

Extrajudicial Settlement with Waiver of Rights: Tax Implications

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An **extrajudicial settlement of estate** with a waiver of rights is one of the ways to transfer a Philippine estate to the appropriate heirs, but it can be a little confusing. There are so many documents needed.

There is also a lot of information and coordination required.

To make things clear and simple, I'll give you an overview of how estates are settled in the Philippines and discuss things simply but comprehensively.

In this article, I discuss:

- What is an Extrajudicial Settlement with of Estate in the Philippines?
- What are the taxes applied on an Extrajudicial Settlement with Waiver of Rights?
- What is the process to settle an Extrajudicial Settlement with Waiver of Rights?
- Real life Challenges and Solutions in Extrajudicial Settlement with Waiver
- Frequently Asked Questions

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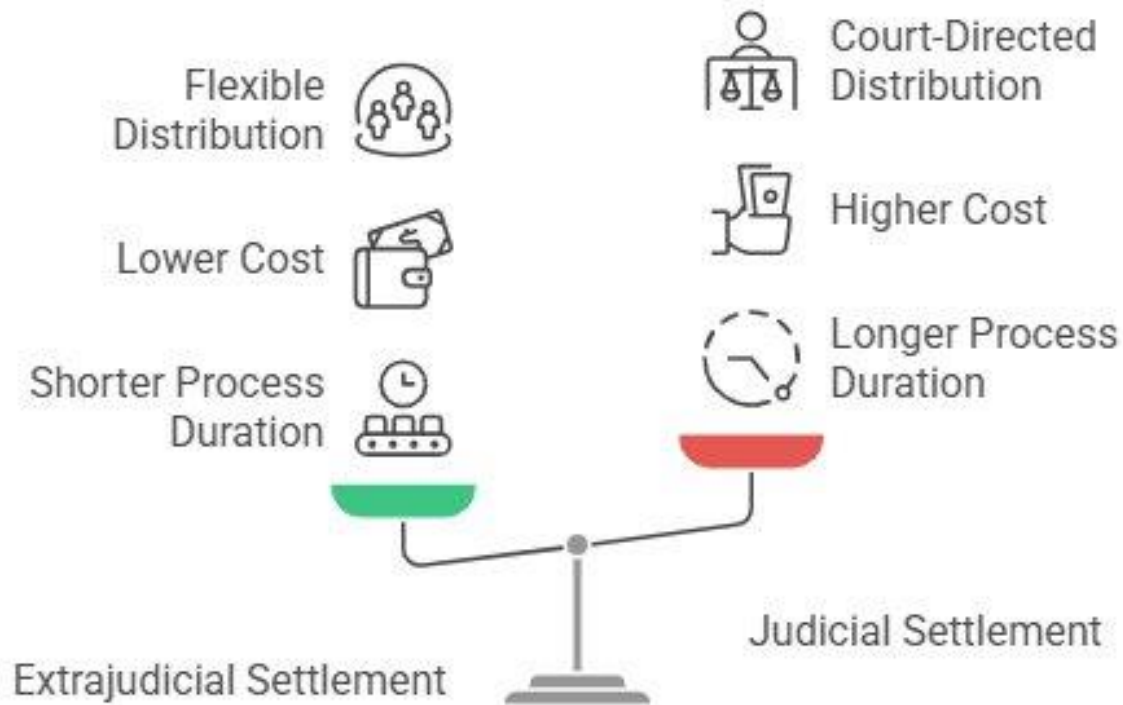
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What is an Extrajudicial Settlement of Estate in the Philippines?

Choose the right settlement for your estate.



An extrajudicial settlement of estate is when the heirs do not need the court to determine the distribution of assets.

An extrajudicial settlement of estate is the legal process that is undertaken based on [Rule 74 of the Rules of Court](#) to settle the estate and transfer the inheritance to the heirs.

