

IN THE COURT OF COMMON PLEAS, PROBATE DIVISION, GEAUGA COUNTY, OHIO  
Judge Timothy J. Grendell

Information Sheet  
Creditor Rights

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**WARNING**

This Information Sheet is intended to provide you with an overview of the subject matter, effective as of the date noted in the upper left-hand corner. This Information Sheet is not intended to provide you with all legal information that may be necessary for you to decide upon a course of action, and the information provided may not be error-free, complete, or accurate. Moreover, this Information Sheet may not accurately describe the cited sections of the Ohio Revised Code or cited case law. Finally, this Information Sheet is not intended as a substitute for legal advice from a competent licensed attorney, who is familiar with all of the relevant facts of your case, and therefore the Help Center recommends that you seek legal advice from a competent licensed attorney that you select before taking any action. While the Help Center can provide you with a limited amount of general legal information, neither the Help Center staff nor any other Court employee can give you any legal advice.

**NOTE: All form numbers referenced in this information sheet and designated by the prefix "HCPF" are only available at the Help Center and are not on the Court's website.**

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Background

The probate process is like a business bankruptcy. When a business is in a bankruptcy proceeding, the Trustee will gather the assets, pay the creditors of the business (including taxes), and pay the remaining assets to the business owners. The business owners only receive assets after the creditors have been fully paid. Likewise, when a person dies owning Probate Property,<sup>1</sup> upon receipt of an application, the probate court will appoint an executor or administrator, in a Full Administration, or appoint the Commissioner in the event of a filing for Relief from Administration. The Estate Representative<sup>2</sup> will identify and gather the Decedent's Probate Property, satisfy the statutory rights of a surviving spouse or minor children, pay the Decedent's creditors and then pay the remaining balance of the Probate Property to those persons or entities entitled to receive the balance of the Probate Property in accordance with the Decedent's Will if admitted to probate, otherwise the statute of descent and distribution.<sup>3</sup>

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<sup>1</sup> See generally Information Sheet "Probate Process Overview" for a description of Probate Property.

<sup>2</sup> "Estate Representative" is the person appointed by the probate court to handle the probate estate, whether the probate process is a Full Administration (in which case the name of that person is the Executor, Administrator, or Administrator with Will Annexed), the Commissioner of a Release from Administration, or the applicant of a Summary Release from Administration. Sometimes that person is called a "fiduciary."

<sup>3</sup> R.C. 2105.06.

## Duty to Pay a Creditor of a Decedent

Subject to the Executor's or Administrator's right to reject a creditor claim, the general rule is that the Executor or Administrator has a duty to pay only the claims of those Decedent's creditors who "timely and properly present" their claims after the probate proceeding is commenced by the appointment of an Executor or Administrator, or by filing an application for Relief from Administration under R.C. 2113.03. The presentation of creditor claims is governed by R.C. 2117.06. If a creditor claim is not timely and properly presented, then no matter how valid the claim is, the Estate Representative must not pay the claim. In effect, R.C. 2117.06 operates as a "statute of limitations." There are two situations that a creditor should consider when presenting a creditor claim.

- **First**<sup>4</sup> If the creditor claim is presented after the appointment of the Executor or Administrator, but before the filing of the final account or certificate of termination, there are three options available to a creditor to present its claim:
  1. To the executor or administrator, or to an attorney who is identified as counsel for the executor or administrator in the probate court records for the estate of the decedent, in a writing;
  2. To the probate court in a writing that includes the probate court case number of the decedent's estate;<sup>5</sup>
  3. In a writing that is actually received by the executor or administrator, or by an attorney who is identified as counsel for the executor or administrator in the probate court records for the estate of the decedent, within the appropriate time specified in R.C. 2117.06(B) and without regard to whom the writing is addressed. If the executor or administrator is not a natural person, then the writing shall be considered as being actually received by the executor or administrator only if the person charged with the primary responsibility of administering the estate of the decedent actually receives the writing within the appropriate time specified in R.C. 2117.06(B).
- **Second**<sup>6</sup> If the final account or certificate of termination has been filed, then in a writing to those distributees of the decedent's estate who may share liability for the payment of the claim.

**Timely Filing Requirement.** Except for a few exceptions that are explained below, all claims shall be presented within six months after the death of the decedent, whether or not the estate is released from administration or an executor or administrator is appointed during that six-month period. Every claim presented shall set forth the claimant's address.

