A PROPERTY DISPUTE

The background to the dispute was that twenty years ago Father died impecunious, and Mother had to sell her home. She had three children, one of reasonable means, two impecunious at the time. The one of reasonable means (George) spent £30,000 on a house for his mother (paid for in ready cash without borrowing), and it was purchased in their names as beneficial joint tenants (i.e. the survivor takes the whole property).

Very shortly before she died recently, Mother severed the beneficial joint tenancy, so that she could leave her half share in the property to her two other children, which she did by Will. The solicitor-mediator obtained the agreement of all parties that this severance was correctly legally documented. The house was now worth £300,000, and all three children were now entering retirement age.

George had expected £300,000 to come in from the house for his pension fund, and was suddenly £150,000 short. The other two were unexpectedly better off by £150,000 and needed it, as Mother well knew.

It was common ground that George should receive £150,000 (his share of the house). He then claimed an additional £150,000 from the estate, with pages of computer calculated schedules to justify each head of claim under what he alleged was the original agreement. George claimed an original verbal agreement of 20 years ago with his (late) Mother, that he would buy the property and take all of it on her death as surviving joint owner. Thus he claimed that her legally documented severance of the joint tenancy was in breach of her original contract.

The other two concluded that George could have back his original £30,000 investment, (as well as the agreed £150,000) but drew the line at giving him an extra £120,000, against their late mother's wishes. Anyway, they needed it and they did not believe there was such an original verbal agreement.

The problem for the parties was that they were seeing the difficulty from a completely different viewpoint. George saw the whole issue purely as financial. The others asked what

price you could put on love and caring? They could not subscribe equivalent cash, but they had put in more than equivalent daily love and care for their mother for years, whereas George had confined his help (in their view) to a one off cash payment he could easily afford. He was alleged not to have bothered much with his Mother's welfare after the house purchase. The others believed that personal and family relationships mattered not to George, but mattered a great deal to them.

What transpired in private sessions with the solicitor-mediator was that with incidents over the years, both sides had reached opposite conclusions. Frequently both sides said incredulously: "I can hardly believe he thought that. Why didn't he pick the phone up and sort it out with me?" In other words a breakdown of communication, getting steadily worse.

The solicitor-mediator himself had great difficulty in helping the parties to meet minds. The solicitor-mediator quizzed the lawyers for both sides in great depth on the legal issues. It was eventually conceded by both sides as "reality" that there was no dispute assurance on either side that a court would award (or not award, as the case may be), the sum claimed. Costs of the trial were agreed as likely to be extensive, and both parties had about the same estimates. But each believed it would win "hands down".

The lawyers for each party spent the time when the solicitor-mediator was with the other in private session, analysing the pro's and con's of the case, with the BATNA'S (Best Alternative to a Negotiated Agreement) and the WATNA'S (Worst Alternative to a Negotiated Agreement) examined in depth, bringing a realistic assessment of cost-benefits. The common-sense solution eventually agreed was largely as a result of the lawyers' hard work. The parties were not really inclined to move an inch. The solicitor-mediator was the catalyst to enable the parties to address the core issues, but it required constant re-defining of possible solutions to keep the mediation process "on the go".

George wanted to be at a business meeting some distance away by a particular time, and wanted a settlement before he went. Also, all parties were tired of the stress and were prepared to settle.

Eventually, the other two said to the solicitor-mediator that provided they felt that George understood what they felt about his alleged absence of filial obligations to Mother, they had done enough. Money was not the main issue for them. George recognised that they were

prepared to be flexible on this basis, and for a money settlement immediately, he could "horse-deal" his claim. So both sides did. But it took six hours to get to the point of starting to "horse deal".

The solicitor-mediator never knew whether both sides had reached their absolute limits, but both sides grudgingly expressed overall satisfaction with the package eventually agreed and signed on the day, and they saved the extensive costs of a trial which might have gone either way.