It has the following benefits:

- A shorter process as court is not required
- Less cost since this is settled out of court
- The heirs may distribute the estate amongst themselves as they see fit so long as they all agree. This cannot be done while the estate owner is still alive

Because it has clear advantages over a judicial settlement of estate, it is often encouraged when the heirs agree.

In the next section, I'll compare Extrajudicial Settlement vs Judicial Settlement, which is the other main way to settle an estate.

Extrajudicial Settlement with Waiver Vs Other Estate Settlement Methods

An extrajudicial settlement has advantages over other estate settlement methods, but sometimes judicial settlement cannot be avoided.

Judicial estate settlement is usually undertaken when:

- There is a valid will
- There is conflict between the heirs

Judicial settlement of estate is defined in Articles 774 to 1105 of Civil Code of the Philippines.

It is often done when the heirs are quarelling.

It is also resorted to when a will or a provision in the will may be in dispute.

In these cases, only the judge may be able to determine how the estate is settled but it is a costly and long process, as the filing fee is 2% of the properties involved aside from legal fees and expenses.

When we at FCB draft a will, we encourage its probate while the testator is still alive. If a will is probated while the testator is still alive, then the court case itself is much smoother and can help avoid quarreling heirs.

What are the kinds of Extrajudicial Settlements of Estate documents?


An Extrajudicial Settlement of Estate is a document that identifies the deceased and his property and lists his heirs.


There are several kinds of Extrajudicial Settlement of Estate documents, which are used depending on the situation.

- Extrajudicial Settlement of Estate
- This document is used when there are multiple heirs in agreement of how to divide the estate who wish to transfer the estate to their names.
- Extrajudicial Settlement of Estate with Deed of Sale
- This document is used when the estate is settled and sold at the same time.

- Deed of Sole Adjudication
- This is used when there is only one heir.
- Extrajudicial Settlement of Estate with Waiver
- This document is used when the estate is settled and an heir may donate his share to another or completely give up his inheritance.

I've written on all of the above topics before in-depth so I'll focus instead on an Extrajudicial Settlement of Estate with Waiver, and go through that in depth.





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What is an Extrajudicial Settlement with Waiver of Rights?

An Extrajudicial Settlement of Estate with Waiver of Rights is a legal process document that settles the estate of a deceased person and transfers it to the names of the new owners, and is used when one or more of the heirs waives all or part of his share. An Extrajudicial Settlement with Waiver of Rights must have following legal requirements:

- Information of the deceased
- Identification of the all heirs
- List of the real estate or other properties
- Division of the properties
- Signature of the all the heirs
- Proper notarization of the document by a notary public

All of the above are needed so that the document can be submitted to the BIR. One major thing to note is that this type of estate settlement requires all the heirs to be in agreement.

In our practice, one of the major stumbling blocks to even creating the document is that the heirs disagree as to how the property should be divided.

When the heirs disagree, then the entire estate settlement no longer is possible. Furthermore, the information should be complete and precise.

When the information conflicts – for instance, when there are misspellings in the primary identification documents or when the property information is conflicting, it can be difficult to correct. In those situations, settling the estate takes a lot more time and effort.

What are the documents required for an Extrajudicial Estate Settlement with Waiver?

An Extrajudicial Estate Settlement of Estate with Waiver in the Philippines requires supporting documents that prove the ownership of the properties and the relationships between the heirs.

