

# The Claims of Estate Creditors: Asserting the Claims and Defending on the Claims

Robert I. Aufseeser, J.D., LL.M.

© 2021. All Rights Reserved

# What is a Claim?

- N.J.S. 3B:1-1 defines “Claims” to “include liabilities whether arising in contract, or in tort or otherwise, and liabilities of the estate which arise at or after the death of the decedent, including funeral expenses and expenses of administration, *but does not include estate or inheritance taxes, demands or disputes regarding title to specific assets alleged to be included in the estate.*”
- Pitale, 65 N.J. Super. at 366, (stating that intent of Probate Code is to include “all claims enforceable by suit terminating in a money judgment”).

# Fazilat v. Feldstein, 180 NJ 74 (2004)

- NJ Supreme Court distinguishes between claims made under the Probate Code and claims made under the Parentage Act – both made against a decedent's estate.
- A claim for Child Support is within the framework of the Probate Code and governed by its statute of limitations.
- A claim for Paternity is not within the framework of the Probate Code and is governed by the Parentage Act which has a much longer limitations period.

# Who is a Creditor?

- “[T]he word ‘creditor’ is not used in the restricted sense of one to whom a debt is due, but includes a party entitled to prosecute a suit upon a tort of the deceased.” Hackensack Trust Co. v. Van Den Berg, 92 N.J.L. 412, 413-414 (E. & A. 1918).
- The term includes all claims enforceable by suit terminating in a money judgment. Pitale v. Leroy Holding Co., 65 N.J. Super. 361, 365-66 (Ch. Div. 1961).

# Common Creditors

- Funeral Bills
- Taxing Authorities
- Credit Card Companies
- Creditors secured by Judgment
- Business Partners and contract claimants
- Persons injured by Decedent's tortious conduct
- Mortgage Companies and other secured creditors

# Duty of the Executor to the Estate

- An executor is required to settle and distribute an estate as expeditiously and efficiently as is consistent with the best interests of the estate. N.J.S. 3B:10-23. This includes payment of the decedent's lawful debts.
- Executors have the non-delegable duty to collect and preserve the estate assets, to supervise the administration of the estate and to exercise the care that an ordinary, prudent person would employ in like matters of his or her own. See In re Mild's Estate, 25 N.J. 467, 480 (1957); N.J.S. 3B:10-26.
- If the executor is satisfied that the claim is correct and should be paid, the executor has a duty to pay the claim. N.J.S. 3B:22-11. If the executor fails to pay the unrejected claim, the creditor can bring suit against the executor. N.J.S. 3B:22-12.
- When and if an executor fails to act in the best interests of the estate, then he or she may be discharged. See N.J.S. 3B:14-21

# Duty of the Executor to the Beneficiaries

- An executor has a fiduciary duty to act in the best interests of all the beneficiaries under the will. Branch v. White, 99 N.J. Super. 295, 306 (App. Div. 1968).
- The most fundamental duty owed by an executor to the beneficiaries is the duty of loyalty, see, e.g., Wolosoff v. C.S.I Liquidating Trust, 205 N.J. Super. 349 (App. Div. 1985), and the executor is obligated to deal impartially with all beneficiaries, In re Koretzky Estate, 8 N.J. 506, 530 (1951).
- The executor of the estate must, at all times, act with the best interests of the estate in mind, Taylor v. Errion, 137 N.J. Eq. 221 (Ch. Div. 1945), aff'd 140 N.J. Eq. 495 (1947), and must attempt to ensure that the estate is distributed according to the decedent's wishes. In re Duke, 305 N.J. Super. 408, 439 (Ch. Div. 1997).
- It is beyond peradventure that an executor cannot use his or her position to further his or her own personal interests. Estate of Sauer, 2011 N.J. Super. Unpub. LEXIS 1431 citing Taylor, supra, 137 N.J. Eq. at 225-227.

# N.J.S. 3B:22-1 et seq. (Creditors of Decedents; Their Rights and Remedies)

- No claim which is barred by any statute of limitations at the time of the decedent's death shall be allowed or paid. N.J.S. 3B:22-1
- if the claim couldn't have been brought against the decedent during his lifetime, it generally can't be brought after death

# Presentation of Claims – N.J.S. 3B:22-4

- Creditors of the decedent shall present their claims to the personal representative of the decedent's estate:
  - in writing,
  - under oath,
  - specifying the amount claimed, and
  - specifying the particulars of the claim.

# When Should Claims be Presented?

- **Option 1.** Within six (6) months of the executor giving public notice to all creditors by order of the court.
- **Option 2.** Within seven (7) months from the date letters testamentary were issued to the executor.
- **Option 3.** Within nine (9) months from the decedent's death.

