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A Referee for Family Disputes

By ANNE TERGESEN

For years, couples have hired divorce mediators to avoid court battles. Now growing numbers of mediators are specializing in disputes that relate to older adults, such as those over inheritances and caregiving responsibilities.

But while mediation may prove cheaper than litigation—and less damaging to family relationships—the field is largely unregulated. As a result, it is important to vet prospects carefully to be sure they understand the issues most significant to your family.



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Mark Matcho

Elder mediators say their profession is taking off as baby boomers seek help with aging parents. "Our clients tend to be well-educated, successful people who are used to hiring professionals for whatever services they need," says Arline Kardasis, co-founder of Elder Decisions, a mediation and training firm in Norwood, Mass.

Ms. Kardasis says 250 professionals have joined an elder-mediation group she helped found 18 months ago at the Association for Conflict Resolution, a professional association. Over the last two years, the number of mediators listed at EldercareMediators.com has nearly doubled to 100, says Janet Mitchell, the website's co-founder.

Elder mediators help clients resolve conflicts that arise over a variety of issues, from how to share an inherited vacation home to whether Mom should turn over the car keys and who should arrange for transportation. Some families hire mediators on their own initiative, while others are referred—or ordered to attend—by courts.

Mediators don't offer advice, Ms. Kardasis says. "We facilitate conversations and help the parties get past impasses."

Nor do they spend much time delving into the past. Dana Curtis, an attorney who mediates disputes and trains elder mediators at Elder Mediation Group in Sausalito, Calif., says she frequently reminds participants "why they are there." "If we're talking about Mother's care," she says, "the subject of what a rat the eldest brother was when he was young is usually not relevant."

The process can differ from one mediator to the next. When a family retains Ms. Curtis, she first speaks privately with each person. Such an approach helps her "better understand the issues and family dynamics" and determine whether the family may need additional resources, including legal, tax and estate advice, she says.

While some mediators continue to meet separately with each family member, Ms. Curtis says she prefers to get everyone at the same table.

Polly Osborne, 60 years old, says she and her three siblings recently hired Ms. Curtis to help them decide what to do with a six-acre property they jointly own with their 90-year-old mother in Carmel Valley, Calif. "It was my grandfather's property," says the Los Angeles resident. "We spent every summer vacation there as kids. Emotionally speaking, it's very near and dear to all of us."

Ms. Osborne says she and her siblings, though close, had "no idea how to solve the issues we found ourselves facing," such as how to bequeath a family compound with three residences to a younger generation with seven members.

Together with the participants, Ms. Curtis developed a formal agenda and set communication guidelines. They all gathered at the family's Carmel Valley property one Saturday last fall. "We went from not knowing what to do to agreeing on virtually everything or compromising happily," Ms. Osborne says.

Mediators say it is important to have the elder's viewpoint represented. If the elder can't or won't attend, a friend or trusted professional adviser may be enlisted to serve as a proxy. "A family may want to decide where Mom is going to live," Ms. Kardasis says. "But is it really appropriate to make that decision without her?"

Families often hire an elder mediator to avoid high legal fees. To work with a mediator in private practice, a family can expect to spend from \$150 to \$350 an hour. A national network of nonprofit "community mediation" services charges little to nothing.

There is another advantage to mediation over litigation: confidentiality. In Massachusetts, for example, families who sign an agreement can prevent their conversations from being admitted as evidence in a civil-court proceeding, Ms. Kardasis says.

At the end of a successful mediation, participants typically receive a nonbinding summary of what they agreed to. Ms. Osborne says she and her siblings plan to make their decisions binding and incorporate them into their estate plans.

Because mediation is a largely unregulated field, "pretty much anybody can put out a shingle," says Penny Hommel, co-director of the nonprofit Center for Social Gerontology in Ann Arbor, Mich. Ms. Hommel recommends asking for referrals from trusted advisers, such as elder-law attorneys. (Other sources for mediators include EldercareMediators.com, Mediate.com and acrnnet.org.)

Make sure the mediator you hire has been trained in both basic and elder mediation. And look for a full-time mediator with at least five years of experience that includes similar cases, Ms. Curtis says.

Write to Anne Tergesen at familyvalue@wsj.com

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