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<sup>4</sup> R.C. 2117.06(A)(1)

<sup>5</sup> If a person applies to be appointed the Commissioner of a probate proceeding resulting from the filing of an application for relief from administration. within six months after the Decedent's date of death, as permitted under R.C. 2113.03, then this may be the only option available to a creditor to present its claim. Moreover, if a Will is admitted to probate without the appointment of an Executor, it would seem the creditor may present its claim by filing a writing with the Court because a case number has been assigned.

<sup>6</sup> R.C. 2117.06(A)(2)

If those requirements are not satisfied, then the creditor's claim is barred, and the Estate Representative must not pay the claim.

Exceptions to the Six-Month Rule.

1. Medicaid Estate Recovery Program.<sup>7</sup> If the creditor is the Medicaid Estate Recovery Program, then R.C. 2117.061 exempts that claim from the "six-month" rule requirement. Such a claim typically results from the Decedent or a predeceased spouse residing in a nursing home and the nursing home costs are paid by Medicaid (not Medicare). See the additional information provided below regarding the Medicaid Estate Recovery Program./
2. Possible Other Exempt Creditors. As the result of R.C. 2117.25, there may be other creditors whose claims must be paid by an executor or administration even if their claims are not timely and properly presented.<sup>8</sup> Some of those creditor claims are listed below. If there is such a creditor, who did not timely and properly present a claim, then the Help Center recommends that you obtain legal advice from an attorney of your choosing before paying the claim.
  - a. Spouse/Minor Children Claims.<sup>9</sup> The claim that a surviving spouse or minor children have for the Allowance for Support. If the Decedent is survived by a spouse or any minor children (regardless of whether they are beneficiaries of the estate), then the surviving spouse or minor children may have a claim to receive a portion of the Probate Property before any payment is made to creditors. In effect, the surviving spouse or minor children are treated as a senior creditor. For more information concerning spousal rights, please read information sheet titled "Rights of Surviving Spouse."<sup>10</sup>
  - b. United States Debts.<sup>11</sup> Debts entitled to preference under federal law, which includes federal income taxes.
  - c. State Obligations.<sup>12</sup> Personal property taxes and obligations for which the decedent was personally liable to the state or any of its subdivisions, which includes state or city income taxes.
3. Secured Lenders.<sup>13</sup> If a creditor has a valid lien against any Probate Property, then that secured creditor may proceed to exercise its rights against that Probate Property to collect its debt even if that secured creditor did not timely and properly present its claim within the six-month period in the manner explained above. An example of a secured creditor is a bank that has a valid mortgage against real property owned by the Decedent. Another example is a lending company that has a lien against a vehicle, or a judgment creditor that has obtained a judgment lien against Probate Property. However, if that secured creditor has failed to timely and properly present its claim, then

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<sup>7</sup> R.C. 2117.061

<sup>8</sup> For a more detailed explanation see 33 Ohio Jur. 3d Decedent's Estates Sec. 1213.

<sup>9</sup> R.C. 2106.13

<sup>10</sup> See *generally* R.C. 2106.13 regarding the Allowance for Support rights for the benefit of a surviving spouse or minor children of the decedent. See *generally* R.C. 2117.25 regarding the order of priority for payments to creditors

<sup>11</sup> R.C. 2117.25(D)(1) and R.C. 2117.25(A)(4)

<sup>12</sup> R.C. 2117.25(D)(1) and R.C. 2117.25(A)(8)

<sup>13</sup> See R.C. 2117.10

the Estate Representative has no duty to pay the claim. Additionally, if that secured creditor is not fully paid after exercising its rights against the encumbered Probate Property, then the remaining balance of that creditor's claim is forever barred and must not be paid by the Estate Representative.

