

# **FAMILY LAW COLLABORATIVE PRACTICE**

**(See new California law on following pages)**

**"A new process in which a divorcing couple, together with trained professionals, work as a team to resolve disputes respectfully, without going to court"**

Individual litigants as well as judges, attorneys, other professionals and especially divorcing couples are increasingly dissatisfied with the unnecessary stress, high costs and emotional wreckage that too often occur in the family law adversarial process.

The collaborative practice of law is one attempt to reduce the emotional and financial costs of family law litigation. Stu Webb, a family law attorney in Minneapolis, Minnesota, started collaborative Law in 1990. Webb was frustrated that he was really not helping his clients. He thought the adversarial system was tearing his clients apart and often devastating to the children. He did not want to be part of such a system. He announced that he would no longer go to court and would only represent clients in a participatory negotiation process aimed solely at creative settlements. If the process broke down, he would refer his clients to litigation counsel and he would withdraw. In his first two years he handled 99 cases with only four unable to reach full settlement

In the mid 1990's the Collaborative law movement came to California with the first groups starting in Santa Clara and San Mateo. These groups were concerned not only about the high financial and emotional costs to clients in litigated divorce, but also about the tremendous level of emotional and physical stress among family law attorneys in their area. As the movement evolved, additional professionals were added to the team to help manage the many aspects of divorce - the legal issues, the emotional turmoil, the concerns for children, the financial and property questions. The Collaborative movement has expanded in California to groups of attorneys practicing the collaborative law process in Alameda, Contra Costa, El Dorado, Fresno, Los Angeles, Marin, Monterey, Orange, Placer, Riverside, Sacramento, San Diego, San Francisco, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Shasta, Sonoma, Stanislaus, Ventura and Yolo counties.

The American Bar Association in late 2001 published a book on the collaborative process entitled: "Collaborative Law: Achieving Effective Resolution in Divorce without Litigation," written by Pauline H. Tesler, a family law attorney from Marin and San Francisco.

Collaborative practice allows the divorcing couple to resolve their disputes without going to court. The elimination of the threat of litigation with its rancor and divisiveness creates a profound change for the participants, their attorneys and other team members involved in the divorce. Cooperating, information sharing and creative problem solving replace suspicion, fear and distrust. Full control of the process now rests with the divorcing couple. Both parties are allowed to speak and be heard in a safe environment for communicating.

While it is recommended that those practicing collaborative family law screen cases for domestic violence the collaborative practice process by design helps to reduce conflict and stress, even in high conflict cases, and helps to reduce the potential for domestic violence that can potentially result from conflict escalating as a result of the adversarial process. The collaborative process can also help screen out false accusations and embellishments much faster than the adversarial process by utilizing qualified experts if appropriate and needed on a case by case basis.

Either party may unilaterally, and without reason, terminate their role in the collaborative process and proceed along the more traditional path of individual representation and court intervention.

Having two attorneys involved does not produce the same cost as litigation. The use of jointly selected experts and advisors, the elimination of filtering and obtaining all information simultaneously by all parties greatly reduces legal fees and expenses.

The below legislation was passed and signed into law in California in 2006. You will notice that in (section 5) the legislation established a working group to work out technical amendments for the 2007/ 2008 legislative session. It is hopeful and we encourage that some of the language that was lost during the process will be amended back in as a result of the working group. Please see: [Amended 08/07/06 Language](#) for details.

For additional information please contact policy consultant Michael Robinson who is part of the working group @ (916) 223-6143 or [info@nfvirc.org](mailto:info@nfvirc.org)

BILL NUMBER: AB 402      CHAPTERED  
BILL TEXT

CHAPTER 496  
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AMENDED IN SENATE    APRIL 18, 2006  
AMENDED IN ASSEMBLY    MAY 2, 2005

INTRODUCED BY    Assembly Member Dymally

FEBRUARY 15, 2005

An act to add Sections 2013 and 3022.3 to, the Family Code, relating to family law.

LEGISLATIVE COUNSEL'S DIGEST

AB 402, Dymally    Family law court: marriage.

Existing law establishes procedures related to proceedings for dissolution of marriage, nullity of marriage, and legal separation, as specified.

This bill would enact the Collaborative Family Law Act, which would allow the parties to those proceedings, by written agreement, to utilize a collaborative law process, as specified, rather than an adversarial judicial proceeding to resolve those disputes.

The bill would also require a court to issue a statement explaining the factual and legal basis for its custody decision upon the trial of a question of fact in a proceeding to determine the custody of a minor, upon the request of either party.

The bill would also require the Judicial Council to create an information sheet for parties involved in child custody and visitation matters, as specified, on or before January 1, 2008.

The bill would also request the Committees on the Judiciary of the Senate and Assembly to study and make recommendations for a comprehensive statute governing the practice of collaborative law, as specified.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. This act shall be known and may be cited as the Collaborative Family Law Act.

SEC. 2. Section 2013 is added to the Family Code, to read:

2013. (a) If a written agreement is entered into by the parties, the parties may utilize a collaborative law process to resolve any matter governed by this code over which the court is granted jurisdiction pursuant to Section 2000.

(b) "Collaborative law process" means the process in which the parties and any professionals engaged by the parties to assist them agree in writing to use their best efforts and to make a good faith attempt to resolve disputes related to the family law matters as referenced in subdivision (a) on an agreed basis without resorting to adversary judicial intervention.

SEC. 3. Section 3022.3 is added to the Family Code, to read:

3022.3. Upon the trial of a question of fact in a proceeding to determine the custody of a minor child, the court shall, upon the request of either party, issue a statement of the decision explaining the factual and legal basis for its decision pursuant to Section 632 of the Code of Civil Procedure.

SEC. 4. (a) The Judicial Council shall create an information sheet for parties involved in child custody and visitation matters that informs the parties that they have the right to agree to a custody or visitation arrangement, that if they do not agree, they will be required to participate in child custody mediation, and that if mediation does not result in an agreement, the court will be required to make a determination on the custody issues. The sheet shall also provide information on how to obtain assistance in resolving a custody case, including, but not limited to, information on finding an attorney, information on accessing court based self-help services if they are available, and information regarding other sources of assistance in developing a custodial agreement. The Judicial Council shall adopt this sheet as a statewide form on or before January 1, 2008, and take reasonable steps to ensure that it is distributed statewide and made available to litigants in custody matters.

(b) Funding for creating the notice described in this section shall be derived from existing resources.

SEC. 5. (a) It is the intent of the Legislature that legislation be enacted during the 2007-08 legislative session to provide a procedural framework for the practice of collaborative law, as described in Section 2 of this act. Towards that end, the Committees on the Judiciary of the Senate and Assembly are requested to convene a working group to study and make recommendations for a comprehensive statute governing the practice of collaborative law.

(b) Members of the working group shall include the following:

(1) Family law attorneys, including members of the Executive Committee of the Family Law Section of the State Bar.

(2) Representatives from the judicial, executive, and legislative branches.

(3) Members of the public.

(c) The working group is requested to complete its deliberations by January 1, 2007.