

## **CREDITOR'S CLAIMS**

N.C.G.S. § 28A-14-1(a) requires the personal representative to notify by publication all persons, firms and corporations having claims against the decedent to present them to the personal representative on or before a day to be named in the notice, which day must be at least three months from the date of the first publication of the notice to creditors. The notice must provide a mailing address for the personal representative and be published once a week for four consecutive weeks in a newspaper qualified to publish legal advertisements in the county where the decedent's estate is being administered. If there is no such newspaper published in the county, then at the option of the personal representative the notice can be published once a week in a newspaper having general circulation in the county and posted at the courthouse, or the personal representative can post the notice at the courthouse and four other public places in the county.

N.C.G.S. § 28A-14-1(b) requires the personal representative, before filing the 90-Day Inventory, to personally deliver or send by first class mail a copy of the notice to creditors to all persons, firms and corporations having unsatisfied claims against the decedent who are actually known or can be reasonably ascertained within 75 days after qualification. The personal representative does not have to deliver or mail notice with respect to any claim that is recognized as valid by the personal representative. The personal representative is not liable to any person if he in good faith gives notice or fails to give notice under N.C.G.S. § 28A-14-1(b), whether or not such notice is actually required. In addition, an affidavit of the personal representative or the attorney stating that a copy of the notice to creditors was mailed to each creditor entitled to notice must be filed in the Clerk's office by the personal representative pursuant to N.C.G.S. § 28A-14-2.

After the notice to creditors has run for four consecutive weeks, the newspaper

will send either to the attorney or directly to the Clerk an Affidavit of Publication. You should photocopy at least one copy of the affidavit of publication for your file and file the original with the Clerk at the time the 90-Day Inventory is filed.

Generally, any claims are forever barred if not submitted by the later of (1) the date required by the notice, or (2) in those cases requiring delivery or mailing of notice under N.C.G.S. § 28A-14-1(b), within 90 days of the date of delivery or mailing of the notice. The claims should not be paid unless a release is received from the devisees or heirs.

N.C.G.S. § 28A-19-1 requires that a claim must be in writing, state the amount or item claimed, the basis for the claim, the name and address of the claimant, and requires the claim to be delivered by one of the following methods:

- (1) in person or by mail to the personal representative or Clerk of Superior Court;
- (2) registered or certified mail, return receipt requested, to the personal representative; or
- (3) to the Clerk in the county where the estate administration is pending.

A copy must be mailed first class by the Clerk of Superior Court to the personal representative at the expense of the claimant.

As claims are timely submitted, the personal representative should review the claims to determine their validity and, when appropriate, should require that an affidavit be submitted by the claimant to the effect that the claim is due and payable, that no payments have been made, that there are no offsets against the claim, or, if there have been payments made on the claim or any offsets exist, verification of those payments. N.C.G.S. § 28A-19-2. If the personal representative rejects the claim and does not refer

it pursuant to N.C.G.S. § 28A-19-15, the claimant must, within three months after receiving written notice of such rejection, or after some part of the claim becomes due, commence an action for the recovery of the claim or it will be barred pursuant to N.C.G.S. § 28A-19-16.

Action against a Personal Representative is commenced by filing or by service of process where the action is filed in a county other than where the Personal Representative qualified.

Generally, no debt or claim should be paid by the personal representative until the three months creditors' period has expired. However, if the personal representative is sure that the estate is solvent and is able to pay all debts and claims, they may be paid prior to the expiration of the creditors' period. The personal representative remains personally liable for the payment of debts and claims which exceed the amount that the creditor or claimant would have been entitled to receive under the provisions of N.C.G.S. § 28A-19-6, so make sure there are adequate funds to cover such possibilities.

All claims arising prior to the decedent's death not made within the time prescribed by the notice to creditors statute are barred, except claims of the United States, and tax claims of the State of North Carolina and its subdivisions. All claims arising at or after the death of the decedent, except claims of the United States and tax claims of North Carolina and its subdivisions, are barred unless presented to the personal representative within six months after the date on which the claim arises, or for claims based on contract with the personal representative within six months after the date on which performance by the personal representative is due.

If a claim is not barred by the statute of limitations at the time of decedent's death, it shall not be barred if presented within the period provided for creditors to submit claims. All claims barrable under N.C.G.S. § 28A-19-3 shall be barred, in any event, if the notice to creditors is not published within three years after the death of decedent.

However, claims to the extent that the decedent or personal representative is protected by insurance coverage are not barred.

For claims not barred under this provision, the personal representative has the discretion, acting in good faith, to determine whether or not to plead any applicable statute of limitations, and absent a showing of collusion or bad faith, his discretion is binding on all persons interested in the estate. (N.C.G.S. § 28A-19-11)

Where a contingent or unliquidated claim does not become absolute before final distribution, the Clerk may provide for its satisfaction under N.C.G.S. § 28A-19-5 as follows:

- (1) the creditor and personal representative may determine the value by agreement, arbitration or compromise;
- (2) Clerk may order the personal representative to retain a reserve sufficient to pay the claim when it becomes absolute and order distribution of the balance of the estate;
- (3) Clerk may order distribution as though the claim did not exist subjecting heirs and devisees to liability to the creditor to the extent of the estate received by them; bond may be required.
- (4) such other method as the Clerk may order.

N.C.G.S. § 28A-19-7 provides a procedure for closing an estate without having to pay an outstanding claim. If a decedent or his property was liable at the time of the decedent's death (either directly or contingently), and if any person other than the personal representative agrees to assume the liability and the creditor consents to the assumption, an agreement signed by the personal representative, the creditor and the person assuming the liability may be filed with the Clerk. The filing of a certified copy of the agreement acts as a payment or discharge of the personal representative as far as the estate is concerned.

N.C.G.S. § 28A-19-15 provides that where the personal representative doubts the justness of any claims, he may enter an agreement with the claimant to refer the matter in controversy to one or more disinterested persons, not exceeding three. The determination of the referee shall be filed in the Clerk's office. The right to refer extends to claims in favor of the estate as well as those against the estate. If a claim is presented to and rejected by the personal representative and not referred as provided in this section, the claimant must, within three months after written notice of rejection, or after some part of the claim becomes due, commence an action for recovery or be forever barred from maintaining an action thereon. (N.C.G.S. § 28A-19-16).

There is considerable uncertainty in North Carolina over the duty of a personal representative to pay any of the liability on property owned by the decedent and a surviving spouse as tenants by the entirety. Some corporate fiduciaries have paid one-half of the liability on tenancy by the entirety property from the probate estate. Another position is that probate assets should not be depleted to pay off indebtedness against entirety property, since the property itself is security for payment of the debt, thereby eliminating the need to use probate assets. The statutes do not expressly require that the debt be paid off and seem to recognize that it may not be paid. For example, see N.C.G.S. §§ 28A-15-3 and 28A-15-4, which provide for the non-exoneration of encumbered probate assets.

Effective June 12, 2003, claims for equitable distribution may not be satisfied other than by payment nor treated as contingent claims. Instead the claim must be paid in full or the personal representative and claimant may come to equitable (in their opinions) agreement, which must be filed with the Clerk (N.C.G.S. § 28A-19-19).