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Creditor's Claims

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I. Overview

§6.1 Claims against an estate are one of the most frequent sources of litigation in the probate court. While the resolution of claims may initially sound like a very uncomplicated exercise, it is in fact fairly complex due to distinctions among various classes of claims and the varying procedures applicable as a result.

Claims include liabilities of a decedent or a protected individual that arise before, at, or after death or the appointment of a conservator. Examples of claims include certain taxes, debts, contract claims, tort claims, funeral and burial

expenses, and expenses of administration. Administration expenses include attorney and fiduciary fees, both of which are subject to the probate court's review.

The Estates and Protected Individuals Code (EPIC) prioritizes the order in which charges against an estate are to be paid. Administrative expenses and reasonable funeral and burial expenses are paid first, followed by various statutory allowances for the family. Then, debts and taxes with priority under federal law (including Medicaid payments subject to estate recovery), expenses arising from the decedent's last illness, and debts and taxes with priority under Michigan law are paid, followed by all other claims. *See* MCL 700.3805. Special rules apply to insolvent estates and estates of protected individuals.

If a decedent's probate estate is insufficient to satisfy the estate's obligations, any trust of the decedent that was revocable at the time of the decedent's death is liable for the administrative expenses; enforceable and timely presented claims; and homestead, exempt property, and family allowances. *See* MCL 700.7605(1).

The estate's fiduciary must notify creditors as provided by statute and court rule regarding how and when the creditors must present claims against the estate. Claimants may file their claims as directed or may commence a proceeding for payment in the probate court having jurisdiction over the estate. If a claim is not presented in a timely manner, it will be barred unless the untimeliness results from the fiduciary's fraud, misrepresentation, or fraudulent concealment. Except for proceedings brought by a secured creditor to enforce the creditor's right to the security, a proceeding to enforce a claim cannot be brought against a decedent's estate until a personal representative has been appointed.

If there are no estate proceedings, the trustee of each trust over which the decedent had a power of revocation at the time of death must publish and serve notice to creditors in the same manner as required of a personal representative in MCL 700.3801. *See* MCL 700.7608. In this case, the decedent's trust (or trusts) will be liable for enforceable and timely claims as well as any other charges with the following exception: if no probate estate starts within four months after the publication of notice to creditors, the decedent's trust is not liable for payment of homestead, exempt property, or family allowances. MCL 700.7606(1).

The fiduciary may allow, settle, or disallow claims. If the claimant is a minor and a settlement is involved, special procedures must be followed to protect the minor's interest and ensure finality to the settlement. If the fiduciary has disallowed a claim and the claimant wishes to contest the decision, he or she must commence a civil action on the claim.

Payments in decedents' estates to those whose claims have been allowed, settled, or ordered by the court may be made from property the decedent earmarked for that purpose. If this property is insufficient to pay claims, or if no such property was designated, the claims are paid from the part of the estate, if any, that has not been distributed by the will. If additional property is needed, claims may be paid in any manner that the devisees find satisfactory. A system of prioritization of property that may be used to satisfy claims is set by statute if the devisees disagree about how payment of the claim should be made. Occasionally, heirs and devisees must return estate property previously given to them if it is needed to satisfy the

estate's debts. If the assets of the estate are insufficient to satisfy the various statutory allowances and all claims, a creditor may reach the assets of a revocable trust established by the decedent as well as certain other nonprobate transfers, including property over which the decedent held a general power of appointment. If there are nonprobate assets, such as property over which the decedent held a general power of appointment or other assets that are subject to claims, the personal representative must apportion the assessment among all transferees of nonprobate assets, not just the decedent's revocable trust. Property that passes to a designated beneficiary by operation of law and jointly held property are generally not available to satisfy estate claims unless fraud was involved in the conveyance.

