of collaborative law agreement.</p> <p>(a) No notice shall be given to the court of any collaborative law agreement entered into prior to the filing of a civil action under this Article.</p> <p>(b) If a civil action is pending, a notice of a collaborative law agreement, signed by the parties and their attorneys, shall be filed with the court. After the filing of a notice of a collaborative law agreement, the court shall take no action in the case, including dismissal, unless the court is notified in writing that the parties have done one of the following:</p> <p>(1) Failed to reach a collaborative law settlement agreement.</p> <p>(2) Both voluntarily dismissed the action.</p> <p>(3) Asked the court to enter a judgment or order to make the collaborative law settlement agreement an act of the court in accordance with G.S. 50-75.</p>	<p>The UCLA allows a party to unilaterally terminate a collaborative law process, with or without cause, through a variety of means.</p> <p>Current N.C. law allows a party to unilaterally terminate a collaborative law process by notifying the court in writing that the parties "[f]ailed to reach a collaborative law settlement agreement."</p>

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<p>(1) when a party gives notice to other parties in a record that the process is ended;</p> <p>(2) when a party:</p> <p style="padding-left: 20px;">(A) begins a proceeding related to a collaborative matter without the agreement of all parties; or</p> <p style="padding-left: 20px;">(B) in a pending proceeding related to the matter:</p> <p style="padding-left: 40px;">(i) initiates a pleading, motion, order to show cause, or request for a conference with the tribunal;</p> <p style="padding-left: 40px;">(ii) requests that the proceeding be put on the [tribunal’s active calendar]; or</p> <p style="padding-left: 40px;">(iii) takes similar action requiring notice to be sent to the parties; or</p> <p>(3) except as otherwise provided by subsection (g), when a party discharges a collaborative lawyer or a collaborative lawyer withdraws from further representation of a party.</p> <p>(e) A party’s collaborative lawyer shall give prompt notice to all other parties in a record of a discharge or withdrawal.</p> <p>(f) A party may terminate a collaborative law process with or without cause.</p> <p>(g) Notwithstanding the discharge or withdrawal of a collaborative lawyer, a collaborative law process continues, if not later than 30 days after the date that the notice of the discharge or withdrawal of a collaborative lawyer required by subsection (e) is sent to the parties:</p> <p style="padding-left: 20px;">(1) the unrepresented party engages a successor</p>		

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<p>collaborative lawyer; and</p> <p>(2) in a signed record:</p> <p>(A) the parties consent to continue the process by reaffirming the collaborative law participation agreement;</p> <p>(B) the agreement is amended to identify the successor collaborative lawyer; and</p> <p>(C) the successor collaborative lawyer confirms the lawyer’s representation of a party in the collaborative process.</p> <p>(h) A collaborative law process does not conclude if, with the consent of the parties, a party requests a tribunal to approve a resolution of the collaborative matter or any part thereof as evidenced by a signed record.</p> <p>(i) A collaborative law participation agreement may provide additional methods of concluding a collaborative law process.</p>		
<p>SECTION 6. PROCEEDINGS PENDING BEFORE TRIBUNAL; STATUS REPORT.</p> <p>(a) Persons in a proceeding pending before a tribunal may sign a collaborative law participation agreement to seek to resolve a collaborative matter related to the proceeding. The parties shall file promptly with the tribunal a notice of the agreement after it is signed. Subject to subsection (c) and Sections 7 and 8, the filing operates as an application for a stay of the proceeding.</p> <p>(b) The parties shall file promptly with the tribunal notice in a record when a collaborative law process concludes. The stay of the proceeding under subsection (a) is lifted when the</p>	<p>§ 50-74. Notice of collaborative law agreement.</p> <p>(a) No notice shall be given to the court of any collaborative law agreement entered into prior to the filing of a civil action under this Article.</p> <p>(b) If a civil action is pending, a notice of a collaborative law agreement, signed by the parties and their attorneys, shall be filed with the court. After the filing of a notice of a collaborative law agreement, the court shall take no action in the case, including dismissal, unless the court is notified in writing that the parties have done one of the following:</p> <p>(1) Failed to reach a collaborative law settlement</p>	<p>The UCLA treats the parties' notice to the court of a collaborative law participation agreement as an "application for a stay of the proceeding." The court may require the parties to provide a status report of the collaborative law process.</p> <p>Current N.C. law requires the court, after receiving notice of a collaborative law participation agreement, to</p>

