

Creditor Claims

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NORTHERN TRUST

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THE LIFE CYCLE OF A CREDITOR'S CLAIM

The claims process is designed to ensure the proper identification and payment of debts of the decedent.

The Requirement to Notify Creditors

Identifying Creditors

Filing Claims

Objections to Claims

Litigation of Claims

Payment and Satisfaction of Claims

THE REQUIREMENT TO NOTIFY CREDITORS

733.701 Unless creditors' claims are otherwise barred by s. 733.710, every personal representative shall cause notice to creditors to be published and served under s.733.2121.

Notice to be served on reasonably ascertainable creditors

Notice by publication on all others

Extraordinary efforts to locate creditors are not required

STATUTE OF NONCLAIM

Any claim filed more than 2 years after the date of death is absolutely barred under F.S. 733.710(1), whether or not the creditor was reasonably ascertainable, or whether the personal representative served the creditor with notice.

Exception

- **A duly-recorded mortgage or security interest, or the lien of any person in possession of personal property**

Note also that the claim is not protected to the extent it exceeds the value of the security unless a timely claim is filed.

REASONABLY ASCERTAINABLE CREDITORS

Statutory Creditors on Whom Notice Must be Served

Agency for Health Care Administration – decedent 55+

Department of Revenue

Who is Reasonably Ascertainable?

General debts and regular payments

Final medical expenses

Corporate/partnership liabilities

Former spouse and children

Caveats

The personal representative must make reasonably diligent efforts to locate creditors, but extraordinary measures are not required.

FULFILLING THE NOTICE REQUIREMENT

Probate Rule 5.241

Form of Notice to Creditors

Service – either informal or in the manner provided for formal service

Publication – must be made promptly, once a week for 2 consecutive weeks in the county of administration

Proof of Publication and Service

FILING CLAIMS

Probate Rule 5.490

Caveat

Form of Claim

- No specific form required if content is sufficient

Filing original and a copy with the clerk

- Compliance with e-filing requirement

Proof of Publication and Service

Personal Representative Proof of Claim

- Service on interested persons

Statement Regarding Creditors

LIMITATIONS PERIODS FOR FILING CLAIM

Fla. Stat. §733.702

Reasonably Ascertainable Creditor

- With notice, later of 30 days from service of notice or 3 months from the date of first publication
- If not provided notice, 2 years from date of death

Notice by Publication

- 3 months from the date of first publication

Extension of Time to File Claim

- Only upon grounds of fraud, estoppel, or insufficient notice

PR Notice to File Petition for Extension

- Limits potential claimant to 30 days

When Claim Not Required to be Filed

OBJECTIONS TO CLAIMS

Probate Rule 5.496

Filed 4 months from first publication date, or 30 days from timely filing or amendment of claim, whichever is later

Personal Representative or any interested person may object

Service on claimant and PR if filed by interested party is required

Notice to claimant to bring independent action

Objecting to PR Proof of Claim

LITIGATION OF CLAIMS

Fla. Stat. §733.705(5)

Claimant must act within 30 days from date of service of objection

File an independent action – not in the probate proceeding

Or file a declaratory action for unmatured or contingent claims

PR may agree to an extension of time to file action

Court may extend the time for good cause

PAYMENT OF CLAIMS

Fla. Stat. §733.705

PR must pay all proper claims within 1 year from date of first publication

Cannot be compelled to pay until expiration of 5 months from date of first publication

Interest payable by terms of obligation, or if none, beginning 5 months after date of first publication

Contingent and unmatured claims before final distribution may be prepaid, adequately reserved for future payment, or otherwise compromised, including security interests where appropriate

PAYMENT OF CLAIMS

Fla. Stat. §733.707

Class 1. Costs, expenses of administration, and compensation of personal representatives and their attorneys fees and attorneys fees awarded under s. 733.106(3).

Class 2. Reasonable funeral, interment, and grave marker expenses, whether paid by a guardian, the personal representative, or any other person, not to exceed the aggregate of \$6,000.

Class 3. Debts and taxes with preference under federal law, claims pursuant to ss. 409.9101 and 414.28, and claims in favor of the state for unpaid court costs, fees, or fines.

Class 4. Reasonable and necessary medical and hospital expenses of the last 60 days of the last illness of the decedent, including compensation of persons attending the decedent.

Class 5. Family allowance.

Class 6. Arrearage from court-ordered child support.

Class 7. Debts acquired after death by the continuation of the decedent's business, in accordance with s. 733.612(22), but only to the extent of the assets of that business.

Class 8. All other claims, including those founded on judgments or decrees rendered against the decedent during the decedent's lifetime, and any excess over the sums allowed in Classes 2 and 4.

CONTRIBUTION FROM TRUST

Fla. Stat. §733.607 and §736.05053

The trustee of a trust described in Fla. Stat. § 733.303(3) has a duty to pay expenses and obligations of the settlor's estate to the extent the estate assets are insufficient, and as the personal representative certifies to the trustee.

Default ordering rules are also provided, with direction to pay estate liabilities first from the residue of the trust, then from general devises, and finally from specific devises.

Creditor claims against the decedent must be brought in the probate proceeding.

Claims against the trust may only be brought directly for actions taken by the trustee or concerning trust assets.

***Morey v. Everbank* and § 733.808(4) and §736.05053**

COMPROMISE OF CLAIMS

Fla. Stat. §733.708

When a proposal is made to compromise any claim, court order required.

Compromise must be in the best interest of the interested persons.

RECENT CASES OF INTEREST

In re Estate of Arroyo v. Infinity Indemnity Insurance Company, 211 So.3d 240 (Fla. 3d DCA January 18, 2017), cert. accepted by the Florida Supreme Court.

United Bank v. Estate of Frazee, 197 So.3d 1190 (Fla. 4th DCA July 13, 2016)

Richard v. Richard, 193 So.3d 964 (Fla. 3d DCA May 04, 2016)

Jones v. Golden, 176 So.3d 242 (Fla. 2015)

Soriano v. Estate of Manes, 177 So.3d 677 (Fla. 3d DCA October 14, 2015)