

A LEGAL DISPUTE?
FIX IT
FASTER,
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AGONY!



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A Legal Dispute? Fix It Faster, Cheaper, and With Less Agony!

Are you enduring a fight with a fellow family member? A dispute that might end up in court?

If so, dear friends, what you're about to read is a way of fixing disputes that's faster, cheaper, more humane, and that doesn't have to leave lasting scars. It can exponentially increase the chances of your family staying intact across the generations.

The problem with taking a dispute to court is, the chances of restoring family harmony afterwards approach zero. Lawsuits can be so painful, so expensive, and so destructive that I know of families that still talk about them three generations later.

Fortunately, this never happened in the families I'm closest to. In both the Henderson and Perdue families, we have "the covenant" in which it's ok to fight and get issues out on the table, but it's never ok to go to either the press or lawyers with a dispute. In the Henderson family, we knew not to "wash our dirty linen in public" because it could harm not only the family, but also employees, stockholders, bankers, and the whole community.

I think my siblings and I absorbed that view as thoroughly as we absorbed, "Thou shalt not kill."

Still, every family has conflicts and legitimate disputes do arise. Is there a way of dealing with them short of going to court?

Yes.



Collaborative Law

Collaborative Law is a relatively new branch of law that deals with dispute resolution. The Collaborative Law approach means that disputes can get resolved in a manner that both sides perceive as fairer.

A major feature is that the professionals involved in the process (lawyers along with mental health experts and financial professionals) agree ahead of time that their purpose is to achieve a settlement. There are teeth in this approach because if the dispute ends in litigation instead of settlement, the lawyers are fired. They are not allowed to represent either party in litigation.

Huge benefits accrue from this approach. With litigation off the table, the incentives change from, “We’re fighting to win!” to, “We’re cooperating to achieve a win-win.”

A win-win in this case means that settlement is achieved while keeping time, money, nerves, and emotional pain in check.

Dealing with emotional pain represents one of the biggest differences between the Collaborative process and a litigated approach. The Collaborative process specifically addresses emotional issues, whether in a family business dispute, a divorce, a prenuptial meeting, or any other area where people feel a need for the legal system. The Collaborative team brings emotional issues to the forefront and uses mental health professionals as part of a team approach to finding solutions.

We all know that divorcing couples can act irrationally. You can find divorcing couples who spend tens of thousands of dollars in legal fees fighting about a piece of furniture worth \$200. Fortunately, the mental health professionals who are part of the team know how to deal with these kinds of issues.

They know that “fights are seldom about what they’re about.” The couple fighting over the piece of furniture are almost certainly fighting over a deeper unresolved tension.

The mental health professional can help deal with the psychological pain the individuals are experiencing. The individuals can then address the underlying causes of their fights, as opposed to arguing endlessly about the dining room table.

The goal of the practitioners of Collaborative Law is to provide you and the counterparty in your dispute with a safe and dignified environment that reduces conflict and minimizes its impact on your family, your business, and your life. They work to resolve your legal disputes with you making the decision as opposed to judges, magistrates, or court personnel.

Would both sides of the dispute you're enduring be willing to try a Collaborative approach to resolving the dispute? They're prime candidates if they go along with most of these propositions.

- ❖ Arguments are seldom about what they're about.
- ❖ Mental health professionals can help resolve underlying conflicts, often ones that stem from unresolved tensions from childhood.
- ❖ Hiring advocates whose incentives are linked to resolution may mean a speedier resolution.
- ❖ A quicker resolution means lower legal costs.
- ❖ Hiring advocates who are looking out for the good of both parties decreases the danger of an irreparable rupture in the family.
- ❖ Resolution is essential because it's not just the disputants who are hurt by an argument in a business family: it's all the other stakeholders including employees, stockholders, bankers, the community, and even future generations.
- ❖ Once litigation starts, it can cause people to harden their positions and become irrational, wanting to win at all costs.
- ❖ The incentives for lawyers is to focus on their client, not on the good of the family as a whole.
- ❖ Your family is so important that it's a danger to your long-term happiness to have it threatened by litigation.

I wish I could materialize out of this page and plead with anyone in your family who is considering litigation. This really matters!

The pain and heartache and regret that I've watched when people take the route of litigation is endless. They imagine that they can outsource litigation to their lawyers and a short while later, take home their winnings from the lawsuit.

Instead, the lawsuit is likely to result in unimaginable stress coupled with a bottomless sinkhole of wasted time and nerve-jarring cost. A lawsuit can also mean a permanent rupture in the bonds that keep a family together.

Because of the stakes—which as far as your family goes, couldn't be higher—please, please consider Collaborative Law.

Checklist for Preventing or Resolving Conflicts

- ❖ From the time your children can speak, work to instill a culture of resolving disputes within the family. Through stories, parables, discussions, and actions, create models for resolving conflicts, including hearing the other person's side and encouraging give and take.
- ❖ Take a moral stand that it's wrong to move quarrels outside the family. Have a phrase that children hear continuously that reinforces that we don't take quarrels outside the family. The Henderson one sure worked for us: "We don't wash our dirty linen in public."
- ❖ Let family members know from a young age that there are times when you have a choice of getting your way or having a relationship, and that it's a terrible bargain to sacrifice some of the most important part of your lives for the ego gratification of getting your way.
- ❖ When there's conflict, have ways spelled out of making sure that everyone gets heard and listened to. Being heard goes a long way toward defusing conflict.
- ❖ Teach family members to avoid being addicted to being right. Being addicted to being right is egocentric and destructive, and countless good families have been blown apart by feeling that they have to be right no matter what.
- ❖ Be careful what you say in anger. Angry words (such as threats of divorce, or disinheritance) can be self-fulfilling. You say them in momentary anger, but the person hearing them may remember them for a lifetime. As my brother Barclay Henderson warns, "Garbage can come out of Pandora's Box that can't be stuffed back in again."
- ❖ If the dispute is serious, destructive, laden with emotion, and just can't be resolved within the family, there's still a very good choice before you head into the painful abyss of a law suit. Try Collaborative Law.

If you'd like more information on Collaborative Law, visit the International Academy of Collaborative Professionals at <https://www.collaborativepractice.com>.

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