# Timeframe; Statute of Limitations

- **Presentation of a Claim.** A claim must be presented within **nine (9) months** from the decedent's death.—3B:22-4
- **Time to Dispute.** Within **three (3) months** after presentation to the personal representative, the personal representative shall allow it or dispute it, in whole or in part, and give notice in writing to the creditor.—3B:22-7
- **Time to Commence an Action.** Within **three (3) months** after receiving notice that a claim or a part of it has been disputed, the creditor shall commence an action to recover on the claim.—3B-22-8

# Claim Adjudication

- The Probate Part does not adjudicate common creditor claims.
- A creditor whose claim is denied by a personal representative must initiate a Law Division action to reduce the claim to judgment.
- Once a creditor has reduced a claim to judgment, the creditor has standing to demand an accounting if the judgment is not satisfied.

# Failure to Present a Claim in Time

- If a creditor fails to present its claim within the nine (9) month period, the personal representative may distribute assets without being personally liable to the creditor
  - Not applicable for taxing authorities
- However, if distribution is made within the nine (9) months, the personal representative will be personally liable to any creditor who brings a valid claim
- After the nine (9) months, creditors may continue to make claims against the remaining assets held in the estate. N.J.S.A. 3B:22-10

# Release & Refunding Bonds

- In an action by a creditor against a personal representative, for the payment of a ratable proportion of his debt, it shall be presumed that the assets of the estate due a devisee or heir have not been paid over to him, if no refunding bond from the devisee or heir is on file.
- However, the presumption may be rebutted by actual proof of payment.
- In re Estate of Genet, 2011 N.J. Super. Unpub. LEXIS 2619

# Release & Refunding Bonds – cont.

- § 3B:22-16. Action upon refunding bond of devisee or heir.
- A claimant against an estate who has failed to present his claim in due form within the time required, may bring an action in his own name without leave of court on a refunding bond given by a devisee or heir and recover the proportion of his claim which ought to be paid out of the devise or distributive share for which the bond was given.
- Recovery on a refunding bond shall in no case exceed the amount actually received by the devisee or heir furnishing the bond.

# One-Year Rule for Real Property

- N.J.S.A. 3B:22-22
- The real property of the decedent shall be and remain liable for the payment of his debts for 1 year after his death;
- The personal representative may sell the real estate free from liability upon application to the court upon terms and conditions as the court may direct for the protection of creditors.

# Claims for Unpaid Real Estate Assessment

- Homestead at Mansfield Homeowners Assoc. v. Estate of Lois Mount
  - 2014 N.J. *Super.* Unpub. LEXIS 1634 (Docket No. A-0836-13T1)
  - Decided July 8, 2014
- Issue Presented – Is the beneficiary of real property liable for claims against the Decedent that have attached to the property?
- N.J.S.A. 3B:1-3 states in part that upon the death of an individual, his real and personal property devolves to the person to whom it is devised by his will, subject to rights of creditors and to administration.

# Insolvent Estates – 3B:22-2 & -32

- If the assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:
  - a. Reasonable funeral expenses;
  - b. Costs and expenses of administration;
  - c. Debts incurred by the Office of the Public Guardian for Elderly Adults;
  - d. Debts and taxes with preference under federal or state law;
  - e. Reasonable medical and hospital expenses of the last illness of the decedent;
  - f. Judgments entered against the decedent according to the priority of their entry;
  - g. All other claims.

# Order of Priority of Claims – 3B:22-2

- No preference is given in the payment of any claim over any other claim of the same class.
- No preference is given between claims due and claims not yet due.
- An action against the personal representative for payment does not entitle that creditor to priority over others of the same class.
- Woytas v. Greenwood Tree Experts, Inc., 237 N.J. 501 (2019)

# How Claims are Paid; Abatement

- The personal representative pays claims out of the assets of the estate in the following order (3B:22-3 & 3B:23-12):
  - a. Property passing by intestacy;
  - b. Residuary devises (*e.g.* “I give my children all the rest, residue and remainder of my estate, in equal shares”);
  - c. General devises (*e.g.* “I give my son \$100,000”);
  - d. Specific devises (*e.g.* “I give my son my house located in Edison”).

# Payment of Claims Not Legally Presented

- What happens if the personal representative pays a claim not presented in accordance with 3B:22-4?
- If the claim is paid in good faith, and if it is shown that the claim was owed by the decedent, the claim will be allowed.
- **However, if the estate is later found insolvent, the personal representative will be liable for the *pro rata* portion of the claim that should not have been paid.—N.J.S.A. 3B:22-6**

# Fact Pattern

- John is the court appointed administrator of his mother's estate. The estate is worth \$300,000 and John is also a one-third beneficiary. A week after the funeral, his siblings, the other beneficiaries, are demanding their share. Should John distribute the assets and close the estate?
- Susan and the decedent had a 50/50 partnership flipping houses. 8 months after the decedent's death, Susan uncovers irregularities on the partnership's books that suggests the decedent stole partnership assets. What must she do to recover the amounts she is owed?

