

IN THE COURT OF COMMON PLEAS, PROBATE DIVISION, GEAUGA COUNTY, OHIO
Judge Timothy J. Grendel

Information Sheet
Creditor Rights – Presentation of Claim

WARNING

This Information Sheet is intended to provide you with a brief overview of the subject matter. It may not provide you with all information that you require to be fully informed of the law that is applicable to your case. Additionally, the information may not accurately describe the pertinent sections of the Ohio Revised Code that are referenced in the footnotes. You should read those sections that are referenced. The Ohio Revised Code has a link on the Court's website. Additionally, you should consider reading those sections that are footnoted using "Page's Ohio Revised Code Annotated," which can be found at the Geauga County Law Library in the basement of the Courthouse at 100 Short Ct. Street, Chardon, Ohio 44024. Page's Ohio Revised Code Annotated also will provide you a summary of applicable court decisions (known as "case law"). While the Help Center can provide you with a limited amount of information, the Help Center staff cannot provide you with legal advice, and this Information Sheet is not intended to provide you with legal advice that is applicable to your case. You must decide how to best use the information provided. In the footnotes you will see a reference such as "R.C. 2117.06." That refers to Ohio Revised Code Section 2117.06, which is found in R.C. Title 21, and in R.C. Chapter 2117.

NOTE: All form numbers referenced in this information sheet and designated by the prefix "HCPF" are only available at the Help Center and are not on the Court's website.

Background

When a person dies in Ohio, with very few exceptions, if the Decedent owes a creditor money, no matter how valid the creditor claim, unless the creditor "presents" the claim in accordance with R.C. 2117.06, the creditor's claim is forever barred. In effect, compliance with R.C. 2117.06 operates as a "statute of limitations." There are a couple of requirements that a creditor must satisfy to "properly present" its claim.

- **First** – Only after the probate court appoints either an Executor or Administrator, then after such appointment the creditor must present its claim, in writing, by:
 - delivery of the written claim to the Executor or Administrator, or¹
 - delivery of the written claim to the Executor or Administrator and filing a copy with the probate court,² or

¹ See *Wilson v. Lawrence*, 150 Ohio St.3d 368, 2017-Ohio-1410 (2017) for a good explanation as to how to effect delivery of the written claim in accordance with R.C. 2117.06.

² Note the merely filing a written claim with the probate court is not sufficient to present a claim under R.C. 2117.06.

- by delivery of the written claim by ordinary mail to the Decedent's last known address and the Executor or Administrator actually receives that ordinary mail notice within the six months following the Decedent's death.³
- **Second** – In all events, the creditor must properly present its claim not later than six months after the Decedent's death.⁴ This requirement is applicable even if the estate is released from administration and whether or not an Executor or Administrator has been appointed.

In all events, the creditor should read the probate information sheet titled "Creditor Rights."

The Problem.

Sometimes with the advice of an attorney, persons who qualify to be appointed an Executor or Administrator may intentionally wait until six months after the Decedent's death before filing an application to be appointed as Executor or Administrator, with the intention of barring valid creditor claims. If a creditor files the claim with the probate court within six months of the Decedent's death, but no Executor or Administrator is appointed during that six-month period, then the creditor's claim is still barred. If a person is appointed a Commissioner of a probate estate, rather than an Executor or Administrator, resulting from filing an Application for Relief from Administration, the Decedent's creditors will be barred even if they "present" their claims to the Commissioner.

A Solution.

WARNING - the Help Center highly recommends that a creditor obtain advice before taking any action regarding the presentation of a creditor claim. While this probate information sheet offers a possible course of action, depending upon the particular facts, there may be better solutions that an attorney will recommend. The solution suggested below is general information and not legal advice.

If during the six-month period following a Decedent's death no person is appointed Executor or Administrator of the Decedent's probate estate, one solution for a creditor is for the creditor to be appointed as a Special Administration⁵ for the sole purpose of presenting the creditor claim to himself as the special administrator, and then filing a copy of the written demand with the Court. R.C. 2117.06.

Warning. Before the Court will appoint an Administrator, the Court may hold a hearing regarding the Application for Authority to Administer Estate (Form 4.0). Unless all interested parties have signed a Waiver of Notice (which is highly unlikely), the applicant must cause a Notice of Hearing to be published, at least four weeks before the Hearing Date (the Notice of Hearing must be published for three consecutive weeks). See the probate information sheet titled "Service of Notice" for more details. Therefore, the creditor should consider filing an Application for Authority to Administer Estate (Form 4.0) not later than 22 weeks after the Decedent's death.