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<p>notice is filed. The notice may not specify any reason for termination of the process.</p> <p>(c) A tribunal in which a proceeding is stayed under subsection (a) may require the parties and collaborative lawyers to provide a status report on the collaborative law process and the proceeding. A status report may include only information on whether the process is ongoing or concluded. It may not include a report, assessment, evaluation, recommendation, finding, or other communication regarding a collaborative law process or collaborative law matter.</p> <p>(d) A tribunal may not consider a communication made in violation of subsection (c).</p> <p>(e) A tribunal shall provide parties notice and an opportunity to be heard before dismissing a proceeding in which a notice of collaborative process is filed based on delay or failure to prosecute.</p> <p><i>Legislative Note: In enacting this Section, states should review existing provisions concerning stays of pending proceedings when the parties agree to engage in alternative dispute resolution. As noted in the comment to Section 6, some states treat party entry into an alternative dispute resolution procedure such as collaborative law or mediation as an application for a stay, which the court has discretion to grant or deny, while other states make the stay mandatory. Enacting states may wish to duplicate the practice currently applicable to collaborative law, mediation, or other forms of alternative dispute resolution.</i></p>	<p>agreement.</p> <p>(2) Both voluntarily dismissed the action.</p> <p>(3) Asked the court to enter a judgment or order to make the collaborative law settlement agreement an act of the court in accordance with G.S. 50-75.</p>	<p>"take no action in the case, including dismissal".</p> <p>The UCLA's legislative note for this section suggests that "[e]nacting states may wish to duplicate the practice currently applicable to collaborative law".</p>
<p>SECTION 7. EMERGENCY ORDER.</p> <p>During a collaborative law process, a tribunal may issue emergency orders to protect the health, safety, welfare, or interest of a party or [insert term for family or household</p>	<p>None</p>	<p>The UCLA allows a court to issue an emergency order to protect the "health, safety, welfare, or interest of a party" during a collaborative</p>

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<p>member as defined in [state civil protection order statute]].</p>		<p>law process.</p> <p>Although current N.C. collaborative law does not specifically address this issue, a party could file a separate action to seek an emergency domestic violence protective order under G.S. 50B-2.</p>
<p>SECTION 8. APPROVAL OF AGREEMENT BY TRIBUNAL.</p> <p>A tribunal may approve an agreement resulting from a collaborative law process.</p>	<p>§ 50-75. Judgment on collaborative law settlement agreement.</p> <p>A party is entitled to an entry of judgment or order to effectuate the terms of a collaborative law settlement agreement if the agreement is signed by each party to the agreement.</p>	<p>The UCLA gives a court discretion to approve a collaborative law settlement agreement.</p> <p>Current N.C. law requires a court to enter judgment to effectuate the terms of a collaborative law settlement agreement.</p>
<p>SECTION 9. DISQUALIFICATION OF COLLABORATIVE LAWYER AND LAWYERS IN ASSOCIATED LAW FIRM.</p> <p>(a) Except as otherwise provided in subsection (c), a collaborative lawyer is disqualified from appearing before a tribunal to represent a party in a proceeding related to the collaborative matter.</p> <p>(b) Except as otherwise provided in subsection (c) and Sections 10 and 11, a lawyer in a law firm with which the collaborative lawyer is associated is disqualified from appearing before a tribunal to represent a party in a proceeding related to the collaborative matter if the collaborative lawyer is disqualified from doing so under subsection (a).</p>	<p>§ 50-76. Failure to reach settlement; disposition by court; duty of attorney to withdraw.</p> <p>(a) If the parties fail to reach a settlement and no civil action has been filed, either party may file a civil action, unless the collaborative law agreement first provides for the use of arbitration or alternative dispute resolution.</p> <p>(b) If a civil action is pending and the collaborative law procedures do not result in a collaborative law settlement agreement, upon notice to the court, the court may enter orders as appropriate, free of the restrictions of G.S. 50-74(b).</p> <p>(c) If a civil action is filed or set for trial pursuant to subsection (a) or (b) of this section, the attorneys representing the parties in the collaborative law</p>	<p>Both the UCLA and current N.C. law prohibit a lawyer who represented a party in a collaborative law proceeding from later representing that party in a court proceeding.</p> <p>The UCLA also generally prohibits a lawyer in the same law firm as the collaborative lawyer from representing the party in a court proceeding.</p>

