

Part 8 Creditors' Claims

75-3-801 Notice to creditors.

- (1)
 - (a) A personal representative, upon appointment, may publish a notice to creditors announcing the personal representative's appointment and address and notifying creditors of the estate to present their claims within three months after the date of the first publication of the notice or be forever barred.
 - (b) The notice described in Subsection (1)(a) shall be published:
 - (i) once a week for three successive weeks in a newspaper of general circulation in the county; and
 - (ii) in accordance with Section 45-1-101 for three weeks.
- (2) A personal representative may give written notice by mail or other delivery to any creditor, notifying the creditor to present his claim within 90 days from the published notice if given as provided in Subsection (1) above or within 60 days from the mailing or other delivery of the notice, whichever is later, or be forever barred. Written notice shall be the notice described in Subsection (1) above or a similar notice.
- (3) The personal representative shall not be liable to any creditor or to any successor of the decedent for giving or failing to give notice under this section.
- (4) If the estate is being administered in accordance with Section 75-3-1201, a notice to creditors may be published in an affidavit in accordance with this section by the person claiming to be the successor or the decedent.

Amended by Chapter 364, 2013 General Session

75-3-802 Statutes of limitations.

Unless an estate is insolvent the personal representative, with the consent of all successors whose interests would be affected, may waive any defense of limitations available to the estate. If the defense is not waived, no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid. The running of any statute of limitations measured from some other event than death and advertisement for claims against a decedent is suspended during the three months following the decedent's death but resumes thereafter as to claims not barred pursuant to the sections which follow. For purposes of any statute of limitations, the proper presentation of a claim under Section 75-3-804 is equivalent to commencement of a proceeding on the claim.

Amended by Chapter 194, 1977 General Session

75-3-803 Limitations on presentation of claims.

- (1) All claims against a decedent's estate which arose before the death of the decedent, including claims of the state and any subdivision of it, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented within the earlier of the following dates:
 - (a) one year after the decedent's death; or

- (b) within the time provided by Subsection 75-3-801(2) for creditors who are given actual notice, and where notice is published, within the time provided in Subsection 75-3-801(1) for all claims barred by publication.
- (2) In all events, claims barred by the nonclaim statute at the decedent's domicile are also barred in this state.
- (3) All claims against a decedent's estate which arise at or after the death of the decedent, including claims of the state and any of its subdivisions, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:
 - (a) a claim based on a contract with the personal representative within three months after performance by the personal representative is due; or
 - (b) any other claim within the later of three months after it arises, or the time specified in Subsection (1)(a).
- (4) Nothing in this section affects or prevents:
 - (a) any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate;
 - (b) to the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which the decedent or the personal representative is protected by liability insurance;
 - (c) collection of compensation for services rendered and reimbursement for expenses advanced by the personal representative or by the attorney or accountant for the personal representative of the estate; or
 - (d) medical assistance recovery under Title 26, Chapter 19, Medical Benefits Recovery Act.
- (5) If a personal representative has not been timely appointed in accordance with this chapter, one may be appointed for the limited purposes of Subsection (4)(b) for any claim timely brought against the decedent.

Amended by Chapter 443, 2018 General Session

75-3-804 Manner of presentation of claims.

- (1) Claims against a decedent's estate may be presented as follows:
 - (a) The claimant may deliver or mail to the personal representative, or the personal representative's attorney of record, a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed, or may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court. The claim is deemed presented on either the receipt of the written statement of claim by the personal representative or the personal representative's attorney of record, or the filing of the claim with the court, whichever occurs first. If a claim is not yet due, the date when it will become due shall be stated. If the claim is contingent or unliquidated, the nature of the uncertainty shall be stated. If the claim is secured, the security shall be described. Failure to describe correctly the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate the presentation made.
 - (b) The claimant may commence a proceeding against the personal representative in any court where the personal representative may be subjected to jurisdiction to obtain payment of the claim against the estate, but the commencement of the proceeding must occur within the time limited for presenting the claim. No presentation of claim is required in regard to matters claimed in proceedings against the decedent which were pending at the time of the decedent's death.

- (2) If a claim is presented under Subsection (1)(a), no proceeding thereon may be commenced more than 60 days after the personal representative has mailed a notice of disallowance; but, in the case of a claim which is not presently due or which is contingent or unliquidated, the personal representative may consent to an extension of the 60-day period, or to avoid injustice the court, on petition, may order an extension of the 60-day period, but in no event may the extension run beyond the applicable statute of limitations.

Amended by Chapter 110, 1988 General Session

75-3-805 Classification of claims.

