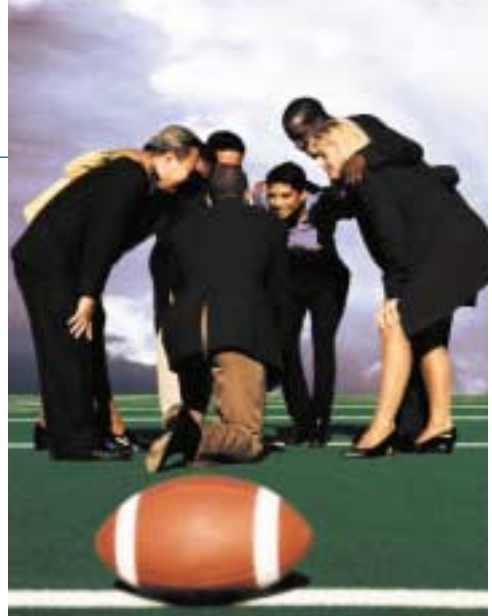


Probate Collections— Managing for the “Two-Minute Drill”

Part 2: Understanding the Legal Playing Field



by Horace A. Lowe

This article, the second in a series on collecting deceased consumer debt, focuses on the hodgepodge of state laws governing the collection of consumer debt once a consumer becomes deceased. There is a comparison of the rules of the game under the Uniform Probate Code and other state probate laws, and discussion of the probate claims process and the general process of pre-death collections, the applicability of certain other laws after death, and the extent to which current probate laws are inappropriate to the current realities of the consumer credit industry.

Death has a way of complicating things. The consumer credit industry's procedures are fairly standard across the spectrum of the debtor-creditor relationship, ranging from qualification, to extension of credit, to collection during life. Except for certain state law variations, of course, the processes, procedures, and laws governing privacy, collection practices, foreclosures, credit reporting, lawsuits, and bankruptcies tend to be quite harmonious and even complementary. What-

ever happens, we all pretty much have procedures and forms in place to deal with it.

However, once a consumer dies, things get a little weird because: 1) the rules of the game change suddenly; 2) creditors often may not know what the new rules are until the game is nearly over; and 3) the clock begins to tick away well before creditors even know the game has changed. This is the “two-minute drill.”

Exactly how weird things get depends largely on where a partic-

ular account is in the collection process at the time of death. There are four general scenarios wherein death can make things weird. The degree of weirdness generally decreases in the following order: 1) nondefault; 2) post-default communication, workout efforts, and enforcement of security interests; 3) lawsuit and litigation; and 4) bankruptcy proceedings. For present purposes, it is enough to say that it is extremely important to get on top of the game when a consumer death

© 2004 by RMA. Horace A. Lowe, Esq., is the principal of the law firm of H.A. Lowe & Associates LLC, Denver, Colorado. As former corporate counsel and a member of the executive management team for a global telecommunications company, Lowe has a strong interest in business solutions development and risk management.

THERE ARE FOUR GENERAL SCENARIOS WHEREIN DEATH CAN MAKE THINGS WEIRD. THE DEGREE OF WEIRDNESS GENERALLY DECREASES IN THE FOLLOWING ORDER: 1) NONDEFAULT; 2) POST-DEFAULT COMMUNICATION, WORKOUT EFFORTS, AND ENFORCEMENT OF SECURITY INTERESTS; 3) LAWSUIT AND LITIGATION; AND 4) BANKRUPTCY PROCEEDINGS.

occurs during the first three scenarios.

A cup of coffee and a high-sugar-content snack are recommended to get through the smorgasbord of probate laws that follow. Some practical tips and anecdotes along the way may also help readers remain alert.

Other Laws Governing Collections Post-Death

Fair Debt Collection

Practices Act. For debt collectors (including some creditors collecting on monies owed directly to them), the weirdness is even weirder. That's because debt collectors still have to comply with both the federal Fair Debt Collection Practices Act (FDCPA) and the probate and other generally applicable laws of the particular state, as well as perhaps the laws of any other state where property owned by the decedent is located. In addition, collectors also may be required to comply with any applicable state version of the FDCPA, although in some states, such as Colorado, the state FDCPA no longer applies once a consumer dies.

In some respects, compliance with the FDCPA seems ridiculous once a consumer is deceased. It is nonetheless important that collectors ensure compliance to avoid

potential liability. The civil liability provision of the federal FDCPA provides that any debt collector who fails to comply with any provision of the subchapter with respect to any person is liable to such person for actual and statutory damages, plus attorneys' fees and costs. Also, the FDCPA includes executors and administrators within the definition of "consumer" for purposes of the provision that governs communications with a consumer, without distinguishing among such persons serving estates in conservatorship, bankruptcy, and probate.

Thus, for example, while the validation-of-debts requirement in the FDCPA seems rather meaningless in probate, collectors would be well advised to send it after receiving notice of a debtor's death. Indeed, in some jurisdictions, including Colorado, the validation notice itself will be legally sufficient to present a claim.

