

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

Information Sheet
Creditor Rights – Presentation of Claim

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.

Background

When a person dies in Ohio, with a few exceptions,¹ if the Decedent owes money to a creditor, then no matter how valid the creditor claim, unless the creditor timely presents the claim in accordance with R.C. 2117.06, the creditor’s claim is forever barred. In effect, compliance with R.C. 2117.06 operates as a “statute of limitations.” There are two situations to consider in order to timely and properly present a creditor claim.

- **First**² 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, then 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;
 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

¹ See the information sheet titled “Creditor Rights” for an explanation of the exceptions.

² R.C. 2117.06(A)(1)

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**³ If the creditor claim is presented after filing the final account or a certificate of termination, then the creditor claim must be presented, in a writing, to those distributees of the decedent's estate who may share liability for the payment of the claim.

Timely Filing Requirement. In all events, 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.

In all events, the creditor should read the probate information sheet titled "Creditor Rights."

The Problem.

In any event, a creditor claim cannot be "presented" unless a probate proceeding has been commenced and a case number is assigned within six months after the Decedent's death. Sometimes persons who qualify to be appointed an Executor or Administrator may intentionally wait until six months after the Decedent's death before filing an application to be appointed as Executor or Administrator, with the intention of barring valid creditor claims. Likewise, if the value of the probate assets qualify for filing an Application for Relief from Administration, the applicant wait until six months after the Decedent's death before filing the application to be appointed as Commission.

A Solution.

WARNING - the Help Center highly recommends that a creditor obtain advice before taking any action regarding the presentation of a creditor claim. While this probate information sheet offers a possible courses of action, depending upon the particular facts, there may be better solutions that an attorney will recommend. The solution suggested below is general information and not legal advice.

If during the six-month period following a Decedent's death no person is appointed Executor or Administrator of the Decedent's probate estate and no person has filed to be appointed Commissioner under R.C. 2113.03, then one solution for a creditor may be for that creditor to apply to the Court to be appointed as a Special Administration for the sole purpose of presenting the creditor claim to himself as the special administrator, and then filing a copy of the written demand with the Court.

Warning. Before the Court will appoint an Administrator, the Court may hold a hearing regarding the Application for Authority to Administer Estate (Form 4.0). Unless all interested persons have signed a waiver of notice (which is highly unlikely), the applicant must cause a Notice of Hearing to be published, at least four weeks before the Hearing Date (the Notice of Hearing must be published for three consecutive weeks). See the probate information sheet titled "Service of Notice; Subpoena, or Summons" for more details. Therefore, the creditor should consider filing an Application for Authority to Administer Estate (Form 4.0) not later than 22 weeks after the Decedent's death.

³ R.C. 2117.06(A)(2)

Initial Steps.

1. Gather Information.

- a. Obtain a copy of the Decedent's death certificate. Check with Geauga County Health – 470 Center St. - Building 8, Chardon, OH 44024, Tel. 440-279-1900.
- b. Check with the Probate Clerk to determine whether a legal proceeding has been started regarding the Decedent, such as an Application to Probate Will.
- c. Use best efforts to obtain the name and address of a surviving spouse, children, or other next-of-kin.

NOTE - that if there is a surviving spouse, then the spouse has rights (e.g., Allowance for Support) that are superior to the creditor rights. See the probate information sheet titled "Rights of Surviving Spouse."

- d. Use best efforts to obtain information regarding the Decedent's probate assets.
 - e. Consider that, depending upon the value of the probate assets and whether the bill of the funeral director has been paid and whether the Decedent has a surviving spouse or minor children, there may not be sufficient probate assets to pay the creditor claim. See the probate information sheets titled "Creditor Rights" and "Rights of Surviving Spouse" for more information.
2. Application. Prepare the form titled Application for Authority to Administer Estate (Form 4.0). Supply as much information as possible.
 3. Statement of Appointment for Limited Purpose. Prepare the form titled Statement of Appointment for Limited Purpose (GF PF 4.15), which should be attached to the Application for Authority to Administer Estate (Form 4.0).
 4. Creditor Statement. Prepare the form titled Creditor Statement (HCPF 070B), which should be attached to the Application for Authority to Administer Estate (Form 4.0), as further evidence of the creditor claim and the creditor's intentions.
 5. Form 1.0. Prepare the form titled Surviving Spouse, Children, Next of Kin, Legatees and Devisee (Form 1.0). To the best of your knowledge, provide the information required on that form. If information is unknown, you can so indicate.
 6. Presentation of Claim. Prepare the demand notice, which the creditor (i) will present to himself after being appointed the special administrator, and (ii) should file with the Court.⁴ Consider using the form titled Presentation of Claim (HCPF 070A). Gather all evidence supporting the claim, such as a cancelled check, promissory note, contract, etc.
 7. Identification. Except when the applicant is represented by an Ohio Attorney, who signs the application, gather (1) a government-issued photographic identification (e.g., a current driver's

⁴ See R.C. 2117.06(A)(1)(b).

license or passport), and (2) evidence of current mailing address (e.g., recent utility bill, bank statement account, property tax bill, voter registration card).

