



# Clayton James

## Solicitor & Conveyancer

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### **Distribution of the Estate.**

#### **What does distribution of the assets of an estate mean?**

Under the laws in New South Wales an executor has one year in which to complete and distribute the estate. During this time the executor would apply for probate after receiving the death certificate listing the assets of the estate on the probate document then once Probate is received getting in those assets e.g. selling any land or shares, recovering the superannuation etc.

The funds are generally placed into a solicitors trust account when received. To distribute the funds the solicitor when instructed by the executors after preparing a draft statement of estate, the executors approve the distribution in accordance with the will and this includes paying any specific gifts and payment of outstanding costs, any outstanding debts and then accounting to the beneficiaries.

To protect the executors the act provides that they can put a notice of intending distribution of the estate which means that if any claimants on the estate who do not give notice to the executors at the address show on the notice are banned from claiming, Therefore the executors are protected from any claims made in the future.

Another problem which exists is when Eligible people make a claim on the estate.

Under the Succession Act they have 12 months from the date of death to bring a claim. The Court may allow a party to bring a claim outside this time even though they are statute barred if there is sufficient reason. A factor that the court will look up is of course is what has happened



to the funds and will a beneficiary be prejudiced because of this late distribution. Details of the Eligible persons are contained on my notes on the Succession Act.

As you can see that if a distribution of the estate is made less than 12 months from the date of death the assets can be clawed back by the court from the beneficiaries. What can be difficult here is if some beneficiaries have disbursed those funds and can't get them back which may leave the recall of funds falling on only one of the beneficiaries or potentially an action for damages against the executors. The publication of a notice referred to above will not protect in this instance.

In small estates it is quite common for the estate to be distributed much earlier than 12 months from the date of death in some instances this could be in three months depending on the delays with the Probate Court and obtaining the funds from the institutions which may hold the assets on behalf of the deceased. The difficulty with this is it there is a real risk that an eligible person may make a claim.

As a result it is not uncommon to find legal firms not distributing the estate until excess of one year from the date of death. This is certainly true with a more complex estate.

Consequently whilst the legal firms act on the half of the executors it is ultimately the executor's responsibility to ensure that the beneficiaries as well as the executors are protected.

Therefore a prudent solicitor will always advise as I have above and have any executors sign confirmation and a direction as to the distribution of the estate.

**Should you wish to clarify any point or need further information please ring me.**

***The call is at no charge and obligation fee.***

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