

ENROLLED ORIGINAL

AN ACT

D.C. ACT 19-319

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MARCH 1, 2012

*Codification
District of
Columbia
Official Code*

2001 Edition

2012 Summer
Supp.

West Group
Publisher

To amend Title 16 of the District of Columbia Official Code to enact the Uniform Collaborative Law Act to provide a statutory basis for an alternative dispute resolution procedure by which civil law disputes may be resolved expeditiously without the expense of litigation pursuant to a collaborative law participation agreement executed by the parties and their lawyers.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Uniform Collaborative Law Act of 2012”.

Sec. 2. Title 16 of the District of Columbia Official Code is amended as follows:

(a) The table of contents is amended by adding a new chapter designation to read as follows:

“40. Collaborative Law; Uniform Act . . . 16-4001.”.

(b) A new Chapter 40 is added to read follows:

“CHAPTER 40. COLLABORATIVE LAW; UNIFORM ACT

“Section

“16-4001. Short title.

“16-4002. Definitions.

“16-4003. Applicability.

“16-4004. Collaborative law participation agreement; requirements.

“16-4005. Beginning and concluding a collaborative law process.

“16-4006. Proceedings pending before tribunal; status report.

“16-4007. Emergency order.

“16-4008. Approval of agreement by tribunal.

“16-4009. Disqualification of collaborative lawyer and lawyers in associated law firm.

“16-4010. Low-income parties.

“16-4011. Governmental entity as party.

“16-4012. Disclosure of information.

“16-4013. Standards of professional responsibility and mandatory reporting not affected.

“16-4014. Appropriateness of collaborative law process.

“16-4015. Coercive or violent relationship.

New
§§ 16-4001 –
16-4022

- “16-4016. Confidentiality of collaborative law communication.
- “16-4017. Privilege against disclosure for collaborative law communication; admissibility; discovery.
- “16-4018. Waiver and preclusion of privilege.
- “16-4019. Limits of privilege.
- “16-4020. Authority of tribunal in case of noncompliance.
- “16-4021. Uniformity of application and construction.
- “16-4022. Relation to Electronic Signatures in Global and National Commerce Act.
- “§ 16-4001. Short title.
- “This chapter may be cited as the “Uniform Collaborative Law Act”.
- “§ 16-4002. Definitions.
- “For the purposes of this chapter, the term
- “(1) “Collaborative law communication” means a statement, whether oral or in a record, or verbal or nonverbal, that:
- “(A) Is made to conduct, participate in, continue, or reconvene a collaborative law process; and
- “(B) Occurs after the parties sign a collaborative law participation agreement and before the collaborative law process is concluded.
- “(2) “Collaborative law participation agreement” means an agreement by persons to participate in a collaborative law process.
- “(3) “Collaborative law process” means a procedure intended to resolve a collaborative matter without intervention by a tribunal in which persons:
- “(A) Sign a collaborative law participation agreement; and
- “(B) Are represented by collaborative lawyers.
- “(4) “Collaborative lawyer” means a lawyer who represents a party in a collaborative law process.
- “(5) “Collaborative matter” means a dispute, transaction, claim, problem, or issue for resolution, including a dispute, claim, or issue in a proceeding, which is described in a collaborative law participation agreement and arises under the family or domestic relations law of the District of Columbia, including:
- “(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.
- “(6) “Family member” means a person:
- “(A) With whom an individual shares or has shared a mutual residence;

or

“(B) Who is related to an individual by blood, adoption, or legal custody;
or

“(C) Who is or was married to, in a domestic partnership with, divorced or separated from, or in a romantic, dating, or sexual relationship with an individual.

“(7) “Law firm” means:

“(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 governmental subdivision, agency, or instrumentality.

“(8) “Nonparty participant” means a person, other than a party and the party’s collaborative lawyer, that participates in a collaborative law process.

“(9) “Party” means a person that signs a collaborative law participation agreement and whose consent is necessary to resolve a collaborative matter.

“(10) “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.

“(11) “Proceeding” means a proceeding before a tribunal, including related prehearing and post-hearing motions, conferences, and discovery.

“(12) “Prospective party” means a person that discusses with a prospective collaborative lawyer the possibility of signing a collaborative law participation agreement.

“(13) “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.

“(14) “Related to a collaborative matter” means involving the same parties, transaction or occurrence, nucleus of operative fact, dispute, claim, or issue as the collaborative matter.

