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PAYMENT OF DEBTS IN ESTATES

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When a loved one passes away, one of the most common concerns our clients ask us as attorneys is “Am I responsible for my loved one’s debts?” or “I am named as the personal representative, will I be responsible for their bills?” The payment of claims and debts is one of the most important functions of the personal representative of an estate. This means that as Probate Judges, each of you are often tasked with ruling on disputed claims and determining if the claims are validly presented, supported by evidence and are due to be paid.

Discussion of estate claims and debts is divided into three sections in the *Code of Alabama*:

- (1) Presentation;
- (2) Payment and Preference; and
- (3) Sale, Compromise and Settlement.

I. Presentation of a Claim.

What is a claim, who may file one, and what must it contain?

- A. Similar to the municipal statute of nonclaims, which bars claims against municipalities if not presented within six months, the Estate code section also has a nonclaims statute. *Code of Alabama* §43-2-350 dictates the time, manner and form of filing a claim.**

Code of Alabama §43-2-350(a)

(a) All claims against the estate of a decedent, held by the personal representative of the decedent or by an assignee or transferee of the personal representative, or in which the personal representative has an interest, whether due or to become due, must be presented within six months after the grant of letters, or within five months from the date of the first publication of notice, whichever is the later to occur, provided however, that any creditor entitled to actual notice as prescribed in section 43-2-61 must be allowed thirty days after notice within which to present the claim, by filing the claims, or statement thereof, verified by affidavit, in the office of the judge of probate, in all respects as provided by section 43-2-352 . All claims not so presented and filed are forever barred, and the payment or allowance thereof is prohibited. But this subsection shall not apply to claims of personal representatives to compensation for their services as such, nor to sums properly disbursed by them in the course of administration.

Code of Alabama §43-2-350(b)

(b) All claims against the estate of a decedent, other than the claims referred to in subsection (a) of this section, whether due or to become due, must be presented within six months after the grant of letters, or within five months from the date of the first publication of notice, whichever is the later to occur, provided however, that any creditor entitled to actual notice as prescribed in section 43-2-61 must be allowed 30 days after notice within which to present the claim, and if not presented within that time, they are forever barred and the payment or allowance thereof is prohibited. Presentation must be made by filing a verified claim or verified statement thereof in the office of the judge of probate of the county in which the letters are granted. Claims which have not been filed and which are liens against the property of the decedent may be paid by the personal representative to protect the assets of the estate. The provisions of this subsection do not apply to heirs or devisees claiming as heirs or devisees.

Code of Alabama §43-2-350 gives a roadmap of when, who, and how a claim must be presented.

1. When – A creditor must file a claim within six months from Letters Testamentary being issued, or five months from first publishing that Letters Testamentary were issued, whichever occurs later. Also, once a creditor becomes a “known creditor”, that creditor has thirty days from notice to present their claim.

What is a “known creditor”? Under § 43-2-61 of the *Code of Alabama*, a known creditor is a person, firm, or corporation having a claim against the decedent, who are known or who are reasonably ascertainable by the personal representative within six months from the grant of letters. We advise our clients to check the decedent’s mail, personal files and check registers to see if there are any creditors that should receive notice by first class mail.

A contingent claim may be filed if a right to demand payment or action in the future exists. However, this does not have to be filed within six months if the future right has not vested yet, as the time begins to run when the claim accrues. For this reason, contingent claims are an exception to the claim statute's time limitation.

2. **By whom** – the Personal Representative, and anyone else wishing to assert a claim, including heirs or legatees if the claim is one for a debt against the estate.
3. **How** – by filing a “verified claim” or “verified statement”.
4. **Where** – in the “office of judge of probate”, or in a civil suit within six months after the grant of Letters Testamentary.
5. **Type of claims** – “all claims” includes tort claims, counterclaims, wrongful death claims against decedent and all other debts owed by the decedent.

B. What is a known creditor and what is “actual notice” pursuant to § 43-2-61?

1. *Code of Alabama* § 43-2-352 provides a precise treatment for “known” creditors versus other claimants that are not easily ascertained:

As we mentioned earlier, known are those creditors that the Personal Representative could easily identify or is aware of. As to this class of creditors, the personal representative must give notice of the appointment as soon as practicable after identification, stating the name of the deceased, the day on which letters were granted, by what court, and notifying all persons having claims against the estate to present the same within the time allowed by law or that the same will be barred. *Code of Alabama* § 43-2-60. Further, publication notice as required in § 43-2-61(2) must be given within thirty days from grant of letters.