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<p>(c) A collaborative lawyer or a lawyer in a law firm with which the collaborative lawyer is associated may represent a party:</p> <p>(1) to ask a tribunal to approve an agreement resulting from the collaborative law process; or</p> <p>(2) to seek or defend an emergency order to protect the health, safety, welfare, or interest of a party, or [insert term for family or household member as defined in [state civil protection order statute]] if a successor lawyer is not immediately available to represent that person.</p> <p>(d) If subsection (c)(2) applies, a collaborative lawyer, or lawyer in a law firm with which the collaborative lawyer is associated, may represent a party or [insert term for family or household member] only until the person is represented by a successor lawyer or reasonable measures are taken to protect the health, safety, welfare, or interest of the person.</p>	<p>proceedings may not represent either party in any further civil proceedings and shall withdraw as attorney for either party.</p> <p>2002 Formal Ethics Opinion 1. Participation in Collaborative Resolution Process Requiring Lawyer to Agree to Limit Future Court Representation</p> <p>Adopted: April 19, 2002</p> <p><i>Opinion rules that a lawyer may participate in a non-profit organization that promotes a cooperative method for resolving family law disputes although the client is required to make full disclosure and the lawyer is required to withdraw before court proceedings commence.</i></p> <p>Inquiry #1: Several lawyers from different law firms would like to start a non-profit organization (the "CFL Organization") to promote the use of a process called "collaborative family law" to facilitate the resolution of domestic disputes through non-adversarial negotiation. The goal of the collaborative family law process is to avoid the negative economic, social, and emotional consequences of protracted litigation by using cooperative negotiation and problem solving. In the "four-way meetings" to negotiate a settlement, each spouse is represented by a lawyer of his or her choice provided the lawyer is trained in and dedicated to the process of collaborative family law. A spouse who wants the CFL Organization to facilitate a collaborative family law process may be represented by a lawyer who is not a member of the organization provided the lawyer is committed to the process. However, it is anticipated that in the majority of</p>	<p>Current N.C. ethics law allows collaborative lawyers who are members of a collaborative law nonprofit organization to represent opposing spouses during the collaborative law process.</p>

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	<p>cases, both the husband and the wife will be represented by lawyers who are members of the CFL Organization. Each spouse agrees to pay his or her own legal fees. A lawyer participating in the process, including a member of CFL Organization, receives all compensation for legal representation from his or her client.</p> <p>May a lawyer who is a member of the CFL Organization represent a spouse in a collaborative family law process if another member of the organization represents the other spouse?</p> <p>Opinion #1: Yes, provided both lawyers determine that their professional judgment on behalf of their respective clients will not be impaired by their relationship to the other lawyer through the CFL Organization, and both clients consent to the representation after consultation. <i>See</i> [Revised Rule of Professional Conduct of the North Carolina State Bar] 1.7(b).</p> <p>Inquiry #2: To further the goal of avoiding litigation, the lawyers must agree to limit their representation of their respective clients to representation in the collaborative family law process and to withdraw from representation prior to court proceedings. May a lawyer ask a client to agree, in advance, to this limitation on the lawyer's legal services?</p> <p>Opinion #2: Yes. Rule 1.2(c) permits a lawyer to limit the objectives of a representation if the client consents after consultation.</p> <p>....</p>	<p>Current N.C. ethics law supports the requirement that a collaborative lawyer withdraw from representation before a court proceeding.</p>