4. Contingent Claims.<sup>14</sup> An exception to the six-month rule is a "Contingent Claim." One definition of a contingent claim is "A claim is considered contingent if no one can be sure at the decedent's death whether the claim will ever become due." An example is if the Decedent committed an act that caused injury to a third person (attorneys refer to this as a tort claim) but no claim was asserted by the injured party before the decedent's death. Another example is a breach of contract claim. R.C. 2117.37 to 2117.42 have special rules regarding contingent claims. Please note that R.C. 2117.41 and 2117.42 may permit the claimant to collect a claim that has accrued (typically resulting from a lawsuit or settlement in favor of the claimant) from a beneficiary of the estate to the extent that a beneficiary received probate property from the probate estate. If you are aware of the possibility of a contingent claim, then you should consider obtaining legal advice before filing any applications with the Court or making distributions of probate property.
5. Administration Costs, including Legal Fees. The six-month rule pertains to creditor claims that accrued before the decedent's death. Thus, a cost of administration (e.g., court costs, appraiser fees, fiduciary fees, attorneys fees) incurred or accrued after the decedent's death is not subject to the six-month rule, and thus is not barred if a claim is not presented within six months after the date of death.
6. Claim of Estate Representative. As explained below, if the Estate Representative has a claim against the probate estate, even if the Estate Representative fails to comply with the six-month rule regarding timely presentation of the claim, nevertheless the Estate Representative may apply to the Court to have that claim allowed by the probate judge as permitted by R.C. 2117.02.

### Allowance or Rejection of Creditor Claims

The mere fact that a creditor claim is timely and properly presented does not mean that the claim must be paid. The Estate Representative has the option to "allow" any pay or to "reject" the claim. The Estate Representative has a duty to the beneficiaries and next-of-kin to determine whether a creditor claim, which is timely and properly presented, is a valid claim or whether the claim should not be paid, in whole or in part. The Estate Representative may not "allow" and thus may not pay a claim where there is a mere moral obligation and not a legal obligation.<sup>15</sup>

**KEY POINT** - The Estate Representative shall act to either "allow" or "reject" a creditor claim within 30 days after a creditor claim is timely and properly presented.<sup>16</sup> However, the failure of the Estate Representative to either timely "allow" or "reject" a creditor claim does not prevent the Estate Representative from doing so at a later time.<sup>17</sup>

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<sup>14</sup> See R.C. 2117.06(C) and R.C. 2117.37 through R.C. 2117.42.

<sup>15</sup> *Drouillard v. Wilson*, 1 Ohio Dec. Reprint 555 (1853).

<sup>16</sup> R.C. 2117.06(D)

<sup>17</sup> R.C. 2117.06(D)

- Authentication of Claim. Before deciding whether to “allow” or “reject” a claim, the Estate Representative may require the creditor to “authenticate” the claim.<sup>18</sup> Upon receipt of a demand by the Estate Representative, the creditor must prepare and deliver to the Estate Representative an affidavit stating (1) the claim is justly due, (2) no payments have been made, and (3) there are no counterclaims.

**Note:** The Estate Representative should consider using the form titled Demand for Authentication (HCPF 071).

- Allowance of Claim. If the Estate Representative decides to “allow” a properly presented creditor claim, Ohio law does not provide a specific method for “allowing” a valid creditor claim. A mere oral statement by the Estate Representative to the creditor that the Estate Representative will pay the claim in due course could be deemed an “allowance” of that claim.<sup>19</sup> There are a few key points to consider:
  - If the Estate Representative does not indicate to the creditor whether the claim is “allowed” or “rejected,” then the creditor may make a written demand upon the Estate Representative to allow the claim.<sup>20</sup> Upon receipt of that demand, the Estate Representative may allow or reject the claim. If the Estate Representative does not respond within five days after receipt of that demand, then the claim is deemed to be rejected. In that case, the creditor may proceed to file a lawsuit against estate, as explained below.
  - Even if the Estate Representative “allows” a valid creditor claim, the Estate Representative has no duty to pay the claim, but rather may decide later to “reject” that claim and not pay it.<sup>21</sup> Again, in that case the creditor may proceed to file a lawsuit against estate, as explained below.
  - Of course, if the Estate Representative pays a claim, the Estate Representative is deemed to have allowed that claim.
  - If the creditor also files a notice of its claim with the Court, then the Court will not permit the Estate Representative to file a final and distributive account without either allowing or rejecting that creditor claim.<sup>22</sup>
  - Even if the Estate Representative allows a creditor claim, that creditor has no assurance that the claim will be paid until that creditor actually receives payment. Again, the Estate Representative has the right to reject a creditor claim after it previously has “allowed” that claim.

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<sup>18</sup> R.C. 2117.08

<sup>19</sup> *Miller v. Ewing*, 68 Ohio St. 176 (1903); *Smock v. Bouse*, 12 Ohio C.C. 46 (1986).

