

Collaborative Estates and Trusts Is it for me?

This list of questions and answers will help you decide if Collaborative Practice is the process for you to plan your estate or resolve family disagreements over eldercare and inheritance.

Questions	Traditional Model	Collaborative Model
What if my spouse and I don't agree on how to leave our property?	Each person makes their own plan; one spouse pressures the other or they don't make a plan at all.	The lawyer mediator, financial specialist or communication specialist helps the couple come to a mutually satisfactory plan.
What if one of my children doesn't manage money well and I'd like to leave someone else in charge but I don't want there to be resentment?	The child that is passed over as trustee, executor, or agent to manage their money is likely to resent the person writing the trust, will or power of attorney (order of trustee, executor, and agent) and/or the sibling who is appointed to act in such a capacity.	The mediator, financial and communication specialists help the parents to talk to their children about their concerns and the family creates a protective but respectful arrangement.
What if one of my children has special needs and <i>can't</i> manage money at all?	If a child or other beneficiary is receiving public benefits, their benefits can be protected by having a "Special Needs Trust" prepared. If this is not discussed with the beneficiary, they might not like the choice of who is put in charge of their money and may not understand the reasons for it	The mediator, financial specialist, and communication specialist help the parents to talk to their children about the Special Needs Trust. The parents have the opportunity to solicit the child's opinions as to who should be in charge of their money and other aspects of the arrangements to the extent of the child's abilities to understand and communicate.
How can I create an estate plan that will be fair to all my family members when I have a blended family, one of my children needs the money more than the others, or I want to reward one of my children for helping me out?	The traditional approach is to make an estate plan and hope everyone will understand.	The family talks about the plan beforehand with the help of a communication specialist so there will be no hard feelings after the estate planner dies.

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Who knows about the will or trust?	While you are living, your will and trust are private documents that nobody else need know about. At your death, your will must be lodged with a court where it is available to the general public. Your beneficiaries and heirs will get notice of your trust and they will have the right to request copies of the trust.	All family members you invite into the process will participate in a discussion of your intentions. Conversations are kept confidential within the family and involved professionals.
Will my family be surprised when the details of the will or trust are disclosed?	Possibly, the planner has not discussed the details. Litigations often arise when each child has expectations that are different than the details of the will or trust.	There are no surprises as your children participated in creating the details of the will or trust.
My family gets along well. Why would I be concerned about fighting amongst my heirs after I die?	The traditional estate planning model takes a very superficial accounting of family relationships. There are some standard considerations, such as a second marriage where the likelihood of a subsequent court battle increases dramatically. But, otherwise, the traditional model does nothing to address underlying family dynamics that can lead to costly, stressful trust or probate battles in the future.	With the Collaborative model, all family members (where appropriate) are informed about the estate planning well ahead of time. They can then resolve any differences while you are living, rather than creating dissension after your passing. Not only does this reduce the likeliness of litigation, but it also increases the quality of life for the family while you are living. Often probate and trust battles are fought over what mom or dad “really” intended. With several people having heard you directly state your intent, it will be very hard for a family member to claim you intended something else.

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<p>How much delay will there be if there's a dispute about my estate?</p>	<p>Litigation usually takes more than a year from the first filing of a document to trial. Some cases stay in court for years pending appeals. Scheduling is first dependent on availability of court and attorneys then parties. Most of the time is spent waiting for one party to respond or the judge to decide on a small issue before the case can go forward. In an adversarial litigation process, the delay can be incredibly long because neither side has control over the actions of the other side and the attorneys have to respond to everything the other attorney does or fails to do.</p>	<p>Flexible meeting schedule (can meet on weekends, holidays, etc.). Professionals suggest, but the family decides, when to meet and how often. The Collaborative process lends itself to finding solutions rather than seeking a "one up" position. Being solution focused, rather than adversarial provides a more efficient process where family meetings focus on understanding and collaborative agreements.</p>
<p>How much would a dispute about my will or trust cost?</p>	<p>Litigation: very expensive, It can cost a minimum of \$60,000 per side from time of filing the first document with the court to trial. The usual cost is well over \$100,000 per side. Most costs are related to disagreements over sharing or hiding information and documents, as well as, preparing for and attending trial. Energy and resources are focused on proving the other side is wrong. Expert witnesses are often involved, which adds a significant expense to the cost. Experts are hired to advocate a position and there is often a very costly "battle of the experts".</p>	<p>Much less costly than trial. Information and documents are voluntarily shared with all family members and professionals. No one has to be wrong. Energy and resources are focused on finding solutions that would benefit all. The neutral experts here are hired to educate, create options, and find a solution rather than to battle with another expert.</p>

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Will my family be able to still get along if there's a dispute about my will?	Litigation: no one talks to each other during and after the litigation. Parties talk through their attorneys and legal documents filed with the court.	Family members talk directly to each other during the meetings. After the process, most family relationships transform from indifference or hostility to cordial or familial.