“(15) “Sign” means, with present intent to authenticate or adopt a record:

“(A) To execute or adopt a tangible symbol; or

“(B) To attach to or logically associate with the record an electronic symbol, sound, or process.

“(16) “Tribunal” means a court, administrative agency, or other body acting in an adjudicative capacity that, after presentation of evidence or legal argument, has jurisdiction to render a decision affecting a party’s interests in a matter.

“§ 16-4003. Applicability.

“This chapter applies to a collaborative law participation agreement that meets the requirements of § 16-4004 signed on or after the effective date of this chapter.

“§ 16-4004. Collaborative law participation agreement; requirements.

“(a) A collaborative law participation agreement shall:

“(1) Be in a record;

“(2) Be signed by the parties;

“(3) State the parties’ intention to resolve a collaborative matter through a collaborative law process under this chapter;

“(4) Describe the nature and scope of the matter;

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

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

“(b) The parties may agree to include in a collaborative law participation agreement additional provisions not inconsistent with this chapter.

“§ 16-4005. Beginning and concluding collaborative law process.

“(a) A collaborative law process begins when the parties sign a collaborative law participation agreement.

“(b) The tribunal may not order a party to participate in a collaborative law process over that party’s objection.

“(c) A collaborative law process is concluded by:

“(1) The resolution of a collaborative matter as evidenced by a signed record;

“(2) The 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

“(3) The termination of the process.

“(d) A collaborative law process terminates:

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

“(2) When a party:

“(A) Begins a proceeding related to a collaborative matter without the agreement of all parties; or

“(B) In a pending proceeding related to the matter:

“(i) Initiates a pleading, motion, order to show cause, or request for a conference with the tribunal;

“(ii) Requests that the proceeding be put on the tribunal’s calendar; or

“(iii) Takes similar action requiring notice to be sent to the parties; or

“(3) Except as otherwise provided by subsection (g) of this section, when a party discharges a collaborative lawyer or a collaborative lawyer withdraws from further representation of a party.

“(e) A party’s collaborative lawyer shall give prompt notice to all parties in a record of a discharge or withdrawal.

“(f) A party may terminate a collaborative law process with or without cause.

“(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) of this section is sent to the parties:

“(1) The unrepresented party engages a successor collaborative lawyer; and

“(2) In a signed record:

“(A) The parties consent to continue the process by reaffirming the collaborative law participation agreement;

“(B) The agreement is amended to identify the successor collaborative lawyer; and

“(C) The successor collaborative lawyer confirms the lawyer’s representation of a party in the collaborative process.

“(h) A collaborative law process does not conclude if, with the consent of the parties, a party requests the tribunal to approve a resolution of the collaborative matter or any part thereof as evidenced by a signed record.

“(i) A collaborative law participation agreement may provide additional methods of concluding a collaborative law process.

“§ 16-4006. Proceedings pending before tribunal; status report.

“(a) Persons in a proceeding pending before the 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) of this section and §§ 16-4007 and 16-4008, the filing operates as an application for a stay of the proceeding.

“(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) of this section is lifted when the notice is filed. The notice may not specify any reason for termination of the process.

“(c) The tribunal in which a proceeding is stayed under subsection (a) of this section 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.

“(d) The tribunal may not consider a communication made in violation of subsection (c) of this section.

“(e) The court 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.

“§ 16-4007. Emergency order.

“During a collaborative law process, the tribunal may issue emergency orders to protect the health, safety, welfare, or interest of a party, family member, or other person, in accordance

with subchapter I of Chapter 10 of this title.

“§ 16-4008. Approval of agreement by tribunal.

“The tribunal may approve an agreement resulting from a collaborative law process.

“§ 16-4009. Disqualification of collaborative lawyer and lawyers in associated law firm.

“(a) Except as otherwise provided in subsection (c) of this section, a collaborative lawyer is disqualified from appearing before the tribunal to represent a party in a proceeding related to the collaborative matter.

“(b) Except as otherwise provided in subsection (c) of this section and §§ 16-4010 and 16-4011, a lawyer in a law firm with which the collaborative lawyer is associated is disqualified from appearing before the 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) of this section.

“(c) A collaborative lawyer or a lawyer in a law firm with which the collaborative lawyer is associated may represent a party:

“(1) To ask the tribunal to approve an agreement resulting from the collaborative law process; or

“(2) To seek or defend an emergency order to protect the health, safety, welfare, or interest of a party, family member, or other person, in accordance with subchapter I of Chapter 10 of this title, if a successor lawyer is not immediately available to represent that person.