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<p>SECTION 10. LOW INCOME PARTIES.</p> <p>(a) The disqualification of Section 9(a) applies to a collaborative lawyer representing a party with or without fee.</p> <p>(b) After a collaborative law process concludes, another lawyer in a law firm with which a collaborative lawyer disqualified under Section 9(a) is associated may represent a party without fee in the collaborative matter or a matter related to the collaborative matter if:</p> <p>(1) the party has an annual income that qualifies the party for free legal representation under the criteria established by the law firm for free legal representation;</p> <p>(2) the collaborative law participation agreement so provides; and</p> <p>(3) the collaborative lawyer is isolated from any participation in the collaborative matter or a matter related to the collaborative matter through procedures within the law firm which are reasonably calculated to isolate the collaborative lawyer from such participation.</p>	<p>None</p>	<p>As an exception to the general rule of disqualification, the UCLA allows a lawyer in the same law firm as the collaborative lawyer to represent the party without fee if the party is entitled to free legal representation, the collaborative law participation agreement so provides, and the collaborative lawyer is isolated from participation.</p>
<p>SECTION 11. GOVERNMENTAL ENTITY AS PARTY.</p> <p>(a) The disqualification of Section 9(a) applies to a collaborative lawyer representing a party that is a government or governmental subdivision, agency, or instrumentality.</p> <p>(b) After a collaborative law process concludes, another lawyer in a law firm with which the collaborative lawyer is associated may represent a government or governmental subdivision, agency, or instrumentality in the collaborative matter or a matter related to the collaborative matter if:</p> <p>(1) the collaborative law participation agreement so</p>	<p>None</p>	<p>As an exception to the general rule of disqualification, the UCLA allows a lawyer in the same law firm as the collaborative lawyer to represent the party if the party is a governmental entity, the collaborative law participation agreement so provides, and the collaborative lawyer is isolated from participation.</p>

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<p>provides; and</p> <p>(2) the collaborative lawyer is isolated from any participation in the collaborative matter or a matter related to the collaborative matter through procedures within the law firm which are reasonably calculated to isolate the collaborative lawyer from such participation.</p>		
<p>SECTION 12. DISCLOSURE OF INFORMATION.</p> <p>Except as provided by law other than this [act], during the collaborative law process, on the request of another party, a party shall make timely, full, candid, and informal disclosure of information related to the collaborative matter without formal discovery. A party also shall update promptly previously disclosed information that has materially changed. The parties may define the scope of disclosure during the collaborative law process.</p>	<p>None</p>	<p>The UCLA requires that the parties make "timely, full, candid, and informal disclosure of information" without formal discovery and allows the parties to define the scope of disclosure.</p>
<p>SECTION 13. STANDARDS OF PROFESSIONAL RESPONSIBILITY AND MANDATORY REPORTING NOT AFFECTED.</p> <p>This [act] does not affect:</p> <p>(1) the professional responsibility obligations and standards applicable to a lawyer or other licensed professional; or</p> <p>(2) the obligation of a person to report abuse or neglect, abandonment, or exploitation of a child or adult under the law of this state.</p>	<p>None</p>	<p>The UCLA specifically provides that it does not supersede a lawyer's ethical obligations or duty to report abuse or neglect under state law.</p>

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<p>SECTION 14. APPROPRIATENESS OF COLLABORATIVE LAW PROCESS.</p> <p>Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall:</p> <p>(1) assess with the prospective party factors the lawyer reasonably believes relate to whether a collaborative law process is appropriate for the prospective party’s matter;</p> <p>(2) provide the prospective party with information that the lawyer reasonably believes is sufficient for the party to make an informed decision about the material benefits and risks of a collaborative law process as compared to the material benefits and risks of other reasonably available alternatives for resolving the proposed collaborative matter, such as litigation, mediation, arbitration, or expert evaluation; and</p> <p>(3) advise the prospective party that:</p> <p>(A) after signing an agreement if a party initiates a proceeding or seeks tribunal intervention in a pending proceeding related to the collaborative matter, the collaborative law process terminates;</p> <p>(B) participation in a collaborative law process is voluntary and any party has the right to terminate unilaterally a collaborative law process with or without cause; and</p> <p>(C) the collaborative lawyer and any lawyer in a law firm with which the collaborative lawyer is associated may not appear before a tribunal to represent a party in a proceeding related to the collaborative matter, except</p>	<p>2002 Formal Ethics Opinion 1. Participation in Collaborative Resolution Process Requiring Lawyer to Agree to Limit Future Court Representation</p> <p>Adopted: April 19, 2002</p> <p><i>Opinion rules that a lawyer may participate in a non-profit organization that promotes a cooperative method for resolving family law disputes although the client is required to make full disclosure and the lawyer is required to withdraw before court proceedings commence.</i></p> <p>...</p> <p>Inquiry #5: The collaborative family law process requires both spouses to agree to disclose voluntarily all assets, income, debts, and other information necessary for both parties to make informed choices. Is it a violation of the lawyer's duty of competent representation to encourage a client to participate in the process and to disclose such information voluntarily?</p> <p>Opinion #5: In order that the client may make an informed decision about participating in the process, the lawyer must use his or her professional judgment to analyze the benefits and risks for the client in participating in the collaborative family law process, taking the disclosure requirements into consideration, and advise the client accordingly. <i>See</i> [Revised Rules of Professional Conduct of the North Carolina State Bar] 1.1 and ... 1.4(b).</p> <p>Inquiry #6:</p>	<p>The UCLA requires a collaborative lawyer to provide a prospective party with "information that the lawyer reasonably believes is sufficient for the party to make an informed decision about the material benefits and risks of a collaborative law process" and to advise the prospective party on various aspects of collaborative law procedure.</p> <p>Current N.C. ethics law requires a collaborative lawyer to advise a prospective party on "the benefits and risks for the client in participating in the collaborative family law process".</p>

