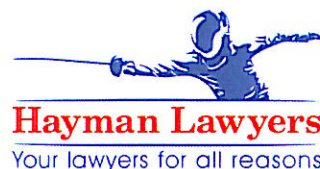


Executors' liability periods



- 1 Executors often want to be helpful to beneficiaries and distribute funds as soon as the money is available. However, this can be risky. We usually recommend that no funds are distributed to beneficiaries until the executors are satisfied that there are no **claims** against the estate and no unpaid **creditors**.
- 2 Examples of **claims** include claims from family members under the Family Protection Act for further provision from the estate, or claims by people who think the deceased promised that they would receive something on his or her death.
- 3 The Administration Act states that executors will not be liable for distributing any part of the estate to the beneficiaries if distributions are made six months after the grant of probate and if, at that time, the executors have not received notice of any claim affecting the estate.
- 4 **Creditors** are different from claimants. They are people to whom the estate owes a debt. Creditors have up to six years from when a debt was incurred to file court proceedings, so it is important to check if any creditors exist before distributing funds.
- 5 The Trustee Act provides a procedure for protecting executors against unknown claims from most creditors (there are some exceptions). It requires an advertisement to be published in the localities where potential creditors may reside, asking creditors to send details of their claims to the executors within the notice period specified in the notice. The notice period must be at least one month if the advertisement is published in New Zealand or at least two months if it is published overseas.
- 6 We recommend that executors consider whether to follow that procedure for their estate.
- 7 Executors may consider that claims and creditors are unlikely, and instruct the estate to be distributed immediately and without advertising. We recommend that they should only do so if the beneficiaries of the estate sign an indemnity stating that, if any claims arise, the beneficiaries will refund sufficient funds to settle the claims.
- 8 Executors could choose to make partial distributions if significant other assets or funds can be held until the end of the six-month period for claimants to come forward.
- 9 This is an important responsibility for executors to be aware of. We know of a case where executors were ordered to pay thousands of dollars from their own pockets because they lost the statutory protection by distributing before they should. Please consult us if you require assistance or advice before you make a decision to distribute.

Hayman Lawyers
Barristers & Solicitors
www.haymanlawyers.co.nz

April 2016

Level 10, Greenock House,
102 Lambton Quay/
39 The Terrace, Wellington
PO Box 204, Wellington 6140
Telephone: +64-4-472 0338
Fax: +64-4-471 2212