“(d) If subsection (c)(2) of this section applies, a collaborative lawyer, or lawyer in a law firm with which the collaborative lawyer is associated, may represent a party or family member only until that person is represented by a successor lawyer or reasonable measures are taken to protect the health, safety, welfare, or interest of the person.

“§ 16-4010. Low-income parties.

“(a) The disqualification of § 16-4009(a) applies to a collaborative lawyer representing a party with or without fee.

“(b) After a collaborative law process concludes, another lawyer in a law firm with which a collaborative lawyer disqualified under § 16-4009(a) is associated may represent a party without fee in the collaborative matter or a matter related to the collaborative matter if:

“(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;

“(2) The collaborative law participation agreement so provides; and

“(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 that are reasonably calculated to isolate the collaborative lawyer from such participation.

“§ 16-4011. Governmental entity as party.

“(a) The disqualification of § 16-4009(a) applies to a collaborative lawyer representing a party that is a government or governmental subdivision, agency, or instrumentality.

“(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:

“(1) The collaborative law participation agreement so provides; and

“(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 that are reasonably calculated to isolate the collaborative lawyer from such-participation.

“§ 16-4012. Disclosure of information.

“Except as provided by law other than this chapter, during the collaborative law process, upon 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.

“§ 16-4013. Standards of professional responsibility and mandatory reporting not affected.

“This chapter does not affect:

“(1) The professional responsibility obligations and standards applicable to a lawyer or other licensed professional; or

“(2) The obligation of a person to report abuse, neglect, abandonment, or exploitation of a child or adult under the law of the District of Columbia.

“§ 16-4014. Appropriateness of collaborative law process.

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

“(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;

“(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

“(3) Advise the prospective party that:

“(A) If, after signing an agreement, a party initiates a proceeding or seeks intervention by the tribunal in a pending proceeding related to the collaborative matter, the collaborative law process terminates;

“(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

“(C) The collaborative lawyer and any lawyer in a law firm with which the collaborative lawyer is associated may not appear before the tribunal to represent a party in a proceeding related to the collaborative matter, except as authorized by § 16-4009(c), § 16-4010(b), or § 16-4011(b).

“§ 16-4015. Coercive or violent relationship.

“(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.

“(b) Throughout a collaborative law process, a collaborative 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.

“(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:

“(1) The party or the prospective party requests beginning or continuing the process; and

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

“§ 16-4016. Confidentiality of collaborative law communication.

“A collaborative law communication is confidential to the extent agreed by the parties in a signed record or as provided by law of the District of Columbia other than this chapter.

“§ 16-4017. Privilege against disclosure for collaborative law communication; admissibility; discovery.

“(a) Subject to §§ 16-4018 and 16-4019, a collaborative law communication is privileged under subsection (b) of this section, is not subject to discovery, and is not admissible as evidence.

“(b) In a proceeding, the following privileges apply:

“(1) A party may refuse to disclose, and may prevent any other person from disclosing, a collaborative law communication.

“(2) A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a collaborative law communication of the nonparty participant.

“(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.

“§ 16-4018. Waiver and preclusion of privilege.

“(a) A privilege under § 16-4017 may be waived in a record or orally during a proceeding if it is expressly waived by all parties entitled to claim the privilege at issue and, in the case of the privilege of a nonparty participant, it is also expressly waived by the nonparty participant.

“(b) A person that makes a disclosure or representation about a collaborative law communication that prejudices another person in a proceeding may not assert a privilege under § 16-4017, but this preclusion applies only to the extent necessary for the person prejudiced to respond to the disclosure or representation.

“§ 16-4019. Limits of privilege.

“(a) There is no privilege under § 16-4017 for a collaborative law communication that is:

“(1) Available to the public under the District of Columbia Public Records Management Act of 1985, effective September 5, 1985 (D.C. Law 6-19; D.C. Official Code § 2-1701 *et seq.*), or made during a session of a collaborative law process that is open, or is required by law to be open, to the public;

“(2) A threat or statement of a plan to inflict bodily injury or commit a crime of violence;

“(3) Intentionally used to plan a crime, commit or attempt to commit a crime, or conceal an ongoing crime or ongoing criminal activity;

“(4) In an agreement resulting from the collaborative law process evidenced by a record signed by all parties to the agreement; or

“(5) A disclosure in a report of suspected domestic violence to an appropriate agency under subchapter I of Chapter 10 of this title.