<sup>20</sup> R.C. 2117.11 (second paragraph)

<sup>21</sup> R.C. 2117.11

<sup>22</sup> R.C. 2117.06(l)

**Note:** An Estate Representative should consider making a list of all known creditor claims, including (1) the name and contact information of the creditor; (2) the amount of the claim; (3) the nature of the claim; (5) the date the claim was presented; and (6) whether the claim should be allowed or rejected. The Help Center has a Worksheet that will assist the Estate Representative.

- **Rejection of Claim.** If the Estate Representative decides to reject a creditor claim that was timely and properly presented, in whole or in part, then the Estate Representative must deliver a written rejection notice to that creditor in the manner provided in R.C. 2117.11. The notice shall be given to the creditor pursuant to Ohio Civil Rule 73. Notice by mail is effective on delivery of the mail at the address given. A claim may be rejected in whole or in part. Again, a claim that has been allowed may be rejected at any time after allowance of the claim. There are a few key points to consider:

**Note:** The Estate Representative should consider using the form titled Rejection of Claim (HCPF 070). In all events, the Estate Representative should consider delivering the written rejection by certified mail, return receipt requested, in order to have evidence of the date of delivery.

- If the Estate Representative is unclear as to whether to “allow” or “reject” a valid creditor claim, then the Estate Representative should consider the following:
  - **Settlement and Compromise.** R.C. 2117.05 permits the Estate Representative to file an application with the Court to settle or compromise a valid claim for or against the estate. Unless the Court seems it unnecessary, the Estate Representative must give reasonable notice of the hearing in accordance with Geauga Probate Local Rules 78.13 and 78.14 – see the information sheet titled “Service of Notice; Subpoena, or Summons.” The Estate Representative must file a schedule of all claims against the estate with the Court either (i) with the fiduciary’s application for hearing or (ii) within 10 days after the Court notifies the Estate Representative of the hearing.<sup>23</sup>
  - **Referral to Referees.** R.C. 2117.09 allows the Estate Representative and the creditor to enter into a written agreement to refer the dispute to three disinterested persons (i.e., referees), who will resolve the dispute and report to the Court. However, the Court retains the power to set aside the report.
  - **Hearing Allowing and Classifying Claims.** In the alternative, the Estate Representative could file a motion as permitted by R.C. 2117.17. However, the Help Center highly recommends that the Estate Representative retain an attorney and obtain legal advice before proceeding, especially if the probate estate is insolvent (i.e., the value of the probate assets is less than the allowed creditor claims). If the Estate Representative decides to proceed, then consider the following:

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<sup>23</sup> Sup.R. 62(A) (Ohio Rules of Superintendence).

**Note:** The Estate Representative should consider preparing and filing the form titled Motion for Confirmation of Allowance of Claims (HCPF 072). The Estate Representative should have those interested persons, who are willing to consent, sign the form titled Waiver and Consent (HCPF 073) and file with the Court that Waiver and Consent together with the Motion for Confirmation of Allowance of Claims.

- Promptly after receiving the date and time of the Hearing, the Estate Representative must notify each of those interested parties who did not sign the Waiver and Consent, using the form titled Notice of Hearing (GC PF 4.18), and (ii) provide the Court with proof of service by preparing and filing the form titled Affidavit Evidencing Service of Notice (GC PF 41.6). See the probate information sheet titled “Service of Notice; Subpoena, or Summons” for more details on service of notice and proof of service to the Court. If the address of a person to be served is unknown, or the name is unknown, and service of publication is required, then review Geauga Probate Local Rule 78.14 and the probate information sheet titled “Service of Notice; Subpoena, or Summons” for more details.
- Finally, the Estate Representative should prepare and file with the Court, before the hearing date, a proposed judgment entry using the form titled Judgment Entry (HCPF 075).

Additionally, if the Probate Property is insufficient to pay all valid creditor claims (including certain statutory rights of a surviving spouse or minor children), then R.C. 2117.25 sets forth the order of payment of creditor claims. If the Court requires a hearing on claims or the Estate Representative requests a hearing on claims or insolvency, then the Estate Representative shall file a schedule of all creditor claims with the Court together with the Estate Representative’s application for hearing or within 10 days after the Court notifies the Estate Representative of a court-initiated hearing.<sup>24</sup>

- When the Estate Representative rejects a creditor claim, then (assuming that the Executor has not filed with the court an application to compromise or settle a claim pursuant to R.C. 2117.05) the only course of action by that creditor is to commence a legal action on the claim within two month after the rejection of the claim.<sup>25</sup> If the creditor fails to timely commence a legal action on that claim within two months, then that valid creditor claim is barred forever.<sup>26</sup>

Duty to Notify Creditors. While the Estate Representative may have a duty to notify the Court of known creditors and creditor claims, with few exceptions the Estate Representative has no duty to notify the Decedent’s creditors of the Decedent’s death or the probate proceedings. However, in two instances, a creditor may be notified by reason of a publication in a local newspaper.

