

MEDIATING INTER-GENERATIONAL DISPUTES

"Sarah, my daughter, is insisting I move in with her," complains Ellen. "She just wants to control my life and take away my freedom." Sarah's mother keeps falling and she worries that she will one day break her hip or hit her head. When Paul, Sarah's brother, hears about her plan, he says, "I'll take my sister to court before I will let her get control of mom and my inheritance."

Sally, who cared for her aging mother, was sued by her sister who claimed that Sally abused the older woman and stole her Social Security checks.

Adam, one of five siblings, wouldn't let any of his brothers or sisters visit their elderly father: he was convinced they would "take advantage" of him.

Caring for an aging parent can be complicated. Adult children may find themselves managing a parent's health, personal and financial affairs. Concerned children and frustrated parents may end up arguing over the next step, and siblings may find themselves laboriously assigning new tasks and responsibilities in an effort to create a safe environment for a parent.

Some family members find it hard to communicate with each other when their parent is in need of care. Perhaps they were not raised to work out problems together so that as adults they don't have a family council strategy to rely on. Such a process may seem unnatural to them. But that is often exactly what is needed, especially in situations in which one child is caring for the parents and the others are left out of the loop.

Children all have a common bond to their parents and as a result a common obligation to each other. When disagreements arise, suspicions begin to grow. Suspicions or distrust often leads to anger which in turns causes people to sever the channels of communication between them. This can occur between parent and child, between siblings or between all of them.

This is when it's often best for a neutral third party to enter the discussion to repair the damage that has been done and help correct the problems. A practitioner experienced in elder mediation is a perfect choice for these situations. Cooper-Gordon LLP is at the forefront of this area of mediation practice.

In one of the most acrimonious custody battles to be published recently, a brother and sister battled custody over guardianship of their mother who has a large fortune estimated at \$25 million. Matthews had sought to become her mother's guardian and transferred \$20 million of her mother's money to a family limited partnership; but her brother fought the attempt and supported a petition from a family friend to be her guardian.

Custody battles involving adult children fighting over their elderly parents and where they should live, who should care for them and who should control their finances is a growing trend. As this trend increases, we encourage families to find a mediator to resolve a dispute or provide options for the future.

Other than the parent's lawyer or accountant, most families would not consider inviting a third party into the discussion. Elder mediators a private, beneficial option for families in need of neutral guidance. The goal of elder mediation is to allow seniors a voice in the decision-making process and to help families communicate with compassionate candor about situations which need to be addressed.

Elder mediation is especially effective at the beginning of the decision process – when families are fact finding, struggling with options and discovering feelings about their parents or adult children that escalate and make clear thinking difficult. For instance, an important form of elder mediation is simply to convene a family meeting where a trained neutral third party is present to create the space for

everyone in the family to be heard on an important developing family transition. This type of mediation before the family is in crisis, can strengthen family ties and enable all family members to deal with the changing nature of their relationships and the realities of their situation. It allows family dynamics including sibling rivalries to be addressed at a time when everyone is calm and thoughtful decision making can occur. In this context, meetings can involve not just family members and one mediator but appropriate professional resources like geriatric care managers and financial planners.

What Is Elder Mediation And Why Is It Advantageous?

Mediation is a process of bringing two or more disputing parties together and having them mutually negotiate a solution to their disagreement. The mediator is not a judge and does not render a decision but is there to make sure that communication flows freely between the disputing parties. Elder Mediators are trained in the art of negotiating resolutions between elderly parents and family members. Cooper-Gordon LLP is at the forefront of this area of mediation practice and one of our attorneys would be happy to assist in bringing the family together on issues of such great magnitude to everyone concerned. At Cooper-Gordon, we also are finding good results with "team mediation," either with two members of our firms working individually with members of the family or interested parties (with the appropriate waivers signed, of course) or with another independent experienced mediator representing those interested parties in conflict with the senior.

In mediation, everybody who is affected by the situation has an opportunity, in a neutral and confidential setting, to tell their story. Whenever possible, that includes the elderly family member.