“(b) The privileges under § 16-4017 for a collaborative law communication do not apply to the extent that a communication is:

“(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

“(2) Sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation of a child or adult, unless the District of Columbia is a party to or otherwise participates in the process.

“(c) There is no privilege under § 16-4017 if the 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:

“(1) A judicial proceeding involving a felony or misdemeanor; or

“(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.

“(d) If a collaborative law communication is subject to an exception under subsection (b) or (c) of this section, only the part of the communication necessary for the application of the exception may be disclosed or admitted.

“(e) Disclosure or admission of evidence excepted from the privilege under subsection (b) or (c) of this section does not make the evidence or any other collaborative law communication discoverable or admissible for any other purpose.

“(f) The privileges under § 16-4017 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 shall 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.

“§ 16-4020. Authority of tribunal in case of noncompliance.

“(a) If an agreement fails to meet the requirements of § 16-4004, or a lawyer fails to comply with § 16-4014 or § 16-4015, the tribunal may nonetheless find that the parties intended to enter into a collaborative law participation agreement if they:

“(1) Signed a record indicating an intention to enter into a collaborative law participation agreement; and

“(2) Reasonably believed they were participating in a collaborative law process.

“(b) If the tribunal makes the findings specified in subsection (a) of this section, and the interests of justice require, the tribunal may:

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

“(2) Apply the disqualification provisions of §§ 16-4009, 16-4010, and 16-4011; and

“(3) Apply a privilege under § 16-4017.

“§ 16-4021. Uniformity of application and construction.

“In applying and construing this chapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

“§ 16-4022. Relation to Electronic Signatures in Global and National Commerce Act.

“This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, approved June 30, 2000 (114 Stat. 464; 15 U.S.C. § 7001 *et seq.*), but does not modify, limit, or supersede section 101(c) of that act (15 U.S.C. § 7001(c)), or authorize electronic delivery of any of the notices described in § 103(b) of that act (15 U.S.C. § 7003(b)).”.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 4. Effective date.

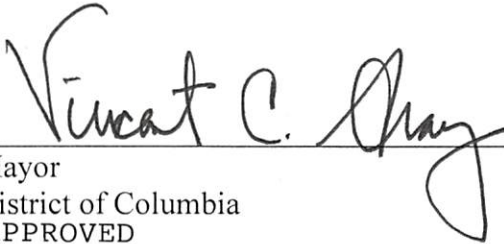
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

ENROLLED ORIGINAL

24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
March 1, 2012



COUNCIL OF THE DISTRICT OF COLUMBIA
WASHINGTON, D.C. 20004

Docket No. **B19-43**

☒ ITEM ON CONSENT CALENDAR

☒ ACTION & DATE

ADOPTED FIRST READING, 01-04-12

☒ VOICE VOTE
 RECORDED VOTE ON REQUEST

APPROVED

ABSENT

MENDELSON AND THOMAS, JR.

☐ ROLL CALL VOTE – Result

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Brown	X				Catania	X				Orange	X			
Alexander	X				Cheh	X				Thomas, Jr.				X
Barry	X				Evans	X				Wells	X			
Bowser	X				Graham	X								
Brown, M	X				Mendelson				X					

X – Indicate Vote

AB – Absent

NV – Present, Not Voting

CERTIFICATION RECORD

Secretary to the Council

Date

☒ ITEM ON CONSENT CALENDAR

☒ ACTION & DATE

ADOPTED FINAL READING, 02-07-12

☒ VOICE VOTE
 RECORDED VOTE ON REQUEST

APPROVED

ABSENT

ALL PRESENT

☐ ROLL CALL VOTE – Result

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Brown	X				Catania	X				Orange	X			
Alexander	X				Cheh	X				Wells	X			
Barry	X				Evans	X								
Bowser	X				Graham	X								
Brown, M	X				Mendelson	X								

X – Indicate Vote

AB – Absent

NV – Present, Not Voting

CERTIFICATION RECORD

Secretary to the Council

Date

☐ ITEM ON CONSENT CALENDAR

☐ ACTION & DATE

☐ VOICE VOTE
 RECORDED VOTE ON REQUEST

ABSENT

☐ ROLL CALL VOTE – Result

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Brown					Catania					Orange				
Alexander					Cheh					Wells				
Barry					Evans									
Bowser					Graham									
Brown, M					Mendelson									

X – Indicate Vote

AB – Absent

NV – Present, Not Voting

CERTIFICATION RECORD

Secretary to the Council

Date