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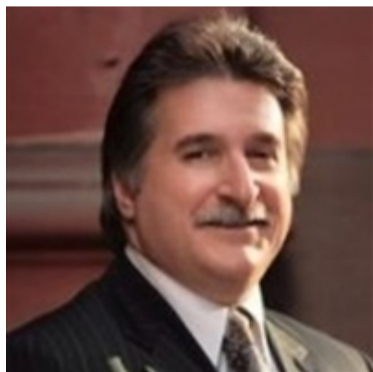
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Warring siblings make bad estate trustees

By AdvocateDaily.com Staff



Parents should think twice before appointing all their children as executors, 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 testators often feel compelled to treat their offspring equally both in terms of their inheritance, but also in their appointment as estate trustees, as a conflict-avoidance measure. But it may have the opposite effect depending on the family

relationship, he warns.

“When you treat children unequally in a will, that’s often a disaster, but equal treatment doesn’t always make sense either,” Ticker says.

For example, he points to a recent Ontario Superior Court [decision](#) — in which all five children were appointed trustees of their father’s estate — as a classic example of the danger in such an approach, especially when there is existing tension between siblings.

Following the death of their father in 2017, three siblings moved to have the other two removed as trustees.

“In the 15 months since their father’s death, the applicants and the respondents have agreed on very little, have had many occasions of conflict as between them, and haven’t accomplished much towards the administration of the estate,” the judge noted. “I need not review chapter and verse of all the complaints that flow in each direction. The important point is that it is crystal clear to me that the applicant siblings and the respondent siblings are unable to work together.”

In the end, he ruled it would be best for everyone if the application were granted.

“I am satisfied it is necessary to remove the two respondents as executors in order to allow the estate to be administered in an efficient and productive way for the benefit of all the beneficiaries,” the decision reads. “If the two respondents are dissatisfied with the way in which the applicants administer the estate, they are of course free to file objections when the applicants come to file for a passing of accounts.”

In most cases, Ticker says parents will know well ahead of time what kind of relationship exists between their children. If there are known tensions, he says it may be wise to appoint another trusted but independent person or even a corporate trustee to handle the administration of the estate.

“I can’t tell you how many cases where the costs are astronomical because siblings who never got along are all of a sudden required to work together,” he says. “It makes no sense to assume that things will go more smoothly after you’re gone.”



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In the Superior Court case, the father's will was signed more than two decades before his death and never revisited, during which time the judge noted, "Obviously a lot of water has gone under the bridge, much of it of a troubled nature."

If a testator is determined to appoint a number of children to the role of estate trustee, Ticker, who was not involved in the matter and comments generally, says a "majority rules" clause can help mitigate the risk of any dispute between them.

"Generally, the rule with multiple executors is that they must act unanimously, so if you have five siblings who can't agree on the time of day, then there is a good chance they won't be able to get anything done — even simple and important things like opening a bank account," Ticker says.

Otherwise, he says litigation seeking the removal of some trustees may be the only option for moving forward.

"You need to be very careful about who you appoint as a trustee because it's not easy to get rid of them," Ticker says. "When you've got a modest estate, a will challenge or any kind of litigation is going to eat into its assets and there may not be much left for anyone."

According to Ticker, the decision is also valuable for highlighting the potential problem with an unqualified "right-to-purchase" clause regarding the parent's home.

"It's another minefield because what happens if more than one child wants to buy the home?" he says.

In this case, the situation was complicated by the fact that one of the children still resided in the father's house and allegedly kept it in poor condition.

According to the decision, photographs showed it "in a state of disgusting disarray, with stacks of bottles and cans all over the house and garbage bags filling several of the rooms," while police were called at one stage to deal with continuing clashes between the siblings over access to the home.

"This may not be the last we hear of this estate in the court," Ticker adds.

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