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<sup>24</sup> Sup.R. 62(B) (Ohio Rules of Superintendence).

<sup>25</sup> R.C. 2117.12

<sup>26</sup> R.C. 21117.12

- Release from Administration. Unless the Court orders that notice by publication is dispensed with as unnecessary in its judgment entry on the Application to Relieve Estate from Administration, the Estate Representative must cause a notice of publication in accordance with Geauga Probate Local Rule 78.5(C)(3) and the probate information sheets titled “Release from Administration” and “Service of Notice; Subpoena, or Summons” for details on issuing the notice by publication.
- Payment of Debt to Estate Representative. As noted below, if the Estate Representative is a creditor and is owed more than \$500, the Court will order an evidentiary hearing and may order the Estate Representative to cause a notice of hearing to be published in the local newspaper.

Right to Accelerate Bar Against Claim.<sup>27</sup> An Estate Representative may accelerate the six-month bar against creditor claims against the estate by giving written notice to a potential creditor that identifies the Decedent by name, states the date of the Decedent’s death, identifies the Estate Representative by name and mailing address, and informs the potential creditor that any claims the creditor may have against the probate estate must be presented to the Estate Representative in a writing within the earlier of 30 days after receipt of the notice by the creditor or six months after the date of the Decedent’s death. A creditor claim that is not timely presented in the manner provided by R.C. 2117.06 is barred as if it was not presented within six months after the Decedent’s death.

Executor or Administrator as a Creditor.<sup>28</sup> If the person appointed as the Executor or Administrator has a claim against the probate estate, then that person may have a duty to present that claim, as a creditor, to himself or herself, after being appointed as the Executor or Administrator, in accordance with R.C. 2117.06, as discuss above and within six months after the date of death. It may be that if the person appointed as Executor or Administrator does not timely and properly present his or her creditor claim in accordance with R.C. 2117.06, nevertheless that person, after being appointed as Executor or Administrator, may present the claim to the Court under R.C. 2117.02, as discussed below.<sup>29</sup> Note that if a Release from Administration is filed, and thus there is no Executor or Administrator appointed, then if the creditor is appointed the Commissioner of the estate, that person, as Commissioner may be unable to present his or her creditor claim and thus may not pay that claim from the Probate Property.

Even if timely and properly presented under R.C. 2117.06, the Estate Representative may not pay that claim from Probate Property without first obtaining a court order that allows the payment. The Estate Representative must present the claim to the Court within three months following the Court’s appointment of the Executor or Administrator in accordance with R.C. 2117.02. If the claim is \$500 or more, then the Judge will hold an evidentiary hearing before allowing the payment and will order the Estate Representative to provide all interested parties with a written notice, which may include notice by publication. Notice must be given at least 20 days before that hearing to all the Decedent’s heirs, legatees, or devisees, and to the creditors named in the order. To notify those persons, the Estate Representative must use the form titled Notice of Hearing (GC PF 4.18), and (ii) provide the Court with proof of service by preparing and filing the form titled Affidavit Evidencing Service of Notice (GC PF 41.6). See probate information sheet titled “Service of Notice; Subpoena, or Summons” for more details on service of notice and proof of service to the Court. If the address of a person to be served is unknown, or the name is unknown, and service of publication is required, then review Geauga Probate Local Rule 78.14 and probate information sheet titled “Service of Notice; Subpoena, or Summons” for more details.

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<sup>27</sup> R.C. 2117.07

<sup>28</sup> R.C. 2117.01 and 2117.02

<sup>29</sup> See *In re Estate of Curc*, 2019-Ohio-416 [11<sup>th</sup> App. Dist.]; and *In re Estate of Gates*, 2022-Ohio-1091 [5<sup>th</sup> App. Dist.]



**Note (claim less than \$500):** If the claim is less than \$500, then the Estate Representative should consider preparing and filing the probate form titled Application for Allowance of Fiduciary Claim (HCPF 079).

