
TEN THINGS TO CONSIDER

.....*About*.....

MEDIATING INHERITANCE DISPUTES



WELCOME

We all interact with people every day in little negotiations. When we buy a cup of coffee, it's a little negotiation. When we discuss dinner plans with a spouse or friends, it's a little negotiation. We all know how to have those conversations.

When the discussions get more difficult, we don't always know how to make them work. Sometimes the problems are substantive: what's the law? How much is that property worth? Other times, the problem is that different people take different approaches – one haggling over pennies like it's an open-air market, the other taking a wider view and trying to figure out what's most important. Still other times, people get locked into positions and ways of acting that go back years, or they become averse to conflict with family members.

There are a lot of lawyers out there. A lot of mediators, too. Many of them come to the dispute resolution world through a love of the fight: litigators who learned how to resolve disputes. I come at it from a different direction, representing business clients in negotiations. Resolution has always been the main goal, with litigation as just one of many tools to get there. I've learned to approach conflict as an opportunity to craft a creative outcome rather than something to shy away from, as a way to decide what is important enough to spend our time discussing. While raising the conflict level is sometimes necessary (see my Kung Fu Mediation blog at <http://kungfumeditation.com>!), coming out swinging is not always the most effective way to a client's goal. That's why techniques like mediation and Collaborative Law exist. Often, with arguments between family members, they work better since they give people more control over the process and solution.

Give me a call. Let's talk about how we can use my decades of real-world experience to help you resolve your dispute.



Jeffrey N. Fink

462 Washington St.
Wellesley, MA 02482

O: 781.237.0338

F: 781.574.4470

jeff@bostonfamilymediation.com



JEFFREY N. FINK

781.237.0338 | www.bostonfamilymediation.com

TEN THINGS TO CONSIDER

..... A b o u t

MEDIATING INHERITANCE DISPUTES

Inheritance disputes can be difficult to resolve. They are tied up in a lifetime of emotions toward the deceased and every other claimant under the will, as well as every claimant's (and every one of their spouses') expectations. Here are ten things to remember:

1

Grief

Grief never stops completely. It only gets attenuated. Every time something comes up that reminds a party of the deceased, there is a little bit of grieving. Since there is no "normal" for how people express grief, it is hard for a mediator who does not know the parties well to predict how they will act or what their particular triggers might be.



2

Old Habits

People who are normally high functioning sometimes revert to the way they acted and interacted as children. If a person was dependent on a parent into adulthood, they may seem dependent when they are discussing the parent. Middle-aged people will follow patterns formed decades ago and argue like they did when they were young children. A sibling who was respected as a 12-year old may carry that respect well past the time it is warranted.

3

Money Isn't Just Money



As in other areas of life, money can be a proxy for parental love, sibling love, competing notions of fairness and even competing notions of honesty. Never assume you know what money means to each of the parties.

MEDIATING INHERITANCE DISPUTES

4

...Except When Money Is Just Money

People may have lived their lives anticipating a particular inheritance. Two siblings may have disproportionate financial needs, or, sometimes, disproportionate greed. If a conversation between you and a sibling becomes a zero-sum calculation on how each of you can maximize your financial gain, then look to your mediator to help broaden the discussion by adding non-financial elements to the mix like preserving personal relationships, or by exploring creative solutions like using payments to fund the next generation's college bills. You should be aware that business mediation often uses techniques designed to manage "positional bargaining" (essentially, bargaining like you are haggling over the price of a used car) that may help resolve the financial part of a dispute. Remember, though, that the way you negotiate may have lingering effects or even make it harder to work together about other aspects of the estate.

5

Addressing Relationship Problems Often Resolves Money Problems

People who seek out a mediator generally have strong but different opinions on financial issues. It is often good for them to express these opinions up front, then spend more time on the fractured relationships that have led to their disagreement. This often sets the stage for overall resolution. Keep in mind that mediators and therapists approach these issues differently.



6

Taxes Can Make Rational Decisions Difficult

For instance, an asset may need to be valued for tax purposes. All beneficiaries should want the valuation to be low in order to maximize the total amount that can be passed to the next generation. The problem is that if the will reads, "Tommy and Janet each get 50% of the estate, but Tommy gets the house and counts the value toward his 50%," the beneficiaries have an incentive to disagree with the valuation.

TEN THINGS TO CONSIDER

..... *A b o u t*

MEDIATING INHERITANCE DISPUTES

7 Embarrassment

The mediator is intruding upon a deeply personal clash. Even if parties disagree on everything else, they often share the expectation that they should have been able to resolve the problem themselves. A good mediator of inheritance disputes works hard to establish a personal connection with the parties to try to overcome any reluctance they have to speak freely.

8 Everyone Should Be In The Room – Even The Deceased

Spouses often exert subtle and not so subtle influences on the parties. They should often be in the room. Children and grandchildren should generally not be present, especially if they are minors, since they add a layer of emotional complexity that often makes resolution harder; however, if a piece of the puzzle has skipped a generation so that grandchildren who are of age are direct beneficiaries, there may be specific reasons to include them. The more difficult issue is that people who cannot be present, like the deceased, usually play an important part in the process. For instance, mediators often hear, “Mom would have been horrified that we are fighting.” Your mediator should use this as a gift – unless Mom had a pattern in life of intentionally causing strife.

9 Time Is The Key

As with divorce mediation, parties’ ability to stay focused is usually limited to a few hours at a time. Also, it takes time to for inheritance discussions to work their way through the process. On the one hand, grief proceeds at its own pace. On the other hand, inheritance discussions often follow a particular pattern that overlays the major emotional processing. Since communication in the presence of a neutral sometimes makes people speak and



MEDIATING INHERITANCE DISPUTES

hear more clearly, the first session may involve re-opening channels of communication. The parties may then need to exchange enough views and information to be able to make a decision, which could take a second session or some legal skirmishing outside the mediator's office; they may then need to use a third session to process the information, depending on how much work they do offline; and then they may need yet another session just for help making the decision. As with family business disputes and divorces, the mediator should gauge and set the parties' expectations up front.

10 It Is An Iterative Process

As with any other family argument, people mediating an argument over an inheritance often keep coming back to the same points. After all, they may have been rehearsing the stories in their heads for years. Different mediators use different approaches. Some move parties quickly forward in the interest of a speedy resolution. If the parties' primary goal is to find a dollar amount to settle a case, that makes sense. However, other mediators work more with the way the parties discuss the conflict with each repetition ("staying in the conflict narrative," in technical terms). This approach helps people process their decisions both rationally and non-rationally, resulting in fewer last minute changes of heart when it comes time to sign the agreement.

"If a mediator helps people through it, circling back to the real source of conflict will help them with the grieving process.

Over time, it will also help them re-evaluate what is most important to them and to the other parties. This increases the chance they will reach an outcome they find satisfactory."

Share This Ebook

