

Mediation offers solution to gut-wrenching family disputes

By Brian Goslow

There are few things harder in life than watching a parent slowly age and fall into physical, mental and emotional decline. But the process is made even more difficult when important issues arise concerning the parent's health, whether mom or dad can safely continue to live at home or what should be done with the family estate, and the subject hasn't been addressed beforehand.

When these issues need to be addressed in an emergency situation, rational thinking frequently falls by the wayside to be replaced by frantic decision-making that may not be in the best interests of all involved — or even worse, the person in question may suddenly be incapacitated and no longer able to express his or her concerns and intentions.

Regardless of how many times one recognizes, "We need to have that talk" about what happens should a parent suddenly be in need of long-term care or placement in assisted living or a nursing home or what will happen to a loved one's property once he or she passes on, the talk rarely occurs for fear of creating a hostile situation.

Then that dreaded phone call arrives — mom has had a bad fall and has been hospitalized or dad has had a severe stroke and may not fully recover — and a family is forced to face not only the short-term, but the long-term challenges of covering the costs of whatever

care and housing might become necessary. When there are a number of children involved, the siblings may find themselves at odds over how to proceed.

The nightmarish weeks of paperwork, bureaucracy and family in-fighting that follow a sudden crisis don't have to happen if a parent takes the big step of getting his or her desires known and contingencies in place in advance of any eventual life emergency — or, if a child feels comfortable enough in doing so, encourages and helps the parent get the process underway.

Eileen Millane

"The majority of the time, people do not want to talk about this before things start going downhill," said Eileen Millane, co-founder of The Mediation Collaborative, LLC, a group of professional mediators who bring experience in a variety of backgrounds from law and social work to education and business to the table with the goal of helping parties resolve their differences with the help of impartial mediators. The Mediation Collaborative recently opened offices in several Greater Boston and MetroWest locations.

"A lot of times it's almost too late," Millane said. "With my own mother, I had really wanted her to go to assisted living and give up the house, but then it got to the point she was way beyond assisted living and had to go right to a nurs-

ing home. A lot of people wait too long to act on these issues."

Millane said requests for mediation on senior health issues usually happens when a major change has occurred, the older person is in a clear state of decline and there's growing concern about the parent's ability to take care of him- or herself. Calls to mediate come from an adult child trying to do the right thing for a parent's wellbeing as well as adult children in conflict about what should be done for their parent.

"You can have so many different scenarios," Millane said. Sometimes one sibling is out of state, the other has been overseeing their parent and the two can't agree on whether it's time to start looking to move their parent into assisted living.

"(For example,) One of the sisters is adamant the mother can still stay in the house and wants to get (home) care in the house," she said. "Then there are many issues around financial stuff, who's going to pay and how they're going to pay for it and that kind of thing."

When the parent is incapacitated and unable to participate in the discussion, Millane said, a major piece of what she does as a mediator is talk to the person who calls her and determines which family members are going to participate in making the decisions.

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“If the older person is not part of the mediation process, as mediators, we’re totally neutral,” she said. “But in that case, the mediator’s role is to make sure that the elder’s interests are taken care of and everything is happening in the best interests of the older person. So there’ll be a slight bias against anything that would not be good for the elder.”

According to the Mediation Collaborative, among the benefits of mediation are:

It avoids the stress of litigation, reducing costs and time.

It maintains confidentiality with all mediation discussions remaining private.

It allows for self-determination with the participants controlling the outcome and therefore being more likely to adhere to the agreement.

Sometimes a judge will court order mediation in order to help battling parties reach an out-of-court agreement. When that happens, said Millane, who has overseen a wide variety of mediation sessions, an agreement is reached 70 percent of the time, with 95 percent adhering to it. “You don’t see them back, because it’s their agreement and they crafted it” she said.

Josephine L. Veglia

Josephine L. Veglia, an attorney at Durbin and Veglia in Oxford, said she doesn’t often get a request for formal mediation. “It is something we can advise clients about as a possible solution to heal family divisiveness, but it is their decision as to whether they wish to participate,” she said.

It is in a less formal setting, she said, and “getting everyone to meet face to face sometimes diffuses some of the emotion and creates a productive environment to find a practical solution.” It allows everyone a chance to be heard. “Often the dispute is because someone feels that their opinions or suggestions are being ignored,” she added.

Overall, Veglia said, the mediation process will work if everyone involved truly sees it as an opportunity to find a resolution and is committed to the process. Participants also need to have the best interest of the senior adult always as the top priority, she said.