**Note (claim \$500 or more):** If the claim is \$500 or more, then the Estate Representative should consider preparing and filing the probate form titled Application for Allowance of Fiduciary Claim (HCPF 079), and consider the following:

- **Waiver and Consent.** The Estate Representative should consider preparing and filing the probate form titled Waiver and Consent (HCPF 080), and to the extent possible have all interested persons sign that form, and file it together with the Application for Allowance of Fiduciary Claim.
- **Notice of Hearing.** To the extent that all interested persons do not sign the Waiver and Consent (HCPF 080), the Court will require the Estate Representative to notify all such interested persons in accordance with Geauga Probate Locals Rules 78.13 and 78.14 - see the probate information sheet titled “Service of Notice; Subpoena, or Summons.”

**Subrogation Rights of Payor.**<sup>30</sup> Any natural person or fiduciary who pays a claim of any creditor described in R.C. 2117.06(A), including the funeral bill, shall be subrogated to the rights of that creditor proportionate to the amount of the payment and shall be entitled to reimbursement for that amount in accordance with the priority of payments set forth in that division.

### **Special Creditor Situations**

#### **Medicaid Estate Recovery Program**<sup>31</sup>

Ohio has a cost recovery program known as the “Medicaid Estate Recovery Program,” which permits Ohio to recover from a Decedent’s Probate Property the costs related to Medicaid services (medical assistance paid for by Medicaid) that were rendered for the benefit of the Decedent who either:

- (a) regardless of age was “permanently institutionalized,” or
- (b) was 55 years or older, even if not “permanently institutionalized.”

The cost of the Medicaid services is recoverable from both the Probate Property and certain Non-probate property (for example, joint and survivor property, life insurance, payable on death assets, living trusts, etc.) of a Decedent who meets either of the qualifications set forth above (“Qualifying Decedent”).

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<sup>30</sup> R.C. 2117.25(C)

<sup>31</sup> R.C. 5111.11. Also see the article located at <https://www.seols.org/wp-content/uploads/2017/11/Medicaid-Estate-Recovery.pdf>.

**Note:** if the Decedent was 55 years or older and was living in a nursing home, the Estate Representative should contact the nursing home to determine whether the nursing home was receiving any Medicaid payments on behalf of the Decedent.

If the Estate Representative of the Decedent's probate estate, or if the Estate Representative of the surviving spouse's probate estate, determined that the Decedent received any Medicaid services and thus is a Qualifying Decedent, then the Estate Representative must prepare and deliver or file two documents:

- (1) The Estate Representative must prepare and deliver, by certified mail, return receipt requested, to the Office of the Attorney General, a Notice to Administration of Medicaid Estate Recovery Program (Form 7.0(A)), within 30 days after the appointment of the Estate Representative. This requirement applies to any person who is appointed to proceed under a Full Administration, Release from Administration, or Summary Release from Administration.<sup>32</sup>
- (2) Promptly after the delivery of the Notice to Administration of Medicaid Estate Recovery Program, the Estate Representative must prepare and file with the Court a Certification of Notice to Administrator of Medicaid Estate Recovery Program (Form 7.0).

An Estate Representative should consider two provisions in the law. First, the Estate Recovery Program allows for an "undue hardship waiver" in certain circumstances.<sup>33</sup> Second, if the Decedent has a surviving spouse or children under the age of 21, then the Administrator of Medicaid Estate Recovery Program cannot proceed to recover the cost of Medicaid Service until the death of the surviving spouse or until all children have attained age 21, which is applicable.

**Note:** If either of these two provisions set forth above are applicable or if the Estate Representative has any questions about whether the Decedent received Medicaid services or is a Qualified Decedent, the Estate Representative should seek legal advice and assistance from an attorney.<sup>34</sup>

Upon receipt of the Notice to Administrator of Medicaid Estate Recovery Program, that program Administrator must present its claim for Medicaid services recovery within the later of: (1) 90 days after receipt of the Notice, or (2) one year after the date of death.<sup>35</sup> If the Estate Representative fails to deliver the Notice to Administrator of Medicaid Estate Recovery Program, then the time period for the program Administrator to assert and collect upon its claim does not expire. The program Administrator may recover its claim from beneficiaries of the Probate Property, from the Trustee of a living trust, or from any person who benefits from the Non-Probate Property.