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<p>as authorized by Section 9(c), 10(b), or 11(b).</p>	<p>In a court proceeding, adultery may determine a client's right to alimony. May a lawyer represent a client in the collaborative family law process if the disclosure requirements for the process permit withholding of information about adultery despite the general policy of full disclosure? May a lawyer represent a client in the process if the disclosure requirements require the disclosure of information about adultery even if it may be detrimental to the disclosing party?</p> <p>Opinion #6: A lawyer may represent a client in the collaborative family law process if it is in the best interest of the client, the client has made informed decisions about the representation, the disclosure requirements do not involve dishonesty or fraud, and all parties understand and agree to the specific disclosure requirements. Before representing a client in the collaborative family law process, the lawyer must examine the totality of the situation and advise the client of the benefits and risks of participation in the collaborative family law process including the benefits and risks of making and receiving certain disclosures (or not receiving those disclosures). See Rule 1.4(b).</p>	
<p>SECTION 15. COERCIVE OR VIOLENT RELATIONSHIP.</p> <p>(a) Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall make reasonable inquiry whether the prospective party has a history of a coercive or violent relationship with another prospective party.</p> <p>(b) Throughout a collaborative law process, a collaborative</p>	<p>None</p>	<p>The UCLA requires a collaborative lawyer to assess whether a party has a history of a "coercive or violent relationship" with another party, to continuously assess this question throughout the collaborative law process, and to stop the process if the</p>

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<p>lawyer reasonably and continuously shall assess whether the party the collaborative lawyer represents has a history of a coercive or violent relationship with another party.</p> <p>(c) If a collaborative lawyer reasonably believes that the party the lawyer represents or the prospective party who consults the lawyer has a history of a coercive or violent relationship with another party or prospective party, the lawyer may not begin or continue a collaborative law process unless:</p> <p>(1) the party or the prospective party requests beginning or continuing a process; and</p> <p>(2) the collaborative lawyer reasonably believes that the safety of the party or prospective party can be protected adequately during a process.</p>		<p>lawyer discovers such a relationship unless the party requests the process and the lawyer reasonably believes that the safety of the party can be protected during the process.</p>
<p>SECTION 16. CONFIDENTIALITY OF COLLABORATIVE LAW COMMUNICATION.</p> <p>A collaborative law communication is confidential to the extent agreed by the parties in a signed record or as provided by law of this state other than this [act].</p>	<p>§ 50-77. Privileged and inadmissible evidence.</p> <p>(a) All statements, communications, and work product made or arising from a collaborative law procedure are confidential and are inadmissible in any court proceeding. Work product includes any written or verbal communications or analysis of any third-party experts used in the collaborative law procedure.</p> <p>(b) All communications and work product of any attorney or third-party expert hired for purposes of participating in a collaborative law procedure shall be privileged and inadmissible in any court proceeding, except by agreement of the parties.</p>	<p>The UCLA provides that a collaborative law communication is confidential to the extent agreed by the parties in a signed record.</p> <p>Current N.C. law provides that all collaborative law communications are confidential.</p>
<p>SECTION 17. PRIVILEGE AGAINST DISCLOSURE FOR COLLABORATIVE LAW COMMUNICATION; ADMISSIBILITY; DISCOVERY.</p> <p>(a) Subject to Sections 18 and 19, a collaborative law communication is privileged under subsection (b), is not subject to discovery, and is not admissible in evidence.</p>	<p>§ 50-77. Privileged and inadmissible evidence.</p> <p>(a) All statements, communications, and work product made or arising from a collaborative law procedure are confidential and are inadmissible in any court proceeding. Work product includes any written or verbal communications or analysis of any third-party</p>	<p>Both the UCLA and current N.C. law provide that all collaborative law communications are privileged and inadmissible as evidence in a court proceeding, except by</p>