Secured Debt and Probate.

If the decedent's debt is secured by real estate or personal property, the creditor typically will have the option of proceeding in probate, proceeding against the security, or pursuing both courses. The latter is the most prudent course of action. Most states reviewed for this article expressly state that a

secured creditor may enforce security without regard to probate to the extent of the value of the security. If the value of the security is less than the debt owed, the creditor must have presented and preserved a claim in probate in a timely manner to collect the deficiency from the estate.

Article 9 of the Uniform Commercial Code, which governs the enforcement of security interests, has been adopted by all 50 states, the District of Columbia, and the Virgin Islands. Article 9 remains fully in effect following a debtor's death. Probate statutes do not attempt to alter the security arrangements between a creditor and a debtor made during the decedent's life. Typically, a credit agreement is binding on the personal representative to the same degree that it was binding on the decedent during his lifetime. Because Article I, § 10 of the U.S. Constitution protects the private right of contract between parties, the states would need to have a very compelling reason to justify impairing the terms of any contract between a creditor and the decedent.

As a practical matter, a secured creditor's default strategy should be to make a claim in probate as a matter of course following notice of a debtor's death, just in case the value of the security is inadequate to cover the debt and the expenses of recovery.

Federal Bankruptcy Law.

The single arena in which federal law absolutely trumps state probate laws is the area of pre-death bankruptcy where the discharge of debts is sought. Once the bank-

ruptcy estate is created, the debtor retains no interest in property of the bankruptcy estate. Consequently, if the debtor dies during the proceeding, property of the bankruptcy estate will not be available to the personal representative of the debtor's probate estate. The bankruptcy proceeding will continue *in rem* (that is, with respect to property of the bankrupt estate). The discharge of debts in bankruptcy will apply *in personam* to relieve the debtor, and thus his probate representative, of liability for dischargeable debts.

That results because the definition of *individual* in the bankruptcy code includes a deceased individual, so that if the debtor dies during the bankruptcy case, he will nevertheless be released from his debts and his estate will not be liable for them. Creditors will be entitled to only one satisfaction—from the bankruptcy estate and not the probate estate.

The Smorgasbord of Probate Laws

Table 1, at the end of this article, shows the variations in selected states' probate laws across five parameters pertinent to the collection of deceased debt, discussed individually in this article. To understand their importance, it is useful to examine the way probate codes work generally. As stated in Part 1, the principal aim of probate laws is to ensure the speedy and efficient administration of estates. Several parties

may have an interest in an estate, including the state and federal governments (which have an interest in everything). As pertinent to this article, the key persons having an interest in a deceased estate are heirs and devisees, on the one hand, and creditors, on the other hand.

Theoretically, pre-death creditors are supposed to be paid before heirs and devisees receive the residual of the estate. In the usual case (absent a will contest, appointment as personal representative, or some other reason to become involved in administration), heirs and devisees are passive players, relying on the estate's personal representative, acting in a fiduciary capacity, to protect their interests. In reality, however, cred-

itors are at a disadvantage compared to heirs because they are active players required to take action to protect their interests.

Most probate codes encourage speedy initiation of the administration and creditor claims processes in an effort to accomplish speedy and efficient estate administration. (With a few exceptions, probate laws include specific time periods in which a creditor or collector must present a claim.) Once a claim is timely and properly presented, then the personal representative (or the court in some states) will make an initial determination to allow or disallow

the claim. The claimant will then have some period of time within which to appeal or petition the court for relief from the denial, failing which the claim will be barred. Probate laws also establish a definite bar for all claims not presented within a certain time following the date of death, the date the personal representative is appointed, or some other early event, typically one year (the "final bar").

As Table 1 shows, there is little uniformity on the pertinent parameters, nor will there likely ever be. The Uniform Law Commissioners first introduced the Uniform Probate Code for adoption in 1969. To date, the Commissioners have approved substantial revisions to the UPC 10

times from 1979 through 2003. Only 18 states have adopted some variation of the UPC to date, although Massachusetts is

considering adoption this year. And, except in the context of pre-death bankruptcies as noted above, there is no applicable federal regulation specifically addressing probate estates in general. So, take a look at Table 1 and, as the old commercial goes, "What you see is what you get."

Parameter 1: The Notice to Creditors

It is in this area that the probate laws are glaringly inadequate in allowing creditors to protect their interests. A particularly large class of claimants, major nationwide lenders and collectors, rou-

A CRITICAL PERIOD IS TRIGGERED BY A PUBLISHED NOTICE THAT HARDLY ANYONE IS GOING TO READ. NOTICE BY PUBLICATION IS, QUITE FRANKLY, A STATUTORY JOKE.

tinely are late in presenting claims, with the result in most states that the claim is automatically barred. This problem arises largely from the gap between the law and certain modern-day commercial realities.

