

# When To Use Mediation or Facilitation In Estate & Wealth Transfer Planning

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Open, forthright facilitated discussions improve family harmony in the long run. When resentments are aired instead of hidden, when differences of viewpoints are listened to and appreciated, when all individuals are heard, there is hope of genuine, long-lasting resolution. Family members are then able to embrace an estate & wealth transfer plan they were informed about and/or involved in creating.

In my professional work I have found that family members hope estate planning, family inheritance and wealth transference will occur easily without any negative repercussions. Most family members think if they ignore the complexities, problems will magically disappear. In reality, we all know in most cases problems do not disappear on their own. The resulting anguish and loss of family ties far outweighs any loss of time and money which might have been spent to resolve contested issues.

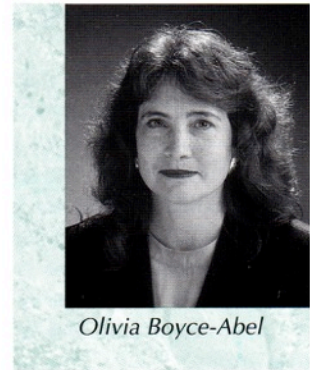
Many families see the real wisdom in facilitating or mediating differences before any hint of serious disagreement arises. Why risk the consequences of silence or saying "I give up," surrendering an inheritance in a moment of bitterness solely because you want the discomfort to end? There are many problems that can be resolved early and easily through facilitation. For example, lacking facilitated discussion, the heirs may have no choice in the hiring or firing of trustees or money managers; or funds may be locked up in trusts versus being distributed outright; or trusts may have poor contingency clauses that could be deeply problematic in the future. An experienced facilitator can spot these issues early and see that they are clearly articulated and resolved rather than ignored or simply overlooked. While families enjoy sitting around the fireplace reflecting on their family ancestry, there is tangible strain when families try to address inheritance, estate planning, and wealth transference issues. Such subjects are culturally verboten and carry unwanted emotional "baggage," which is typically absent in happy discussions of ancestral heritage.

Why is this so? As families we are raised with certain patterns of communication that become habit-driven. By adulthood, all members play a "part" and often become "stuck" in old patterns. For example, a female may traditionally turn her decision

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*Boyce-Able Associates assists families and individuals in effective wealth transference and estate planning, including facilitation of family meetings and mediation of family issues.*

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making authority over to her brother or the male family trust officer. Or a quiet artistic son who has always shied away from financial matters and fiscal responsibility may want to continue to do so. Often individuals and family groups are unaware of their own dynamics. But in a family situation where critical decisions need to be made, if people can't agree, they risk losing their family or being cut off in some significant way.

## OPENING COMMUNICATIONS

An "outside" neutral facilitator can assist families in developing better ways to communicate, and a mediator can guide them to closure in resolving issues of inheritance, estate planning, and wealth transference. While the roles of facilitator and mediator are akin, they also differ. A facilitator can help ease family tensions during sensitive or difficult discussions by: organizing and focusing meetings, laying ground rules, and making sure everyone is heard in orderly fashion. A facilitator listens well, gives feedback, and recognizes all participants while maintaining impartiality. A mediator has specific training that goes beyond a facilitator's skills. A competent mediator brings individuals engaged in adversarial posturing to conflict resolution and helps everyone reach consensus. Most families never need a mediator, yet there is true wisdom in using a mediator as a facilitator to insure that your family reaches a harmonious agreement. The "ounce of prevention" proverb certainly applies here.

Family members often lack effective communication skills. A facilitator can help to insure that all views are expressed and understood because issues that appear to be practical and straightforward become complicated when seen from different individual viewpoints. Sometimes "practical" issues become emotional, especially in families where there is a strong sense of history and legacy. Even in matters of money alone, issues of equity seldom mean simply "equal." What about the feelings of a son or daughter who have no offspring while their parents are jointly gifting \$20,000 each year to the

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seven grandchildren of their other two siblings? What happens when a mother gives one daughter a painting worth \$20,000 and the other daughter a bracelet worth \$8,000? How do you account for what appears to be a discrepancy, or do you? No matter how much we try to avoid it, there is a cultural belief that love is equated with money, and this pervades family dynamics. Families need clarity and understanding to resolve differences.

Using a neutral professional facilitator or mediator can help to achieve these goals better than using a family advisor or someone from the family office. Why? Everyone has some biases, but outside professionals work consciously to avoid interjecting their personal feelings at family meetings. As a result, it is likely that family members will be on equal footing with a trained facilitator. Individuals will feel more comfortable to freely voice their concerns than if they were speaking to Dad's trusted friend or someone from the family office.

Besides neutrality, the professional facilitator brings a broader perspective to the discussion. Through confidential interviews the facilitator establishes trust with each family member and removes the risk factor of exposure to the entire family group. Individuals can speak privately and honestly about needs, desires, fears, and apprehensions. Since the facilitator listens to everyone, he or she alone can know the literal and perceived differences in viewpoints. As a professional, I am always surprised at the differences in family members' perceived viewpoints.

Because the professional facilitator occupies a trusted knowledgeable position, they can see the issues more clearly, articulate differences in viewpoints more fully, and help lay the right groundwork for reaching satisfactory resolution within the family. While a family's discussions focus on individual family goals, the professional helps them to manage their differences, to empathize with one another, and to reach positive, creative resolutions and closure. **FOX**

## Case Studies In Mediation

*By Olivia Boyce-Abel*

In one family mediation, eight siblings reached an impasse over valuation of one of the family's vacation properties. One sister, "Liz," valued the family plantation, "Greenwood," for its heritage, while her siblings saw it primarily in monetary terms, representing a sizable asset in their parent's estate. Liz wanted Greenwood as her share of the estate in order to preserve it for the family. Some of her siblings felt preserving it in Liz's family was not the same as preserving it for their families.

A breakthrough was finally achieved when Liz's husband, "Mike," who seldom spoke much, became visibly emotional. When I asked him to speak about his perceptions, he shared his anxiety over his family's finances and whether he could afford to accept the legacy of matriarchal family land, foregoing any liquid assets. When the others heard his genuine concern, they realized Liz and Mike's valuation of the property reflected their own financial limit and was not a strategy to bargain them down from their higher appraisals of the property. There were audible sighs of relief as siblings moved away from their positions immediately. We reached consensus on valuation shortly afterward.

In another situation, I recall three siblings debating whether to establish a foundation in their great grandparents' home where one of the sisters was living with her husband and children. She finally cried in frustration and despair, saying she just wanted to know if that would mean she had to move her family. Her siblings had forgotten that they were planning the future disposition of her current home! Once they heard her emotional need for a home, they reevaluated their positions.

I remember sadly one potential client whose father had loaned her only sister money to get out of debt. This was done without any discussion in the family. I suggested mediation or facilitated family meetings to address the loan. She and her mother toyed with the idea but rejected it. When their father died, her sister refused to repay the estate. Eventually, the family resorted to litigation and the once closely knit family became estranged. When I see them today, they each tell me they wish they had followed my advice to mediate.

Often parents who want to solve estate tax problems by giving large gifts to children and charity are concerned about who will take care of them in their old age. In one family I worked with, the children honored their mother's concerns in a special way. They all included provisions in their estate planning agreement insuring that their mother was cared for in her own home. Once their mother's fears were allayed, she felt comfortable and began gifting to all of her children and grandchildren. Facilitation of honest and clear communication about the issues made the resolution obvious to everyone. **FOX**