

## Mediation

# More on the mediated family conference

*This series of articles has been about wills and how to avoid family fights over your estate when you die.*

While the final decision is yours, you should include your family in your will and estate planning process.

Family members are less likely to challenge your will if you have told them why you want to deal with your assets a certain way and they have had

an opportunity to express their opinions about your plan. The mediated family conference is an excellent way to accomplish this.

First, with the help of your lawyer, you prepare a draft of your estate plan.

Secondly, you or your lawyer needs to choose a mediator. The mediator must be neutral and must not have been involved in the preparation of

your estate plan.

Thirdly, you decide who to invite to the family meeting.

In addition to your spouse, all of your adult children and their spouses should be invited to attend. It is amazing how many spouses of children can cause problems within a family.

Your mediator will help you determine if there are others that should be invited.

The mediator will help you decide where to hold the family conference. For several reasons, the family home is not a suitable location.

Your mediator will help you prepare the agenda which should allow for the discussion of all of the necessary issues.

At the family conference, to ensure the smooth running of the meeting, the mediator will first describe the process and the goals, including the type of conduct that is expected from all participants during the meeting. The mediator will emphasize the confidential nature of what is being said at the meeting. Then the mediator usually gives a broad overview of the estate plan.

After you have made some brief opening remarks, your lawyer will provide the details of your proposed estate plan and answer questions.

Once everyone understands your proposed estate plan, the mediator will divide all of you into smaller groups. In these smaller groups, people can say things and ask questions that they might feel uncomfortable doing with everyone present. The mediator attends these smaller group sessions to find out what concerns, if any, are being raised.

The mediator then works with everyone to try to resolve all of the problem issues.

At the family conference, you are looking for unanimous consent. It is not good enough to simply satisfy the majority present. It only takes one dissatisfied beneficiary or person who thought he should be a beneficiary to start a lawsuit against your estate.

The mediator keeps everyone focused on the task at hand. Sometimes an agreement will be reached in one



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meeting. Other times, further meetings will be required.

The key to a successful family conference is to have everyone listen to what each person is saying.

Once everyone agrees to your estate plan, a private family document called a "family constitution" will be prepared and signed. One of the paragraphs in the family constitution will

state that none of the parties who sign it will contest your will.

In some families, it may not be possible to obtain the approval of all of the family members who attend. In other families, some who are invited may not attend the family conference.

However, you need to eventually finalize your estate plan, regardless of whether everyone approves. Your mediator will be able to assist you in trying to obtain the eventual approval of all of your family members. If that still does not work, your mediator can suggest ways that you and your lawyer may be able to minimize the risk of a future successful challenge of your will and protect your estate.

After the family constitution has been signed, your lawyer and other professional advisors will prepare the documents and take the steps necessary to implement your estate plan.

This is only an overview of how a mediated family conference works.

If you are interested in reading more about this topic, a friend of mine, Ian Hull, has written an excellent book entitled "Advising Families on Succession Planning: The High Price of Not Talking." In Part 3 of that book, Mr. Hull talks in detail about how the mediated family conference works.

One of the benefits of using mediation in will and estate planning is peace of mind for you, knowing that your family will likely not contest your will or fight among themselves after you die.

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