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DISTRIBUTION OF ESTATES

When somebody passes away, the Executor or Administrator of the Estate is responsible for administration of the Estate. This involves "getting in" all Estate assets, paying any debts and eventually paying funds to the beneficiaries. This process can take some time, depending on the assets involved and whether Probate or Letters of Administration is required.

Once Estate funds are received, there are a few matters an Executor or Administrator should consider before distributing Estate funds:

CREDITORS

Creditors have 12 months from the date of death to request payment from an Estate. If desirable to distribute funds within this time, an advertisement may be published in the local newspaper pursuant to the Trustee Act 1956 advising creditors to make payment demands within 1 month. If no claims are made within the month, Estate funds may be distributed without the Executor or Administrator being personally liable for payment from these funds.

It is usual practice for the Estate solicitor to place an advertisement request on behalf of an Estate as specific wording must be used in the advertisement.

ESTATE CLAIMS

Anyone other than a creditor may make a claim against an Estate within 1 - 2 years after Probate is granted. Three possible claims that may be made are:

(a) **Family Protection Act Claims:** The law imposes a moral duty on Will makers to provide for family members in their Will. Family members such as children, parents, de facto partners/spouses or grandchildren may make a claim pursuant to the Family Protection Act 1955 if the deceased did not provide for them in their Will and argue they are entitled to a share of the Estate;

(b) **Law Reform (Testamentary Promises) Act Claims:** In exchange for goods or services, if the deceased promised somebody that they would provide for them in their Will, they may make a claim pursuant to the Law Reform (Testamentary Promises) Act 1949 if not provided for as promised;

(c) **Property (Relationships) Act Claims:** A spouse, de facto or civil union partner may make a claim for a share of the Estate pursuant to the Property (Relationships) Act 1976.

If funds are distributed before 6 months after Probate or Letters of Administration are granted and a claim is made against the Estate, action may be taken against the Executor or Administrator in their personal capacity for payment.

If making distribution within 6 months from the date of grant, we recommend obtaining a waiver of rights from anyone known to be in a position to bring a claim.

TAX

We suggest obtaining advice from an accountant as to whether there is any outstanding tax liability before distributing funds. A final personal and/or Estate tax return may need to be filed to finalise tax matters.

The above is an outline of matters an Executor or Administrator should be aware of before Estate funds are distributed. If you have any particular queries regarding any of these matters, please feel free to contact a member of the Collins & May Law Team.

20 MINUTE FREE

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