

FAMILY MEDIATION: MAKING THE MOST OF A DIFFICULT SITUATION

 Diane Ferrante



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PERSONAL

If you are going through a separation or divorce, you will inevitably need to resolve and agree on a number of issues with your partner or spouse that can range from child and spousal or partner support, to custody and parenting arrangements, to property division. While some splits are more amicable than others, family mediation can be a faster, more efficient and more affordable way to help you reach an agreement than the litigation path.

At a family mediation meeting an independent mediator helps you reach a solution that works for all parties in a non-adversarial environment. You do not need to have a lawyer present at mediation (although you can if both parties agree it will assist) and the entire process is “without prejudice” which means that the information shared or concessions made cannot be used against either party should the matter proceed to court.

Why choose mediation?

- Mediation can be less stressful as the setting is less formal than a courtroom atmosphere.
- You are able to participate in the creation of solutions rather than having decisions imposed on you.
- You can agree to split the mediator's fees.

- Often times you can schedule mediation faster than you can obtain a court date.
- Mediation can be less expensive than pursuing a decision at a hearing or trial.

Family mediators are trained to deal with conflict. They understand the dynamics of solving problems and how the background or context of the relationship between the parties affects their ability to agree.

Your role in a productive mediation

Your mediator will try to establish an atmosphere where you can resolve your issues, but you play a key role as well. Here are a few things you can do to increase your chances of a successful mediation:

- Be prepared to give the process an honest effort.
- Consult and/or retain a lawyer ahead of time so you are aware of your rights and obligations under the law and are educated about the legal process.
- Gather your financial disclosure in advance (for example, bank account and credit card statements).
- Identify what you are hoping to achieve at mediation (i.e., resolve a single issue

such as property division, or agree on all aspects of your separation or divorce?).

- Before you arrive and during the process, take the time to calmly consider the validity of the other side's point of view, even if you don't agree with it.
- Try not to develop a 'bottom line' before you enter the room; stay involved and listen closely.
- Have an open mind and contribute ideas for how the issue in question can be resolved.
- At the end of a successful mediation process, a memorandum of agreement will be drafted by the mediator for you to take to your lawyer for review, drafting of a separation agreement and independent legal advice. A lawyer must draft the separation agreement and both parties require independent legal advice to ensure its enforceability.

While a relationship breakdown is never a pleasant experience, with the help of a qualified mediator both parties can attempt to come to an agreement that helps everyone involved move forward to a brighter future.

Diane Ferrante has been trained as a family mediator.

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 DUNCAN CRAIG
LAWYERS MEDIATORS

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THIS LAND IS MY LAND...OR IS IT? THE RISK OF ADVERSE POSSESSION IN ALBERTA

 Alex Kennedy

Many people assume that when they buy a piece of land, they own that land, and it cannot be taken away from them unless they fail to pay their debts. Unfortunately, that is not true. One way that land rights can be lost is through expropriation. But another way is through adverse possession, otherwise known as 'squatter's rights'.

Alberta is one of the few provinces in Canada that continues to recognize adverse possession. There are good philosophical reasons for this, but we have yet to meet a client who was interested in a discussion of the philosophy of real property law when facing the prospect of losing some part of their land.

In Alberta, adverse possession generally requires (among other things) that the person wishing to take the land in question must have openly and exclusively occupied it for at least ten years even though they did not own it. One of the most common ways this occurs

is with a misplaced fence—a fence that is not on the correct boundary between two parcels may create an adverse possession and allow the owner of one of the parcels to “expand” up to the fence. That said, even farming, grazing animals, or cutting down trees up to an unmarked boundary could be enough to establish the necessary possession.

From another point of view, the party seeking adverse possession may feel that they have been treated unfairly. The landowner may have purchased the parcel in question based on presumed boundaries marked by fences or landscaping, only to discover that a new survey has disclosed that they are not entitled to what they thought.

In many situations, landowners are knowingly allowing neighbours or other to use their land free of charge. Even in these informal situations, it is important to have a written document outlining that both parties accept the boundary between the parcels, and that

there is a permitted use. The arrangement can be formalized by registering an easement that would prevent future adverse possession. Adverse possession of an easement is not permitted in Alberta.

If you think that some of your land is at risk for adverse possession, or if you feel that a survey does not include all of the land you thought you purchased, you should contact a lawyer as soon as possible. Adverse possession is highly time-sensitive, and the sooner you take steps to protect your rights, the better.

If you are purchasing a property, it is worth investing in a full Survey or a Real Property Report, depending on the kind of parcel you are buying. A new purchase can reset the clock on the 10 year period, although it may not, depending on the facts. If, for example, you find a fence on your property does not match the boundary line, it is important to know right away so that you can address it—ten years passes fast!



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STOPPING THE TRADEMARK TROLLS

 Ross Swanson



In the past few months, a number of Duncan Craig clients have contacted us with concerns about registration and renewal forms they have received regarding their trademarks. While scams involving trademark renewals are not new, they do seem to be on the increase. Here is some information on how the scams work and how to spot illegitimate notices. If in doubt, please contact us for an assessment of the material you have received.