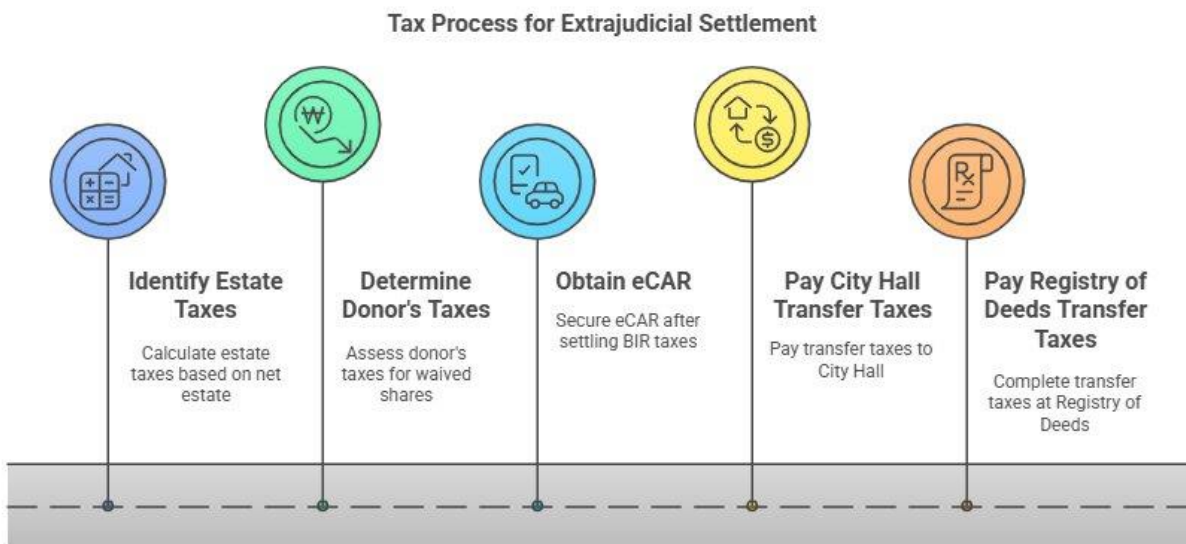
- Death Certificate of the deceased
- Birth Certificates, Marriage Certificates and IDs of the heirs
- Adoption Certificates, as required
- Property Ownership documents such as Land Titles and Tax Declarations
- Stock certificates, if applicable
- LTO Registration for cars and other vehicles, as applicable
-

These documents are required to settle the estate and then transfer the properties to the heirs.

However, it is possible to settle the estate at the BIR and then transfer the properties at a later time.

The primary benefit of doing this is to stop the increase of estate taxes (estate taxes increase every year that the estate is not settled) and so can actually save you money even if you might need to do the transfer later on due to missing documents. This strategy is especially used when property documents such as the Original Land Title may be missing.

What are the taxes applied on an Extrajudicial Settlement with Waiver of Rights?



An Extrajudicial Settlement of Estate with Waiver of Rights has the following taxes at the BIR, City Hall and the Registry of Deeds:

- Estate Taxes at the BIR
- Estate taxes are 6% of the net estate on the zonal or market value of the properties whose decedents passed on or after January 1, 2018. Previously the amount of estate tax was anywhere from 5% to 20% depending on the net value to be settled. There is estate tax amnesty to encourage the settlement of estates whose decedents passed on or before Dec 31, 2027 but this expires Jun 14, 2025.
- Donor's Taxes at the BIR
- Donor's Taxes can apply for estates that have heirs that waive their share. The amount of donor's tax depends on the amount being waived and whether that share has been waived in favor of a particular heir. This can get a little complicated, so it is best to talk to a Philippine estate lawyer for legal advice regarding your particular situation.
- Transfer Taxes at City Hall
- When the Estate Taxes and Donors Taxes at the BIR have been settled, the BIR releases an eCAR. This eCAR will then allow the City Hall to transfer the Tax Declaration to names of the heirs name upon the payment of the transfer taxes. The transfer taxes vary depending on the city and can be 0.75% or more. These transfer taxes are applied on the current market value of the property and they can be very hefty – it's another reason why we here at FCB Law tend to encourage early settlement of estates.
- Transfer Taxes at the Registry of Deeds
- In addition to transfer taxes to transfer the Tax Declaration, there are also transfer taxes to transfer the land title. These transfer taxes are paid at the Registry of Deeds.

As you might imagine, these estate taxes can pile up.

One of the main reasons why people are not able to settle estates is the fact that estate taxes and the associated transfer taxes can be a lot of money, which is why people often ask a great deal about this.