- (1) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:
 - (a) reasonable funeral expenses;
 - (b) costs and expenses of administration;
 - (c) debts and taxes with preference under federal law;
 - (d) reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending the decedent, and medical assistance if Section 26-19-405 applies;
 - (e) debts and taxes with preference under other laws of this state; and
 - (f) all other claims.
- (2) No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.

Amended by Chapter 443, 2018 General Session

75-3-806 Allowance of claims.

- (1) As to claims presented in the manner described in Section 75-3-804 and within the time limit prescribed in Section 75-3-803, the personal representative may mail a notice to any claimant stating that the claim has been allowed or disallowed. If, after allowing or disallowing a claim, the personal representative changes the decision concerning the claim, the personal representative shall notify the claimant. The personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has expired and the claim has been barred. If the notice of disallowance warns the claimant of the impending bar, a claim which is disallowed in whole or in part by the personal representative is barred so far as not allowed, unless the claimant seeks a court ordered allowance by filing a petition for allowance in the court or by commencing a proceeding against the personal representative not later than 60 days after the mailing of the notice of disallowance or partial allowance. If the personal representative fails to mail notice to a claimant of action on the claim within 60 days after the time for original presentation of the claim has expired, this failure has the effect of a notice of allowance.
- (2) Upon the petition of the personal representative or a claimant in a proceeding for this purpose, the court may order any claim presented to the personal representative or filed with the clerk of the court in a timely manner and not barred by Subsection (1) to be allowed in whole or in part. Notice of this proceeding shall be given to the claimant, the personal representative, and those other persons interested in the estate as the court may direct by order at the time the proceeding is commenced.
- (3) A judgment in a proceeding in another court against a personal representative to enforce a claim against a decedent's estate is a court ordered allowance of the claim.

- (4) Unless otherwise provided in any judgment in another court entered against the personal representative, allowed claims bear interest at the legal rate for the period commencing six months after the decedent's date of death unless based on a contract making a provision for interest, in which case they bear interest in accordance with that provision.

Amended by Chapter 179, 1992 General Session

75-3-807 Payment of claims.

- (1) Upon the expiration of the earliest of the time limitations provided in Section 75-3-803 for the presentation of claims, the personal representative shall proceed to pay the claims allowed against the estate in the order of priority prescribed, after making provision for homestead, family, and support allowances, for claims already presented which have not yet been allowed or whose allowance has been appealed, and for unbarred claims which may yet be presented, including costs and expenses of administration. By petition to the court in a proceeding for the purpose, or by appropriate motion if the administration is supervised, a claimant whose claim has been allowed but not paid as provided in this section may secure an order directing the personal representative to pay the claim to the extent that funds of the estate are available for the payment.
- (2) The personal representative at any time may pay any just claim that has not been barred, with or without formal presentation, but he is personally liable to any other claimant whose claim is allowed and who is injured by such payment if:
 - (a) the payment was made before the expiration of the time limit stated in Subsection (1) and the personal representative failed to require the payee to give adequate security for the refund of any of the payment necessary to pay other claimants; or
 - (b) the payment was made, due to the negligence or willful fault of the personal representative, in such manner as to deprive the injured claimant of his priority.

Amended by Chapter 179, 1992 General Session

75-3-808 Individual liability of personal representative.

- (1) Unless otherwise provided in the contract, a personal representative is not individually liable on a contract properly entered into in his fiduciary capacity in the course of administration of the estate unless he fails to reveal his representative capacity and identify the estate in the contract.
- (2) A personal representative is individually liable for obligations arising from ownership or control of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.
- (3) Claims based on contracts entered into by a personal representative in his fiduciary capacity, on obligations arising from ownership or control of the estate, or on torts committed in the course of estate administration may be asserted against the estate by proceeding against the personal representative in his fiduciary capacity, whether or not the personal representative is individually liable therefor.
- (4) Issues of liability as between the estate and the personal representative individually may be determined in a proceeding for accounting, surcharge, or indemnification or other appropriate proceeding.

Enacted by Chapter 150, 1975 General Session

75-3-809 Secured claims.

Payment of a secured claim is upon the basis of the amount allowed if the creditor surrenders his security; but otherwise payment is upon the basis of one of the following:

- (1) If the creditor exhausts his security before receiving payment (unless precluded by other law) upon the amount of the claim allowed less the fair value of the security; or
- (2) If the creditor does not have the right to exhaust his security or has not done so, upon the amount of the claim allowed less the value of the security determined by converting it into money according to the terms of the agreement pursuant to which the security was delivered to the creditor, or by the creditor and personal representative by agreement, arbitration, compromise, or litigation.

Amended by Chapter 30, 1992 General Session

75-3-810 Claims not due and contingent or unliquidated claims.