Trademark Renewal Scams

Registered trademarks in Canada are valid for 15 years. You cannot renew a trademark until you or your designated agent receives a renewal notice from CIPO. In renewal scams, the perpetrators take advantage of publicly available information about trademarks and count on the trademark owner losing track of when they need to renew. The scammers typically send a letter or email to the trademark owner saying that the trademark is about to expire and that there is fee to renew that far exceeds the \$200-\$350 charged by the Canadian Intellectual Property Office (CIPO). These notices are made to resemble notices from CIPO and contain dire warnings about trademarks being cancelled unless action is taken.

CIPO is the only organization that can communicate with you about your trademark renewals. If you are concerned about the legitimacy of any communication, the first thing to do is to check from where the communication came. Legitimate notices will come from the CIPO email address with the @canada.ca domain or be mailed to you from:

50 Victoria St
Gatineau, QC
K1A 0C9

If you have registered your trademark, CIPO will communicate with your agent directly about the renewal. No other parties will receive any communication from CIPO regarding your trademarks.

The second step is to check when your trademark needs to be renewed. If the deadline is still years away then the communication is not legitimate. If you are still concerned, you should contact us or CIPO. If you are unsure when your trademark's 15 years are up, you or we can search the CIPO database to find the original registration date.

Trademark Application Scams

When you apply for a trademark, CIPO will review the application and, if there are no concerns, will publish details of the application in the Trade-marks Journal. If no opposition has been received within 60 days of publication, then the trademark applicant can apply to register the trademark.

Scam #1

When the application is published in the Trade-marks Journal the scammers will contact the applicant saying they will complete the registration process for them for a fee, often in the range of \$1500. In Canada, the only person who can register a trademark is the person who made the initial application or a designated agent. Agents designated to act on your behalf must be Canadian. Offers from foreign entities are not legitimate. If nobody opposes the trademark application process the final step to complete the registration is simple and straightforward and can typically be finished in under an hour.

Scam #2

When the trademark application is published, the applicant will receive a letter or email from a foreign country saying they can register their trademark in that country with no additional paperwork required – just a large fee. The notices come with a warning that failure to pay will result in the applicant losing the right to apply in that country. Just about every country has the same application process as we have in Canada. There is no easy or paperless way to get around the application process.

Scam #3

When the application is advertised in the Trade-marks Journal it opens the door for companies to aggressively go after any potential trademark that bears any resemblance to their own. The opposition to the application is usually accompanied by a request for a monetary payout in exchange for not opposing the application. While not a scam *per se*, applicants should be aware that there is the danger that they may be targeted even if there is no solid ground for the opposition. Any opposition will inevitably delay the trademark application process and add to the costs.

If you have any concerns about your trademark renewals or applications, please contact us for an assessment of the notices you have received. You can also contact CIPO directly to get an assessment and report any scams.

ADULT GUARDIANSHIP: CARING FOR THE ONES YOU LOVE

 Jacklynn Pivovar



Do you find you have a loved one, who has lost capacity, is reaching adulthood and who needs help in making decisions? If so, we can help.

ADULT GUARDIANSHIP & TRUSTEESHIP ACT

In Alberta, the Adult Guardianship and Trusteeship Act (“AGTA”) governs when an adult needs assistance making decisions. The AGTA provides a variety of options that range from having a person provide some help in making decisions to having a person take over the decision-making completely. The options depend on the kinds of decisions being made. There are 2 kinds of decisions covered by the AGTA: “personal matters” and “financial matters.”

A person who is subject of a guardianship order or trusteeship order is called a “Represented Adult”. The person authorized to make personal decisions for a Represented Adult is the “Guardian”. The person authorized to make financial decisions for a Represented Adult is the “Trustee”.

Personal Matters

There are various options available under the AGTA to help someone make decisions about personal matters. Personal matters include the following:

- the adult's health care;
- where, with whom and under what conditions the adult is to live;
- with whom the adult may associate;
- the adult's participation in social activities;
- the adult's participation in any educational, vocational or other training;
- the adult's employment; and
- any legal proceedings that do not relate primarily to financial matters of the adult.

We can work with you to discuss what may be the best option for you and your loved one. This may include a co-decision making order, specific decision making order, temporary guardianship order or a full guardianship order depending on the circumstances.

Financial Matters

The AGTA also has options available to help support someone with their decisions about financial matters. A financial matter is any matter relating to the acquisition, disposition, management or protection of property. This includes real property, personal property, bank accounts, money, or investments. The options include a temporary trusteeship order or full trusteeship order if an adult is assessed as incapable (and who have not completed an Enduring Power of Attorney.) A trusteeship order gives another adult the authorization to make financial decisions for someone who does not have capacity.

If you know someone who needs help in making personal or financial decisions because they have a diminished state of mental capacity or have lost their capacity, we would be happy to discuss your options with you.

RECENT DEAL HIGHLIGHTS | January - June

In the first 6 months of 2016, Duncan Craig's M&A Team advised clients on dozens of successful transactions with a total value of \$261.5M. Recent deal highlights from 2016 include:

- Acted for lead arranger on a \$57M syndicated finance.
- Acted as the Alberta agent for a lending syndicate on a \$100M financing.
- Represented the owner on the disposition of \$33M in commercial real estate assets within Alberta and Manitoba to a private company.
- Negotiated a \$5.6M settlement for a home building company with a supplier.

Contact us today for a no obligation chat about your next business purchase, sale or merger to find out how our team can make the transaction a success.