What tends to work best is when the parents seek to have their financial, estate and health matters addressed while they’re in relatively good health with a clear mind. “Many times, clients want their children to come with them to my office when we meet about their estate plans,” Veglia said. “That is perfectly fine and often works well, since then, all children have an opportunity to hear their parents’ intentions, and understand the different estate planning documents that are used.”

When this occurs, she said, attorneys have the opportunity to explain the legal obligations associated with each subject and by talking a family through the process, can “mediate” the issues.

That doesn’t occur when family members suddenly find themselves faced with a life-changing health emergency resulting in one of their parents being hospitalized. Such circumstances regularly lead to heated disputes over whether the parent can continue to live alone and if so,

whether some type of home care is needed, if a family member can help with caregiving and how the cost of care would be covered.

“Hopefully, that opens up a family discussion during which everyone is involved and contributes what they can,” Veglia said. “However, some families are separated by distance or relationship, and the people living locally feel that they are carrying all the weight and doing the best they can with a difficult situation and yet are being criticized by other family members, or alternatively, those at a distance really don’t understand the parent’s needs and don’t agree with the level of care being provided.”

Veglia has had instances where these discussions began too late, starting after the parents had reached a state of diminished capacity to think and communicate their wishes and intentions clearly and their ability to remain safely in their own home had been compromised. Earlier talks had ended after the parent stated, “I don’t want to go to a nursing home.”

When this situation occurs, Veglia said, there is still the opportunity for the family members to mediate the issue. “After all, they are the ones, not the senior, who are having the dispute. The senior should not be placed in the middle — just as children should not be put in the middle when their parents are divorcing,” she said. “I had a client tell me that she was really upset that all her children were fighting. She didn’t want them to fight. They did not understand how they were hurting her. She unfortunately passed away before things were resolved.”

Linda T. Cammuso

As an attorney, Linda T. Cammuso of the Estate Preservation Law Offices in Worcester is professionally obligated to carry out the directives of her clients; in most instances, it will be the parent who makes the decisions. "They have to decide their family situation and decide how involved or not they want their kids to be," she said.

If there are several children, the parent might have one he or she is especially close with who is privy to all of the parent's financial matters while the other children are not as involved with the parent's day-to-day life or are perceived as troublemakers looking for a fight.

Some of Cammuso's clients will tell her, "I don't even want my kids to know I saw an attorney." In that instance, Cammuso isn't allowed to tell the children anything about any of her discussions with their parent. "If the kids called us and said, 'I want to know what you're doing for my mom, I heard that she's drafting a will with you and I want to know what's going on,' we would say, 'I'm sorry, we can't even confirm to you that we represent your parent because we don't have authority to do that,'" she said.

Those calls can become hostile.

'A lot of times it comes from the kids who maybe aren't as involved in their parents' legal or financial

matters and who perceive because they have not been included in meetings or things like that, it's possibly because the other kids are conspiring to try to diminish their inheritance. Or maybe they feel they need to be involved in key decisions," Cammuso said. "But it's the client's call as to who they want to involve and how they want them involved."

Carole Lieberman

In the past 10 years, as the country's population has aged, Beverly Hills psychiatrist Carole Lieberman, who works as a mediator, said she has seen a remarkable growth in conflict between seniors and their adult children.

"This mainly focuses on money and inheritance, although issues regarding residence and health decisions also come up," she said. "Increasingly, litigation ensues when siblings feel they have been done wrong in the division of property and money, as described in their parents' will. It is not solely a matter of finances or greed, although the current recession has made this more of an issue; it is wanting to feel that a parent loves them as much or more than their siblings, as finally proven by what the parent bequeathed to them."

When children are unhappy with the provisions of a will, they often bring up the question of a parent's

competency. Was the parent in his or her right mind when the will was written or was there undue influence? Mediation between seniors and their adult children can often avoid these issues by working them out beforehand and allowing children to understand what their parent was thinking.

When some adult children feel money is being unfairly kept from them, they'll threaten to take the issue to court, an act that could leave a lasting split between relatives.

Celeste Zimmerman

Celeste Zimmerman, a professional mediator based in Colorado who works with seniors and their adult children, said the benefits to using mediation versus litigation are significant.

"The most important of these, is maintaining the relationship between the siblings while trying to hash out any differences and coming to solutions that all of them can live with," she said. "Mediation provides the vehicle to possibly retaining relationships. If lawsuits get filed, there most likely won't be any relationship when all is said and done. Besides relationship building/ retaining, mediation normally is less costly, less time consuming and less emotionally devastating