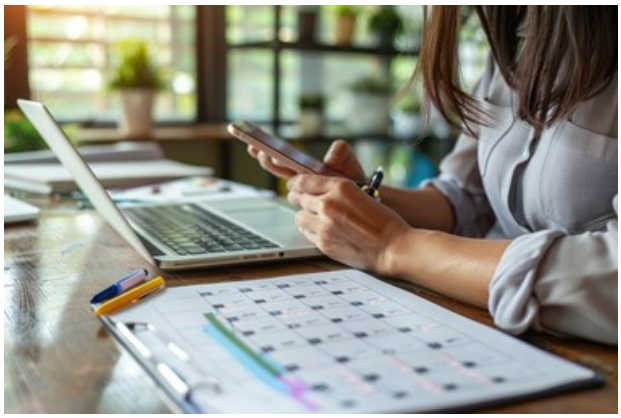


The 6 month rule – executors should wait 6 months before distributing a deceased estate

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When a person passes away, the executor named in the Will must apply for a Grant of Probate to be able to commence the process of distributing the assets of the deceased estate. This process can be relatively straightforward, and if the estate is not complex and there are no unusual factors, it can be completed in a relatively short time frame if all necessary documents are in order. However, before the executor can begin distributing the estate, there are a few things they must consider.

Why an executor should wait 6 months before distributing a deceased estate

In Victoria, an executor should refrain from distributing an estate until at least six months from the date of the Grant of Probate. This waiting period serves to:

1. allow time to work through outstanding debts and any tax issues;
2. allow the executor to gather all relevant information required to properly and fully distribute the estate;
3. afford the executor (and the deceased person's estate) protection against family provision claims when someone intends to contest the Will.

Finalising outstanding taxes and debts of a deceased estate

After probate is granted, there are important tasks the executor will need to complete prior to administering the estate and distributing the assets to the beneficiaries. You can learn more about this in our earlier blog, "Tasks for the executor after probate is granted".

The estate may have outstanding debts and tax liabilities that need to be dealt with before the assets can be distributed to the beneficiaries. For example, if the deceased took out a loan that had not yet been fully repaid prior to his or her death, the debt would need to be paid before the executor could begin to distribute the estate.

If the executor distributes the estate prior to all debts being dealt with, they may be held personally liable to meet the outstanding tax liabilities and debts.

Complexity of the estate

If the estate is particularly large or complex, the executor may use much of the six-month period following the Grant of Probate to pay off debts, liquidate assets (if necessary) and locate beneficiaries. This six-month period allows the executor a reasonable amount of time to carry out their duties before commencing to distribute the estate. It can also protect them from any potential pressure from beneficiaries wanting to receive their entitlement immediately

A complex estate may include the following:

- A business or trust that is still operating;
- Insurance claims;
- A business that is to be sold;
- Outstanding and significant tax liabilities;
- An estate that is in debt;
- Assets in different countries; or
- The validity of the Will being questioned by the Court; for example, if the Will-maker lacked capacity to make the Will, amongst other things.

Family provision claims

A family provision claim is basically a claim where an eligible person contests the Will. There is no absolute bar on an executor from distributing an estate prematurely so long as a Grant of Probate has been made. However, an executor can be at risk if they distribute assets during the time period in which an eligible person is able to make a Family Provision Claim.

Eligible persons (usually family members) have the right to contest a deceased person's Will if they believe they have not been adequately provided for. These claims, known as 'family provision claims', must be made and filed with the Court within six months from the date probate is granted unless leave (i.e. permission) is granted by the court to extend this time period.

Once a family provision claim is made, an executor should refrain from distributing any part of the deceased's estate to beneficiaries until the claim has been dealt with.

If a claim is upheld (that is, the applicant is found to be entitled to receive a share of the estate) and a claimant is awarded provision from the Court, the executor may need to personally meet any award from their own resources in circumstances where:

- they have distributed an estate prior to the six-month time period; and
- they are unable to claw back what has been paid out to beneficiaries.

Even if the circumstances are such that a family provision claim is likely not to be made, executors should wait for the six-month period to lapse before commencing to distribute the estate to be sure that no claims have or will be made. There are no penalties if an executor refrains from distributing an estate before six months from the date of the grant of probate, but distributing an estate within the six-month period could greatly increase the risk to the executor.

Whilst an executor should be cautious to ensure they do not make distributions during the time period in which a claimant can make a family provision claim, in practice there are generally some exceptions to this rule.

If beneficiaries are given small legacies in the Will and the estate is relatively large, some distribution could occur with minimal risk. Also, sometimes child beneficiaries require some payment for their maintenance and advancement. If the estate has sufficient funds to cover debts and potential claims, the executor would generally not be criticised for making such payments following the grant, although it would be prudent to obtain the claimant's permission to do so.

Timeframes for an executor to distribute a deceased estate in Victoria

In Victoria, there is no fixed period in which the executor *must* distribute the assets of a deceased estate, as each estate differs in size and complexity.

In fact, an executor is not required to distribute an estate until at least twelve months from the date of death, and they cannot be compelled by a beneficiary to do so until this period has elapsed. If this twelve-month period has passed and the estate still has not been distributed, depending on the circumstances, the beneficiaries may be able to apply to the court to have the executor removed.

Get help from a probate lawyer

If you are an executor of an estate, Smith Family Law is able to assist you in obtaining a Grant of Probate. We are also able to provide you with the necessary advice so that you can ensure you are carrying out your duties and obligations and that you are aware of the risks involved and claims that could be made against you if you distribute an estate prematurely.

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This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.