2. How is actual notice given to creditors?

Notice, as prescribed in section 43-2-60, must be given as follows:

- (1) By first-class mail addressed to their last known address, or by other mechanism reasonably calculated to provide actual notice, to all persons, firms, and corporations having claims against the decedent, who are known or who are reasonably ascertainable by the personal representative within six months from the grant of letters; and
- (2) By publishing a notice once a week for three successive weeks in a newspaper of general circulation published in the county in which the letters were granted or, if none is published in the county, in the one published nearest to the courthouse thereof or in an adjoining county.

Code of Alabama § 43-2-61.

C. What is a “verified claim”?

Code of Alabama § 43-2-352 states:

The presentation must be made by filing a verified claim, or a verified statement thereof, in the office of the judge of probate in which letters are granted, and the same must be docketed with a note of the date of such presentation; and, if required, a statement must be given by such judge, showing the date of presentation. Every such claim or statement thereof so presented **must be verified by the oath of the claimant or some person having knowledge of the correctness thereof, and that the amount claimed is justly due, or to become due, after allowing all proper credits.** Any defect or insufficiency in the affidavit may be supplied by amendment at any time. All claims not presented within six months from the granting of letters testamentary or letters of administration shall be forever barred, and the payment or allowance thereof is prohibited. But this section shall not apply to claims of executors or administrators to compensation for their services as such, nor to sums properly disbursed by them in the course of administration.

Some important things to consider when determining if a claim is properly presented to the Probate Court:

1. Failure to verify claim in and of itself will not defect claim.
2. A claim may be amended past the six month claim period, but still be timely if originally filed within six months.
3. Someone other than the claimant may present a claim, but that person must have “knowledge of the correctness” of the claim. *Code of Alabama* § 43-2-353.
4. Any action pending against the decedent at the time of death, which survives by law, is “presentment” against his or her personal representative if notice is served upon the personal representative within six months of letters being issued.

D. What claims do not require timely, verified presentation to the court in order to be paid?

Personal Representative fee, funeral expenses, existing lien against property, costs of estate administration, homestead allowance and personal property exemption are some examples of “claims” that do not have to be filed against the estate.

E. Disputed Claims.

The personal representative may dispute a claim. Disputes are resolved by the Probate Court or Circuit Court, depending on which court the administration of the estate is pending.

Code of Alabama § 43-2-354 provides the structure for disputing a claim:

The personal representative of the estate of a decedent may give notice in writing to the claimant or anyone having a beneficial interest in a claim against the estate that such claim is disputed in whole or in part; if in part, specifying the part disputed. Thereupon the judge of the court having jurisdiction of the administration of the estate shall, on written application of either the personal representative or the claimant, hear and pass on the validity of such claim, or part thereof, first giving 10 days' notice of such hearing to the interested parties. If the claimant in such proceeding shall fail to recover upon the disputed part of such claim, he shall be taxed with the costs thereof. This section shall not apply to claims against estates declared insolvent. If the judgment on any such claim is rendered by a probate court, either party may, within 30 days after the rendition of such judgment, appeal to the circuit court of the county in which the administration of said estate is pending, and the trial of the validity of said claim in said circuit court shall be de novo, and upon demand of either party, filed in the circuit court within 30 days from the taking of said appeal, shall be tried by a jury. If the administration of an estate in which a claim is disputed is pending in the circuit court, the trial of the validity of said claim shall be by jury upon demand of either party filed within 30 days after written notice that the claim is disputed. In any event either party may appeal to the supreme court or court of civil appeals, as the case may be, from the judgment of the circuit court, such appeal to be taken within 42 days and as other appeals are taken.

The process for disputing a claim is:

1. Objection – Personal Representative must give notice, in writing, specifying parts of the claim disputed.
2. Notice of Objection – must be provided to the claimant and anyone having an interest in the claim.
3. Hearing – the Probate Court shall provide at least ten days’ notice to all interested parties of the hearing on the disputed claim.
4. If a claimant fails to recover the disputed claim amount, the claimant “shall” be taxed with the costs associated with the hearing.
5. The non-prevailing party to a disputed claim may appeal the judgment on a claim. Rules for an appeal from the judgment on a Disputed Claim is:
 - a) Probate Court – within thirty days to Circuit Court, trial de novo, but a jury is possible if requested by either party.
 - b) Circuit Court – trial by jury, with judgment being appealable to the Alabama Supreme Court or Alabama Court of Civil Appeals, as appropriate, within forty-two days.

NOTE: The statute governing appeals from judgments adjudicating the claims of creditors are governed by § 43-2-354 only, not statutes governing appeals from other orders of probate court or circuit courts, generally.

II. Payment and Preference of Claims.

Now that a properly filed, valid claim is before the Court, how is the claim paid, in what amount, and when?

