



## Planning Pointers

### Claims Against a Decedent's Estate

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The fiduciary of a decedent's probate estate is obligated to pay any enforceable debts of a decedent outstanding at the time of death. A creditor, however, must follow prescribed steps in successfully enforcing a claim against a decedent's estate. The state having jurisdiction over the decedent's estate sets those procedures. Generally, it is difficult or impossible for creditors to satisfy claims from a decedent's non-probate property, such as jointly-owned assets, life insurance proceeds, qualified retirement plans or individual retirement accounts.

#### Notice to Creditors

The court having jurisdiction typically requires some form of notice to creditors to be issued, most frequently publication of a legal notice in a local newspaper. Some jurisdictions authorize direct notice by mail to known creditors.

#### CONNECTICUT

In Connecticut, the probate court having jurisdiction over the decedent's estate will issue a Notice to Creditors for publication at least once in a local newspaper within 14 days after the fiduciary's appointment. This notice advises all persons having claims to present them to the fiduciary. The published notice must state (i) the name of the fiduciary and the address to which the claims may be presented, (ii) that persons with claims should promptly present those claims to the fiduciary, and (iii) that failure to present claims promptly could result in the loss of rights to recover on such claims.

A Connecticut fiduciary also has the option of giving direct notice to any person whom the fiduciary has reason to believe may have had a claim against the decedent. This notice contains the name and address of the fiduciary to whom the claim must be presented. The fiduciary may issue such notice at any time, and if the notified person fails to present a claim to the fiduciary on or before the date specified in the notice (not less than 90 days from the date of the notice), such person will be barred forever from recovering on any claim from (i) the fiduciary, (ii) the estate, and (iii) any beneficiary of the estate. A creditor who presents a claim on or before the date specified in the notice may not increase such claim after the date specified in such notice.

#### MASSACHUSETTS

Massachusetts does not require a fiduciary to notify creditors by publication or direct written notice to known creditors. Massachusetts does require, however, publication of notice of the filing of a petition for probate or administration of an estate. This published notice may inform a creditor of the decedent's death.

## **NEW YORK**

A New York fiduciary need not search for or send notice to creditors. The law assumes that creditors exercising ordinary diligence will send regular bills to the decedent and the fiduciary will learn of claims through receipt of the decedent's bills. A creditor who learns of the death of a debtor should send written notice of claim to the fiduciary.

## **Filing Claims**

After the decedent's death, the court of jurisdiction (either where the decedent was domiciled at time of death or where he or she owned real estate and/or tangible personal property at time of death) appoints a fiduciary (e.g., executor, administrator, personal representative, etc.) responsible for the settlement of the decedent's estate. Each jurisdiction, however, has distinct requirements for creditors in submitting their claims to the appointed fiduciary.

## **CONNECTICUT**

In Connecticut, a claim must be in writing and, when the fiduciary requires, the claimant must present proof by an affidavit that the claim is justly due and that all prior payments thereon have been credited and, if applicable, identify any security held by the creditor related to the debt.

## **MASSACHUSETTS**

A creditor may file with the probate court a written notice of claim against a probate estate. If the claim is undisputed and accepted by the fiduciary, it will be paid as part of the settlement of the estate. If not accepted, however, the creditor must file a lawsuit against the estate (typically in district or superior court) to enforce his claim.

## **NEW YORK**

In New York, a claim must be in writing, state the amount sought, and contain a recitation of facts upon which the claim is based. The fiduciary may require the creditor to present proof by affidavit that (i) the amount sought is justly due, (ii) any prior payments have been credited, (iii) the creditor is not in possession of any undisclosed collateral, and (iv) any indebtedness or other offset of the creditor to the decedent has been accounted for.

## **Period for Filing Claims**

Creditors must commence a lawsuit on unpaid claims before the expiration of the applicable statute of limitations. The period of statutes of limitation varies depending upon the nature of the creditor's claim. Actions in contract, for example, typically have a longer statute of limitations than actions for negligence. Death can trigger special statutes of limitation intended to facilitate the efficient settlement of estates.

## **CONNECTICUT**

The Connecticut statute of limitations for a claim against a decedent's estate is the earlier of the (i) date the applicable statute of limitations for such claim expires, or (ii) two years from the date of the decedent's death if such claim is or could have been asserted during the decedent's lifetime, or two years from the date such claim is asserted if such claim arose after the decedent's death.

However, in Connecticut if a decedent dies within 30 days prior to the expiration of the statute of limitations, then the creditor may nevertheless file a claim against the decedent's estate for a period of 30 days after the appointment of the fiduciary.