### Funeral Costs

The bill of the funeral director is NOT in satisfaction of a personal obligation of the decedent and thus is not treated as a creditor for the purposed of presenting the claim within six months after

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<sup>32</sup> R.C. 2117.061(B)

<sup>33</sup> R.C. 5111.11(E), R.C. 5111.11(G)(2), and Ohio Admin. Code §5101:1-38-10(C)(3)

<sup>34</sup> See <https://medicaid.ohio.gov/Portals/0/Resources/Publications/Forms/ODM07400.pdf> for more information.

<sup>35</sup> R.C. 2117.061(D).

date of death as required by R.C. 2117.06.<sup>36</sup> Any “natural person” or fiduciary who pays the funeral director’s bill entitled to make a claim against the probate estate as provided that (i) the bill is reasonable, and (ii) the claim is timely and properly presented within the six-month period.<sup>37</sup> If the person who paid those expenses does not timely and properly present a claim in accordance with the six-month rule, then like any other creditor claim, that claim is void.<sup>38</sup> Typically a funeral director’s bill is not an obligation of the decedent during lifetime, but rather an obligation incurred by another person after the decedent’s death but for the benefit of the estate and thus is a claim against the decedent’s estate, similar to a person who pays the court costs. Nevertheless, both kinds of debts are subject to R.C. 2117.06(A) and must be timely presented within six months after decedent’s death. However, as explained below, if the person who is appointed as the Executor or Administrator paid the funeral bill, then even if the claim is not timely presented as explained above in R.C. 2117.06, nonetheless, after being appointed as such the Estate Representative may be able to present the claim as permitted by R.C. 2117.02.

### Tax Creditors

**Warning:** The Help Center provides limited tax information and no tax advice. All Estate Representatives should consider obtaining professional tax advice to review any questions involving taxation arising from the Decedent’s death, including state and federal income or estate taxes. The information provided below is a summary of relevant information, but it is not complete and should not be relied upon in making any decision pertaining to taxation. The following concerns are more complicated if the Decedent is not a U.S. citizen.

### Federal Estate Tax

For a Decedent, who is a U.S. citizen, if the death occurred in 2023, and if the value of “gross estate” and “taxable gifts” exceeds \$12,060,000, then the Estate Representative may need to file a federal estate tax return (Form 706). The “gross estate” includes not only the value of Probate Property, but also Non-Probate Property (for example, life insurance, joint and survivor assets, or retirement benefits). Even if a federal estate tax return need not be filed, if the Decedent is survived by a spouse, then the Estate Representative should consider, with the advice of a qualified tax advisor, whether to file a Form 706 and make an election for the benefit of the surviving spouse known as the “Deceased Spousal Unused Exclusion.”<sup>39</sup> Again, you should obtain tax advice from a competent professional of your choosing regarding the need to file a federal estate tax return.

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<sup>36</sup> See R.C. 2117.251.

<sup>37</sup> R.C. 2117.25(D)(1). See *Osbourne v. Osbourne*, 114 Ohio App. 3d 412(1996)(2<sup>nd</sup> App. Dist. – Greene Cty.)

<sup>38</sup> See *In re Estate of Lewis*, 2006 WL 10474478 (2006)(6<sup>th</sup> App. Dist. – Lucas Cty.); *Mlynek v. Mlynek*, 2008 WL 307449 (2008)(6<sup>th</sup> App. Dist. – Wood Cty.); and *Hull v. Hartley* 2009 WL 57080 (2009)(3<sup>rd</sup> App. Dist. – Marion Cty.)

<sup>39</sup> Regarding the duties of an Estate Representative as to both federal estate and income taxes, see generally IRS Publication < <https://www.irs.gov/pub/irs-pdf/p559.pdf>>.

## Ohio Estate Tax

For a Decedent who died on or after January 1, 2013, Ohio does not impose an estate tax, and thus the Estate Representative has no duty to file an Ohio Estate Tax Return.<sup>40</sup> Also, Ohio does not have an inheritance tax.