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<p>(b) In a proceeding, the following privileges apply:</p> <p>(1) A party may refuse to disclose, and may prevent any other person from disclosing, a collaborative law communication.</p> <p>(2) A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a collaborative law communication of the nonparty participant.</p> <p>(c) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely because of its disclosure or use in a collaborative law process.</p>	<p>experts used in the collaborative law procedure.</p> <p>(b) All communications and work product of any attorney or third-party expert hired for purposes of participating in a collaborative law procedure shall be privileged and inadmissible in any court proceeding, except by agreement of the parties.</p>	<p>agreement of the parties. Section 19(f) of the UCLA provides that this agreement must be in a record and that it does not apply to a person that did not receive actual notice of the agreement.</p>
<p>SECTION 18. WAIVER AND PRECLUSION OF PRIVILEGE.</p> <p>(a) A privilege under Section 17 may be waived in a record or orally during a proceeding if it is expressly waived by all parties and, in the case of the privilege of a nonparty participant, it is also expressly waived by the nonparty participant.</p> <p>(b) A person that makes a disclosure or representation about a collaborative law communication which prejudices another person in a proceeding may not assert a privilege under Section 17, but this preclusion applies only to the extent necessary for the person prejudiced to respond to the disclosure or representation.</p>	<p><i>Hulse v. Arrow Trucking Co.</i>, 161 N.C. App. 306, 310, 587 S.E.2d 898, 901 (2003):</p> <p>"In <i>State v. Tate</i>, 294 N.C. 189, 239 S.E.2d 821 (1978), our Supreme Court held that the attorney-client privilege which preserves the confidentiality of a normally privileged written communication is deemed to be waived if the holder of that privilege testifies concerning the written communication thereby putting it into evidence before the jury. The Court reasoned that the written communication itself 'is the best evidence of what it does and does not contain.' <i>Id.</i> at 194, 239 S.E.2d at 825 (emphasis added and omitted)."</p>	<p>The UCLA allows a party to waive the evidentiary privilege of a collaborative law communication and precludes a person from asserting the privilege about a collaborative law communication that the person already disclosed to the prejudice of another person.</p> <p>Current N.C. case law allows a person to waive the attorney-client privilege.</p>
<p>SECTION 19. LIMITS OF PRIVILEGE.</p> <p>(a) There is no privilege under Section 17 for a collaborative law communication that is:</p> <p>(1) available to the public under [state open records act] or</p>	<p>§ 132-1.1. Confidential communications by legal counsel to public board or agency; State tax information; public enterprise billing information; Address Confidentiality Program information.</p> <p>(a) Confidential Communications. – Public records,</p>	<p>The UCLA does not extend the evidentiary privilege to a collaborative law communication that is a public record or made during a session open to the</p>

