WHAT FACTORS AFFECT THE DISTRIBUTION OF AN ILLINOIS INHERITANCE?

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ROBERT N. NASH
ILLINOIS ESTATE PLANNING ATTORNEY
The death of a family member or loved one is typically an emotional period of time for everyone involved. Once the immediate shock of the death passes, however, the legal and practical repercussions of the death start to settle in, with one of those being the distribution of the decedent’s estate assets.

If you are an heir to the estate, or believe you are a beneficiary of the estate, you may wonder how long it will take you to actually receive your inheritance; however, you may also be reluctant to ask as it may seem inappropriate or callous.
The reality though is that you do have a right to know when you should expect your inheritance. The problem is that there are so many factors that can influence the time it will take before estate assets can be distributed it may be difficult to provide you with an accurate timeline. Consulting with the estate planning attorney representing the estate is the best way to get a general idea of how long it will take before assets can be released from the estate. In the meantime, it may help you to understand the probate process better and the factors that will impact how long that process takes. The answers to the following questions may help you determine how long it will be before you receive your inheritance.
1. **What Is Probate?**

Probate is the legal process that follows the death of an individual. Probate is intended to fulfill several purposes, including:

A. Identifying, locating, and valuing all assets owned by the decedent at the time of death.
B. Notifying and paying creditors of the estate.
C. Ensuring that state and federal taxes are paid
D. Transferring estate assets to heir or beneficiaries

2. **What Type of Probate Will Be Required?**

One major factor in determining how long the probate process in Illinois will take is which type of probate is required. If the total value of the estate is less than $100,000 (as of 2015), the estate does not have claims against it, and the estate does not contain real property the estate may use the “small estate affidavit” process in lieu of formal probate. If formal probate is required or requested it may use “supervised” or “limited supervision.” When limited supervision is
chosen the probate court typically only reviews the final accounting filed with the court whereas a supervised probate requires the probate judge to be more involved with each step of the probate process, thereby taking more time as a general rule.

3. DOES YOUR INHERITANCE CONSIST OF PROBATE OR NON-PROBATE ASSETS?

Even if the estate requires formal, supervised probate you may still be in luck if the assets that make up your inheritance are not included in that process. Not all assets are required to pass through probate. Assets that do not need to go through probate can be distributed to the intended beneficiary shortly after the death of the decedent. Some common non-probate assets include:

A. Proceeds of a life insurance policy

B. Property co-owned as “joint tenants with rights of survivorship”
C. Assets held in a trust
D. Assets held in an account designated as “Payable on death (POD)” or “Transfer on Death (TOD)”

4. Did the Decedent Leave Behind a Valid Last Will and Testament?

If the decedent left behind a valid Last Will and Testament the estate is referred to as a “Testate” estate. If the decedent failed to leave behind a valid Will the estate is an “Intestate” estate. If the decedent died intestate the Illinois laws of intestate succession will be used to determine what will happen to the decedent’s estate assets. It will often take longer to probate an intestate estate than a testate estate because the legal heirs of the estate must first be identified and then located. This alone can slow down the probate process considerably.
5. Has Anyone Challenged the Will?

Sometimes, a Will contest is filed by a beneficiary or potential heir of the estate. When that happens it effectively brings the entire probate process to a halt until the challenge has been litigated. The reason for this is that if the Will submitted for probate is found to be invalid it changes how the assets are handled. Therefore, the Will must be found to be valid or invalid before things can move forward.
6. **Does the Estate Have Creditors?**

The number and extent of creditor claims against the estate will impact how long it takes to probate the estate because each claim must be reviewed by the Executor/Personal Representative and either denied or approved. If approved, the claim must be paid out of estate assets which can require the sale of estate assets if the estate lacks liquidity. *It takes a minimum of six months for any estate to go through formal probate because the law allows creditors that long to file claims against the estate.*

7. **How Valuable Is the Estate?**

As a general rule, the more valuable the estate assets and/or the more complex the assets are the longer it will take to probate the estate. One
reason for this is that all property, real or personal, tangible and intangible, must be inventoried and valued as of the date of death of the decedent.

8. Do the Beneficiaries/Heirs Get Along?

Why would this matter? Because it is sometimes necessary to make decisions about how state assets will be divided among heirs when general bequests are made. For example, the decedent’s Will may have directed that you and your siblings split the estate equally; however, that cannot be done precisely without selling assets and splitting the money for the sales, which will take time and may result in the loss of family heirlooms or sentimental assets. If, however, the beneficiaries or heirs can work issues such as this out amongst themselves, the sale of assets can be avoided, thereby moving the probate process along.
9. **Who Is the Executor?**

Unfortunately, people often fail to understand the importance of their appointment of an Executor when they create their Will. The Executor, however, oversees the entire probate process, albeit with the help of an estate planning attorney most of the time. A competent and aggressive Executor will ensure that the probate process moves along as efficiently and as expeditiously as possible, highlighting the need to appoint the right person for the job.

Each one of these factors can have a significant influence on the amount of time it takes a beneficiary or heir of an estate to receive his or her inheritance. If you would like a more specific opinion on the time frame within which you can expect to receive your inheritance, consult with the attorney for the estate in question or with your own Illinois estate planning attorney.
REFERENCES:

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About the Author

Robert N. Nash

Robert N. Nash is a partner in the law firm of Nash Nash Bean & Ford, LLP. The law firm has offices in Geneseo and Moline, Illinois and conference facilities available throughout Northwestern Illinois. Mr. Nash chose the estate and business planning arena because he believes it provides a positive force in his clients’ lives. He practices preventative, rather than remedial law. Robert Nash focuses on all aspects of estate planning, including estate, gift and income taxes, trust and probate administration, real estate, and business.

Nash Nash Bean & Ford, LLP
www.nashbeanford.com

Geneseo
445 US Highway 6 East
Geneseo, IL 61254
Phone: (309) 944-2188
Fax: (309) 944-3960

Moline
5030 38th Avenue, Suite 2
Moline, IL 61265
Phone: (309) 762-9368
Fax: (309) 944-3960