8. Court Costs. Arrange for payment of court cost deposit - see the Court's website.

Initial Filing with Court. File with the Probate Clerk the following:

1. Application for Authority to Administer Estate (Form 4.0), together with both (i) the form titled Statement of Appointment for Limited Purpose (GC PF 4.15) and (ii) the form titled Creditor Statement (HCPF 070B), and attach a copy Presentation of Claim (HCPF 070A).
2. Surviving Spouse, Children, Next of Kin, Legatees and Devisee (Form 1.0)
3. Copy of Death Certificate - (1) must redact the social security number and (2) must be shrunk to letter-size.
4. If required, (1) a government-issued photographic identification (e.g., a current driver's license or passport), and (2) evidence of current mailing address (e.g., recent utility bill, bank statement account, property tax bill, voter registration card).
5. Pay Court Cost Deposit.

Post-Filing Matters and Concerns.

1. Notice of Hearing. If the Court sets the matter for hearing, then to the extent that all interested persons do not sign the form titled Waiver to Administer Estate (Form 4.3), the applicant must notify those persons, using the form titled Notice of Hearing on Appointment of Special Administrator (Form GC PF 4.17) no later than 10 days before the hearing, and (i) serve that notice in compliance with Geauga Probate Local Rule 78.13, 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 the probate information sheet titled "Service of Notice; Subpoena, or Summons" for more details.
2. Notice of Appointment. If the Court appoints the applicant, then the Estate Representative shall give notice of the appointment, within seven days after the appointment, to all persons entitled to inherit, including persons entitled to an Allowance for Support, except to the extent that any of those persons waived notice of the hearing to appoint or were given notice of the hearing.⁵ The Administrator shall use the form titled Notice of Appointment as Special Administrator (GC PF 4.16) and (i) serve that notice in compliance with Geauga Probate Local Rule 78.13, 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.

⁵ See Sup. R. 60(B) (Ohio Rules of Superintendence)

(i) Presentation of Claim. Promptly after appointment, the Estate Representative should deliver to himself/herself, as the appointed special administrator, the form titled Presentation of Claim (HCPF 070A), either by personal deliver (prepare a dated receipt) or certified mail, return receipt requested, and (ii) file with the Probate Clerk a copy of the Presentation of Claim and the dated receipt.

3. Other Considerations.

- a. Note that even if you (i) are successful in being appointed special administrator within six months after the Decedent's death and (ii) timely present your creditor claim as required by R.C. 2117.06, nevertheless a subsequent fiduciary may challenge the claim as an invalid claim, in whole or in part. Again, carefully read the probate information sheet titled Creditor Rights. If the creditor claim is "rejected," as permitted by law, the creditor's only course of action may be filing a complaint with the Court as permitted by R.C. 2117.12.
- b. After you have properly presented the creditor claim as explained above, consider withdrawing as special administrator by preparing and filing the form titled "Application to Withdraw as Fiduciary" (GC PF 4.20A) - see Geauga Probate Local Rule 78.6(A).
- c. If you fail to properly and timely present your creditor claim in accordance with R.C. 2117.06, then consider filing to be appointed as the Administrator. If so appointed, you may present your claim to the Court under R.C. 2117.02, as discussed below and in the information sheet titled "Creditor Rights."
- d. If you are appointed the Administrator and if your claim is more than \$500, then you must prepare and file an Application requesting that the Court allow the payment of the fiduciary claim. Judge will hold an evidentiary hearing before allowing the payment and will order you to provide all interested persons with a notice, which may include notice by publication.⁶ Notice must be given at least 20 days before that hearing. See the information sheet titled "Creditor Rights."
- e. Timely presentment of the creditor claim is the first step. Again, consider retaining an attorney and obtaining legal advice and review the information sheet titled "Creditor Rights."
 - Decide whether to resign as the Special Administrator. Remaining as Special Administrator will require additional duties to be performed and may result in liability for action taken or failure to act.
 - Having timely presented the creditor claim does not guarantee that the claim will be paid.
 - If, after timely presentation of claim, the successor Estate Representative neither allows nor rejects the claim, then the creditor may deliver to the Estate Representative a written demand for allowance.⁷
 - A successor Estate Representative may allow or reject the claim.

⁶ Review Geauga Probate Local Rules 78.13 and 78.14, and the information sheet titled "Service of Notice, Subpoena, or Summons."

⁷ See R.C. 2117. 11

- If the claim is rejected, then the creditor must commence a lawsuit against the estate within two months after rejection of the claim. See R.C. 2117.12.

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.