

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 1126
Committee Substitute Favorable 4/23/03

Short Title: Collaborative Law Procedures/Family Law. (Public)

Sponsors:

Referred to:

April 10, 2003

1 A BILL TO BE ENTITLED

2 AN ACT ESTABLISHING COLLABORATIVE LAW PROCEDURES UNDER
3 CHAPTER 50 OF THE GENERAL STATUTES WHEREBY PARTIES SEEKING
4 A DIVORCE AND THEIR ATTORNEYS MAY SETTLE THEIR DISPUTES BY
5 WRITTEN AGREEMENT WITH LIMITED JUDICIAL INTERVENTION.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** Chapter 50 of the General Statutes is amended by adding a
8 new Article to read:

9 "Article 4.

10 "Collaborative Law Proceedings.

11 "**§ 50-65. Collaborative law; definition.**

12 (a) As an alternative to judicial disposition of issues arising in a civil action
under this Chapter, 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
procedure.

13 (b) Collaborative law is a procedure in which parties who are separated and are
seeking a divorce and their counsel agree, in writing, to use their best efforts and make a
good faith attempt to resolve their disputes arising from the marital relationship on an
agreed basis without resorting to judicial intervention, except to have the court approve
the settlement agreement, make the legal pronouncements, and sign the orders required
by law to effectuate the agreement of the parties as the court deems appropriate. The
parties' counsel shall not serve as litigation counsel, except to ask the court to approve
the settlement agreement.

14 (c) No provision in this Article shall be construed to prohibit the parties from
using, by mutual agreement, other forms of alternate dispute resolution, including, but
not limited to, mediation or binding arbitration, to reach a settlement on any of the
issues included in the collaborative law agreement. The parties' counsel 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.

1 **"§ 50-66. Agreement requirements.**

2 A collaborative law agreement must include provisions for all of the following:

- 3 (1) Full and candid exchange of information between the parties and their
4 attorneys as necessary to make a proper evaluation of the case.
- 5 (2) Suspending court intervention in the dispute while the parties are using
6 collaborative law procedures.
- 7 (3) Hiring experts, as jointly agreed, to be used in the procedure.
- 8 (4) Withdrawal of all counsel involved in the collaborative law procedure
9 if the collaborative law procedure does not result in settlement of the
10 dispute.
- 11 (5) Other provisions as agreed to by the parties consistent with a good
12 faith effort to collaboratively settle the matter.

13 **"§ 50-67. Judgment on collaborative law agreement.**

14 Notwithstanding any other rule or law, a party is entitled to judgment on a
15 collaborative law settlement agreement if the agreement:

- 16 (1) Provides, in a prominently displayed statement that is boldfaced,
17 capitalized, or underlined, that the agreement is not subject to
18 revocation.
- 19 (2) Is signed by each party to the agreement and the attorney of each
20 party.

21 **"§ 50-68. Acts prohibited by court.**

22 Except as otherwise provided in G.S. 50-70, if a civil action is pending, unless a
23 party notifies the court that the collaborative law procedures did not result in a
24 settlement, a court that is notified 30 days before trial that the parties are using
25 collaborative law procedures to attempt to settle a dispute shall not:

- 26 (1) Set a hearing or trial in the case.
- 27 (2) Impose discovery deadlines.
- 28 (3) Require compliance with scheduling orders.
- 29 (4) Dismiss the case.

30 **"§ 50-69. Notice to court of settlement.**

31 If a civil action is pending, the parties shall notify the court if the collaborative law
32 procedures result in a settlement. However, if the collaborative law procedures do not
33 result in a settlement, the parties shall file the following:

- 34 (1) A status report with the court not later than 180 days after the date of
35 the written agreement to use the procedures. The court shall establish
36 what information shall be included in the status report.
- 37 (2) A status report within one year from the date of the written agreement
38 to use the procedures, accompanied by a motion for continuance that
39 the court shall grant if the status report indicates the desire of the
40 parties to continue to use collaborative law procedures.

41 **"§ 50-70. Failure to reach settlement; disposition by court; duty of attorney to**
42 **withdraw.**

43 (a) If the parties fail to reach a settlement and no civil action has been filed,
44 either party may file a civil action.

1 (b) If a civil action is pending and the collaborative law procedures do not result
2 in a settlement within two years from the date the collaborative law procedures were
3 initiated, upon notice to the court by the parties of their failure to reach a settlement, the
4 court may do either of the following:

- 5 (1) Set the civil action for trial on the regular docket.
6 (2) Dismiss the civil action without prejudice.

7 (c) If a civil action is filed or set for trial pursuant to subsection (a) or (b) of this
8 section, the attorneys representing the parties in the collaborative law proceedings shall
9 withdraw as counsel for the parties and may not represent the parties in the civil action
10 proceedings."

11 **SECTION 2.** This act becomes effective October 1, 2003.