³ R.C. 2117.06(A).

⁴ R.C. 2117.06(B); see *Wilson v. Lawrence*, 150 Ohio St. 3d 368, 2017-Ohio-1410 (2017).

⁵ See Geauga Probate Local Rule 60.4.

Initial Steps.

1. Gather Information.

- a. Obtain a copy of the Decedent's death certificate. Check with Geauga County Health – 470 Center St. - Building 8, Chardon, OH 44024, Tel. 440-279-1900.
- b. Check with the Probate Clerk to determine whether a legal proceeding has been started regarding the Decedent, such as an Application to Probate Will.
- c. Use best efforts to obtain the name and address of a surviving spouse, children, or other next-of-kin.

NOTE - that if there is a surviving spouse, then the spouse has rights (e.g. Family Allowance) that are superior to the creditor rights. See the probate information sheet titled "Rights of Surviving Spouse." Depending upon the value of the Probate Property, there may not be sufficient Probate Property after the payments of those spousal rights.

- d. Use best efforts to obtain information regarding the Decedent's probate assets.
 - e. Consider that, depending upon the value of the probate assets and whether the bill of the funeral director has been paid and whether the Decedent has a surviving spouse or minor children, there may not be sufficient probate assets to pay the creditor claim. See the probate information sheets titled "Creditor Claims" and "Rights of Surviving Spouse" for more information.
2. Application. Prepare the form titled "Application for Authority to Administer Estate" (Form 4.0). Supply as much information as possible.
 3. Statement of Appointment for Limited Purpose. Prepare the form titled "Statement of Appointment for Limited Purpose" (GF PF 4.15), which should be attached to the Application for Authority to Administer Estate (Form 4.0).
 4. Creditor Statement. Prepare the form titled "Creditor Statement" (HCPF 070B), which should be attached to the Application for Authority to Administer Estate (Form 4.0), as further evidence of the creditor claim and the creditor's intentions.
 5. Form 1.0. Prepare the form titled "Surviving Spouse, Children, Next of Kin, Legatees and Devisee" (Form 1.0). To the best of your knowledge, provide the information required on that form. If information is unknown, you can so indicate.
 6. Presentation of Claim. Prepare the demand notice, which the creditor will present to himself, after being appointed the special administrator, and also with the Court.⁶ Consider using the form titled "Presentation of Claim" (HCPF 070A). Gather all evidence supporting the claim, such as a cancelled check, promissory note, contract, etc.

⁶ See R.C. 2117.06(A)(1)(b).

7. Identification. Except when the applicant is represented by an Ohio Attorney, who signs the application, gather (1) a government-issued photographic identification (e.g. a current driver's license or passport), and (2) evidence of current mailing address (e.g. recent utility bill, bank statement account, property tax bill, voter registration card).
8. Court Costs. Arrange for payment of court cost deposit - see the Court's website.

Initial Filing with Court. File with the Probate Clerk the following:

1. Application for Authority to Administer Estate (Form 4.0), together with both (i) the form titled "Statement of Appointment for Limited Purpose" (GC PF 4.15) and (ii) the form titled "Creditor Statement" (HCPF 070B).
2. Surviving Spouse, Children, Next of Kin, Legatees and Devisee (Form 1.0)
3. Copy of Death Certificate - (1) must redact the social security number and (2) must be shrunk to letter-size.
4. If required, (1) a government-issued photographic identification (e.g. a current driver's license or passport), and (2) evidence of current mailing address (e.g. recent utility bill, bank statement account, property tax bill, voter registration card).
5. Pay Court Cost Deposit.

Post-Filing Matters and Concerns.

