



Hayman Lawyers

Your lawyers for all reasons

Executor's Liability Periods

1. 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 that may apply are those from family members under the Family Protection Act for further provision from the estate and claims by people who consider that the deceased has breached a promise that they would receive something on his or her death.
3. The Administration Act provides 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 in a different category from claimants and have up to six years from when a debt was incurred to file court proceedings. It is important to also find out if any creditors exist before funds are distributed. The Trustee Act provides a procedure for protecting executors against unknown claims from most creditors (there are some exceptions) and we recommend that executors consider whether the procedure should be followed for their estate.
5. The Trustee Act requires an advertisement to be published in the localities where potential creditors may reside, requesting 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. Executors may consider that claims are unlikely, and instruct the estate to be distributed immediately and without advertising. We recommend that executors only do so if the beneficiaries of the estate sign an indemnity stating that, should any claims arise, they will refund sufficient funds to settle the claims.
7. Executors could make partial distributions if significant other assets or funds can be held until the end of the six-month period.
8. Please consult us if you require assistance with this issue. It is important—we know of a case where executors were ordered to pay thousands of dollars from their own resources because they lost the statutory protection by distributing before they should.

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