

Creating Collaborative Agreement on Family Land Use and Distribution

When large and valuable parcels of land pass from one generation to the next, they often carry with them unresolved problems. Some heirs may wish to preserve the land in the family, while others may wish to dedicate the land for conservation. Still others may wish to develop all or some portion, and others may wish to change the productive use. Often the land represents a substantial portion of the inherited wealth, and some of it may need to be sold to pay debts, provide liquidity or pay taxes.

To resolve their conflicts over land issues, family members need to arrive at a collaborative agreement, that is, a common understanding among all the parties. In order for collaboration to occur, the families need to be willing to meet, and actually do so, in order to resolve whatever their land issues are.

Family Meeting Process

The process of reaching collaboration usually requires a series of family meetings over a period of time. The length of time will vary according to the complexities of issues in dispute, the personal dynamics among family members, and the rapidity with which agreement can be reached.

Intervals between meetings give family members an opportunity to do their homework in the interim. Homework includes meeting with individual attorneys, accountants, spouses, and heirs, as well as allowing time for environmental studies, appraisals, surveys, etc. Scheduled meetings held every two or three months over a year or so are often effective. Frequently scheduled meetings help maintain the decision-making momentum within the group.

For family members to feel comfortable expressing themselves, it works best for the sessions to be closed to “outsiders”. However, if possible, sessions should include spouses, heirs and those who will be directly affected by the decisions made. Land trust directors, accountants, attorneys, and other advisors should only attend the portion of the meeting where their information is desired.

The assistance of a professional neutral facilitator can help family members to own the process, as well as arrive at consensus on what they want to do with the land.

Professional Facilitation / Mediation

Based on both my personal and professional experience, I know that families reach more thoughtful, solid decisions about the future of their lands when their sessions are professionally facilitated / mediated. While the roles of facilitator and mediator are akin, they also differ. A competent facilitator can organize and focus meetings, lay ground rules, and make sure everyone is heard in orderly fashion. He or she treats members of the group

with even-handed respect. He/she listens well, gives active feedback, and recognizes all participants while maintaining impartiality.

A competent mediator has all of the facilitator's skills, but also is skilled at helping family members to:

- solve problems collaboratively
- empathize with different viewpoints
- arrive at conflict resolution
- help everyone reach collaborative agreements
- achieve a fair equitable balance
- create a sense of harmony in conflict resolution
- preserve and actually strengthen family ties

Especially in highly complex situations where there is a wide disparity of viewpoints a mediator is often essential to achieve collaborative agreement.

A skilled professional facilitator or mediator is important precisely because he or she does not have a vested interest in the outcome. By training, both facilitators and mediators are neutral. They have no history of family association or relationships. For example a facilitator/ mediator should not be a longstanding family advisor. Often such a person has failed to listen to one individual's wishes at an earlier time, or worse, disputed them. A facilitator/ mediator should not be someone previously hired by one family member, or other members may question his or her prior allegiance.

No matter how fair a family member is, if he or she has a personal stake in the outcome and facilitates the sessions, it is impossible for him or her to maintain true impartiality. Someone is certain to feel unfairly treated and, as a result, not buy in to either the process or the eventual solution.

The careful professional facilitator begins by conducting confidential interviews with each family member before the first group session. The purpose of these "stake holder" interviews is to determine how far apart or close together the family members' goals actually are. The trained facilitator makes certain that everyone is heard on an ongoing basis throughout the process. The professional mediator takes the process one step further by bringing people with different interests to consensus.

If a family is in litigation or serious adversarial posturing, a professional mediator is needed. Because a facilitator is not always a trained mediator, he/she may not be capable of moving people from conflict to consensus. A trained mediator can always facilitate family meetings. In fact, a mediator is frequently the best choice because well-facilitated meetings usually disclose the existence of disputes that can then be resolved by a skilled mediator.

In the end, all of the family members need to own the process in order to fully support the final decision.

Further Reading on Effective Group Decision-making

Balfe, Judith Huggins. *Passing It On: The Inheritance and Use of Summer Houses*. (book) New Jersey: Pocomo Press, 1999.

Balfe, Judith Huggins and Ken Huggins, *How to Pass It On: The Ownership and Use of Summer Houses*. (workbook) New Jersey: Pocomo Press, 1999.

Fisher, Roger and William Ury. *Getting to Yes: Negotiating Agreement Without Giving In*. Boston: Houghton Mifflin Co., 1981.

Fisher, Roger and William Ury. *Getting Together: Building Relationships As We Negotiate*. New York: Penguin, 1988.

Recommended Reading on Conservation Easements & Tax Planning

Englund, Gregory. *Beyond Death and Taxes*. Boston, Estate Planning Press, 1993.

Land Trust Alliance. *Conservation Options: A Landowner's Guide*. Washington, D.C., Land Trust Alliance, 1993.

Small, Stephen. *Preserving Family Lands: Book I, Essential Tax Strategies for the Landowner*. Boston: Landowner Planning Center, 1992.

Small, Stephen. *Preserving Family Lands: Book II, More Planning Strategies for the Future*. Boston: Landowner Planning Center, 1997

Small, Stephen. *Preserving Family Lands: Book III, New Tax Rules & Strategies & A Checklist*. Boston: Land Planning Center, 2002.