Generally, with some notable exceptions, the process goes like this. The personal representative publishes a notice to creditors in a newspaper published in the decedent’s state and county of domicile. That notice (usually placed rather inconspicuously somewhere in the classified section) states a date by which creditors must present their claims (typically three to six months). Some states permit or require the personal representative to also give actual notice to creditors who are known or are reasonably ascertainable from records available to the personal representative. If the personal representative gives actual notice (usually by mail), the notice typically will state the same deadline for presenting claims as was stated in the published notice. If a creditor having a claim fails to present it within that period, the claim is forever barred and cannot be paid. End of story.

So, a critical period is triggered by a published notice that hardly anyone is going to read. Notice by publication is, quite frankly, a statutory joke. No lender or collector is going to have staff scanning the newspapers in the numerous states and innumerable counties across the country looking for notices to creditors.

However, in most cases where the applicable law provides for an early-claim bar failing timely presentation of a claim, the personal

representative will provide a written notice. That is because of a 1988 ruling by the U.S. Supreme Court that if a probate statute provides for the bar of a creditor’s claim based upon a published notice, then, to the extent the personal representative knows of a creditor and its claim, or such information is reasonably ascertainable, the personal representative must give actual notice to that creditor to meet the constitutional due process rights of the creditor. If the personal representative fails to do so, then the early-claim bar does not apply.

Thus, the creditor could come in at any time before the final bar and make his claim. That scenario tends to make for loose ends and really messy administration. Good probate lawyers and the courts prefer the orderly administration that results from the early-claim bar. Therefore, in most cases, actual notice will be provided.

Besides, good probate lawyers also know that, given the large volume of mail delivered daily to a typical large creditor, when they mail the notice to “Really Big Bank” in New York, addressed to nobody in particular, the envelope containing the notice is unlikely to reach the right person in time to allow preparation and timely presentation of a claim. That is especially true if the estate’s lawyer uses a plain white envelope that does not attract the attention that his fancy logo might. This practical reality is another indication that the probate laws simply are not reasonably crafted to provide actual notice to creditors, given current commercial realities.

So, unless the decedent died

in a big fire at his home without a fireproof safe or something like that, the personal representative will have access to all kinds of stuff that lenders and creditors send every month and, in most cases, Really Big Bank will get a written notice. The problem is that, in too many cases, no individual who knows what to do will receive it in time to do anything about it.

Parameter 2: Estate Inventory

In almost every state, the personal representative is required to prepare and make available, within some period of time after appointment or some other event early in the administration process, a reasonably detailed inventory of property owned by the decedent at the date of death, its fair market value as of such date, and the type and amount of any encumbrance that may exist with reference to any item. The personal representative typically also is required to prepare a supplemental inventory if she later discovers additional property or discovers that a valuation provided initially was misleadingly incorrect. The inventory will inform the creditor as to the net value of the estate after giving effect to encumbrances.

(Future articles will address the importance of the inventory and how to use the information provided, together with other useful and available information, to the creditor’s advantage.)

Parameter 3: Claim Presentation and Proof of Claim

Now and then a notice gets through in time to the right person, even at Really Big Bank. The

next question is what to do. It's simple. Just prepare the claim, mail it out to the personal representative or her lawyer and/or the clerk of the court, and then sit back and wait for the check to come in. Sort of like an income tax return, right?

Not quite. This is the point at which there are a lot of important things to think about from a risk management perspective, some of which are discussed below. And the larger the claim, the more important it is to make informed decisions about how to proceed. (The next article will cover some very practical and simple tips for deciding how and to whom—the personal representative or the court—to present claims following receipt of notice of a debtor's death.)

Once the decision is made to present a claim for determination by the personal representative, assuming the applicable law gives creditors a choice, it is important to understand the role of the personal representative in determining claims, as the nature of that role bears on the manner in which a claim is presented.

Because of her role as a fiduciary to both creditors and heirs, the personal representative should determine all creditor claims on their merits, much as the court would in deciding a claim in a legal proceeding. With respect to each claim, the personal representative must ensure, at minimum, that 1) the claim is substantively meritorious (i.e., a complete body

of reliable evidence exists to support the claim); 2) the claimant has standing, meaning that the claimant is the proper party to make the claim; 3) the claim is not barred by any applicable statute of limitation; and 4) the claim is not subject to any affirmative defenses or there are no counterclaims of the estate that would exceed the amount of the creditor's claim.

The failure to require that degree and quality of evidence would leave the personal representative vulnerable to liability to other creditors or the heirs or devisees, if it turns out that the claim was paid on the basis of untruth or invalidity of the facts that the creditor presented. Well-

**WELL-ADVISED FIDUCIARIES SIMPLY DO NOT PAY
MONEY OUT OF THE ESTATE JUST BECAUSE A
CREDITOR OR COLLECTOR SAYS THE MONEY IS DUE.**

advised fiduciaries simply do not pay money out of the estate just because a creditor or collector says the money is due.

