



SEPTEMBER 2014

## NEW JERSEY ENACTS “FAMILY COLLABORATIVE LAW ACT”

By Robert A. Epstein

Overshadowed by the state’s recent enactment of alimony reform, the New Jersey Family Collaborative Law Act was also signed into law by Governor Chris Christie on September 10, 2014. The law takes effect on the 90th day after enactment.

Collaborative law is a form of alternative dispute resolution in which, as described by the legislation, an attorney is retained “for the limited purpose of assisting his client in resolving family disputes in a voluntary, non-adversarial manner, without court intervention.” In other words, the goal and stated intent by both parties is to resolve the matter without litigation, including the mutual provision of full disclosure of information and documentation without the need for formal discovery.

Generally, a collaborative law process terminates if either party involved commences a proceeding related to the subject matter at issue (divorce, custody and the like), other than for a court’s entry of a settlement agreement. Parties and non-party experts or neutrals are protected from the disclosure of communications, similar to that covered in mediation, with various exceptions delineated in the new law. The collaborative law “participation agreement” must, among other things: (1) be in a record; (2) signed by the parties; (3) state the parties’ intention to resolve the dispute through the collaborative method; (4) detail the confidential nature of communications and applicable evidentiary privilege; and (5) describe the nature and scope of the dispute, as well as how the process will commence and ultimately end.

Additionally, the agreement must identify the collaborative lawyer representing each party and contain a statement limiting the collaborative lawyer’s role. The lawyer and lawyers in that same firm, if any, shall not continue to represent the party in that family law dispute if the dispute is submitted to a tribunal for adjudication.

To “conclude” the collaborative process, the law provides that there must either be a signed settlement agreement or a termination of the process. A termination occurs in one of many ways, including:

- When either party gives notice in a record that the process has ended (with or without cause).
- A party files a document without the agreement of all parties that initiates a proceeding related to the family law dispute.
- Either party is subject to or obtains a temporary or final restraining order against the other party under the Prevention of Domestic Violence Act.
- An action is commenced requesting that a tribunal issue emergency relief to protect the health, safety, welfare or interests of a party, or the defense against such a request is commenced.
- A party discharges a collaborative family lawyer. If this occurs, or the lawyer ceases representation, the process continues if, “not later than 30 days after the date of notice of the discharge or cessation of representation is sent to the parties,” the unrepresented party retains a successor lawyer and, in the amended collaborative law agreement,

the parties consent to continue and the successor lawyer confirms representation of the party.

- A party fails to provide information necessary to address issues in dispute, and the other party, as a result, chooses to terminate the process.
- A family collaborative lawyer ceases further representation of a party.

Any form of alternative dispute resolution can be a substantial positive over traditional litigation, especially considering the potential benefits of a private resolution from a cost, time and emotional standpoint.

Collaborative law is a great concept, but the parties involved must be fully and completely reasonable and willing to act in good faith with each other for it to truly work. Two like-minded people on an equal playing field,

without one party overpowering the other (financially, emotionally or otherwise), may be able to effectively proceed with the collaborative divorce process. A case involving other circumstances, however, may prove less than ideal.

For more information regarding the act or guidance on other family law issues, please contact Robert A. Epstein at 973.994.7526 or [repstein@foxrothschild.com](mailto:repstein@foxrothschild.com) or any member of the firm's Family Law Practice.



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