



A Primer on Claims Against a Probate Estate

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In Ohio, a claimant may bring a claim against a probate estate for claims arising out of contract, tort, or cognovits notes, or on judgments, regardless of whether they are due, secured, or liquidated. The Ohio General Assembly set forth specific requirements within R.C. § 2117.06 with which a claimant must comply to preserve its claim against a probate estate. Ohio courts interpret the requirements prescribed by the General Assembly strictly. Generally, if a claimant fails to satisfy these requirements, their claim will be forever barred. Thus, it is imperative that claimants are familiar with the law governing claims against probate estates so they do not lose the ability to pursue such claims.

Under Ohio law, if a claimant possesses a claim against an open probate estate, the claimant must present its claim, in a writing that contains the claimant's address, to the fiduciary of the probate estate, to the fiduciary's attorney of record in the probate action, or to the probate court. If the claimant elects to present its claim to the probate court, the writing must include the probate court case number regarding the debtor's probate estate. If a creditor possesses a claim against a closed probate estate, the claimant must submit the writing to distributees of the estate who may share liability for the claim.

Generally, the claimant must present its claim within six (6) months of the decedent's death or the claim will be barred. Ignorance of the decedent's death will not afford the claimant additional time to present its claim. However, a probate estate's fiduciary may accelerate the bar of claims by sending written notice to potential claimants. If the fiduciary does so, a claimant who receives such notice must present its claim within thirty (30) days of receipt of the notice or within six (6) months of the decedent's death, whichever is sooner. If the claimant is not an excepted entity, such as a tax authority, and fails to meet these deadlines, it will forever lose the ability to seek payment for its claim.

The Supreme Court of Ohio recognized these requirements as protecting the vital interests of the probate estate and its beneficiaries, as well as the estate's creditors, by ensuring the orderly, efficient, and legally-proper administration of the estate by the probate fiduciary, an officer of the probate court. As such, Ohio courts reject claims whose presentation does not strictly comply with these requirements. For example, if a claimant presents a claim to an agent of a probate estate's fiduciary, rather than to the fiduciary, to its attorney, or to the probate court, the presentation would be ineffective, and the statute of limitations would continue to run.

Thus, it is imperative for the claimant to ensure that the presentation of the claim is: (1) written in a compliant manner; (2) presented within six (6) months of the decedent's death, or within thirty (30) days of receipt of written notice of the decedent's death, whichever is sooner; and (3) presented to either the fiduciary of the estate, to its attorney, or to the probate court, if the estate is open; or (4) presented to distributees of the decedent's estate who may be liable for the claim, if the estate is closed.

Once a claim is presented, the fiduciary shall allow or reject the claim within thirty (30) days, provided that failure of the fiduciary to allow or reject within that time shall not prevent the fiduciary from doing so after that time and shall not prejudice the rights of any claimant. If the fiduciary contests the claim, the

fiduciary and the claimant may enter into an agreement in writing to refer the matter to three disinterested persons, or referees. If the probate court approves the referees, it will refer the matter to the referees. The referees will then hear and determine the matter and make a report to the Court reflecting their determination. The Court then has the discretion to reject the referees' report and to appoint new referees to hear the matter, or to confirm the report and to adopt it as a valid and effectual judgment.

Similarly, a fiduciary may reject a claim against a probate estate. The fiduciary must do so by providing clear and unequivocal written notice of the rejection to the claimant. A claim may be rejected in whole or in part. A fiduciary may also reject a claim by simply not responding to a written demand for an allowance of a claim (made simultaneously or subsequently to the written presentation of the claim) within five (5) days of receipt of the demand. Once a claimant presents a claim against a probate estate, and the estate's fiduciary rejects the claim, the claimant may commence an independent action on the claim against the probate estate. The claimant must do so within two months of the rejection if the debt, or part of the debt, was due when rejected, or within two months after the debt, or part of the debt that was rejected, becomes due, or the action will be forever barred.

If someone would like to bring, or to preserve and enforce, a claim against a probate estate, sophisticated and experienced trust, estate, and probate litigation counsel should be consulted to help effectuate a successful resolution.

This article provides an overview and summary of the matters described therein. It is not intended to be and should not be construed as legal advice on the particular subject.