Therefore, it is extremely important for creditors to present as much evidence as possible in support of the claim, irrespective of whether such is required by the probate code that governs the claims process. The author strongly recommends that creditors and collectors simply adopt a policy of complying with the most onerous law of all the states in terms of the substantive content of their claims presentation, among which are Alabama and especially Texas.

It probably will be a rare circumstance for a creditor to get the

opportunity to supplement its claim presentation, but it does happen. Following is an example of how *not* to respond to such an opportunity. In the example case discussed in Part 1, the estate's lawyer disallowed a claim and wrote the responsible employee of the debt collector, asking for backup documentation to support the claim, including evidence that the claim had been assigned to the putative creditor by way of merger with the original lender, as the employee had asserted. The lawyer also stated that the personal representative would reconsider and allow the claim upon submission of the backup documentation within 60 days, the time for filing a petition for allowance. In a follow-up conversation, the employee rather huffily retorted, "We don't have to do that." *Not smart. Also not paid—not a dime.*

Lesson: Always cooperate with the personal representative and estate legal counsel who request additional information or documentation. *Cost of lesson: over \$35,000.*

Parameter 4: Claim Determination

Once the claim is presented and the deadline for presenting claims has passed, a lot of important things start to happen. This is the beginning of the period during which the personal representative (read, the estate's lawyer) probably has the most fun, beating up on creditors. Creditors should expect their claims to be denied and should be pleasantly surprised when they are allowed.

There are several reasons for that. Often, the personal representative will be a relative of the decedent who also is in line to receive dollars from the estate, if only as compensation for serving as personal representative. The estate's attorney (who really is the decision maker in determining claims) obviously is loyal to the personal representative and is really motivated to avoid being sued by the heirs. So, the estate's lawyer will want to ensure that the heirs receive as much cash distribution as possible. This means he will do everything permissible under the law (and maybe even a little more) to avoid paying creditors.

In reality, there is no one in the whole game looking out for the creditors, even though the probate code may state that the personal representative has a fiduciary obligation to both heirs and creditors. Probate practitioners in Colorado take the view that, despite the absence of clear law on the point, there is no fiduciary obligation to any creditor unless and until the creditor's claim is allowed.

Irrespective of any fiduciary obligation, the personal representative has a good deal of discretion in dealing with pre-death claims against the estate. In addition, in most states and under the UPC, the personal representative is not required even to state the reason for the disallowance. The question has arisen in Colorado among the probate bar as to whether the personal representative and/or her attorney who frivolously disallows

a claim (that is, without justification based on the merits of the claim) should be subject to monetary sanctions for doing so.

While the question has not been answered definitively in Colorado, it is a legitimate and serious issue that ought to be answered in every jurisdiction. Even though the law might not require the personal representative to state a reason for denying a claim, it does not mean that there need be no reason. Creditors' counsel should pursue sanctions under applicable law whenever it appears that the estate's personal representative and/or attorney has issued a frivolous denial or disallowance.

On the other hand, while the

typical, most lenders and collectors prefer to pursue their claims without an attorney representing their interests. However, the hard reality is that this is the point at which the unrepresented creditor may wind up wishing it had a lawyer standing by in the jurisdiction.

In the example case, the overwhelming majority of the claiming creditors were not represented by counsel, and most of them did some pretty strange things following disallowance of their claims. One major creditor simply mailed to the court the same claim paperwork that it had sent in the original claim presentation, without so much as even changing the date.

Two local attorneys representing creditors failed to file anything at all following disallowance,

and their clients' claims were thus barred. One of them, a foreclosure attorney, represented a mortgage lender with respect to an upside-down real property. Result: The estate had a rock-solid defense to the deficiency claim following an auction sale of the property with a resulting deficiency. Lesson: Never assume the security will cover the debt, even if you have an appraisal that says it will. Make the claim in probate and always follow the disallowance with a petition to the court for an allowance. *Cost of lesson: over \$77,000.*

The other lawyer, once informed of the claim bar, engaged in a rather aggressive campaign including multiple letters that increasingly personalized

CREDITORS SHOULD EXPECT THEIR CLAIMS TO BE DENIED AND SHOULD BE PLEASANTLY SURPRISED WHEN THEY ARE ALLOWED.

claims determination period is somewhat murky and uncertain, it also is the period during which a properly informed and equipped creditor can have fun beating up on the personal representative. The wise creditor will obtain the information necessary to understand its position vis-à-vis other creditors and pursue early settlement terms favorable to the creditor. (A future article will cover strategies for use during this period of time.)