## **MASSACHUSETTS**

Massachusetts has a short one-year statute of limitations for asserting claims against a decedent's estate. The one-year period commences on the date of death, and before the period expires, the creditor must file a lawsuit and serve the fiduciary with process. This procedure is burdensome. In fact, if a decedent's survivors do not file a petition for appointment of a fiduciary, the creditor, to preserve his rights, will be forced to petition the probate court to appoint a fiduciary. This strict rule provides an exception for creditors whose claims accrue after the expiration of the one-year period. For example, if a promissory note matured eighteen months after the date of death, the holder of the note could commence his action after maturity, but even then the action must be commenced before the estate is fully administered. The special one-year statute of limitations does not extend the time to present a claim that is barred by an underlying statute of limitations (e.g., for contract claims) that expires shortly after death.

## **NEW YORK**

In New York, there is not a separate statute of limitations that applies to claims against a decedent and enforced against the decedent's estate. Rather, the customary statute of limitations to enforce a claim (e.g., six-year statute of limitations for most contract claims) will continue to apply to claims after a decedent's death.

### **Liability of the Fiduciary**

A fiduciary is personally liable for management of the decedent's probate assets. If a fiduciary wastes assets, uses them to pay unlawful debts and expenses, or prematurely distributes assets to beneficiaries, the fiduciary may be personally obligated to satisfy the decedent's debts from his own assets.

## **CONNECTICUT**

In Connecticut, if a claim is not presented to the fiduciary within 150 days from the date of the fiduciary's appointment, the fiduciary is not personally chargeable for any assets (i) paid in satisfaction of any lawful claims, expenses or taxes, or (ii) distributed to any beneficiaries, provided such payments and distributions were made in good faith (i.e., the fiduciary had no knowledge of unfiled claims) before such late-filed claim was presented.

## **MASSACHUSETTS**

A Massachusetts fiduciary distributes estate assets prior to one year from the date of death at his or her peril. The fiduciary could be personally liable for breach of the fiduciary's obligation to pay just debts of a decedent.

## **NEW YORK**

Similar to the Connecticut rule, in New York, if a claim is not presented to the fiduciary within seven months from the date of the fiduciary's appointment, the fiduciary is not personally chargeable for any assets (i) paid in satisfaction of any lawful claims, expenses or taxes, or (ii) distributed to any beneficiaries, provided such payments and distributions were made in good faith (i.e., the fiduciary had no knowledge of unfiled claims) before such late-filed claim was presented. Importantly, a creditor who fails to present his/her claim within seven months may continue to recover from the fiduciary to the extent of any estate assets in the hands of the fiduciary after expiration of such seven-month period.

### **Liability of Beneficiaries**

In most estates, a fiduciary defers making distributions to beneficiaries until the fiduciary is satisfied that he has fully paid all of (i) the decedent's debts, (ii) estate administration expenses, and (iii) taxes. A fiduciary, however, often makes advance distributions to beneficiaries. When making such distributions, the fiduciary may require each beneficiary to sign a receipt and

refunding agreement, by which the beneficiary agrees that if additional estate obligations subsequently arise for which the fiduciary has not retained sufficient assets, the beneficiary will return to the fiduciary his/her pro rata share of assets needed to satisfy such obligations.

## **CONNECTICUT**

In Connecticut, a fiduciary frequently makes a distribution after 150 days from the date of the fiduciary's appointment. A creditor having a claim which arose prior to the decedent's death for which the statute of limitations has not expired may seek payment of such claim from either (i) the remaining estate assets held by the fiduciary, or (ii) the estate assets distributed to the beneficiaries. Thus, the estate assets distributed to the beneficiaries are deemed available for the payment of any such claim until the applicable statute of limitations has expired. The liability of a beneficiary for claims against a decedent's estate, however, is limited to the fair market value of the estate assets received by the beneficiary as valued on the date the beneficiary received those assets.

## **MASSACHUSETTS**

If a creditor's right to enforce his claim did not accrue against a Massachusetts estate within the one-year statute of limitations for bringing a claim against the fiduciary, the beneficiaries of an estate can be liable to the creditor after the estate is settled. As in Connecticut, however, a beneficiary cannot be liable for more than the value of the assets received from the estate.

## **NEW YORK**

Assuming the statute of limitations has not expired, estate beneficiaries are liable for claims of estate creditors to the extent of the value of any estate property received by them. In order to recover from an estate beneficiary, however, a creditor must first establish that his/her claim cannot be satisfied (i) from property in the hands of the fiduciary, (ii) by action against a beneficiary prior in liability (for example, a residuary beneficiary is prior in liability to a specific legatee), or (iii) by resort to any collateral or insurance on the decedent's life payable to the beneficiary.

## **Summary**

A creditor holding an obligation of a decedent may collect on his/her claim, provided he/she adheres to filing and/or submission requirements in accordance with steps prescribed by the state having jurisdiction over the decedent's estate. Under such circumstances, we recommend a creditor seek counsel to ensure he/she fully complies with required procedures.

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