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What is "The Executor's Year"?

There is a general principle that a legal personal representative has an obligation to realise estate assets, pay debts and expenses and distribute the estate within 12 months of the deceased's death. This principle is what is commonly known as 'the executor's year'.

The executor's year principle extends to the payment of any legacy left by a Will in that interest will not be payable on a legacy until 12 months after the deceased's death, unless the contrary intention is contained in the Will.

In Western Australia, the executor's year principle is reflected in Rule 37 of the *Non-Contentious Probate Rules 1967*. Rule 37 requires the legal personal representative (i.e estate's appointed executor(s) or administrator(s), as the case may be) to file:

- the estate's accounts, more commonly known as the 'passing of accounts', and
- a plan of distribution

with the Probate Registry within 12 months of the grant being issued or such further time as a Judge or Registrar may allow.

<u>What happens if takes longer than a year?</u>

Whilst the executor's year principle applies, in practice, it depends on what is reasonable in the circumstances. Matters such as the size or complexity of the estate or litigation which is commenced against the estate may delay completing the administration of the estate within the executor's year (*Atkins v Godfrey [2006] WASC 83*).

The onus will shift onto the legal personal representative to justify the delay.

<u>What about the Executor's commission?</u>

A failure to finalise the administration of the estate within the executor's year may affect the right of the legal personal representative (i.e the executor) to claim an executor's commission and/or the amount of commission claimed (*Atkins v Godfrey*).

An executor's commission is a remuneration to a legal personal representative to compensate them for the effort expended and their 'pains and trouble' in administering an estate. It is usually a percentage of the estate (up to a maximum of 5%).

<u>What are some of the other important tax and financial issues with a delay?</u>

Further, a delay in administering the estate can also incur the estate (and potentially therefore its beneficiaries) additional unnecessary costs.

A legal personal representative of an estate should be aware of the executor's year and should ensure that they complete the administration of the estate within the executor's year where it is practicable to do so.

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