1. Notice of Hearing. If the Court sets the matter for hearing, then to the extent that all Interested Persons do not sign a "Waiver to Administer Estate" (Form 4.3), the applicant must notify those persons, using the form titled "Notice of Hearing on Appointment of Fiduciary" (Form 4.4) no later than 10 days before the hearing, and (i) serve that notice in compliance with Geauga Probate Local Rule 78.13, and (ii) provide the Court with proof of service by preparing and filing the form titled "Affidavit Evidencing Service of Notice" (GC PF 41.6). See probate information sheet titled "Service of Notice" for more details on service of notice and proof of service to the Court. If the address of a person to be served is unknown, or the name is unknown, and service of publication is required, then review Geauga Probate Local Rule 78.14 and probate information sheet titled "Service of Notice" for more details.
2. Notice of Appointment. If the Court appoints the applicant, then the Estate Representative shall give notice of the appointment, within seven days after the appointment, to all persons entitled to inherit, including persons entitled to an allowance for support, except to the extent that any of those persons waived notice of the hearing to appoint or were given notice of the hearing.⁷ The Administrator shall use the form titled "Notice of Appointment as Special Administrator" (GF PF 4.16) and (i) serve that notice in compliance with Geauga Probate Local Rule 78.13, and (ii) provide the Court with proof of service by preparing and filing the form titled "Affidavit Evidencing Service of Notice" (GC PF 41.6). See probate information sheet titled "Service of Notice" for more details on service of notice and proof of service to the Court. If the address of a person to be served is

⁷ Sup. R. 60(B) (Ohio Rules of Superintendence)

unknown, or the name is unknown, and service of publication is required, then review Geauga Probate Local Rule 78.14 and probate information sheet titled "Service of Notice" for more details.

3. Presentation of Claim. Promptly after appointment, the Estate Representative (and creditor) should (i) deliver to himself/herself, as the appointed special administrator, the Presentation of Claim (HCPF 070A), either by personal deliver (prepare a dated receipt) or certified mail, return receipt requested, and (ii) file with the Probate Clerk a copy of the Presentation of Claim (HCPF 070A).
4. Other Considerations.
 - a. Note that even if you (i) are successful in being appointed special administrator within six months after the Decedent's death and (ii) timely present your creditor claim as required by R.C. 2117.06, nevertheless a subsequent fiduciary may challenge the claim as an invalid claim, in whole or in part. Again, carefully read the probate information sheet titled "Creditor Rights." If the creditor claim is "rejected," as permitted by law, the creditor's only course of action may be filing a complaint with the Court as permitted by R.C. 2117.12.
 - b. After you have properly presented the creditor claim as explained above, consider withdrawing as special administrator by preparing and filing the form titled "Application to Withdraw as Fiduciary" (GC PF 4.20A) - see Geauga Probate Local Rule 78.6(A).
 - c. If you fail to properly and timely present your creditor claim in accordance with R.C. 2117.06, then consider filing to be appointed as the Administrator. If so appointed, you may present your claim to the Court under R.C. 2117.02, as discussed below.⁸ Please review the Information Sheet "Creditor Rights."
 - d. If you are appointed the Administrator and if your claim is more than \$500, then you must prepare and file an Application requesting that the Court allow the payment of the fiduciary claim. Judge will hold an evidentiary hearing before allowing the payment and will order you to provide all interested parties with a notice, which may include notice by publication. Notice must be given at least 20 days before that hearing. See the information sheet titled "Creditor Rights."

LEGAL PRACTICE IN THE PROBATE COURT IS RESTRICTED BY LAW TO ATTORNEYS WHO ARE LICENSED BY THE SUPREME COURT OF OHIO AND INDIVIDUALS WHO ARE HANDLING THEIR OWN LEGAL MATTERS. IF AN INDIVIDUAL WISHES TO HANDLE HIS OR HER OWN CASE, THAT PERSON MAY ATTEMPT TO DO SO, HOWEVER DUE TO THE COMPLEXITY OF THE LAW AND THE DESIRE TO AVOID COSTLY ERRORS, MANY PERSONS WHO HAVE MATTERS BEFORE THE COURT ARE REPRESENTED BY AN ATTORNEY.

IF YOU CHOOSE TO REPRESENT YOURSELF AND USE THE COURT'S FORMS, BE AWARE THAT STATE LAW PROHIBITS THE JUDGE, MAGISTRATE, AND EMPLOYEES OF THE GEAUGA COUNTY PROBATE COURT, INCLUDING THE HELP CENTER STAFF, FROM PROVIDING YOU WITH LEGAL ADVICE. IF YOU NEED LEGAL ADVICE, THEN YOU SHOULD CONTACT AN ATTORNEY OF YOUR CHOOSING.

⁸ See *In re Estate of Curc*, 2019-Ohio-416 [11th App. Dist.]