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<p>made during a session of a collaborative law process that is open, or is required by law to be open, to the public;</p>	<p>as defined in G.S. 132-1, shall not include written communications (and copies thereof) to any public board, council, commission or other governmental body of the State or of any county, municipality or other political subdivision or unit of government, made within the scope of the attorney-client relationship by any attorney-at-law serving any such governmental body, concerning any claim against or on behalf of the governmental body or the governmental entity for which such body acts, or concerning the prosecution, defense, settlement or litigation of any judicial action, or any administrative or other type of proceeding to which the governmental body is a party or by which it is or may be directly affected. Such written communication and copies thereof shall not be open to public inspection, examination or copying unless specifically made public by the governmental body receiving such written communications; provided, however, that such written communications and copies thereof shall become public records as defined in G.S. 132-1 three years from the date such communication was received by such public board, council, commission or other governmental body.</p> <p>....</p> <p>§ 143-318.11. Closed sessions.</p> <p>(a) Permitted Purposes. – It is the policy of this State that closed sessions shall be held only when required to permit a public body to act in the public interest as permitted in this section. A public body may hold a closed session and exclude the public only when a closed session is required:</p> <p>(1) To prevent the disclosure of information that is</p>	<p>public.</p> <p>Current N.C. law provides that a communication to a governmental entity made within the scope of the attorney-client relationship is not a public record until three years have elapsed.</p> <p>Current N.C. law allows a public body to hold a closed session to prevent the disclosure of privileged or confidential information or to consult with its attorney.</p>

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	<p>privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes.</p> <p>...</p> <p>(3) To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged. General policy matters may not be discussed in a closed session and nothing herein shall be construed to permit a public body to close a meeting that otherwise would be open merely because an attorney employed or retained by the public body is a participant. The public body may consider and give instructions to an attorney concerning the handling or settlement of a claim, judicial action, mediation, arbitration, or administrative procedure. If the public body has approved or considered a settlement, other than a malpractice settlement by or on behalf of a hospital, in closed session, the terms of that settlement shall be reported to the public body and entered into its minutes as soon as possible within a reasonable time after the settlement is concluded.</p> <p>....</p> <p>The Revised Rules of Professional Conduct of the North Carolina State Bar</p> <p>Rule 1.6. Confidentiality of information.</p> <p>(a) A lawyer shall not reveal information acquired during the professional relationship with a client</p>	

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<p>(2) a threat or statement of a plan to inflict bodily injury or commit a crime of violence;</p> <p>(3) intentionally used to plan a crime, commit or attempt to commit a crime, or conceal an ongoing crime or ongoing criminal activity; or</p> <p>(4) in an agreement resulting from the collaborative law process, evidenced by a record signed by all parties to the agreement.</p> <p>(b) The privileges under Section 17 for a collaborative law communication do not apply to the extent that a communication is:</p> <p>(1) sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice arising from or related to a collaborative law process; or</p> <p>(2) sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation of a child or adult, unless the [child protective services agency or adult protective services agency] is a party to or otherwise participates in the process.</p> <p>(c) There is no privilege under Section 17 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 collaborative law communication is sought or offered in:</p>	<p>unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).</p> <p>(b) A lawyer may reveal information protected from disclosure by paragraph (a) to the extent the lawyer reasonably believes necessary:</p> <p>(1) to comply with the Rules of Professional Conduct, the law or court order;</p> <p>(2) to prevent the commission of a crime by the client;</p> <p>(3) to prevent reasonably certain death or bodily harm;</p> <p>(4) to prevent, mitigate, or rectify the consequences of a client's criminal or fraudulent act in the commission of which the lawyer's services were used;</p> <p>(5) to secure legal advice about the lawyer's compliance with these Rules;</p> <p>(6) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client; to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved; or to respond to allegations in any proceeding concerning the lawyer's representation of the client;</p> <p>(7) to comply with the rules of a lawyers' or</p>	<p>The UCLA does not extend the evidentiary privilege to a collaborative law communication that is "a threat or statement of a plan to inflict bodily injury or commit a crime of violence" or a collaborative law communication that is "intentionally used to plan a crime, commit or attempt to commit a crime, or conceal an ongoing crime or ongoing criminal activity".</p> <p>Current N.C. ethics law allows a lawyer to reveal confidential information "to prevent reasonably certain death or bodily harm" or "to prevent the commission of a crime by the client".</p> <p>The UCLA does not extend the evidentiary privilege to a collaborative law communication to the extent that it is "offered to prove or disprove a claim or complaint of professional misconduct or malpractice".</p> <p>Current N.C. ethics law allows a lawyer to reveal confidential information to</p>