Mediation can achieve results that the family by itself may not be capable of realizing or have the expertise to achieve. Elder Mediation is valuable because having a trained expert in communication:

- Gives the family a perspective it could not gain by meeting together on its own
- Allows all family members involved to meet and prevent problems from arising by anticipating situations that may cause disputes
- Can invite other experts, such as care managers or other care providers, to the meeting to educate the family and give them a new perspective
- Allows parents to focus on their abilities rather than their limitations
- Allows children to come up with and consider options not thought of previously
- Encourages uninvolved family members to become involved
- Allows parents to express wishes and desires that had previously gone unuttered
- Allows for a neutral third party to challenge family members and make them take responsibility for their actions
- Promotes consensus of all involved which in turn creates a much higher rate of compliance with the plan than with any other process (the success rate for compliance with elder mediation is estimated to be about 80% to 85%)
- Requires a written plan with specific responsibilities which makes compliance feasible.

Agreement Is the Aim

The basic idea behind mediation is that a dispute is resolved through an agreement among the parties, instead of a resolution mandated by a judge or negotiated by attorneys. The role of the mediator -- usually an attorney like those of us at Cooper-Gordon LLP, sometimes in conjunction with someone with a background in social work and/or financial planning, is to facilitate communication and informed decision making. The cost of mediation varies but can easily cost \$300 to \$500 an hour.

Defusing Tensions

The mediator can help ease communications among family members for whom the elder-care dispute may reopen decades-old wounds. Sometimes old behaviors among siblings come to the fore when dealing with an elderly parent. Common candidates for mediation are disagreements between family members who live far away and a sibling who lives closer to the elder and may have a different assessment of that person's needs. Sometimes the disputes are between children and elderly family members who have their own view of where they should be living and who should be caring for them.

The mediation process for elder-care decisions can -- and most say, should -- bring in experts such as social workers, estate-planning specialists and health-care professionals who would typically be upon as part of a court case. The courts will deal with the same issues, but it is wonderful to be able to control the outcome yourself and avoid the expense of litigation.

How can you preserve relationships, build cooperative and collaborative decision-making processes, and improve the quality of care for your elderly loved one? Elder care mediation helps caring people make better decisions, settle disputes, and solve family issues. Participants share their perspectives and needs, and work together to make responsible decisions that affect their lives. Families face many challenges in providing continued, loving care for their elders. Many families struggle to communicate and to agree about the care of their parents or other family members. Often people don't know where to turn for help with the myriad of life-changing decisions to be made. Financial, housing, medical, care-giving, end-of-life and legal issues need to be considered. Caring families might disagree not only among themselves but also with their elderly parents, caregivers, facility administrators, and other professionals. Long-distance care-givers have their own areas of concern.

The elder care mediator responds to the challenges facing elders and their families, and is informed about current issues in the industry. Elder care mediation acknowledges the inherent rights and integrity of seniors and provides them an opportunity to express their values and standards. If the senior is cognitively impaired, the mediator will insist on an appropriate advocate. Inherent in the mediation process is the goal of preserving and improving relationships by enhancing and strengthening trust and respect between the participating parties.

A mediator will gather background information about people's concerns, identify areas of mutual interest, and provide a forum for discussion. Interviews can be conducted via telephone, e-mail, fax, etc., and mediation sessions can be held in homes, facilities, or by teleconference.

In choosing a mediator, consider your needs. Does your parent require a medical assessment to determine the type of care? Are legal concerns at issue, whether over inheritance, family business or assigning the power of attorney? Or do you just need to bring the family together to decide what needs to be done and who will do it?

"Bringing a neutral person with a professional and compassionate attitude into our disputes was the best thing for all involved," said Susan, a woman I know who struggled for months over health and safety issues before she enlisted the service of a professional care manager mediator. "My parents shared their concerns and listened with acceptance to mine. All of a sudden we could communicate and work out a plan that they could live with; then, I could relax knowing they were safe."

It's hard enough for families to navigate the complicated and emotionally charged decisions related to elder care when everyone gets along. Throw in a family with tensions or outright hostility and it's no wonder that disagreements sometimes end up in court, an expensive proposition that can easily magnify divisions.