

## **CHAPTER 30.1-19 CREDITORS' CLAIMS**

### **30.1-19-01. (3-801) Notice to creditors.**

Unless notice has already been given under this section, a personal representative upon appointment may publish a notice to creditors whose identities are not reasonably ascertainable. The notice must be published once a week for three successive weeks in a newspaper of general circulation in the county. If the personal representative elects to publish a notice to creditors then, in addition to publishing the notice to creditors, the personal representative shall mail a copy of the notice to those creditors whose identities are known to the personal representative or are reasonably ascertainable and who have not already filed a claim. The notice must announce the personal representative's appointment and address and notify creditors of the estate to present their claims within three months after the date of the first publication or mailing of the notice or be forever barred. For the purpose of this section, a reasonably ascertainable creditor includes a creditor who regularly submits billings to the decedent or the decedent's estate and to whose billings the personal representative has had access.

### **30.1-19-02. (3-802) Statutes of limitations.**

Unless an estate is insolvent, the personal representative, with the consent of all successors whose interests would be affected, may waive any defense of limitations available to the estate. If the defense is not waived, no claim that was barred by any statute of limitations at the time of the decedent's death may be allowed or paid. The running of any statute of limitations measured from some other event than death and advertisement and mailing of notice for claims against a decedent is suspended during the three months following the decedent's death but resumes thereafter as to claims not barred pursuant to the sections which follow. For purposes of any statute of limitations, the proper presentation of a claim under section 30.1-19-04 is equivalent to commencement of a proceeding on the claim.

### **30.1-19-03. (3-803) Limitations on presentation of claims.**

1. All claims against a decedent's estate which arose before the death of the decedent, including claims of the state or any political subdivision, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, the heirs and devisees of the decedent, and nonprobate transferees unless presented as follows:
  - a. Within three months after the date of the first publication and mailing of notice to creditors if notice is given in compliance with section 30.1-19-01; provided, claims barred by the nonclaim statute at the decedent's domicile before the first publication for claims in this state are also barred in this state.
  - b. Within three years after the decedent's death, if notice to creditors has not been published and mailed.
2. All claims against a decedent's estate which arise at or after the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:
  - a. A claim based on a contract with the personal representative, within four months after performance by the personal representative is due.
  - b. Any other claim, within three months after it arises.
3. Nothing in this section affects or prevents:
  - a. Any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate.

- b. To the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which the decedent or personal representative is protected by liability insurance.

**30.1-19-04. (3-804) Manner of presentation of claims.**

Claims against a decedent's estate may be presented as follows:

1. The claimant may deliver or mail to the personal representative and any attorney of record for the estate a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed, or may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court. The claim is deemed presented on the first to occur, either receipt of the written statement of claim by the personal representative, or the filing of the claim with the court. If a claim is not yet due, the claimant shall state the date when it will become due. If the claim is contingent or unliquidated, the claimant shall state the nature of the uncertainty. If the claim is secured, the claimant shall describe the security. Failure to describe correctly the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate the presentation.
2. The claimant may commence a proceeding against the personal representative in any court where the personal representative may be subjected to jurisdiction, to obtain payment of the claimant's claim against the estate, but the commencement of the proceeding must occur within the time limited for presenting the claim. A presentation of claim is not required in regard to matters claimed in proceedings against the decedent which were pending at the time of death.
3. If a claim is presented under subsection 1, a proceeding on the claim may not be commenced more than sixty days after the personal representative has mailed a notice of disallowance, but, in the case of a claim which is not presently due or which is contingent or unliquidated, the personal representative may consent to an extension of the sixty-day period, or to avoid injustice, the court, on petition, may order an extension of the sixty-day period, but in no event may the extension run beyond the applicable statute of limitations.

**30.1-19-05. (3-805) Classification of claims.**

1. If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:
  - a. Costs and expenses of administration.
  - b. Reasonable funeral expenses.
  - c. Debts and taxes with preference under federal law.
  - d. Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending the decedent.
  - e. The decedent's child support obligations that were due and unpaid before death.
  - f. Debts and taxes with preference under other laws of this state.
  - g. All other claims.
2. No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.