# Claims Against the Estate for Services Rendered During Life of the Decedent

- Fact Pattern: Patrick does work for Decedent during Decedent's life in exchange for Decedent's oral promise to name Patrick as a beneficiary of Decedent's will. Decedent dies and the Will makes no mention of Patrick or the debt. Is Patrick a creditor? Can Patrick bring a claim against the estate?
- N.J.S.A. 3B:1-4 provides that these types of contractual arrangements relating to death must be in writing.
- See Estate of Cosman, 193 N.J. Super. 664 (App. Div. 1984)

# Claims: Probate Estate Insufficient

- Estate of Jerry Turco, 2013 N.J. Super. Unpub. LEXIS 1923
  - Docket No. ESX-CP-0162-2005
  - Decided July 22, 2013
- Question Presented: Does the personal representative have a duty to pursue non-probate assets to satisfy the debts of the Decedent?
- Answer: No. There is no statutory authority permitting the personal representative to access non-probate assets. The PR has no duty under federal law to pursue the non-probate assets.

# Joint Accounts – N.J.S.A. 17:16I-7

- The Multiple-Party Deposit Account Act contains provisions for the payment of debts, taxes, and administrative expenses in situations where the estate assets are otherwise insufficient.
- Ordinarily, the joint owner would take sole possession of the account.
- N.J.S. 17:16I-7 allows the estate of a deceased account holder to recover from the survivor to pay debts, taxes and administration expenses if other estate assets are insufficient.
- The Act provides in part that no multiple-party account will be effective against the estate to transfer to a survivor sums needed to pay debts, taxes, and expenses of administration.

# Claims for Federal Estate & Income Taxes

- 26 U.S.C. 2002 imposes the responsibility to pay the Estate's tax on the executor.
  - Treas. Reg. 20.2002-1 provides that the Federal estate tax is payable by the executor of the decedent's estate. This duty applies to the entire tax, regardless of the fact that the gross estate consists in part of property which does not come within the possession of the executor.
- 26 U.S.C. 2203 defines an "executor" as the appointed executor, or if none, then *any person* in actual or constructive possession of any property of the decedent.
- 31 U.S.C. 3713(b): a personal representative "paying any part of a debt of the person or estate before paying a claim of the Government is liable to the extent of the payment for unpaid claims of the Government."

# Claims for Federal Estate & Income Taxes - Cont.

- The word "debt" includes a beneficiary's distributive share of an estate.
- Thus, if the executor pays a debt due by the decedent's estate or distributes any portion of the estate before all the estate tax is paid, he is personally liable, to the extent of the payment or distribution, for so much of the estate tax as remains due and unpaid. –Treas. Reg. 20.2002-1

# David Allen, et al., TC Memo 1999-385, 11/24/1999

- Facts: In 1987, Decedent died intestate with a gross taxable estate of \$11M. Following Decedent's death, Decedent's son David took possession of Decedent's assets rendering the estate insolvent. David never qualified as the administrator of his father's estate, but transferred all of the assets to himself.
- Held:
  1. David is the "executor" of Decedent's estate within the purview of section 2203.
  2. David was the fiduciary (personal representative) of Decedent's estate within the purview of 31 U.S. section 3713(b). David is responsible for the payment of income and estate taxes, as well as additions to tax, owed by Decedent's estate.
  3. David is liable as a transferee of the assets of Decedent's estate for the income and estate taxes, as well as additions to tax, owed by the estate.

# Prompt Assessment of Federal Taxes

- The IRS generally has three (3) years to assess tax from the date the return is filed.
- This places an added burden on the Executor, because the true nature of unpaid income tax liabilities may not be known for several years.
- One option is for the executor to request a prompt assessment of the decedent's income tax liabilities by filing a form 4810.
- This gives the IRS just eighteen (18) months (instead of 36 months) to review the filed returns and assess the tax.

# New Jersey (Estate &) Inheritance Taxes

- 54:35-2. Executors, administrators, trustees, grantees, donees or vendees shall be personally liable for any and all such taxes until paid.
- 54:36-7. No executor or trustee shall turn over any property of an estate until all taxes have been paid. Any executor or trustee who shall turn over any such property prior to the payment of tax due thereon, together with interest, shall be personally liable for such tax and interest.
- 54:38-6. All administrators, executors, trustees, grantees, donees and vendees, shall be personally liable for taxes. Taxes imposed under this chapter shall remain a lien on all property of the decedent as of the date of the decedent's death until paid.

# Tax Liability on Non-Probate Assets

- Gould v. Director, Division of Taxation, 2 N.J. Tax 316 (Tax Ct. 1981)
- Decedent's estate comprised of non-probate insurance transfers to Decedent's niece and grandniece, both living out of state. Decedent named plaintiff sole residuary beneficiary and executor.
- Held. Executor is personally liable for unpaid inheritance taxes to the extent of the estate assets entering his possession regardless of whether those taxes are the result of non-probate transfers. His "liability as executor is measured by, and limited to, the value of assets which actually came into his hands, irrespective of whether he acquired dominion over the subject matter of a particular taxable transfer".

---

**ROBERT I. AUFSEESER, ESQ.**  
**[WWW.ROBERTAUFSEESER.COM](http://WWW.ROBERTAUFSEESER.COM)**

---