

Resolving Elder Care, Trusts and Estate Planning Disputes: Employing Mediation as a Tool

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Mediation – Who, What, Where, When, How?

- Who?
 - People of all ages and backgrounds
 - Disagreement around a common person or issue
 - Willing parties - *voluntary, self-determination*
 - Family members, caretakers, other decision-makers, neighbors, business partners, etc.
- What?
 - A Conversation among parties
 - With or without attorneys
 - Confidentiality applies with minor exceptions

Mediation – Who, What, Where, When, How?

- Where?
 - In Person
 - Virtual (e.g., Zoom)
 - Hybrid
- When?
 - Early
 - In the midst
 - Pre- or Post-Litigation
 - Before it's too late

Who, What, Where, When, How?

- How?
 - Mediators as neutral participants
 - Facilitate productive conversation
 - Focus discussion and set framework for going forward
 - Problem solve; brainstorm; generate possible options
 - Help parties to arrive at a settlement and draft terms of a settlement agreement

WHY?

- Why is Mediation used and why is it becoming more popular?
 - People disagree
 - Dispute is about something important
 - Difficult to talk about
 - Motivated to work it out, get past this
 - Mediators can navigate parties through difficult emotional and personal issues
 - Increase understanding
 - Open up/improve communication
 - Cost-effective decision-making
 - Outcomes are party-driven – it is not a zero-sum game

What does this have to do with me?

- Elder Care Issues
- Trust and Estate Issues
- Guardianship

What does this have to do with me?

Elder Care Issues

- Choice of living arrangements
- Real estate, accounts, personal belongings
- Hiring and firing of caretakers
- How to and who should pay for care
- Division of chores and financial responsibilities

Trust and Estate Issues

- Real estate, Accounts, Personal belongings
- Out of state property
- Contesting Executor/Trustee
- Breach of Fiduciary Duty

What does this have to do with me?

Guardianship

- Who should serve as guardian?
- Powers of the guardian
- Decision-making for health-care, finances, and other advance directives
- Supported Decision Making (Article 82 of NYS Mental Hygiene Law) – a less restrictive alternative to Guardianships (Article 81 of NYS Mental Hygiene Law and Articles 17 & 17-A of the Surrogate's Court Procedure Act)
- Court-referred mediation may be limited in courts & regarding certain matters
- Mediation not used to determine/decide capacity or whether a guardianship is warranted

Case Studies

- Elder Care
 - Living situation
 - Division of Responsibilities
 - Financials
 - Input of elder family member where possible
- Trust and Estate Disputes
 - In Surrogate's Court – appointment of Executor, Administrator, or Trustee; disputes over validity of Wills and Trusts
 - Outside of court – huge opportunity!
Start the mediation process early!

Conclusion

- Wide range of issues
- Open communications
- EARLY resolution of issues
- Mediation as a tool in your toolkit
- Additional Q and A

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