Parameter 5: Post-Denial Relief

Presentation of claims to the personal representative has the advantage of avoiding the costs of legal representation. If the example case mentioned in Part 1 is

the dispute and that constituted actual harassment in an attempt to compel the estate to pay the claims. What he did not realize, apparently, is that once a claim is barred, the personal representative cannot—by law—pay the claim without incurring personal liability for breach of fiduciary duty as well as violation of the probate code. Lesson: The term *barred* means . . . well, barred, a status to be avoided because it cannot be fixed. *Cost of lesson: A mere \$1,000, but hey, it adds up.*

It is important to note that, in practically all of the states reviewed, once a claim is denied by the personal representative, there must be some sort of a hearing or other proceeding to determine whether the court will allow the claim. A hearing usually requires people to show up in court, even if it's just the lawyers. Under Colorado law, and presumably the laws of most other states, a corporate entity generally cannot be represented in court by any of its officers. Rather, the law

requires that an attorney represent the entity. And, in virtually every state, an out-of-state lawyer must be specially admitted to represent his corporate client.

With this backdrop, in another case, following disallowance a major credit card issuer sent the case file to its lawyer located outside, and not licensed to practice in, Colorado. The attorney mailed some papers to the court, the personal representative, and the estate's lawyer, but the papers did not qualify as, or even purport to be, a petition for allowance of the disallowed claim. Also, the lawyer skipped the step of obtaining special admission from the court. As a result, even if he had filed appropriate papers, under Colorado law, they probably were a nullity—of no legal effect whatsoever. And, without even knowing it, he may have placed himself in contempt of court by filing anything at all. Lesson: Outside counsel should associate with local counsel. *Cost of lesson: over \$35,000.*

Relationship Management

So, what is a national or regional lender to do, given the legal smorgasbord that is probate law? Well, you sort of knew it had to be coming at some point, but there simply is no substitute for having legal counsel in each state into which a creditor lends who has a working knowledge of that state's probate laws governing creditor claims. The trick is in managing those lawyer relationships (a topic to be discussed in a future article).

Lots of football games have been won by the guy who comes in at the last second and kicks the winning field goal. Lenders and collectors also must have one of those special guys on the team. A person with a good leg who knows just when, how, and where to let loose a good swift kick can be the difference—in the "two-minute drill." □

Contact Lowe by e-mail at hlowe@halolaw.com.



Table 1

Probate Codes of Selected States Across Pertinent Parameters

State	Notice to Creditors	Inv. & Appraisal	Claim Presentation/Proof	Claim Determination	Post-Denial Review
AL Based on UPC, but with many material variances from UPC.	Notice of appointment given to known or reasonably ascertainable CRs as soon as practicable within 6 months from grant of letters. Notice of appointment published within 30 days of letters. Actual notice by first class mail to last known address or other method reasonably calculated to provide actual notice. Publish Notice of Death and Petition to Administer Estate 3 times with 1st publication at least 15 days before hearing on petition. Actual notice to known or reasonably ascertainable CRs within 4 months of issuance of letters or 30 days after CR is known, whichever is later.	Within 2 months after PR appointed.	File-verified claim or statement with court within the latter of 5 mos. from 1st publication or 6 months from grant of letters, provided CRs receiving actual notice are given at least 30 days after actual notice to present claims. Claim must be verified by oath of CR or other person having knowledge of correctness and that amount claimed is justly due or to become due.	PR must prepare sworn list of claims 6 months following appointment and thereafter when required by court or IPs. PR must give CR written notice that claim is disputed. PR must provide sworn list of claims within 6 months after appointment.	Court will hear and determine validity of claim on petition of either PR or CR, first giving 10 days notice to IPs. Thereafter, either party may appeal to the circuit court for a trial on the claim.
CA	Publish Notice of Death and Petition to Administer Estate 3 times with 1st publication at least 15 days before hearing on petition. Actual notice to known or reasonably ascertainable CRs within 4 months of issuance of letters or 30 days after CR is known, whichever is later.	Within 4 months after PR appointed.	File claim with PR and clerk of court before latter of (a) 4 months from issuance of letters or (b) 60 days after Notice of Administration is given to CR. Claims must be verified and show all particulars with originals or copies of pertinent documents.	PR must act on claims within 30 days after presentation. If PR fails to act on claim, then, at CR's option, claim is deemed rejected on the 30th day.	CR must sue on claim within 3 months of rejection.
CO UPC: Adopted.	Publish notice to CRs once per week for 3 consecutive weeks. May give actual notice to any CR.	Within 3 months after PR appointed	If claim to be barred by published notice, then CR has a date that is not less than 4 months from first publication to present claim, which date is stated in the notice. If claim to be barred by actual notice, then CR must present claim by date stated in actual notice. No particular form of presentation required. At minimum, claim must state the amount of the claim and adequately identify the claimant (name and address). Claim is presented to PR by delivery of statement of claim or by filing with the clerk of the court. CR also has the option of by-passing the PR by filing suit in court against the PR, but suit must be filed by deadline to present claims.	PR has 60 days from end of the period for presenting claims to determine claims. PR may disallow claims wholly or partially, or may allow claim entirely. Failure to disallow in writing is an allowance.	After disallowance, CR has 60 days from mailing of notice of disallowance within which to file petition for allowance or commence a suit against the PR on the claim.
CT	By publication within 14 days after appointment of PR. Actual notice may be given to specific CRs and PR may give such CRs 90 days to present claims.	Within 2 months of PR's appointment.	Present in writing to PR or the court. If required by the PR, CR must present affidavit signed by the CR proving justice of the claim. Time to present depends on solvency of the estate as presented by the PR. If solvent, then court at time of appointment of PR sets time from 3 to 12 months to present claims. If insolvent, court will determine solvency issues at hearing. Notice of determination is published within 14 days. PR to give notice to CRs allowing 210 days to present claims.	If estate is presented as insolvent and the court deems it appropriate to settle the estate as such, two or more commissioners are appointed to receive and pass on claims and file their report with the court. PR should notify CRs of a disallowance (a) in the case of a solvent estate, within 30 days following the period for presentation of claims and (b) in the case of an insolvent estate, within 6 days of the commissioner's report.	After disallowance, CR has 60 days from mailing of notice of disallowance within which to file petition for allowance or commence a suit against the PR on the claim. If estate is solvent, CR may apply to court within 30 days after rejection of claim to hear and decide the claim or may file suit within 120 days from the date of rejection of the claim. A CR who has not received notice of disallowance from the PR within 30 days after the period for presentation of claims may bring suit within 120 days after giving notice to the PR of intent to sue.

