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**Estates & Wills & Trusts**

## Appointing all your children as executors can be a mistake



By [Charles Ticker](#)

When I was drafting wills, my clients would quite often have difficulty in deciding whom they should appoint to be their executor. While they usually would appoint their spouse, when it came to appointing other alternate executors, they typically would tend to appoint all of their children. I would advise my clients that naming any more than two or three executors was a recipe for disaster as all executors must act unanimously. The problem can be avoided if the will provides for a majority rule clause that provides a majority of executors can make decisions on behalf of the estate.

A recent case in the Ontario Superior Court of Justice underscores the problems that can arise when all the children of the deceased are named as co-executors. The case involved the estate of Filippo Virdo. The deceased died on May 29, 2008 naming his four children as co-executors of his estate. All of the children, Onofrio, Anna, Maddalena and Domenic were entitled to share equally in the estate. As the will did not have a majority clause, all decisions with respect to the estate administration had to be made by the four of them unanimously. Madam Justice Greer of the Ontario Superior Court of Justice heard the case on September 11, 2013 and her [reasons](#) were released on September 19, 2013.

Her Honour noted that five years and four months after the deceased's death, the estate remained unadministered. In this case, the only complication was that the four children could not agree on the sale of the deceased's home.

Anna and her family had been living in the family home for nearly four years without paying any occupation rent. She was paying some of the expenses and had agreed to pay the property taxes but by the time this matter came on for hearing before Justice Greer, she had not paid the property taxes which were substantially in arrears. Accordingly, the property was at risk of being sold on a tax sale.

By the time, the parties appeared before Justice Greer, they had already appeared two or three times before other judges of the Superior Court.

Another judge had previously ordered that the home be listed for sale and that any of the siblings would have the right to make an offer at any time either before or during the listing. Anna had been previously given two weeks to make an offer to purchase before it was listed but failed to do so.

Anna also refused to cooperate with the listing agent. She would not leave the home during showings making



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some buyers uncomfortable and cancelled or refused eighteen of sixty-nine showings that the agent had booked.

The house was listed for \$949,000.00 and numerous offers in excess of the listing price were received but Anna refused to sign any of the offers.

Finally, Onofrio could take it no longer and brought this matter before the court seeking an order that Anna be removed as executor and dispensing with her signature on any documents to complete a sale. He also sought vacant possession of the family home so that the house could be properly cleaned. Apparently, Anna lived in the house not only with her family, but, with a number of cats which contributed to a somewhat unpleasant odour in the home. The agent recommended that Anna, her family and the cats vacate the property.

Justice Greer held that as an executor Anna had to act in the best interest of all the beneficiaries and not only her own best interests. The judge had no difficulty in finding that Anna was not carrying out her duties and was interfering with the administration of the estate.

Anna was removed as an executor and the requirement of her signature on any real estate documents was dispensed with.

Furthermore, the judge ordered Anna and her family to vacate the home within thirty days failing which the Sheriff was authorized to evict Anna and her family and the cats.

While the case may seem unique, I can attest to the fact that similar fact situations are seen in our office on a regular basis.

The *Virido* case underscores the importance of choosing your executors carefully and as well, to be wary about allowing executors or beneficiaries to occupy a home that forms part of the estate without an agreement in place that provides for payment of market rent and the term of the tenancy.

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