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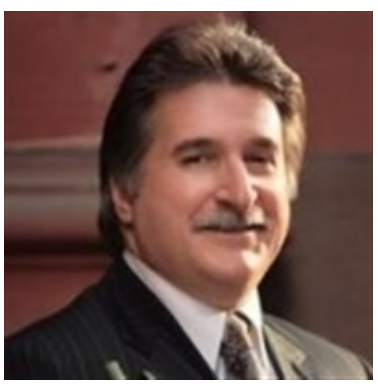
Dysfunctional sibling relationships delay estate administration

By AdvocateDaily.com Staff



Some siblings relationships are so dysfunctional that even majority clauses for multiple estate trustees won't keep the administration flowing, Toronto-area estates litigator and mediator Charles B. Ticker tells AdvocateDaily.com.

Ticker, who practises estates litigation and mediation at Charles B. Ticker Law Office, says parents are typically ill-advised to appoint all of their children as estate trustees if there is serious tension in the sibling relationship.

"They think they're doing right by the children by naming them all as executors, but it's going to cause a problem in the estate administration if they don't get along," he says. "Because decisions are supposed to be unanimous, it gives each child a veto that can result in serious delays."

If a testator is determined to appoint a number of children to the role, Ticker says many lawyers will advise them to insert a "majority rules" clause in order to mitigate the risk of any dispute.

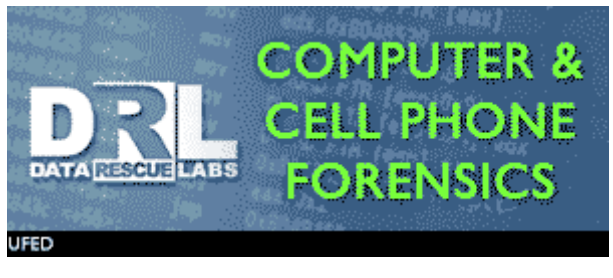
However, in one recent case involving three children appointed to administer their mother's modest estate, even that precaution failed to prevent the administration process from getting bogged down.

"The takeaway here is that if you have a dysfunctional relationship between siblings acting as trustees, even a majority clause may not necessarily save the day," Ticker says. "The majority were unable to freeze the other sibling out, and they had to move for an order removing him as trustee."

According to the decision, two of the three siblings appointed to administer their mother's estate applied to have their brother removed as trustee after he blocked the distribution of funds related to the sale of a property worth around $115,000, and objected to the payment of a $67,000 tax bill, which was delivered by the Canada Revenue Agency (CRA) in early 2016.

A judge agreed, noting that the brother's "inexplicable lack of co-operation" had allowed significant tax debts to go unpaid, accumulating penalties that were depleting the estate.

"I find that it is necessary to remove [the brother] as estate trustee … so that the balance of the administration of these estates can be completed in a timely fashion," the decision reads. "Judging from [the brother's] complete lack of co-operation over the past three years, it is reasonable to infer that he will continue to be unco-operative and hinder and delay the completion of the administration of these estates, contrary to the interests of all beneficiaries."



Ticker says the case would have been subject to mediation had it proceeded in Toronto, Windsor or Ottawa, where mediation is mandated under Ontario's *Rules of Civil Procedure*. Indeed, it would have been an ideal case for mediation because of the uncomplicated nature of the estate's assets and liabilities, as well as its modest size, he adds.

"Mediation might have helped them to reach a settlement out of court with fewer delays," he says.

However, Ticker notes that lawyers in other jurisdictions are increasingly taking advantage of amendments to the rules, which took effect in January 2016, allowing judges to order matters to mediation.

"I do some work outside Toronto, and I'm seeing experienced litigators agreeing to go to mediation, or seeking orders for it even in locations where it is not mandated," he says. "Hopefully these amendments are the first step towards province-wide mandatory mediation because, in my experience, it can save parties a lot of delays and grief."

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