Why can’t I get an advance on my inheritance?

In short: the law doesn’t allow an executor to pay out an inheritance until the estate is finalised. Until then, your inheritance stays safely invested and earns interest, which you receive with the capital.

We understand that waiting is frustrating, especially when you know that money is coming to you. Heirs often ask us whether part of their inheritance can be paid out in advance. This article explains why we cannot do that, and what happens to the money while you wait.

Why does winding up an estate take so long?

An executor must deal with several offices and institutions, each with its own processes and backlogs:

- **The Master of the High Court**: Appoints the executor and later approves the liquidation and distribution account. Each step can take months.
- **The South African Revenue Service (SARS)**: Assesses the deceased’s final returns and the estate’s own returns, and confirms that all taxes, including Estate Duty and Capital Gains Tax, are paid.
- **The municipality**: Must issue a rates clearance certificate before fixed property can be transferred (section 118 of the Local Government: Municipal Systems Act 32 of 2000).
- **The Deeds Office**: Registers the transfer of property to the heirs or a purchaser.
- **The banks**: Close accounts, release funds to the estate, and handle bond cancellations and registrations.

The law also sets fixed waiting periods to protect creditors and heirs:

1. Creditors get at least 30 days after notice in the *Government Gazette* and a local newspaper to lodge claims (section 29 of the Administration of Estates Act 66 of 1965).
2. The executor prepares the liquidation and distribution account, showing

the estate's assets, liabilities, costs and division among the heirs (section 35(1)).
3. After the Master's examination, the account lies open for inspection for 21 days, during which anyone with an interest may object (sections 35(4) and 35(7)).

The executor cannot speed up these steps, and a delay at any one office holds up the whole estate.

When may the executor pay out to the heirs?

The executor may pay out estate funds to the heirs only once **all three** of the following requirements have been met:

1. **The liquidation and distribution account has lain open for inspection** for the full period required by law.
2. **No objections have been lodged**, or any objections lodged have been dealt with and finalised.
3. **SARS has issued a tax clearance certificate** confirming that all taxes owed by the deceased and the estate have been paid.

Only after this may the executor pay the creditors and distribute the balance to the heirs in accordance with the account (section 35(12) of the Administration of Estates Act).

This order exists for a reason. Until the account has been finalised, nobody knows for certain what each heir will receive. A late creditor's claim, a tax assessment, or another heir's objection can change the figures.

Why can't we pay an advance?

An executor who pays out to heirs before these requirements are met becomes personally liable if the estate later turns out to be short.

The risk is real. Suppose, for example, that SARS issues an additional tax assessment after an advance has been paid, or that a creditor proves a claim late. The estate may then not have enough money left to pay it. In that case, the executor must make good the shortfall from his or her own pocket. Tax law expressly holds an executor personally liable for tax if estate funds are paid away while tax is still outstanding (section 155 of the Tax Administration Act 28 of

2011).

Recovering money from an heir who has already spent it is difficult, expensive and often impossible.

For this reason, and to protect all heirs equally, our firm does not make advances on inheritances before the estate is finalised. We apply this rule consistently in every estate, however strong the need, so that every heir is treated fairly.

Your inheritance keeps working while you wait

The money is not standing still. **All funds in the estate's bank account are invested in an interest-bearing account** in the estate's name, as the Administration of Estates Act allows (section 28).

The estate owns the interest earned. When the estate is finalised, the executor pays out the interest to the heirs **together with the capital**, in proportion to each heir's share. A delay therefore does not mean that you lose out: your inheritance grows while the estate is being wound up.

We will keep you informed of progress, and we will pay out your inheritance as soon as the law allows.

Volker Krüger

This article contains general information only and is not legal advice for any particular estate. Please contact our office for advice on your specific situation.