

CREDITOR CLAIMS

S.C. Code of Laws §62-3-801, et seq.

This brochure is meant to help the public understand probate procedure. IT IS NOT LEGAL ADVICE. Probate Court staff can only give procedural information. It is always recommended that you seek the advice of an attorney to assist you. See "Need Legal Assistance" brochure for information on obtaining an attorney. Probate Court staff cannot make a recommendation of an attorney.

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Probate Judge
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South Carolina Code of Laws (Probate Code) §62-3-801, et seq. sets out the process for the filing and resolution of a creditor claim against an estate.

Time for Presentment of Creditor

Claims: Claims are barred against the estate unless presented within the earlier of the following: (1) one year after the decedent's death; or (2) the time provided in § 62-3-801(b) for creditors who are given written notice.

No claim against an estate may be presented or legal action commenced prior to the appointment of a personal representative (except see SCPC 62-3-804(1)(b)).

DUTIES OF PERSONAL REPRESENTATIVE REGARDING CLAIMS

Publication: Upon appointment, a personal representative must publish a notice to creditors once a week for three successive weeks in a newspaper of general circulation in the county. In Greenville County, this notice is published by the Court in the *Greenville News* and a fee is collected at the time of appointment for this publication. This ad begins the "claims period".

If the personal representative is not appointed until one year after the decedent's death, a publication is not required.

Written Notice: The personal representative may also (but is not required) give written notice (FORM 376ES) to any creditor notifying the creditor to present their claim within one year of the decedent's death or within sixty days from the mailing/delivery of such notice, whichever is earlier, or the claim will be barred.

Allow/Disallow Claim: The personal representative must, within 60 days after filing of the claim or within 14 months after the date of death, whichever is later, serve upon the creditor a Notice of Allowance/Disallowance (FORM 372ES) stating the claim has been allowed or disallowed in whole or in part. This notice (FORM 372ES) and a Proof of Delivery (FORM 120PC) must be filed with the Court.

Claims Resolution: The personal representative shall resolve all claims prior to the closing of the estate file and no later than 14 months after the date of death. This may be accomplished by:

- **Negotiating/Compromising the Claim:** Discuss the balance due with the creditor to determine if a lesser amount will be accepted by the creditor. Upon paying the creditor, a Release/Satisfaction of Claim (FORM 325ES) must be filed with the Court.
- **Pay the Claim:** Pay the claim from the estate account and a Release/Satisfaction of Claim (FORM 325ES) must be filed with the Court.
- **Disallow Claims:** Claims that were disallowed (in whole or in part) on the Notice of Disallowance are barred if the creditor does not pursue the claim within thirty days after service.

Insufficient Assets to Pay Claims: If there are not sufficient liquid assets to pay the claims, other estate assets may need to be liquidated. If the personal representative does not have authority to sell estate assets, permission will need to be obtained from the Probate Judge. See brochure "Selling Real Estate While in Probate."

Once the assets are liquidated, if there is still not enough funds to pay all claims, the claims will be paid in the order of priority as outlined in §62-3-805. Funds may need to be prorated among the creditors.

Creditor/Claimant Duties

Filing of Claim: Creditor Claims against an estate must be presented by mailing/delivering the Statement of Creditor's Claim (FORM 371ES) to the Court. The Creditor may also deliver a copy of the claim to the personal representative. If a creditor is seeking appointment as personal representative, the Statement of Creditor's Claim (Form 371ES) must be attached to the application/petition for appointment.

Claims Disallowed: Within 30 days from receiving a Notice of Disallowance of Claim, the creditor will:

- Submit Summons, Petition for Allowance of Claim (FORM 373ES) along with a \$150.00 filing fee.
- Serve pleadings upon personal representative
- Personal Representative will have 30 days to file an answer.
- If issues are not resolved, a hearing will be held thereafter.

Claims Resolved: Upon resolution of a claim, the Creditor must file a Release/Satisfaction of Claim (FORM 325ES) with the Court.

Personal Representative as Creditor

If the personal representative files a claim against the estate, this could be a conflict of interest and therefore these claims are handled in a different manner. A special administrator may need to be appointed to determine the validity of the claim. A copy of the claim would need to be sent to all interested parties and a proof of delivery filed with the Court. At the time of closing of the estate, a Notice of Right to Demand Hearing with the Proposal for Distribution will need to be filed and sent to the interested parties along with the Accounting.