In the case of an Extrajudicial Settlement with Waiver of Rights, the above Donor's tax may or may not apply depending on the situation. Let's dig into this a little more.

What are the Donor's Taxes that apply on an Extrajudicial Settlement with Waiver of Rights?

In the Philippines, whether there is a donor's tax in an extrajudicial settlement of estate with waiver of rights depends on the situation.

Usually, if an heir gives up their inheritance in favor of other heirs and does not name someone to take their share, it is not taxed as a donation.

This waiver is mostly seen as giving up the inheritance, not as making a donation. However, if an heir gives up part of his inheritance in favor of a specific heir, then donor's taxes may be levied.

Things can get complicated if a specific heir benefits from the share that is given up. In these situations, the Bureau of Internal Revenue (BIR) may look closely at the deal as a possible donation, which could lead to a donor's tax.

Also, if anything is exchanged for the waiver, it is likely to be seen as a taxable donation, even if this is noted in the deed of settlement.

How much are Donor's taxes for an Extrajudicial Settlement with Waiver of Rights?

In the Philippines, if an extrajudicial settlement of estate with waiver of rights falls under the purview of donor's tax, the tax rate is calculated based on the net value of the donated property or the amount of consideration received in exchange for the waived inheritance rights.

The amount of donor's tax varied depending on a graduated table.

However, the TRAIN law fixed the donor's tax to 6% over any annual gift of Php 250,000.

For instance, if a waiver results in a sibling receiving an additional parcel of land valued at PHP 1,000,000, donor's tax would be applied to the amount exceeding PHP 250,000.

What is the process to file an Extrajudicial Settlement with Waiver of Rights?

The process for filing an extrajudicial settlement of estate with waiver of rights in the Philippines is as follows:

- Document gathering of the family and property documents
- Drafting of the Extrajudicial Settlement with Waiver of Rights
- Submission of the Extrajudicial Settlement with Waiver of Rights at the BIR
- Payment of the Estate and Donor's Taxes
- Registration of the Extrajudicial Settlement at City Hall and RD

The process itself takes about a year if the documents are readily available and do not have errors.

The process can take longer if there are missing documents or documents where the information conflicts with another document.

Some common examples are:

- Incorrect spellings of the names of heirs among various documents
- Tax Declarations not transferred to the deceased
- Land Titles that were not transferred after there was a Deed of Sale

In these cases, further documents might be needed or corrections might need to be done.

Another reason the process takes so long is that each step is manual as there is no online process for this, in addition to further requirements at each stage of the process such as a heirs bond or publication in a newspaper of general circulation.