A. Negotiation and compromise between Personal Representative and creditor is allowed. A Personal Representative and creditor may reach a settlement in a lesser amount than the filed claim. A satisfaction of claim in an amount less than the presented claim is still a “satisfied” claim.

B. Any property of a decedent is subject to use for the payment of debts, and if necessary, the property may be sold for payment of debts. *Code of Alabama § 43-2-370.*

1. Limitations on use of decedent's property to satisfy claims:
 - a) Certain claims may not be satisfied before priority claims.
 - b) Only applies to Alabama property.
 - c) Widower exemptions and allowances are paid as a priority before creditors.
 - d) If assets are insufficient to pay debts and legacies, valid debts are generally paid with assets of the residue estate, then with specific devises or bequests.

2. Court approval of the sale of property for payment of debts must be obtained and notice published if the estate is an administration or if the will does not confer the power to sell. *Code of Alabama* § 43-2-410(1).

C. The order of preference for payment of debts against the estate is statutory. Debts are to be paid in the following order pursuant to *Code of Alabama* § 43-2-371:

Code of Alabama § 43-2-371

1. The funeral expenses.
2. The fees and charges of administration.
3. Expenses of the last sickness.
4. Taxes assessed on the estate of the decedent previous to his death.
5. Debts due to employees, as such, for services rendered the year of the death of the decedent.
6. The other debts of the decedent.

D. Unless expressly stated in the decedent's will at the time of his death, no claim barred by the statute of limitations as of the date of death "shall be paid or allowed[...]". *Code of Alabama* § 43-2-373. There is no discretion for a Personal Representative, or a Court, to revive or allow claims of debt that were barred as of the date of the decedent's death.

III. Sale, Compromise and Settlement of Claims Against an Estate.

A. Bad or doubtful claims may be sold by the Personal Representative. *Code of Alabama § 43-2-390* provides a method for additional protection against personal liability of a personal representative in selling or compromising a claim. However, this statute does not prevent or prohibit the personal representative from settling a claim without court approval.

Code of Alabama § 43-2-390 reads:

The probate court having jurisdiction of the estate may authorize any executor or administrator to compromise or sell any bad or doubtful claim due the estate, on the written application of the executor or administrator, verified by his affidavit, and stating the facts, supported by evidence satisfactory to the court, that such claim is bad or doubtful, and that a compromise or sale thereof will promote the interests of the estate.

B. If a personal representative invokes the court's approval as to the sale or compromise of a claim, *Code of Alabama* § 43-2-391 provides the statutory guidance for the sale of claims.

Such application must not be heard until 10 days after the filing thereof, and notice thereof may be given to some person adversely interested whenever the court may deem just. When, or at such time as the court may continue the hearing, the court, satisfied that the claim is bad or doubtful, and that a sale or compromise thereof will promote the interests of the estate, must make and enter a decree directing the sale or compromise of the claim, as may be best for the interests of the estate. If a sale is decreed, it must be made by the executor or administrator at the courthouse of the county, or such other place as the court may direct, at public outcry to the highest bidder for cash, after having first given notice of the time and place thereof by publication, once a week for three successive weeks, in some newspaper published in the county, or if none is published therein, by posting notices for three weeks at the courthouse door, and three other public places in the county, or the notice may be given in any manner and for any time which may be directed by the court.

Code of Alabama § 43-2-391.

1. Similar to disputing a claim, obtaining court approval for the selling or compromising of a claim must follow this process:
 - a) At least ten days' notice of the hearing on application for sale or compromise;
 - b) Notice to adversely interested parties; and
 - c) Hearing to determine if sale or compromise is beneficial to the interest of the estate.

2. If the application for sale or compromise is approved, it must be sold to the highest bidder in a courthouse sale, after publication of such sale for three consecutive weeks or notice on courthouse door and three other public places or as Court directs. *Code of Alabama* § 43-2-391.

3. After such sale, within thirty days, a verified report of sale shall be made to the Court. *Code of Alabama* § 43-2-392.

C. The personal representative of an estate may, with authority from the probate court, give a note to extend or settle a debt, provided that the heirs, devisees, distributees or legatees have at least ten days' notice of such application. *Code of Alabama § 43-2-393.*

D. In dealing with a debtor of the decedent that is unable to pay his debt to the estate, a personal representative may either settle such debt or obtain court approval for such settlement or discharge. *Code of Alabama* § 43-2-394.

IV. Insolvent Estates

While not the direct topic of this presentation, the treatment of debt and claims in an insolvent estate, or a potentially insolvent estate, is an important, complex area of estate administration. Treatment of debt in that situation is different than discussed in this presentation. Discussion of the treatment of debt in an insolvent estate is contained in Article 19 of Title 43.