**30.1-19-06. (3-806) Allowance of claims.**

1. As to claims presented in the manner described in section 30.1-19-04 within the time limit prescribed in section 30.1-19-03, the personal representative may mail a notice to any claimant stating that the claim has been disallowed. If, after allowing or disallowing a claim, the personal representative changes the personal representative's decision concerning the claim, the personal representative shall notify the claimant. The personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. Every claim which is disallowed, in whole or in

part, by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than sixty days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. Failure of the personal representative to mail notice to a claimant of action on the claimant's claim for sixty days after the time for original presentation of the claim has expired has the effect of a notice of allowance.

2. After allowing a claim, the personal representative may before payment change the allowance to a disallowance in whole or in part, but not after allowance by a court order or judgment or an order directing payment of the claim. The personal representative shall notify the claimant of the change to disallowance, and the disallowed claim is then subject to bar as provided under subsection 1. After disallowing a claim, the personal representative may change a disallowance to an allowance in whole or in part until it is barred under subsection 1 and after it is barred, it may be allowed and paid only if the estate is solvent and all successors whose interests would be affected consent.
3. Upon the petition of the personal representative or of a claimant in a proceeding for the purpose, the court may allow, in whole or in part, any claim or claims presented to the personal representative or filed with the clerk of the court in due time and not barred by subsection 1. Notice in this proceeding must be given to the claimant, the personal representative, and those other persons interested in the estate as the court may direct, by order entered at the time the proceeding is commenced.
4. A judgment in a proceeding in another court against a personal representative to enforce a claim against a decedent's estate is an allowance of the claim.
5. Unless otherwise provided in any judgment in another court entered against the personal representative, allowed claims bear interest at the legal rate for the period commencing sixty days after the time for original presentation of the claim has expired unless based on a contract making a provision for interest, in which case allowed claims bear interest in accordance with that provision.

#### **30.1-19-07. (3-807) Payment of claims.**

1. Upon the expiration of three months from the date of the first publication and mailing of the notice to creditors, the personal representative shall proceed to pay the claims allowed against the estate in the order of priority prescribed, after making provision for homestead, family, and support allowances, for claims already presented which have not yet been allowed or whose allowance has been appealed, and for unbarred claims that may yet be presented, including costs and expenses of administration. By petition to the court in a proceeding for the purpose, or by appropriate motion if the administration is supervised, a claimant whose claim has been allowed but not paid as provided herein may secure an order directing the personal representative to pay the claim to the extent that funds of the estate are available for the payment.
2. The personal representative at any time may pay any just claim which has not been barred, with or without formal presentation, but the personal representative is personally liable to any other claimant whose claim is allowed and who is injured by such payment if:
  - a. The payment was made before the expiration of the time limit stated in subsection 1 and the personal representative failed to require the payee to give adequate security for the refund of any of the payment necessary to pay other claimants; or
  - b. The payment was made, due to the negligence or willful fault of the personal representative, in such manner as to deprive the injured claimant of the injured claimant's priority.

#### **30.1-19-08. (3-808) Individual liability of personal representative.**

1. Unless otherwise provided in the contract, a personal representative is not individually liable on a contract properly entered into in the personal representative's fiduciary

capacity in the course of administration of the estate unless the personal representative fails to reveal the personal representative's representative capacity and identify the estate in the contract.

2. A personal representative is individually liable for obligations arising from ownership or control of the estate or for torts committed in the course of administration of the estate only if the personal representative is personally at fault.
3. Claims based on contracts entered into by a personal representative in the personal representative's fiduciary capacity, on obligations arising from ownership or control of the estate or on torts committed in the course of estate administration, may be asserted against the estate by proceeding against the personal representative in the personal representative's fiduciary capacity, whether or not the personal representative is individually liable therefor.
4. Issues of liability as between the estate and the personal representative individually may be determined in a proceeding for accounting, surcharge or indemnification, or other appropriate proceeding.

**30.1-19-09. (3-809) Secured claims.**

Payment of a secured claim is upon the basis of the amount allowed if the creditor surrenders the security. Otherwise, payment is upon the basis of one of the following:

1. If the creditor exhausts the security before receiving payment, unless precluded by other law, upon the amount of the claim allowed less the fair value of the security.
2. If the creditor does not have the right to exhaust the security or has not done so, upon the amount of the claim allowed less the value of the security determined by converting it into money according to the terms of the agreement pursuant to which the security was delivered to the creditor, or by the creditor and personal representative by agreement, arbitration, compromise, or litigation.