- (1) If a claim which will become due at a future time or a contingent or unliquidated claim becomes due or certain before the distribution of the estate, and if the claim has been allowed or established by a proceeding, it is paid in the same manner as presently due and absolute claims of the same class.
- (2) In other cases the personal representative, or, on petition of the personal representative or the claimant in a special proceeding for the purpose, the court may provide for payment as follows:
 - (a) If the claimant consents, he may be paid the present or agreed value of the claim, taking any uncertainty into account;
 - (b) Arrangement for future payment, or possible payment, on the happening of the contingency or on liquidation may be made by creating a trust, giving a mortgage, obtaining a bond or security from a distributee, or otherwise.

Enacted by Chapter 150, 1975 General Session

75-3-811 Counterclaims.

In allowing a claim the personal representative may deduct any counterclaim which the estate has against the claimant. In determining a claim against an estate a court shall reduce the amount allowed by the amount of any counterclaims and, if the counterclaims exceed the claim, render a judgment against the claimant in the amount of the excess. A counterclaim, liquidated or unliquidated, may arise from a transaction other than that upon which the claim is based. A counterclaim may give rise to relief exceeding in amount or different in kind from that sought in the claim.

Enacted by Chapter 150, 1975 General Session

75-3-812 Execution and levies prohibited.

No execution may issue upon nor may any levy be made against any property of the estate under any judgment against a decedent or a personal representative, but this section shall not be construed to prevent the enforcement of mortgages, pledges, or liens upon real or personal property in an appropriate proceeding.

Enacted by Chapter 150, 1975 General Session

75-3-813 Compromise of claims.

When a claim against the estate has been presented in any manner, the personal representative may, if it appears for the best interest of the estate, compromise the claim, whether due or not due, absolute or contingent, liquidated or unliquidated.

Enacted by Chapter 150, 1975 General Session

75-3-814 Encumbered assets.

If any assets of the estate are encumbered by mortgage, pledge, lien, or other security interest, the personal representative may pay the encumbrance or any part thereof, renew or extend any obligation secured by the encumbrance, or convey or transfer the assets to the creditor in satisfaction of his lien, in whole or in part, whether or not the holder of the encumbrance has presented a claim, if it appears to be for the best interest of the estate. Payment of an encumbrance does not increase the share of the distributee entitled to the encumbered assets unless the distributee is entitled to exoneration.

Amended by Chapter 194, 1977 General Session

75-3-815 Administration in more than one state -- Duty of personal representative.

- (1) All assets of estates being administered in this state are subject to all claims, allowances, and charges existing or established against the personal representative wherever appointed.
- (2) If the estate either in this state or as a whole is insufficient to cover all family exemptions and allowances determined by the law of the decedent's domicile, prior charges and claims, after satisfaction of the exemptions, allowances and charges, each claimant whose claim has been allowed either in this state or elsewhere in administrations of which the personal representative is aware, is entitled to receive payment of an equal proportion of his claim. If a preference or security in regard to a claim is allowed in another jurisdiction but not in this state, the creditor so benefited is to receive dividends from local assets only upon the balance of his claim after deducting the amount of the benefit.
- (3) In case the family exemptions and allowances, prior charges and claims of the entire estate exceed the total value of the portions of the estate being administered separately and this state is not the state of the decedent's last domicile, the claims allowed in this state shall be paid their proportion if local assets are adequate for the purpose, and the balance of local assets shall be transferred to the domiciliary personal representative. If local assets are not sufficient to pay all claims allowed in this state the amount to which they are entitled, local assets shall be marshalled so that each claim allowed in this state is paid its proportion as far as possible, after taking into account all dividends on claims allowed in this state from assets in other jurisdictions.

Enacted by Chapter 150, 1975 General Session

75-3-816 Final distribution to domiciliary representative.

- (1) The estate of a nonresident decedent being administered by a personal representative appointed in this state shall, if there is a personal representative of the decedent's domicile willing to receive it, be distributed to the domiciliary personal representative for the benefit of the successors of the decedent unless:
 - (a) By virtue of the decedent's will, if any, and applicable choice of law rules, the successors are identified pursuant to the local law of this state without reference to the local law of the decedent's domicile;

- (b) The personal representative of this state, after reasonable inquiry, is unaware of the existence or identity of a domiciliary personal representative; or
 - (c) The court orders otherwise in a proceeding for a closing order under Section 75-3-1001 or incident to the closing of a supervised administration.
- (2) In other cases, distribution of the estate of a decedent shall be made in accordance with the other parts of this chapter.

Enacted by Chapter 150, 1975 General Session