

Preparing to mediate your guardianship or non-family law case

When preparing to mediate your guardianship or non-family law case, you need to spend some time beforehand figuring out

- What the issues are (i.e., what needs to be mediated);
- What your ideal resolution would be for each issue; and
- What you are possibly willing to compromise on.

Depending on the issue, you should also think about what you would want to happen if something goes wrong in the future. (For example: You may agree that one person is going to handle Mom's medical decisions and another person is going to handle her finances. But what should happen if the person with medical decision authority thinks Mom should live in a particular facility, but the person in charge of the finances thinks it's too expensive?)

The following is intended to get you thinking about issues you may need to address in your mediation; it is not intended to cover everything, it is simply a starting point.

Guardianships

- Who's going to be the guardian of the person?
- Who's going to be the guardian of the estate?
- Should the guardianship be limited in any way?
- If the kids or family don't all get along, what's the "visitation" schedule going to be? Do you need something as formal as a "residential schedule"?
- How are holidays going to be handled? Will one person have priority for the same holidays every year, or will you rotate?
- How will people communicate?
- Should the guardian consult with anyone before making certain types of decisions? If so, what types of decisions, and who should be consulted?
- What if the house needs to be sold to pay for care needs? Should the kids be given the first chance to buy it? If so, how will the proposed sale price be determined and presented to the court for approval? And what if more than one person wants to buy the home?
- What if personal property/furnishings need to be sold or disposed of?
- What if more than one person wants any particular item—how will the dispute be resolved?
- Does the ward have any "special relationships" that need to be addressed? (Have they been involved in a long-term relationship? Does everyone get along? Are there any potential issues regarding claims of exploitation or abuse?)

Estates

- Who's going to get particular items?
- What if more than one person wants any particular item—how will the dispute be resolved?
- What if the house needs to be sold? Should the kids be given the first chance to buy it? If so, how will the proposed sale price be determined? And what if more than one person wants to buy the home?
- Was the unmarried deceased involved in a long-term relationship? Does that person have any claims to property, furniture, mementos? Was that person living in the deceased's home? If so, what happens to them now?
- Did the deceased make any loans to someone who is inheriting from the estate? If so, how is that going to be addressed?
- Is a beneficiary incapacitated (mental health issues, substance abuse, addiction)? If so, does that person have a guardian or a guardian ad litem? And how is their share of the estate to be handled?