The probate court has exclusive jurisdiction over a significant portion of the matters arising in probate cases and concurrent jurisdiction to hear others. Consequently, a substantial amount of litigation on claim matters is brought in probate court. Two forms of action are available in probate court: proceedings and civil actions. For disputes involving creditors' claims, an action on a claim against an estate or trust before the claim has been disallowed is made by a proceeding. A proceeding starts by filing a petition in the probate court, and the probate court rules apply. An action on a claim following disallowance of the claim is a civil action. Regardless of whether a civil action is filed in probate, district, or circuit court, it starts by filing a complaint, and the parties must follow the general court rules applicable to civil actions. The claimant has the burden of proof on each element of the claim.

II. Claims Against an Estate

A. What Is a Claim?

1. Definition

§6.2 MCL 700.1103(g) provides the following definition of a *claim*:

"Claim" includes, but is not limited to, in respect to a decedent's or protected individual's estate, a liability of the decedent or protected individual, whether arising in contract, tort, or otherwise, and a liability of the estate that arises at or after the decedent's death or after a conservator's appointment, including funeral and burial expenses and costs and expenses of administration. Claim does not include an estate or inheritance tax, or a demand or dispute regarding a decedent's or protected individual's title to specific property alleged to be included in the estate.

It is important to emphasize that the above definition of claim is broad. Claims may include not only liabilities that arose before the decedent's death, but also obligations that arose at or after the decedent's death. However, although the statutory definition is broad, not all charges against an estate are considered to be claims. Further complicating matters, within the class of charges that constitute "claims" governed by Article III, Part 8 of EPIC, MCL 700.3801–.3815, and Article VII, Part 6 of the Michigan Trust Code, MCL 700.7605–.7615, some require the filing of a formal claim against the estate or trust within a specified claims period and some do not. For this reason, it is important to determine what constitutes a claim against an estate and, within the claims category, which procedures apply to which claims. In addition, understanding the distinction between

various categories of claims is necessary because claims are paid from an estate in an order of priority mandated by statute. See §§6.19–6.23. Because of the interplay and confusion over which charges constitute claims, this chapter will address a variety of charges, identifying those that are claims and specifying the procedures necessary to perfect those claims.

2. In What Form Is a Claim Filed?

§6.3 A claim must be in writing and must indicate the basis of the claim, the name and address of the claimant, and the amount of the claim. It is suggested that claims be made on State Court Administrative Office (SCAO) form PC 579, Statement and Proof of Claim (form 6.1). MCL 700.3804(1)(a), .7609(1)(a). However, there is no requirement that a claim be made on the SCAO-approved form, nor does it have to be signed, sworn to, or notarized. Most bills, credit card statements, and other invoices will satisfy the requirements.

However, if the creditor elects to file the claim with the probate court, it must be authenticated by verification under oath by the claimant or, in the alternative, contain the following statement directly above the date and signature of the claimant: “I declare under the penalties of perjury that this [claim] has been examined by me and that its contents are true to the best of my information, knowledge, and belief.” MCR 5.114(B)(1); *see also* MCL 600.852(1). See form 6.1.

3. Administrative Expenses

a. In General

§6.4 The administrative expenses of an estate or trust are those expenses necessarily incurred during the estate’s administration, such as reasonable attorney fees, accountant fees, appraiser fees, court fees, and fiduciary fees. Because the payment of attorney fees, fiduciary fees, and fees of auditors, investment advisors, and other assistants is authorized by statute, MCL 700.3715(v)–(w), .5423(2)(y)–(z), and .7817(v)–(w), the filing of a claim against the estate is not necessary to preserve a claim for these fees and costs. MCL 700.3803(3).

On petition of an interested person in an unsupervised administration, on motion of an interested person in a court-supervised administration, or on the court’s own motion, the court may review the propriety of the employment of a person by the fiduciary and the reasonableness of the person’s fees or the reasonableness of the fiduciary’s own fees. If the court determines that a person employed by the estate received excessive compensation, the court can order that person to refund the estate and may assess interest and penalties that the court deems just. MCL 700.3721; MCL 700.7207; MCL 700.7901(1)(h); MCL 700.7904(2)–(3). In a supervised administration or if the personal representative elects to use a formal closing procedure, these fees will also be subject to review in a hearing to allow the personal representative’s account. See the discussion in §6.57.