

Key time frames when administering a deceased estate

Planning is key when administering a deceased estate and knowing what timeframes apply is crucial to limiting the risk of liability. The following is an overview of some important timeframes which may apply.

FOR WHAT	TIME FRAME	FROM WHEN	WHY IS IT IMPORTANT?
Probate, administration and claims			
Notice of intention to apply for probate ¹	14 days	Date of advertisement ²	An application cannot be made until this period has lapsed. Allows opportunity for somebody to object to application (eg if they allege the will is not valid), by filing a caveat.
Family provision claims ³	6 months	Date of probate	Family provision claims are the typical 'will dispute', where somebody is claiming more. If the estate is distributed within this period, and a successful claim is then made, the executor may be personally liable.
Notice to creditors of intended distribution ⁴	2 months	Date of advertisement ⁵	If creditor doesn't stake their claim in this period, and the executor isn't otherwise on notice of potential claim, then the executor can distribute the estate, and the creditor is barred from subsequently making a claim.
Notice to bring claim ⁶	3 months	Date of service of notice on potential claimant	Executor can serve notice on a potential claimant requiring proceedings be issued within 3 months. If no proceedings issued, executor can apply for orders, including that claim be barred, and estate distributed.
No interest on gifts of money ⁷	12 months	Date of death	After this period, interest will start to accrue on any unpaid 'pecuniary' (ie monetary) gifts in the Will, at the legacy interest rate. ⁸
'Executor's year' ⁹	1 year	Date of death	Period in which executors are not bound to distribute an estate.

Key time frames when administering a deceased estate *continued*

FOR WHAT	TIME FRAME	FROM WHEN	WHY IS IT IMPORTANT?
Tax and SMSF			
To keep SMSF complying	6 months	Date of death of member	The period in which executor must step in to represent the deceased SMSF member at the trustee level, to ensure the SMSF remains a complying fund. ¹⁰
CGT main residence exemption ¹¹	2 years	Date of death	An estate is exempt from paying capital gains tax on sale of main residence if disposed of within this period. Settlement of the sale must take place within this period.
Estate taxed at individual rates ¹²	3 income years	Date of death	For the first three income years, an estate is typically taxed at individual income tax rates, including access to the tax-free threshold. Beyond this period, higher rates apply.
Land tax concessionary period	3 years	Date of death	The 'concessionary period' in which a PPR remains exempt and other land is taxed at general land tax rates. ¹³ Outside this period, trust surcharge rates will apply.

1 Regulation 2.03(1) of the Supreme Court (Administration and Probate) Rules 2014

2 On Supreme Court website

3 S99(1) of the *Administration and Probate Act 1958* (Vic)

4 S33 of the *Trustee Act 1958* (Vic)

5 In Government Gazette & local news paper

6 S30 of the *Administration and Probate Act 1958* (Vic). Typically used for creditors or purported 'next of kin' (not family provision claimants, where there's a set limitation period), to enable estate to be distributed.

7 S39B(3) of the *Administration and Probate Act 1958* (Vic)

8 2 percent above cash rate last published before 1 January in year which interest begins to accrue

9 S49 of the *Administration and Probate Act 1958* (Vic)

10 S17A of the *Superannuation Industry (Supervision) Act 1993* (Cth)

11 S118-195 of the *Income Tax Assessment Act 1997* (Cth). Executor can rely on an additional 18-month period if certain conditions are met (see ATO Practical Compliance Guideline (PCG 2019/5)).

12 Per schedule 10 of the *Income Tax Rates Act 1986* (Cth) and s99 of the *Income Tax Assessment Act 1936* (Cth)

13 Ss 46A and 57 of the *Land Tax Act 2005* (Vic)