**30.1-19-10. (3-810) Claims not due and contingent or unliquidated claims.**

1. If a claim which will become due at a future time or a contingent or unliquidated claim becomes due or certain before the distribution of the estate, and if the claim has been allowed or established by a proceeding, it is paid in the same manner as presently due and absolute claims of the same class.
2. In other cases the personal representative or, on petition of the personal representative or the claimant in a special proceeding for the purpose, the court may provide for payment as follows:
  - a. If the claimant consents, the claimant may be paid the present or agreed value of the claim, taking any uncertainty into account; or
  - b. Arrangement for future payment, or possible payment, on the happening of the contingency or on liquidation, may be made by creating a trust, giving a mortgage, obtaining a bond or security from a distributee, or otherwise.

**30.1-19-11. (3-811) Counterclaims.**

In allowing a claim the personal representative may deduct any counterclaim which the estate has against the claimant. In determining a claim against an estate, a court shall reduce the amount allowed by the amount of any counterclaims and, if the counterclaims exceed the claim, render a judgment against the claimant in the amount of the excess. A counterclaim, liquidated or unliquidated, may arise from a transaction other than that upon which the claim is based. A counterclaim may give rise to relief exceeding in amount or different in kind from that sought in the claim.

**30.1-19-12. (3-812) Execution and levies prohibited.**

No execution may issue upon nor may any levy be made against any property of the estate under any judgment against a decedent or a personal representative, but this section shall not be construed to prevent the enforcement of mortgages, pledges, or liens upon real or personal property in an appropriate proceeding.

**30.1-19-13. (3-813) Compromise of claims.**

When a claim against the estate has been presented in any manner, the personal representative may, if it appears for the best interest of the estate, compromise the claim, whether due or not due, absolute or contingent, liquidated or unliquidated.

**30.1-19-14. (3-814) Encumbered assets.**

If any assets of the estate are encumbered by mortgage, pledge, lien, or other security interest, the personal representative may pay the encumbrance or any part thereof, renew or extend any obligation secured by the encumbrance, or convey or transfer the assets to the creditor in satisfaction of the creditor's lien, in whole or in part, whether or not the holder of the encumbrance has presented a claim, if it appears to be for the best interest of the estate. Payment of an encumbrance does not increase the share of the distributee entitled to the encumbered assets unless the distributee is entitled to exoneration.

**30.1-19-15. (3-815) Administration in more than one state - Duty of personal representative.**

1. All assets of estates being administered in this state are subject to all claims, allowances, and charges existing or established against the personal representative wherever appointed.
2. If the estate, either in this state or as a whole, is insufficient to cover all family exemptions and allowances determined by the law of the decedent's domicile, prior charges, and claims, after satisfaction of the exemptions, allowances, and charges, each claimant whose claim has been allowed either in this state or elsewhere in administrations of which the personal representative is aware, is entitled to receive payment of an equal proportion of the claimant's claim. If a preference or security in regard to a claim is allowed in another jurisdiction but not in this state, the creditor so benefited is to receive dividends from local assets only upon the balance of the creditor's claim after deducting the amount of the benefit.
3. In case the family exemptions and allowances, prior charges, and claims of the entire estate exceed the total value of the portions of the estate being administered separately, and this state is not the state of the decedent's last domicile, the claims allowed in this state shall be paid their proportion if local assets are adequate for the purpose, and the balance of local assets shall be transferred to the domiciliary personal representative. If local assets are not sufficient to pay all claims allowed in this state the amount to which they are entitled, local assets shall be marshalled so that each claim allowed in this state is paid its proportion as far as possible, after taking into account all dividends on claims allowed in this state from assets in other jurisdictions.

**30.1-19-16. (3-816) Final distribution to domiciliary representative.**

The estate of a nonresident decedent being administered by a personal representative appointed in this state shall, if there is a personal representative of the decedent's domicile willing to receive it, be distributed to the domiciliary personal representative for the benefit of the successors of the decedent unless:

1. By virtue of the decedent's will, if any, and applicable choice of law rules, the successors are identified pursuant to the local law of this state without reference to the local law of the decedent's domicile;
2. The personal representative of this state, after reasonable inquiry, is unaware of the existence or identity of a domiciliary personal representative; or
3. The court orders otherwise in a proceeding for a closing order under section 30.1-21-01 or incident to the closing of a supervised administration.

In other cases, distribution of the estate of a decedent shall be made in the manner provided elsewhere in this title.