

Introduced by Senator OllerFebruary 20, 2002

An act to amend Section 2451 of, and to add Chapter 5.5 (commencing with Section 2420) to Part 3 of Division 6 of, the Family Code, relating to collaborative law.

LEGISLATIVE COUNSEL'S DIGEST

SB 1603, as introduced, Oller. Collaborative law.

Existing law governs judicial proceedings for the dissolution of marriage, nullity of marriage, or legal separation of the parties. Existing law also governs proceedings to determine child custody and visitation.

Existing law also provides for alternative dispute resolution, such as mediation.

This bill would enact collaborative law proceedings for persons who have filed for dissolution of marriage, nullity of marriage, or legal separation. Pursuant to these procedures, the parties and their attorneys would agree in writing to make a good faith effort to resolve their disputes with the assistance of their attorneys, without further court proceedings, except for court approval of the resulting agreement. The bill would provide for a suspension of court proceedings during negotiations. Among other things, the bill would require a collaborative law agreement to include a separate written agreement signed by all of the attorneys for the parties stating that any attorney who represents a party in collaborative law proceedings may not represent any of the parties in subsequent court proceedings if the collaborative law proceedings do not result in a court-approved settlement.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.



The people of the State of California do enact as follows:

1 SECTION 1. Chapter 5.5 (commencing with Section 2420) is
2 added to Part 3 of Division 6 of the Family Code, to read:

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4 CHAPTER 5.5. COLLABORATIVE LAW PROCEEDINGS

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6 2420. Upon written agreement of the parties and their
7 attorneys, parties attempting to resolve issues related to a
8 dissolution of marriage, nullity of marriage, or legal separation, or
9 issues related to the care of any minor children of the parties, may
10 proceed pursuant to this chapter.

11 2421. (a) Parties who have filed for dissolution of marriage,
12 nullity of marriage, or legal separation, and elect to proceed
13 pursuant to this chapter shall agree in writing to make a good faith
14 effort to resolve their disputes regarding dissolution of marriage,
15 nullity of marriage, or legal separation, or disputes related to the
16 care of any minor children of the parties, without further court
17 proceedings except for court approval of any agreement reached
18 as a result of proceedings conducted pursuant to this chapter.

19 (b) The collaborative law agreement described in subdivision
20 (a) shall include provisions for all of the following:

21 (1) A complete description of the issues that are the subject of
22 the agreement.

23 (2) A full and candid exchange of information between the
24 parties and their attorneys as necessary to make a proper evaluation
25 of the case.

26 (3) Suspension of court proceedings while the parties are
27 engaged in negotiations pursuant to this chapter.

28 (4) Guidelines and standards for hiring experts to be consulted
29 during negotiations pursuant to this chapter.

30 (5) A written agreement signed by all of the attorneys for both
31 parties stating that if the collaborative law proceedings conducted
32 pursuant to this chapter do not result in a court-approved
33 settlement of the dispute, any attorney representing a party in any
34 proceeding conducted pursuant to this chapter may not represent
35 any of the parties in subsequent judicial proceedings concerning
36 any issues that were the subject of the collaborative law
37 proceedings.



1 (6) Other provisions as agreed to by the parties consistent with
2 a good faith effort to resolve the disputes that are the subject of
3 these proceedings.

4 2422. Notwithstanding any other provision of law, a party is
5 entitled to judgment on a collaborative law settlement agreement
6 if the agreement complies with all of the following:

7 (a) Provides, in a prominently displayed statement that is in
8 boldface type, capitalized, or underlined, that the agreement is not
9 subject to revocation.

10 (b) It is signed by each party to the agreement and by the
11 attorney for each party.

12 2423. (a) Subject to subdivision (c), if the superior court is
13 notified that the parties have entered into the agreement described
14 in Section 2421 at least 30 days before a hearing or other court
15 proceeding is scheduled to be held regarding an issue that is a
16 subject of the agreement, the court may not do any of the
17 following, until a party to the agreement notifies the court that the
18 collaborative law proceedings did not result in a settlement of that
19 issue:

20 (1) Set a hearing or trial in the case.

21 (2) Impose discovery deadlines.

22 (3) Require compliance with scheduling orders.

23 (4) Dismiss the case.

24 (b) The parties shall notify the court if the collaborative law
25 proceedings result in a settlement. If the parties do not reach a
26 settlement, the parties shall file both of the following:

27 (1) A status report with the court not later than the 180th day
28 after the date of the written agreement to use the procedures.

29 (2) A status report on or before the first anniversary of the date
30 of the written agreement to use collaborative law proceedings,
31 accompanied by a motion for continuance that the court shall grant
32 if the status report indicates the desire of the parties to continue to
33 use collaborative law proceedings.

34 (c) If the collaborative law procedures do not result in a
35 settlement on or before the second anniversary of the date that the
36 suit was filed, the court may do either of the following:

37 (1) Set the suit for trial on the regular docket.

38 (2) Dismiss the suit without prejudice.

39 SEC. 2. Section 2451 of the Family Code is amended to read:



- 1 2451. A court-ordered case management plan, as stipulated
- 2 by the parties, may include all of the following:
- 3 (a) Early neutral case evaluation.
- 4 (b) Alternative dispute resolution.
- 5 (c) *Collaborative law procedures pursuant to Chapter 5.5*
- 6 *(commencing with Section 2420).*
- 7 (d) Limitations on discovery, including temporary suspension
- 8 pending exploration of settlement. There is a rebuttable
- 9 presumption that an attorney who carries out discovery as
- 10 provided in a case management plan has fulfilled his or her duty
- 11 of care to the client as to the existence of community property.
- 12 ~~(d)~~
- 13 (e) Use of telephone conference calls to ascertain the status of
- 14 the case, encourage cooperation, and assist counsel in reaching
- 15 agreement. However, if the court is required to issue an order other
- 16 than by stipulation, a hearing shall be held.
- 17 ~~(e)~~
- 18 (f) Use of telephone conference calls for hearing contested
- 19 motions. These conference call hearings shall be recorded by a
- 20 court reporter.
- 21 ~~(f)~~
- 22 (g) Modification or waiver of the requirements of procedural
- 23 statutes.
- 24 ~~(g)~~
- 25 (h) The powers of the judicial officer who is managing the case
- 26 under the case management plan.
- 27 ~~(h)~~
- 28 (i) A requirement that any expert witness be selected by the
- 29 parties jointly or be appointed by the court. However, if at any time
- 30 the court determines that the issues for which experts are required
- 31 cannot be settled under these conditions, the court shall permit
- 32 each party to employ his or her own expert.
- 33 ~~(i)~~
- 34 (j) Bifurcation of issues for trial.
- 35 ~~(j)~~
- 36 (k) A case management plan pursuant to subdivision (d) of
- 37 Section 2032 or subdivision (b) of Section 2034.
- 38 ~~(k)~~



1 (l) Any other matters.

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