

## 17 QUESTIONS TO FACILITATE DISPUTE RESOLUTION

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I designed this paper to help you prepare for mediation or settlement and resolution of your dispute. Preparation is important to effectively mediate, settle and resolve difficult disputes – preparation will help you to evaluate the strengths and weaknesses of your position or case. You should provide complete answers to the below questions after you have given them careful thought. All parties to the dispute should consider these questions.

Thank you for reading these materials. I ask that you also pass this along to other people who would be interested as it is through collaboration that great things and success occur more quickly. And please also subscribe to my blogs (see below), and connect with me on LinkedIn and Twitter.

Disclaimer. Every case situation is different. You do need to consult with an attorney and other professionals about your particular situation. These materials are not a solicitation for legal or other services inside of or outside of California, and, of course, these materials are only a summary of information that changes from time to time, and do not apply to any particular situation or to your specific situation. So . . . you cannot rely on these materials for your situation or as legal or other professional advice or representation.

Blogs: California trust, estate, and elder abuse litigation and contentious administrations <http://californiaestatetrust.com>; D&O, audit committee, governance, litigation, investigations, liability, and risk management <http://auditcommitteeupdate.com>

Best to you,  
David Tate, Esq. – practicing in California only  
(and inactive California CPA)



1. In the order of importance to you (beginning with the most important), please list and describe, including important dates, each item for which there is a disagreement or dispute, including your views or positions, and, if you know or have a belief, the views or positions of the other party(s) to the dispute.

2. For each item discussed in number 1 above, describe conversations, documents, agreements, industry standards and other items that state and support your views or positions. You need to have copies of the important documents, and have them with you or have them easily available to you for settlement discussions.

3. For each item discussed in number 1 above, describe conversations, documents, agreements, industry standards and other items that tend to state and support the views or positions of the other party(s). You need to have copies of the important documents, and have them with you or have them easily available to you for settlement discussions.

4. For each item discussed in number 1 above, if you have been injured and/or damaged list each person and/or entity that caused or contributed to your injuries and/or damages; describe what each such person or entity did wrong that caused or contributed to your injuries and/or damages; and estimate the percentage of fault that you attribute to each such person or entity for causing or contributing to the injuries and/or damages.

5. For each item discussed in number 1 above, if it is claimed that you caused or contributed to injuries and/or damages, describe why you are not responsible for causing or contributing to the injuries and/or damages; list each person and entity who is responsible for causing or contributing to the injuries and/or damages; and estimate the percentage of fault that you attribute to each such person or entity for causing or contributing to the injuries and/or damages.

6. For each item of alleged injury and/or damage estimate the value or amount of each such injury and/or damage regardless of who you believe is responsible or at fault for causing or contributing to the injury and/or damage.

7. For each item discussed in number 1 above, describe the resolution offer(s) that the other party(s) has made (if any) to resolve or settle each item of dispute.

8. For each item discussed in number 1 above, describe the resolution offer(s) that you believe the other party(s) would be willing to make to resolve or settle each item of dispute.

9. For each item discussed in number 1 above, describe the resolution offer(s) that you have made (if any) to resolve or settle each item of dispute.

10. For each item discussed in number 1 above, describe the resolution offer(s) that you would be willing to make to resolve or settle each item of dispute.

11. For which of the items that you discussed in number 1 above do you believe that you are close to agreement or settlement with the other party(s)? Please list and discuss.

12. For each item discussed in number 1 above, describe the criteria that you would use to determine whether a settlement proposal is reasonable.

13. For each item discussed in number 1 above, describe or explain the award or remedy that you believe a judge, arbitrator or trier of fact will most likely give you if this dispute does not settle, and why you believe that a judge, arbitrator or trier of fact will give you that award or remedy. Include oral (testimony) and written (documents) facts and evidence, and, to the extent possible, the applicable law relating to the claims made and possible defenses available. You should also keep in mind that in every case there is also a lot more to consider including, for example, legal and evidentiary presumptions and implications, burdens of proof, evidence actually in hand or available and admissible, and witness and evidence credibility.

14. Describe how the other party(s) has been unfair to you. You may feel that you have already answered this question in your above responses. If so, please indicate. However, if you would like to provide further responses or if you would like to answer to this question with a different viewpoint or in a different manner than what you have already above, please do so.

15. Describe in detail each downside risk to you if resolution of each item in dispute is not achieved.

16. This question might call for a longer response. What additional information, if any, needs to be known or obtained to help you and the other party(s) achieve resolution? Your case history includes important past events—for example, things that have happened or that people have said or done, or perhaps events involving relationships and emotions. It would be most helpful if you would describe those and also indicate for how long those difficulties have been ongoing.

17. What else do you suggest should be done, or must be done or must occur, and what else can be done so that (1) you and (2) the other parties each reach the decision that they actually do want to reasonably resolve and settle the dispute and reach resolution of the items in dispute?

Best to you,  
David Tate, Esq.