



Wroten & Associates, Inc.
Attorneys at Law

Advisors To Professionals Who Care For The Elderly

**SERVING THE UNIQUE NEEDS OF LONG TERM
CARE PROFESSIONALS**

**20 Pacifica · Suite 1100 · Irvine · CA · 92618 · (949)788-1790 ·
www.wrotenlaw.com**

ALTERNATIVE DISPUTE RESOLUTION: When is Negotiation the Best Process to Resolve a Dispute?

by: Regina Casey, Esq.

We are all involved in negotiations in our daily lives. When disagreements arise among families, friends, or co-workers, we often try to resolve the conflict by communicating our position and attempting to persuade the other person to accept our way of thinking. In the long term care setting, there are often issues raised by residents of their families that may lead to litigation if not handled properly.

Developing negotiation skills and obtaining a better understanding of the process will benefit you both personally and professionally. When faced with a dispute, the first step is to determine the best method of addressing the conflict in order to resolve it. When a dispute arises, negotiation should be the first process considered. In order for negotiation to be the most effective process to resolve a dispute the parties must be willing to communicate, cooperate, and compromise.

COMMUNICATION

Negotiation involves direct contact between the disputing parties or their representatives. The first step in the negotiating process is to open the lines of communication. Without communication, the parties can not identify and agree on what issues are in dispute. Only when there is an open exchange of information can the parties understand each others needs and interests. It is important to identify the person with authority to know with whom to negotiate. To be effective, it is also important to establish a rapport and start developing trust early in the negotiations.

When a person is emotional about an issue, he or she is not able to make reasonable demands. If one of the parties is so adversarial, irrationally suspicious or uncomfortable with the direct negotiation, the process will not be effective. It may be necessary to calm the situation by using active listening skills, asking open ended questions, and letting the person speak without interruption to allow the party to vent their emotions. Once emotionality is eliminated for the process or controlled, progress can be made towards a resolution, but only if the parties are willing to cooperate.

COOPERATION

The parties must cooperate to meet their goals. If the parties' interests, goals and needs are entirely incompatible, negotiation will not likely be successful. External constraints, however such as reputation, cost and risk of the adversarial decision encourage participation in a private, cooperative process. There is often tension between the desire to compete and the desire to cooperate. Bargaining by its very nature is competitive. The value being bargained is relatively fixed so that whatever one side gains, the other side

www.wrotenlaw.com

must lose. When bargaining, one must move from one position to another position. Positions are changed through a series of concessions or compromises.

COMPROMISE

Competitive bargaining encourages an aggressive style of negotiating which may harm the parties' relationship. Tactics with this negotiating style include concealing information and attempting to overpower the opposing party. When it is important to preserve a positive relationship between the parties, integrative dispute resolution is preferred over competitive bargaining. With integrative problem solving, attention is placed on the disputants' interests, not positions in an attempt to discover what is driving the parties conflicting positions. There are other elements of value in the dispute that may not be obvious. An injured party may not be satisfied with monetary compensation alone, but may be seeking an apology or assurance that behavior will be modified in the future through a change in the facility's policy and procedure, for example.

CONCLUSION

If the parties are not willing to communicate, cooperate, and compromise, negotiation is not the most effective process to resolve a conflict. Mediation, a process in which a third party or mediator assists the parties in moving to resolution, may be the better method of addressing the dispute. In our next newsletter, we will describe the circumstances when you should consider using mediation as the process to resolve dispute, rather than direct negotiations between the parties.