Notes on Use: PR=Personal Representative, executor or administrator of an estate. CR=Creditor, including a debt collector, having a general pre-death claim. UPC=Uniform Probate Code. No UPC reference indicates UPC not adopted in any form. IP=Interested Person, meaning any person having an interest in the estate, including, but not limited, to heirs and creditors. DOD=date of death of the decedent.

Disclaimer: Table 1 is not intended to provide legal advice to the reader. Rather, the author has compiled the information solely to illustrate the lack of uniformity among the state probate laws governing creditor claims. The compilation is based, in part, on secondary resources and is not intended as a complete rendering of all provisions concerning creditor claims. The author is not licensed to practice law in any state other than Colorado, and the author does not intend, by publication of this compilation, to engage in the practice of law in any other state. The reader should consult with counsel in the particular jurisdiction, rather than rely on the information provided herein. The author assumes no responsibility whatsoever for any action taken, or any omission to act, in reliance on the information provided herein.

State	Notice to Creditors	Inv. & Appraisal	Claim Presentation/Proof	Claim Determination	Post-Denial Review
FL	Publication of notice once a week for two weeks. PR required to promptly make diligent search to determine names and addresses of CRs and shall serve copy of Notice of Administration on those CRs within three months following first publication.	Within 60 days after letters issued.	Present claims within 3 months following date of first publication or 30 days following actual notice. Claim must be verified and set forth basis, name, and address of CR, CR's agent or attorney, and the amount of the claim. CR must deliver original and a copy of claim to the clerk of court, who then serves the PR. Claim is deemed presented when so filed.	Claim not objected to by PR or other IPs within 4 months of first publication or 30 days from timely filing of claim, whichever is later, is deemed allowed.	The objecting person must file with the court and serve notice of objection on the CR (or its attorney) and the PR. The CR has 30 days from the service of the objection within which to bring appropriate proceedings.
GA	Within 60 days of PR's qualification, PR must publish notice for 4 weeks.	Within six months following qualification of PR	No particular form required. Verification not required but is advisable. Must be presented within 3 months of date of last publication or lose right to participate equally with claims of equal priority paid before PR has notice of late presented claim. However, late claiming CR does have a claim on funds remaining with PR, so long as no debt of higher priority remains unpaid.	PR may compromise doubtful claims against the estate. The PR may reject outright any claim against the estate.	CR's only recourse is action against the PR, which cannot be brought until passage of 6 months after PR's qualification.
IL	Publish once a week for 3 consecutive weeks and mail or deliver to known and reasonably ascertainable CRs.	Within 60 days after issuance of letters.	Present claims within 6 months from date of publication or 3 months from date of actual notice, whichever is later. Claim must state sufficient information to notify the PR of the nature of the claim or other relief sought. May be filed with PR, the court, or both. Must deliver to each PR appointed and not revoked, as well as such person's attorney, and file proof of delivery with court.	The PR may pay, consent to, allow, or disallow any timely presented claim at any time. Any interested party may contest the PR's determination and also may demand a jury trial of any claim and compel the PR to justify any allowed claim. PR may disallow any claim not presented to the court by mailing notice to the CR or its attorney stating that if the claim is not filed with the court by a certain date (not less than 2 months from the date of the notice), the claim will be barred.	Contested claims are set for trial, which may be by jury. Post-trial relief as in all other civil cases.
KS	Publish notice to CRs for 3 weeks and give actual notice to known or reasonably ascertainable CRs.	Within 30 days after appointment.	Claims must be presented within 4 months of date of first publication. Claims are presented by filing a verified petition for allowance with the court, stating the nature of all demands and offsets. The petitioner must provide a copy of the petition to the PR.	Upon hearing, the court will enter judgment of allowance or disallowance. However, a verified claim under \$5,000 may be allowed without a filing and allowance by the court.	Appellate relief from adverse determination same as other civil cases.
MD	Publish notice once a week for 3 weeks. PR required to make diligent search to identify and locate CRs and give actual notice by mail.	Within 3 months of CR's appointment.	Claims must be presented within the earlier of 6 months following decedent's death (if notice by publication) or two months following notice given by mail. Claims are presented by filing with the court registry and serving a copy on the PR, or by filing suit. Must be verified and state the name and address of the CR, the basis of the claim, and the amount.	If PR intends to disallow a claim, PR must notify the CR that it has been disallowed, in whole or in part, and that the CR has 60 days to petition the court for allowance or to commence suit. If the PR takes no action, then the CR must petition the court, which can allow or disallow the claim.	Appellate relief from adverse determination same as other civil cases.