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<p>(1) a court proceeding involving a felony [or misdemeanor]; or</p> <p>(2) a proceeding seeking rescission or reformation of a contract arising out of the collaborative law process or in which a defense to avoid liability on the contract is asserted.</p> <p>(d) If a collaborative law communication is subject to an exception under subsection (b) or (c), only the part of the communication necessary for the application of the exception may be disclosed or admitted.</p> <p>(e) Disclosure or admission of evidence excepted from the privilege under subsection (b) or (c) does not make the evidence or any other collaborative law communication discoverable or admissible for any other purpose.</p> <p>(f) The privileges under Section 17 do not apply if the parties agree in advance in a signed record, or if a record of a proceeding reflects agreement by the parties, that all or part of a collaborative law process is not privileged. This subsection does not apply to a collaborative law communication made by a person that did not receive actual notice of the agreement before the communication was made.</p>	<p>judges' assistance program approved by the North Carolina State Bar or the North Carolina Supreme Court; or</p> <p>(8) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.</p> <p>....</p>	<p>(1) "establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client", (2) "to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved", or (3) "to respond to allegations in any proceeding concerning the lawyer's representation of the client".</p>

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<p>SECTION 20. AUTHORITY OF TRIBUNAL IN CASE OF NONCOMPLIANCE.</p> <p>(a) If an agreement fails to meet the requirements of Section 4, or a lawyer fails to comply with Section 14 or 15, a tribunal may nonetheless find that the parties intended to enter into a collaborative law participation agreement if they:</p> <p style="padding-left: 40px;">(1) signed a record indicating an intention to enter into a collaborative law participation agreement; and</p> <p style="padding-left: 40px;">(2) reasonably believed they were participating in a collaborative law process.</p> <p>(b) If a tribunal makes the findings specified in subsection (a), and the interests of justice require, the tribunal may:</p> <p style="padding-left: 40px;">(1) enforce an agreement evidenced by a record resulting from the process in which the parties participated;</p> <p style="padding-left: 40px;">(2) apply the disqualification provisions of Sections 5, 6, 9, 10, and 11; and</p> <p style="padding-left: 40px;">(3) apply a privilege under Section 17.</p>	<p>None</p>	<p>The UCLA provides that if a court finds that the parties "signed a record indicating an intention to enter into a collaborative law participation agreement" and "reasonably believed they were participating in a collaborative law process", a court may enforce a collaborative law settlement agreement or apply the UCLA disqualification or privilege provisions, even if the collaborative law participation agreement failed to satisfy Section 4 (Collaborative Law Participation Agreement Requirements) or a lawyer failed to comply with Section 14 (Appropriateness of Collaborative Law Process) or Section 15 (Coercive or Violent Relationship).</p>
<p>SECTION 21. UNIFORMITY OF APPLICATION AND CONSTRUCTION.</p> <p>In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.</p>	<p>None</p>	
<p>SECTION 22. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.</p>	<p>None</p>	

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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 does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).		
[SECTION 23. SEVERABILITY. If any provision of this [act] or its application to any person or circumstance is held invalid, the invalidity does 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.]	None	
SECTION 24. EFFECTIVE DATE. This [act] takes effect	None	

Additional relevant provisions of current N.C. law:

§ 50-73. Tolling of time periods.

A validly executed collaborative law agreement shall toll all legal time periods applicable to legal rights and issues under law between the parties for the amount of time the collaborative law agreement remains in effect. This section applies to any applicable statutes of limitations, filing deadlines, or other time limitations imposed by law or court rule, including setting a hearing or trial in the case, imposing discovery deadlines, and requiring compliance with scheduling orders.

§ 50-78. Alternate dispute resolution permitted.

Nothing in this Article shall be construed to prohibit the parties from using, by mutual agreement, other forms of alternate dispute resolution, including mediation or binding arbitration, to reach a settlement on any of the issues included in the collaborative law agreement. The parties' attorneys for the collaborative law proceeding may also serve as counsel for any form of alternate dispute resolution pursued as part of the collaborative law agreement.

§ 50-79. Collaborative law procedures surviving death.

Consistent with G.S. 50-20(1), the personal representative of the estate of a deceased spouse may continue a collaborative law procedure with respect to equitable distribution that has been initiated by a collaborative law agreement prior to death, notwithstanding the death of one of the

spouses. The provisions of G.S. 50-73 shall apply to time limits applicable under G.S. 50-20(1) for collaborative law procedures continued pursuant to this section.