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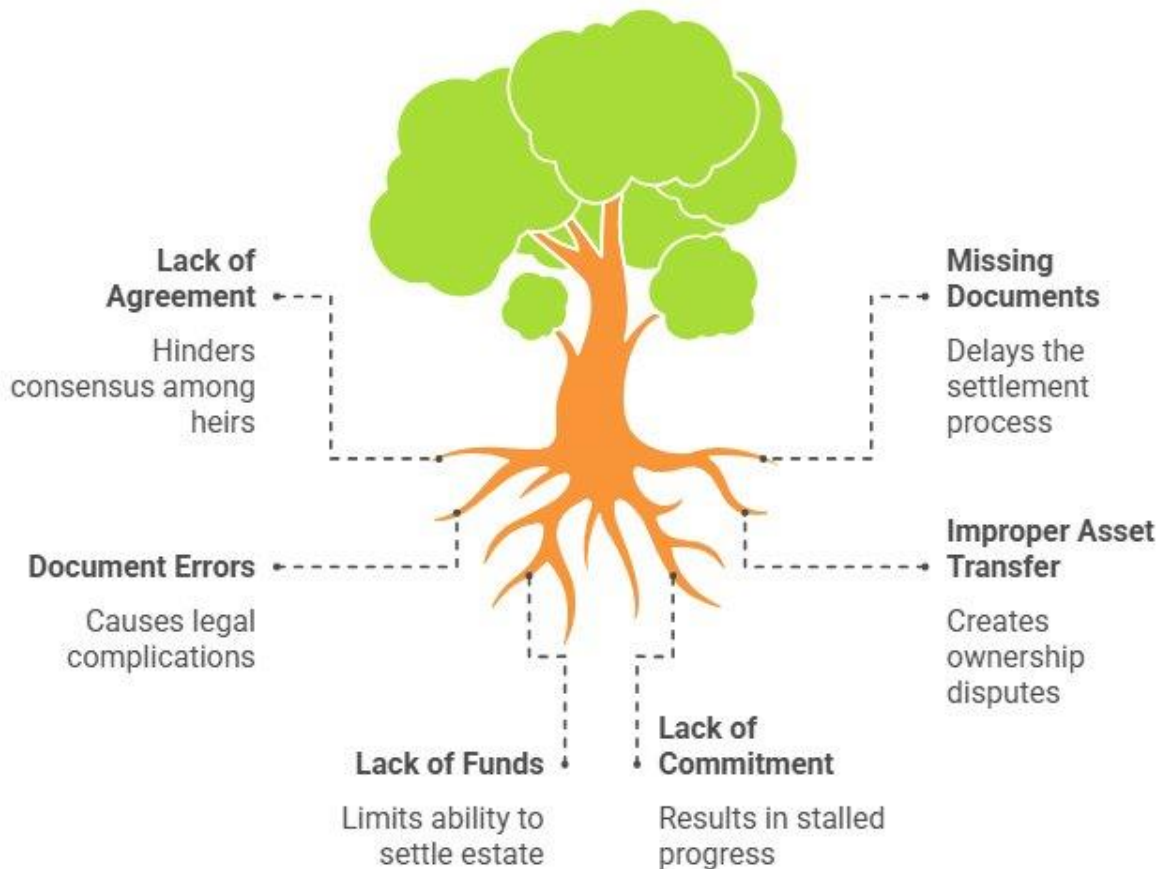


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Real-Life Challenges and Solutions in Extrajudicial Settlement with Waiver

Challenges in Extrajudicial Estate Settlement



Real-life challenges in the extrajudicial settlement of estates often prevent the estate from being settled.

In our practice, we've often had inquiries from people who were not able to settle the estate immediately.

Their reasons were:

- Lack of agreement between the heirs
- Missing documents such as lack of Original Land Title
- Documents with errors such as severe misspellings of name of an heir
- Improperly transferred assets, for instance a tax declaration that was not transferred even if the title was
- Lack of funds
- Lack of commitment

Transferring an inheritance really requires everyone to be in agreement, and for a there to be a commitment and enough funding to see it through.

It will take several months and in some cases years, and all the documents must be in order.

Because of how exacting the government is around this, documents must be complete and without errors as much as possible.

These are often rather difficult for families to do, so often times people start the process and then stop somewhere in the middle.

Check to see where you and your family are – it's good to be organized and in agreement before you start.

Frequently Asked Questions

1. Where do I file an Extrajudicial Settlements with Waiver of Rights?

In the Philippines, you usually file an Extrajudicial Settlement of Estate with Waiver at the BIR where the decedent lived before he passed away or where decedent's real property is found.

2. When do I file an Extrajudicial Settlement with Waiver of Rights?

The Extrajudicial Settlement of Estate with Waiver should be filed at most a year after the deceased has passed away. If it is filed after a year, then late fees are levied for each year that the estate is not settled.

3. What are the taxes that apply to an Extrajudicial Settlement with Waiver of Rights?

In the Philippines, the main taxes are Estate Tax and possibly Donor's Tax, depending on the type of waiver made. There are also transfer taxes when the property is transferred to the new heirs.

4. How much is donor's tax for an Extrajudicial Settlement with Waiver of Rights?

Donor's tax is 6% of any amount over the annual allowed gift of Php 250,000. Donor's tax may or may not apply depending on the type of waiver done.