## Federal Income Tax

An Estate Representative has two concerns regarding federal income taxes:

- The first concern is the filing of the Decedent's final income tax return for the year of death.<sup>41</sup> Please read Internal Revenue Service Publication 559. We recommend that you obtain tax advice as to your responsibility regarding the filing of federal and Ohio income tax returns. If the Decedent was married, then the Estate Representative must decide whether to file separately or jointly with the surviving spouse. If the Decedent was not married, then the Estate Representative has a duty to file a final federal income tax return (IRS Form 1040) for the year of death and pay from Probate Property any taxes owed (or receive and account for any tax refund as Probate Property). The Estate Representative must also file any unfiled federal income tax returns due for any prior years. In some cases, the Estate Representative has personal responsibility for any unpaid federal income taxes. The payment of federal income taxes generally has priority over the claims of other unsecured creditors. Discuss with your tax advisor whether you should prepare and file IRS Form 56, which is intended to notify the Internal Revenue Service of the creation and termination of a fiduciary relationship.<sup>42</sup>
- The second concern is the filing of a federal income tax return for the probate estate (IRS Form 1041) for the period starting with the date of the Decedent's death and ending on the date of final distribution of the estate assets. Generally, the Estate Representative must file an estate federal income tax return if the gross income earned by the probate estate during the period exceeds \$600 during a 12-month tax period.

## Ohio Income Tax

The Estate Representative must file a final Ohio income tax return (Form IT 1040) for the year of the Decedent's death. Moreover, if the Estate Representative files a federal Form 1041 (federal estate income tax return), then the Estate Representative must prepare and file an Ohio estate income tax return (Form IT-1041).<sup>43</sup>

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<sup>40</sup> See generally the guidance issued by the Ohio Department of Taxation at: <<http://www.tax.ohio.gov/estate/prior2013.aspx>>, and House Bill 153.

<sup>41</sup> See generally IRS Publication 559, titled "Survivors, Executors, and Administrators." <<https://www.irs.gov/pub/irs-pdf/p559.pdf>>

<sup>42</sup> <https://www.irs.gov/pub/irs-prior/i56--2019.pdf>

<sup>43</sup> See generally the guidance issued by the Ohio Department of Taxation at: <[http://www.tax.ohio.gov/ohio\\_individual/individual/faqs/individual.aspx](http://www.tax.ohio.gov/ohio_individual/individual/faqs/individual.aspx)>

Creditor Claims Against Surviving Spouse.

Typically, a spouse is not liable to pay the creditors of the other spouse, including if the other spouse is deceased. The creditor may only assert its claim against the probate estate. Of course, a surviving spouse is liable to pay the creditor claims of the deceased spouse if the surviving spouse is a joint debtor or a guarantor of those claims. An example could be a credit card. Additionally, under R.C. 3103.03(C), the surviving spouse may be liable to pay creditors of the deceased spouse if the creditor's claim is based upon providing the deceased spouse with "necessary" goods or services and the creditor is not fully paid from the probate assets, if any. Examples would be the claims of a doctor, nursing home, or hospital. However, as noted above in page two, R.C. 2117.06 requires that the creditor must timely and properly present its claim. If not so timely and properly presented, then the claim is null and void. In that case, the creditor cannot pursue its claim against the surviving spouse.<sup>44</sup> Perhaps this is another reason for a surviving spouse to delay commencing a probate proceeding until six months after the date of death. You should seek legal advice before making that decision based upon unpaid medical bills of the decedent.

**LEGAL PRACTICE IN THE PROBATE COURT IS RESTRICTED BY LAW TO ATTORNEYS WHO ARE LICENSED BY THE SUPREME COURT OF OHIO AND INDIVIDUALS WHO ARE HANDLING THEIR OWN LEGAL MATTERS. IF AN INDIVIDUAL WISHES TO HANDLE HIS OR HER OWN CASE, THAT PERSON MAY ATTEMPT TO DO SO, HOWEVER DUE TO THE COMPLEXITY OF THE LAW AND THE DESIRE TO AVOID COSTLY ERRORS, MANY PERSONS WHO HAVE MATTERS BEFORE THE COURT ARE REPRESENTED BY AN ATTORNEY.**

**IF YOU CHOOSE TO REPRESENT YOURSELF AND USE THE COURT'S FORMS, BE AWARE THAT STATE LAW PROHIBITS THE JUDGE, MAGISTRATE, AND EMPLOYEES OF THE GAUGA COUNTY PROBATE COURT, INCLUDING THE HELP CENTER STAFF, FROM PROVIDING YOU WITH LEGAL ADVICE. IF YOU NEED LEGAL ADVICE, THEN YOU SHOULD CONTACT AN ATTORNEY OF YOUR CHOOSING.**

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<sup>44</sup> See *Embassy Healthcare v. Bell*, 155 Ohio St.3d 430, 2018-Ohio-4912.