

Understanding Legal Claims that May Be Made for and Against an Estate

When someone dies, there may be outstanding legal and financial claims for or against the individual. This article will discuss some of the procedures regarding claims involving an estate.

If an individual is involved in a lawsuit and then dies, the proceeding is automatically stayed (or temporarily delayed) until an estate representative is substituted for the decedent. This is especially a concern if there was a foreclosure proceeding against the decedent. Many times, the lender doesn't know the decedent died and continues with the case to a judgment of foreclosure. If this happens, the estate representative would have to motion the court to vacate the judgment because of the decedent's death and continue on with the proceeding.

Sometimes, if the claimant against the decedent knows of the death and the interested heirs don't attempt to administer the estate, the claimant has a right to petition for the estate proceeding as a creditor of the estate. In this situation, a public administrator may be appointed to represent the estate and act as a substitute for the decedent in the pending civil case.

These same issues arise if the decedent had a civil lawsuit against another party. After death, the case is stayed until a personal representative is substituted for the decedent in the case.

Pending Cases

When filing for a petition to administer the estate, the petitioner must inform the court of pending cases. These cases might involve a personal injury claim where the injury eventually resulted in death.

Along those lines, the original personal injury claim would now effectively be a wrongful death claim. In these cases, the decedent was usually represented by a personal injury attorney who ends up settling the case. The settlement and compromise of the action must be approved by the probate or surrogate's court. These cases may run into difficulty with professional fee requests and how the proceeds are to be distributed. Sometimes, the person who is entitled to distribution depends on whether there was an *economic recovery* versus a *pain and suffering* recovery.

Claims Against the Estate

After death, any party that has a legitimate claim against the estate can file a claim. However, it would have to be in the proper format. Further, the claim usually would have to be made within six or seven months of when the personal representative is appointed or when notice of death is published.

One issue that sometimes arises involves a credit card company contacting a family member about an outstanding bill. The card company insinuates that the family member must pay the bill. In almost all cases, this is not true if the family member was not on the

card. Family members don't have to pay for the decedent's debts. The claims should be made against the estate only. Any threats should be ignored (see right-hand box).

Claims Accepted or Rejected

When a claim is filed against the estate, the executor or personal representative can accept it or reject it. Usually, there are strict procedures on how to handle these claims.

There may also be claims that an executor or personal representative has against other parties on behalf of the decedent (and thus, the estate). For example, this could occur if someone took money from the decedent right before death when the individual was incapacitated. Or perhaps the decedent owned rental property and the tenants did not pay rent.

Speak with your attorney if you find yourself in any of these situations. The procedures can be complicated.

From the FTC: Who Is Responsible for Paying a Deceased Person's Debts?

In the months after a relative dies, family members may get telephone calls from debt collectors asking them to pay the deceased individual's bills.

The Federal Trade Commission ("FTC") warns that "family members typically are not obligated to pay the debts of a deceased relative from their own assets."

"The estate of the deceased person owes the debt. If there isn't enough money in the estate to cover the debt, it typically goes unpaid," explains the FTC. However, there are exceptions. A family member may be responsible for the debt if he or she:

- Co-signed the obligation;
- Lives in a community property state;
- Is the deceased person's spouse and state law requires a spouse to pay a particular type of debt, such as some health care expenses; or
- Was legally responsible for resolving the estate and didn't comply with certain state probate laws.

Relatives have protection under the federal *Fair Debt Collection Practices Act*. Debt collectors may call them in some cases. For example:

- Collectors are allowed to contact third parties (such as relatives) to get the name, address and telephone number of the deceased person's spouse, executor, administrator or other person authorized to pay the debts.
- Collectors usually can contact such third parties only once to get this information. The main exception is if a collector reasonably believes that the information provided initially was inaccurate or incomplete, and that the third party now has more accurate or complete information. But, collectors cannot say anything about the debt to the third party.

The Law Office of Eugene Gorrin, LLC
17 Watchung Avenue, Suite 204
Chatham, NJ 07928
973.701.9300
egorrin@gorrinlaw.com
www.gorrinlaw.com