

Creditors' Claims Against Deceased Debtors: A Brief NC Guide

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In most cases, the rights of creditors against debtors are enforced through traditional collection suits, foreclosures, or other like actions. However, when the debtor is deceased, the procedures for creditors hoping to collect are different than the traditional avenues of collection. This article provides a brief outline of the remedies available to creditors and highlights some of the newest changes to North Carolina law with respect to claims against a decedent's estate.

Making Claims Against a Decedent's Estate

If a debtor dies with a valid will that has been admitted to probate, then the named Personal Representative (PR) (aka Executor or Executrix) typically is appointed by the clerk of court to administer the estate of the deceased debtor. In this case, filing a timely claim against the estate once the PR is appointed is the best and most effective means for a creditor to protect its rights.

N.C.G.S. § 28A-14-1(a) requires the PR to publish notice to all persons, firms or corporations having claims against the decedent. This notice is made through a newspaper circulated in the area where the decedent lived. Creditors of the decedent must present their claims to the PR on or before the published deadline (within 90 days of the notice's first publication). In addition, N.C.G.S. § 28A-14-1(b) requires the PR to give direct personal notice to all creditors having unsatisfied claims known or reasonably ascertained by the PR. Subject to a few exceptions, most claims by creditors will be barred if not timely presented. N.C.G.S. § 28A-19-1 requires that a creditor's claim must be in writing, state the amount claimed, the basis for the claim, the name and address of the claimant and be properly delivered to the PR or Clerk of Superior Court. It is highly recommended that creditors present their claims to both the PR and Clerk of Superior Court, although notice to one is sufficient under the statute.

A creditor should make its claim as soon as it is aware of the decedent's death, and not assume that its claim was known or reasonably ascertained by the PR. Case law is full of examples where creditors failed to file a claim within the 90 day publication period, and then argued that their claim was known or should have been known by the PR, requiring direct personal notice. However, the burden of proof in such cases shifts to the creditor to prove that it was entitled to personal notice pursuant to N.C.G.S. § 28A-14-1(b). The creditor must "produce a forecast of evidence demonstrating that a material issue of fact exists as to whether its identity and its claim were reasonably ascertainable" by the PR.

Following proper presentment of a creditor's claim, the PR has the option of recognizing the claim as valid or rejecting the claim. If the claim is recognized as valid and the estate is solvent, the claim should be timely paid. If the estate has insufficient assets to pay all claims, the statutes prescribe the order of priority for payment of claims by the

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estate.

If a creditor's claim is rejected by the PR, the creditor must act promptly to defend and collect on the claim. N.C.G.S. § 28A-19-16 requires that the PR give written notice of a rejected claim so the creditor receives prompt notice of rejection. In response, the creditor must, *within three months after notice of rejection, or after some part of the claim becomes due, commence an action for the recovery thereof or be forever barred from maintaining an action on the claim.* Thus, creditors must be vigilant in filing an action against the estate before the three month deadline expires. The action should be brought in the traditional forums and using the same procedures as regular collection actions, with the estate being a party to the action.

If the decedent dies without a will, the estate is known as an intestate estate. In such cases, the statutes provide a list of persons who have preference to serve as the administrator of the estate. First priority is given to the surviving spouse, devisees/heirs of the decedent and next of kin. Typically, in solvent intestate estates, a family member will qualify as administrator, and all of the rules for publication and presentment of creditor claims are exactly the same as outlined above. However, in the event a family member or heir does not come forward and timely open an estate, a creditor has the ability to come forward and qualify as administrator of the deceased debtor's estate.

Alternative to Full Administration

In some cases, if no estate has been opened and the creditor wishes to pursue a claim but doesn't want to qualify and serve as administrator, the creditor can administer the estate by affidavit. An administration by affidavit is available only if the personal property of the deceased is \$20,000.00 or less. The creditor would file such affidavit and then make its claim and receive payment from whatever assets of the deceased could be recovered. The only claim that would come before that of the creditor in such cases is the "year's allowance" to a surviving spouse and children (explained below). Although the affidavit alternative does limit the amount a creditor can claim, if the claim amount is small and there are known assets of the decedent, this procedure can avoid the need for full estate administration when pursuing a claim against an estate.

Common Exempt Assets

Certain assets are exempt from the reach of creditors. The first of these is the "year's allowance" for the surviving spouse and children of the deceased. The year's allowance protects a certain amount of assets and pays them to the surviving spouse and children of the deceased before payment of any creditor claim. In 2010, the North Carolina legislature increased the spousal year's allowance from \$10,000.00 to \$20,000.00. In addition, each minor child (and certain adult children in college or who are disabled) can receive \$2,000.00 each under this year's allowance. In some cases all of a decedent's assets may be exhausted using the year's allowance, leaving no funds to satisfy creditors' claims.

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Another asset typically a part of a decedent's estate is life insurance. Unfortunately for creditors, North Carolina is very protective of life insurance policies so long as the policy and its proceeds benefit the insured's spouse and/or children. Under the North Carolina Constitution, the proceeds of any life insurance paid to or for the benefit of the spouse or children, or both, or to a guardian are free from the claims of creditors of the insured or his or her estate. Thus, life insurance proceeds paid outright to a spouse and/or the children of the insured as well as proceeds paid to a trust for the benefit of the insured's spouse and/or children are exempt from the claims of the creditors of the insured's estate under North Carolina law. However, once the proceeds are received by the beneficiary, life insurance proceeds are not protected from the beneficiary's creditors. The constitutional protection of life insurance does not extend to policy proceeds in the hands of the beneficiary, even if the beneficiary is the insured's spouse or children. Therefore, if a creditor holds a claim against both the deceased and a surviving beneficiary of the policy, the creditor may be able to reach the insurance proceeds once distributed to the obligated beneficiary.

Conclusion

While North Carolina estate administration procedures establish a process for creditors' claims against a deceased debtor, the process is time sensitive and requires creditors to be diligent in presenting and defending claims. Failure to adhere to the deadlines can leave a creditor with no recourse against an estate.

If you have questions about asserting claims against a decedent's estate in North Carolina, please contact [Craig Dalton](#) at (919) 783-2943 or [Bill Pate](#) at (919) 783-2983.

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