

What You, As Beneficiary of Final Settlement of A Pennsylvania Estate or Trust, Should (And Should Not) Expect

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Estate and trust settlement in Pennsylvania can be simple or complex, depending on what needs to be accomplished by the fiduciary (executor, trustee, etc.) in the way of administration to bring matters into a position where final distribution can occur. Nevertheless, settlement of both the simplest and most complex estates and trusts is governed by a timetable provided by law for the filing of certain probate documents and/or death tax returns. Awareness and understanding of this timetable will hopefully serve to alleviate the common complaint of beneficiaries that settlement is taking too long.

Concerns of undue delay can also become exacerbated by a perceived lack of being adequately informed, all of which may lead to a generalized suspicion by the beneficiaries that the fiduciary is doing something wrong, and that something needs to be done about it. While this may be understandable, it is nevertheless a situation to be avoided if possible, because it undermines the ability of the fiduciary and beneficiaries to engage in the cooperation ultimately necessary to achieving a timely and cost-efficient resolution of matters.

So, how long should everything take?

Both Federal and Pennsylvania law provide for an initial nine-month period from date of death in which to file estate/inheritance tax returns. The same is true for required probate estate filings with the Register of Wills. The law presumes this to be a reasonable time frame, and so should you. Those deadlines may be *automatically* extended for an additional six months, which is not at all unusual.

You should never make the mistake of assuming that any supposed lack of estate or trust complexity will advance the general timetable. In fact, the opposite is true. The very first thing an estate or trust settlement lawyer does is diary the nine-month deadline date for calendar control purposes, and these critical dates on the lawyer's calendar build up, because every day is always nine months from someday. It would be foolhardy for the lawyer to attend to the easiest cases first, leaving the more difficult ones with the least amount of time to work on before the filing deadline. You should therefore assume that between nine and fifteen months will elapse before any required death tax return is even filed. After filing, returns take four to six months on average to be assessed / approved, and fiduciaries can not reasonably be expected to distribute an estate or trust before receiving tax clearance because they would be facing the possibility of additional tax being due without having the funds to pay it. Thus, for an estate or trust that has no unusual issues or problems, a "delay" of thirteen to twenty-one months is routine and doesn't signal anything being amiss. And note that the foregoing only takes into account death taxes, not income taxes.

Estates and trusts are taxpayers, too. Usually, the final administrative task of the fiduciary is the filing of final income tax returns. Although the return due date may vary, the returns can not in any event be filed before the tax return forms for the year have been released by the taxing authorities. Depending on the date of death, it could be several additional months after death tax clearance before the income tax returns can be prepared and filed.

I want to know everything that's going on. What should I expect?

Actually, not much. But again, you probably shouldn't worry about it. The law has traditionally imposed a duty upon fiduciaries to keep beneficiaries "reasonably" informed, but that (rather vague) traditional standard has been clarified through promulgation of laws and procedural rules that specify exactly what a fiduciary is required to do, and when. Provision is made for the giving of written notice to beneficiaries of the commencement of estate proceedings, and of the triggering event (usually a death) for changes of trusteeship or beneficiary entitlement. However, the notices don't tell you much more than who is in charge, who the lawyers are, and how to contact them. For estates, the notice also gives you the county and docket number. For trusts, you are notified that you have the right to be advised of its holdings, but only upon request and only on an annual basis. Estate and trust notices may appear in the newspapers, and public Audit proceedings for estates and trusts are also advertised, although very few estates and trusts go through the public Audit process. Estates (but not trusts) will have annual Status Reports filed with an expected completion of administration date or timeframe specified, but the fiduciary is not legally bound to comply with it. Thus, while none of the foregoing might seem particularly informative, it would be hard to argue that a fiduciary has acted unreasonably if the fiduciary has done everything that the law requires.

Until an estate or trust administration nears finality, neither the fiduciary nor the lawyers will be in any position to answer a question such as, "How much am I going to get, and when am I going to get it?" They simply don't know, so it isn't reasonable to expect them to answer. And, there is an additional reason why you should not expect much from the lawyers. Whatever duty there may be to be informative, it is the fiduciary's duty, not the lawyer's, and the lawyer's client is the fiduciary, not the beneficiaries.

The lawyers have their own duty of confidentiality that prevents them from discussing their representation of a client with third parties. Unfortunately, this often results in a Catch-22 situation where the beneficiary asks the fiduciary what's going on, and the fiduciary answers, "I don't know, the lawyers are handling everything. You'll have to talk to them." But then the lawyers refuse to discuss anything with the beneficiary for confidentiality reasons, again potentially creating an impression that something is amiss where nothing is.

Is there anything I can do about this?

Yes. Beneficiaries have one thing in their favor if they want information as to what has transpired during administration. It is a fact that a final and binding settlement cannot occur without their participation. Fiduciaries usually try to avoid the costly and time-consuming method of having an estate or trust formally settled through Audit proceedings. However, any less formal settlement method requires the beneficiaries' cooperation (usually the execution of a Receipt / Release Agreement), so a beneficiary can always refuse to cooperate unless and until the fiduciary provides copies of whatever financial records or court filings may be desired. While this cooperative refusal power will not likely cause any increase in lawyer/fiduciary communications in response to beneficiary inquiries and demands as administration proceeds, it is still "there when it counts" from a beneficiary's perspective, and this should allay any "silent treatment" concerns you might otherwise perceive.