"The Two-Minute Drill"

Part 2

State	Notice to Creditors	Inv. & Appraisal	Claim Presentation/Proof	Claim Determination	Post-Denial Review
MA	No notice to CRs required, except in the case of insolvent estates. Notice of petition for testamentary letters or of administration must be given to all IPs at least 14 days before the return (hearing) date and at least 7 days prior by publication.	Required to be filed in court within 3 months following appointment.	An action must be commenced against the estate and process served upon or accepted by the PR, or notice of action filed in the probate registry, within one year of the date of death. No particular form required, but must be in writing, including the name and address of the CR.	If, PR determines estate solvent 6 months after the date of death, PR is to pay the debts due and shall not be personally liable to any CR for such payments made before notice of such CR's demand. Failure to pay is tantamount to denial.	Unpaid claim determined by court, with appellate relief as in other civil cases.
MI	Upon appointment, PR must publish a single notice to CRs within 4 months after publication. Notice to a known CR is given within (a) 4 months after the date of the publication of notice to CRs or (b) 28 days after the PR first knows of the CR if the PR first knows of a CR less than 28 days before the expiration of the 4-month period.	PR must prepare within 91 days of appointment and deliver to all IPs who request it.	Claim is presented by either filing verified statement containing specified information to the PR or by commencing an action in court. Claim must be presented: if notified by publication, within 4 months after date of first publication; if notified by actual notice, by the date 4 months after first publication or 1 month following date of actual notice, whichever is later.	PR may mail notice disallowing a claim in whole or in part within 63 days following the time for presentation of claims. Failure to mail a notice of disallowance constitutes an allowance.	CR must commence a proceeding against the PR not later than 63 days after the mailing of the notice of disallowance. Upon petition, the court may allow wholly or in part a timely filed claim.
MN UPC: Adopted with significant variation	Publish notice to CRs once per week for 2 consecutive weeks. Actual notice to be provided within 3 months after the date of first publication to each then known and identified creditor.	Within 6 months after appointment of PR, or 9 months after DOD, whichever is later.	CRs must present claims within 4 months after the date of the court administrator's notice, which is subsequently published, unless they are entitled to actual notice. If actual notice provided, CRs must present claim within 1 month after the date of the service of the notice or 4 months from date of administrator's notice, whichever is later. No particular form of presentation required. At minimum, claim must state the amount of the claim and adequately identify the claimant (name and address). Claim is presented to PR by delivery of statement of claim or by filing with the clerk of the court. CR also has the option of bypassing the PR by filing suit in court against the PR, but suit must be filed by deadline to present claims.	PR has 2 months from end of the period for presenting claims to determine claims. PR may disallow claims wholly or partially, or may allow claim entirely. Failure to disallow in writing is an allowance.	After disallowance, CR has 2 months from mailing of notice of disallowance within which to file petition for allowance with the court or commence an action against the PR.
MO	Court clerk, upon issuance of testamentary letters, publishes once a week for 4 consecutive weeks a notice of the appointment of the PR, which includes a notice to CRs. The PR may, but is not required to, send a copy of the notice to any known CR.	Within 30 days after letters are granted.	CR must file claim in court within 6 months from the date of first publication or, if notice was mailed to, or served upon the CR, then within 2 months from the date it was mailed or served, whichever is later. No particular form of proof is required.	The PR may pay any claim without allowance by the court if the claim is paid or filed within 6 months following the first date of publication. However, any IP may file an exception to the payment and the court must hold a hearing in which the burden is on the PR to prove that the estate was liable on the claim for the amount so paid. If the court determines that the estate was not liable for any part of the amount paid, the exception is sustained.	The court sets the claim for hearing and determination with the right of appeal following an adverse determination.

