

## Inheritance Dispute? Don't Just Sit There. Mediate!

by Christina Yee, Esq.



"Why did my dad leave most of his money to charities and not his kids?"

"It's unclear what my father's intentions were with our family vacation home."

"My mom left a handwritten document stating who should receive her jewelry and art collection. Is this an official document?"

Losing a loved one is a difficult time, then add on to that trying to interpret and manage a trust that is unclear or seems unfair, it's no wonder people procrastinate and put it off. But waiting can have negative implications which may end up costing you not only time and money, but additional and unnecessary heartache.

This is where a **court appointed mediation** can help. The court reviews all documents left by the deceased (including trusts, wills, and handwritten wills/documents), thereby taking the burden off of you to determine the following:

- Who are the beneficiaries (heirs, charities, other family, friends)
- Allocation of assets (property, bank accounts, family heirlooms and collections, stocks, etc.)
- The court can also break down assets into percentages, divided amongst beneficiaries

When an inheritance dispute is decided by a court appointed mediation, time limits are set for responses from parties mentioned in the trust and any apparent heirs, resulting in quicker resolutions so families can move on with their lives.

I hope that u are all  
fine, I am not feeling  
well. everything I own  
goes to my sister, Norma  
XXXXXX  
Betty Williams

### Handwritten Will to 24 Charities

Let's look at the recently settled public case of *Breslin v. Breslin* (not a client of Law & Stein). The court's findings emphasize the importance of quickly asserting your rights where your inheritance is affected. In other words, don't just sit there. Mediate!

David Breslin was the successor trustee to Don Kirchner's trust. The trust was missing a list of beneficiaries but Breslin found a list of charities (24 total) with handwritten percentages next to each organization. Out of an abundance of caution, Breslin filed a petition with the probate court, asking the court to determine who are the beneficiaries of the trust, and what percentage each beneficiary should receive. All 24 charities were served with the petition, but only 3 out of 24 chose to respond to the petition. The remaining 21 charities did not file a response.

The court then ordered the parties to mediation, and notice of the court's order for mediation was sent to all possible heirs of Mr. Kirchner, and all 24 charities. The notice included language informing all parties that non-participating parties may still be bound by the terms of the settlement, and failure to participate may

result in a loss of rights.

At the mediation, 5 of the 24 charities appeared and participated, along with the heirs of Mr. Kirchner. All of the parties that participated at the mediation reached a settlement, awarding specific amounts to each of the charities and individual heirs, along with attorney's fees. Success! Mr. Kirchner's heirs and the charities that participated were happy and ready to move on. But those 19 charities that did not participate and who were excluded from inheriting, were not! Upon hearing the news that they would not be receiving anything, they objected, and filed a petition with the probate court.



The objections were heard by the court and denied! The court approved the settlement over the non-participating charities objection, and the Court of Appeal affirmed, stating:

*The (non-participating) parties apparently believe the trustee and participating parties should have gone through mediation, reached a settlement, and before the settlement was signed, notified the (non-participating) parties so that they could come in and object. That would have made the mediation a waste of time, money, and effort.*

Kudos to the court on this one! Efficiency is generally not synonymous with court proceedings, but in this case the court is exactly right. The whole point of a court ordered mediation is for all parties to make a good faith attempt to resolve the issues. The probate court made a reasonable effort to reach out to all parties involved, giving them time to respond and since those charities did not respond, they receive nothing.

A court mediation can be a timelier and more cost-effective way to approach an inheritance dispute or help determine the intent and legality of a handwritten document. This process benefits the trustee by relieving them of potential ongoing liability because they are unable, legally, to argue one beneficiary's rights over another's. In addition, it demonstrates to beneficiaries their rightful inheritance is protected under the law.

Hiring strategic and thoughtful legal counsel to lead the court probate process can allow those involved in an inheritance dispute to rest a bit easier, knowing their rights are protected by the courts and their probate attorney/estate litigation attorney.



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