

## MEDIATION

We all know stories about families that have disagreements after the death of a parent. Sometimes these disagreements result in relationships being permanently damaged. When disagreements arise it is good to know that there are alternatives to disagreeing and litigating. Let's explore mediation as an option to litigation.

It is amazing how many conflicts arise over things that have little monetary value such as personal effects-what we might refer to as "mementos." Many families benefit from communicating and discussing how the distribution of tangible personal property should be handled after the death of a parent. However, on issues relating to property interests having greater value, mediation may be a good option.

Mediation is a process in which the parties to a dispute meet together with a neutral third party. The mediator works with the parties to create a solution to the dispute that all parties can agree on. Mediation is a voluntary procedure. Mediation is the act of having a third party who is neutral try to bring the parties together to an agreement. It should not be confused with "arbitration" which is really similar to litigation in that an arbiter will make a binding decision that is not something the parties have agreed to. In mediation the parties are the ones who decide if a resolution has been reached. Typically, mediation is confidential. In other words, the parties agree ahead of time that if they can't reach agreement that none of the discussion or proposals that arise during the process can be utilized later if litigation is pursued.

In arbitration or litigation there is often a "winner" and a "loser." The theory behind mediation is that it is a "win" for all sides. Because of this, the parties are often able to maintain and preserve family relationships because the parties work together toward agreement.

Sedgwick County has begun a mediation program and process for resolution of probate disputes. We are aware of situations in other counties where the parties have agreed to mediate or where a court has ordered the parties to litigation to attempt to mediate.

If mediation doesn't result in an agreement, typically the parties are only out the costs relating to the mediator's time and their own attorney's time (if they are represented by counsel). Trained mediators typically charge by the hour and fees range from \$100 to \$200 per hour.

In reviewing the use of this process across the country, mediation has been utilized in situations where the only other option is to pursue a guardianship or conservatorship for a parent. It has also been used to resolve long-standing family conflicts. A typical use of mediation is to resolve issues that arise in the after death administration of an estate. One unique use of mediation is to enter into mediation to resolve family conflicts during the estate planning process, particularly where there are family business interests and children who are involved in family business interests. Think of it, the concept is to put together a plan that is agreed upon by the children (and parents) while the parents are still living.

Mediators can help the professionals and parties in estate matters look at all possible options, including new proposals that no one has considered before. In some situations a mediation team that includes a counselor or psychologist working with the mediator can accomplish results that otherwise would be missed because of family dynamics and difficult personalities.

Every situation is unique. Please get advice from a knowledgeable estate planning attorney before deciding how mediation might benefit you or your family.

**Tim J. Larson, JD, PA, has its offices in Wichita, Kansas. Tim J. Larson and Logan M. Brown are members of Wealth Counsel, the Wichita Estate Planning Council, and *e.Planners*, a select group of nationally known and recognized Estate-planning Attorneys.**