"The Two-Minute Drill"

Part 2

State	Notice to Creditors	Inv. & Appraisal	Claim Presentation/Proof	Claim Determination	Post-Denial Review
NC	PR to publish notice to CRs once per week for 4 consecutive weeks. PR must deliver or mail notice to CRs actually known or who can be reasonably ascertained within 75 days after the granting of letters.	Within 3 months after PR's qualification.	Claim must be presented by the date specified in the published notice or notice delivered or mailed within 90 days after the date of the delivery or mailing if the expiration of said 90-day period is later. Claim must be in writing and state the amount or item claimed, or other relief sought, the basis for the claim, and the name and address of the CR. PR may require additional information to substantiate claim. Claims are delivered to the PR or the clerk of the court. CR also may commence an action against the PR within the time limits stated.	PR may approve or reject claim. PR may pay approved claims prior to the date set forth in the first published notice.	Rejected claim may be referred to arbitration before 3 or fewer arbitrators. If not arbitrated, then CR must bring action within 3 months of PR's notice of rejection of claim.
NJ	None required unless ordered by the court. If ordered, notice is published once and/or mailed or delivered to CRs who are known or are reasonably ascertainable.	Not required unless ordered by court.	Claim must be presented to PR in writing and under oath setting forth the particulars of the claim and the amount claimed. PR may obtain a court order limiting the presentation of claims and, if so, claims must be presented within 6 months following date of the order.	PR may approve or reject claims. PR must give written notice of rejection within 3 months.	CR must commence action within 3 months of receipt of notice of rejection.
NY	None required.	Within 6 months following issuance of letters	Claims are presented to the PR on or before the date fixed in the notice to CRs or, if no notice is published, within 7 months from the date letters are issued. Must include statement of facts and amount of claim. PR may require affidavit and additional supporting information. Failure to so present a claim relieves the PR from liability with respect to assets paid out for lawful claims or of legacies or distributions made. However, any claim presented before actual distribution should share in the same manner as though presented timely.	PR must give prompt written notice to CRs as to disposition of claims, stating the reason for any rejection. If PR fails to allow claim within 90 days after presentation, claim is deemed disallowed.	CR must petition court for allowance of claim and court may dismiss petition or allow the claim in whole or in part.
PA	Immediately following grant of letters, publish once a week for 3 consecutive weeks.	Must be filed at earlier of filing of account or inheritance tax return. If requested by IP, must be filed within 3 months of appointment or 300 days following request, whichever is later.	Claims must be presented to the PR promptly. If presented before claim is barred, or within 1 year of DOD, whichever is later, statute of limitations is tolled. All claims must be presented in the court at the audit of the PR's account and failure to do so will bar the claim. No particular form is required. No verification required.	Claims approved by the PR are paid without proof, unless an IP objects.	Disallowed CR must appeal from disallowance.

"The Two-Minute Drill"

Part 2

State	Notice to Creditors	Inv. & Appraisal	Claim Presentation/Proof	Claim Determination	Post-Denial Review
TX	Within 1 month after receiving letters, PR publishes notice once and sends notice to the comptroller of public accounts (if the decedent remitted or should have remitted taxes administered by the comptroller of public accounts). Also, at any time before the estate is closed, PR may give actual notice to CR to present claims within four months.	Within 90 days after PR's qualification	Claims must be presented to the PR any time before the estate is closed if not barred by statute of limitations. Claim must be supported by affidavit that claim is just and that all legal offsets, payments and credits known to the affiant have been made. Pertinent instruments should be attached and, if no such instrument exists, the affidavit should state all facts on which the claim is based.	PR may approve or reject claim. If not expressly approved within 30 days, claim is deemed rejected.	If claim rejected, CR must commence action on claim within 90 days after the rejection.
WA	PR may give notice to CRs by publication once each week for three successive weeks and may, at any time during the probate proceeding, give actual notice to CRs who become known to the PR.	Within 3 months after appointment.	CR must serve on or mail to the PR and file the original of the claim with the court. The claim must be presented within the later of 1) 30 days after the PR served or mailed the notice to CR, or 2) 4 months after the date of first publication.	The PR must either allow or reject the claim within the latter of 4 months from the date of first publication of the notice or 30 days from presentation of the claim. Properly presented claims for \$1,000 or less are deemed allowed and may not thereafter be rejected unless the PR issues notification of rejection within the latter of 6 months from the date of first publication or 2 months from the PR's receipt of the claim. However, the PR may request an extension of time from the court to allow or reject such claims.	If the PR has not allowed or rejected a claim in a timely manner, the CR may serve written notice on the PR that the claimant will petition the court to have the claim allowed. If the PR fails to notify the claimant of the allowance or rejection of the claim within 20 days after the PR's receipt of the CR's notice, the CR may petition the court for a hearing to determine whether the claim should be allowed or rejected, in whole or in part. If the court substantially allows the claim, the court also may allow the CR reasonable attorneys' fees chargeable against the estate.



Moving?

Let us know!

Tape your current label in the box at right, fill in your new address below, and fax to [Customer Relations, 215-446-4101](tel:215-446-4101).

New address: _____
