

The Executor Won't Distribute an Estate – What Can I Do?

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A common problem in many estates is the executor's failure to promptly settle an estate or make distributions to the beneficiaries. Delays in settling an estate can have many causes, including inattention by an executor, failure to take action where required, and mismanagement. In some cases, the delays are a sign of more serious problems, such as self-dealing or an intent to deprive the beneficiaries of their inheritance.

If you are a beneficiary of an estate, you have a right to compel the executor to settle an estate and make distributions to you.

New Jersey law requires an executor to take action to settle an estate. N.J.S.A. 3B:10-28 provides that an executor "shall proceed expeditiously with the settlement and distribution of a decedent's estate and do so without adjudication, order, or direction of a court...."

Similarly, N.J.S.A. 3B:10-23 holds that an executor "is under a duty to settle and distribute the estate of the decedent in accordance with the terms of [the will] and applicable law, and as expeditiously and efficiently as is consistent with the best interests of the estate...."

An executor must undertake these responsibilities subject to a fiduciary duty to the estate. This includes a non-delegable duty to collect and preserve the estate. As the fiduciary of the estate, an executor owes a duty to act on behalf of the estate, and not for the executor's personal interests. In the management of estate assets the executor must abide by the principle that an executor acts primarily in the interest the estate and its beneficiaries.

A beneficiary of the estate has legal rights to hold an executor to these standards. The beneficiary's rights include seeking the removal of an executor from office, and court oversight of the estate administration, and sanctions. Often, without action by the beneficiaries the executor will continue to do little or nothing to administer an estate. It is important that action be taken to enforce these rights as quickly as possible. The longer the delays, the more likely waste and damage may affect an estate. The first step is to know your legal rights and the options that best fit your situation.

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