

WHY DOES PROBATE FEEL LIKE IT TAKES SO LONG?

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The answer to the above is that it does not take any longer to perform the administration of an estate by means of probate or trust administration. The length of an estate administration is generally extended because of having to settle tax issues or family feuding.

Under normal circumstances the time line to complete an average estate administration is a minimum of 6 months to a maximum of 8 months. This is true for both trust and probate administrations. I often hear from clients that they had a previous experience where it took multiple years to complete an estate administration; however, when you dig into it, you find out that either the parties were waiting on an IRS letter to close an estate or the parties were arguing over estate assets or the validity of a Will. Unless these situations are resolved early in the administration, the estate proceedings could take months even years to eventually conclude.

The first-time line to be concerned about is getting the parties to an estate notified of it being administered. In a probate administration this is called a Notice of Administration. The Notice of Administration gives the recipient of such notice 3 months from receipt of the notice to object to the proceedings or the admission of a Will to Probate. This should be started following the issuance of the personal representative's Letters of Administration. Failure to do so could result in a disgruntled beneficiary from timely filing their objection to the estate proceedings as the estate is winding down and closing.

In the trust world the same type of notice is needed to identify the qualified beneficiaries, the successor trustee and that such successor trustee has accepted the position of Trustee. The notice will also include a copy of the trust for each party to review and determine if an objection to the proceedings is needed. If a properly drawn up notice is prepared and sent to the qualified beneficiaries, said beneficiaries will have six months to file an objection with the circuit court. Thus, a trust proceeding may take as long as six months before it can effectively close.

The personal representative will have 4 months following the issuance of the Notice of Administration to file a petition to determine if any of the decedent's property is exempt from creditor claims. Alternatively, the personal representative may have 40 days after the date of termination of any proceeding involving the construction, admission to probate or a question challenging the validity of the decedent's will or other matter affecting any part of the estate. Failure to file for an exemption will cause the beneficiaries to have waived their right to such exemption.

The next timeline is the notice to creditors. This proceeding generally begins following the appointment of a personal representative. The notice consists of the publication of a such notice in the newspaper two times over a two-week period. The creditor period runs for 90 days. However, it is not a requirement to file a probate just to notice the creditors of a decedent's death. Failure to do so is not catastrophic, but not publishing the notice will cause a decedent's real estate not to be eligible for title insurance should it be sold. Alternatively, a family could

wait two years from the date of death to file for the administration of the estate. But, by publishing the notice to creditors eliminates those creditors who fail to timely file

For creditors, they must file a claim against an estate within 90 days of the publication notice or within 30 days once they receive notice via the mail. What is important to know is when the creditor was noticed. This can be determined by using certified mail with a return receipt. Failure by the personal representative to not serve notice on a known creditor could give such creditor the right to extend the time to file a claim, provided two years from the decedent's death has not passed when all creditors are barred from filing a claim. Worse, intentional failure to service notice on a creditor may cause the Personal Representative to be personally liable for the claim.

Once the Letters of Administration are issued to the personal representative, the clock starts ticking giving the executor of the estate 60 days to file an estate's inventory. Failure to do so could jeopardize the personal representative's right to continue to serve in such role. In the trust world, the successor Trustee must also serve the estate's trust inventory to the qualified beneficiaries within a reasonable time following the Trustee's acceptance of serving as Trustee.

The personal representative can be forced to pay, deliver any devise, distributive share or surrender possession of any land to a beneficiary following the fifth month after the Letters of Administration were issued. The personal representative is also charged with filing a final accounting and petition for discharge (which equates to closing the estate) within 12 months from the date the Letters of Administration are issued. Of course, this deadline can always be extended provided there is good cause to do so, such as litigation or an estate which is taxable.

Should a beneficiary object to the closing of an estate because they believe there has been misappropriation of assets or excessive fees charged by the attorney or personal representative, he or she must file their objection with the court within 30 days of receiving Notice from the Personal Representative of the estate's closing. The same objector will then have 90 days to arrange for a hearing concerning their objection. Should the 90 days come and go and no hearing is scheduled by the objector, the estate automatically closes.

Spouses that were not included in a decedent's Will have 6 months following their receipt of the Notice of Administration to file for an elective share or two years following the spouse's death whichever is earlier. The spouse will also have 6 months from the date of death to file a notice and record their election to take the decedent's homestead property as a tenant in common with the deceased spouse's beneficiaries. Failure to record and file such notice, causes the spouse to automatically take the property as a life estate with a remainder to the deceased spouse's descendants or heirs.

As you can see, the above are just a few of the major milestones (but not exhaustive) that must be managed during an estate administration. Failure to properly manage these milestones may result in litigation and loss of a benefit to a beneficiary. As stated at the beginning of this article, an estate normally takes 6 to 8 months to complete provided at least the above referenced milestones are met. When one milestone fails to be met, the administration of an estate can drag on for months. If you are concerned about the status of your estate proceedings, contact your

lawyer and discuss how the administration of your loved one's estate is coming along. Stay on top of the timelines and don't be afraid to ask questions.

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