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CREDITORS CLAIMS AGAINST AN ESTATE

When someone passes away, the Executors of the estate should make enquiries as to whether there are any outstanding creditors. Any debts are to be paid before distribution of estate funds. It is the responsibility of the Executor of the estate to arrange for payment of any such debts.

Creditors may come forward at any time so long as the estate assets remain undistributed.

If an Executor arranges for payment of estate funds within one year from the date of death and a creditor comes forward within this time, an Executor is personally liable for payment.

This is an issue for an Executor not familiar with the deceased's affairs where there could be outstanding amounts owing they are unaware of.

This twelve month period can be shorted by the procedure in section 35 of the Trustee Act 1956.

This section provides that an advertisement may be published in the local newspaper advertising creditors to make payment demands within one month. If no claims are made within one month, an Executor may distribute funds without being personally liable for payment of any debts they have not been notified of from funds distributed.

Where an Executor is in doubt as to

what advertisements should be published, they may apply to the Court for directions.

Some Executors may find it unnecessary to advertise for creditors if they are confident as to any debts the deceased may have had at the date of their death. Otherwise advertising for creditors is a good way of providing assurance to an Executor that there are no outstanding creditors and beneficiaries do not necessarily have to wait one year before receiving funds.

A point to note - arranging for an advertisement under this section will only preclude an Executor from being liable against claims from creditors. It does not apply for other estate claims such as those made under the Family Protection Act 1955 or Law Reform (Testamentary Promises) Act 1949.

If you have any queries regarding advertising for creditors or would like us to assist with this, please do not hesitate to telephone us. Specific matters must be covered in the advertisement such as the fixed time and warning of consequences of failure to respond. A member of the Collins & May Law Team will be more than happy to assist with these.

20 MINUTE FREE

**WANT to review your Family Trust structure?
 THEN call us and take advantage of our 20 Minute Free interview**