

WHY HAVEN'T I RECEIVED MY INHERITANCE?

After a loved one dies, family members frequently have unrealistic expectations as to the steps that are necessary to complete the process of distributing the decedent's assets. Chief among them is the belief that the distributive plan developed for the decedent should be implemented immediately and the property dispersed to the beneficiaries. When the fiduciary, the executor or trustee, does not distribute property on this timetable, beneficiaries start pressuring the fiduciary to make distributions prematurely. This can lead to disastrous results and greater family disharmony.

The time it takes for the fiduciary to reach the point of being able to distribute assets is affected by the manner in which the assets that comprise the estate of the decedent were owned. If the decedent's assets were titled in his or her name individually, and not in a trust, a proceeding in Surrogate's Court is required regardless of whether or not the decedent had created a last will and testament. Where there is a will, a probate proceeding must be commenced by the executor nominated in the will. If there is no will, an administration proceeding is brought by the person(s) who wants to be appointed by the Court to administer the decedent's estate.

The amount of time it takes before the Court authorizes the executor or administrator to act on behalf of the estate can vary significantly. If the family is cooperative, there are no disputes and the all of the heirs are adults, the Court will generally authorize the fiduciary to act within two months of the filing of the completed petition. However, if the family members are uncooperative and not unified as to who should serve as the fiduciary, it could take years for the Court to render its decision. Moreover, even when the family cooperates, the process can be delayed for months if any of the decedent's heirs are minors or unknown. In such cases the Court must appoint a *Guardian ad Litem* to protect the rights of the minor or unknown heir. The *Guardian ad Litem* must investigate the estate

and the circumstances and render a written report to the Court. Only after the Court reviews this report is it able to authorize a fiduciary.

In contrast, if the decedent's property is owned by a trust, no probate or estate administration proceeding is necessary and the trustee's authority to act takes effect immediately upon the death of the decedent. By using a trust, delay that would have occurred in the Surrogate's Court is eliminated.

From that point, the duties of a trustee or the fiduciary of the decedent's estate are similar.

Family members often overlook the fact that, once the fiduciary is empowered to act, he is obligated to manage the affairs of the decedent. For example, the decedent's final income tax return must be filed for the last year or partial year of life. The estate may be large enough to incur federal or state estate taxes. Income or estate taxes that are owed to federal, state or local governments must be paid from the decedent's assets.

A premature distribution of the decedent's assets could leave the estate with insufficient assets to pay the taxes that are due.

Creditors of the decedent are also entitled to be paid - before the beneficiaries. Debt incurred during the decedent's life may continue to accumulate after the decedent's death. Expenses of the last illness and funeral of the decedent must be paid. Sometimes, the extent of the decedent's debt is not fully known until months after death. The fiduciary requires time to become familiar with the decedent's financial circumstances.

If the estate owns property, the fiduciary must continue to pay property taxes, insurance, upkeep and maintenance until the property is sold or disposed of otherwise.

A fiduciary who distributes the decedent's assets to the beneficiaries at the expense of the taxing authorities or creditors will be obligated to reacquire the property from the beneficiaries to make those payments. If the fiduciary cannot reacquire assets, he or she may be responsible to make

payments from their own funds. Eager beneficiaries looking to enjoy their inheritance may find the wait excruciating but the fiduciary is well-advised to avoid being caught with insufficient assets to pay the liabilities of the decedent.

Even after the payment of the estate's obligations is complete, the prudent fiduciary should refrain from making distributions. Instead, the fiduciary should prepare an Accounting which reflects the assets that have been marshaled during the administration of the estate, the income earned, the expenditures made and the proposed distributions. The Accounting provides each beneficiary with an opportunity to review the fiduciary's activities and, to the extent there are questions, a means to address them. The documentation proving the Accounting should be maintained and available if the beneficiaries wish to review it. Each beneficiary is entitled to know that they have received exactly what they were entitled to receive.

At Berwitz & DiTata LLP, we recommend that the fiduciary secure a release from each beneficiary, after the Accounting has been reviewed. The release confirms that the beneficiary had the opportunity to review it, is satisfied with the manner in which the estate was administered and with the calculation of the distributions. In short, it protects the fiduciary from liability arising from the administration of the estate and from a later claim by a disgruntled beneficiary. But it also protects the beneficiaries. If the beneficiaries will not sign a release, a more formal Accounting should be submitted to the Court for approval.

When beneficiaries make unrealistic demands, it can be helpful to have a meeting to ensure that all concerned are apprised of the circumstances and the process. When the process is transparent, the beneficiaries are often more patient. Sometimes a partial distribution can be considered. When the information is not shared, beneficiaries are apt to think the worst.

It is imperative for the fiduciary to have experienced counsel to advise and guide them through a process that has many potential landmines. At Berwitz & DiTata LLP, we are available to assist the fiduciary in all aspects of meeting their obligations. We are also available to represent beneficiaries who are concerned that a fiduciary is acting inappropriately.