

How Commercial Transactions Can Involve Estates and How To Deal With Claims (and Estate Administrators) When it Happens

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Contractual Considerations

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- Loan documents often specify post-death creditor rights and loan status.**
- A borrower's death is often an event of default.**
- The death of a "key employee" may be an event of default and/or impact extensions of credit.**
- Post-death collection procedures are quite different from collection procedures used when the debtor is living.**



Estate Administration

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- 1. Appointment of Personal Representative.**
 - Letters Testamentary
 - “Executor” (Will)
 - Letters of Administration
 - “Administrator” (no Will)
- 2. Collect and report probate assets.**
- 3. Pay valid debts.**
- 4. Distribute remaining property to beneficiaries.**



Notice to Creditors

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- Personal Representative (“PR”) must publish a notice to creditors:**
 - County newspaper qualified to publish legal advertisements.
 - Provide that claims must be filed on a date at least three months from date of first publication.
 - Provide PR's mailing address.
 - Published once per week for four consecutive weeks.



Notice to Creditors (cont.)

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Published Notice to Creditors

Having qualified as (Executor/Administrator) of the Estate of (Decedent's name), late of (Decedent's address), _____, _____ County, North Carolina, the undersigned does hereby notify all persons, firms and corporations having claims against the estate of said decedent to exhibit them to the undersigned at _____, North Carolina (zip code), on or before the _____ day of _____, 20____, or this notice will be pleaded in bar of their recovery. All persons, firms and corporations indebted to the said estate will please make immediate payment to the undersigned.



Notice to Creditors (cont.)

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- Direct personal notice to “known or reasonably ascertained” creditors.**
 - Delivered within 75 days after granting of Letters.
 - Claim must be submitted within 90 days of delivery of personal notice.
 - Exception: personal notice is not required to be given to creditors whom the PR recognizes as having a valid claim.
- PR must file an affidavit with the Clerk of Court stating that a copy of the notice was mailed to each creditor entitled to notice.**



Presentment of Claims

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- **North Carolina's formal claim requirements:**
 - In writing.
 - The amount or item being claimed, or other relief sought.
 - Basis of the claim.
 - Name and address of the claimant.
 - Proper and timely delivery.
 - Personal representative and/or
 - Clerk of Superior Court



Presentment of Claims (cont.)

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- **Statute of Limitations (N.C.G.S. 28A-19-3)**
 - **Claim arose *before* death:**
 - Presentment before date posted in the Creditor's Notice, or
 - In cases requiring personal notice, 90 days after date of delivery of the personal notice.
 - **Claim arose *at or after* death:**
 - 6 months from the date performance was due or when claim arose.
 - **If no Creditor's Notice is given, three years from date of death.**



Handling Claims

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- **PR will assess the validity of the claim.**
- **PR may require Claimant to submit affidavits or additional evidence of indebtedness.**
- **PR has sole discretion to settle or negotiate claim on behalf of the estate.**



Handling Claims (cont.)

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- **Disputed claims:**
 - **PR and Claimant may refer the disputed claim to a three person panel for a final determination of the validity and amount of debt.**
 - **PR may reject the claim in writing, after which Claimant has three months to file an action for recovery against the estate.**



Handling Claims (cont.)

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- **Contingent claims/Personal guaranties**
 - **Is the death of the guarantor an event of default?**
 - **File a contingent claim.**
 - **Options:**
 - **Settle contingent claim with Clerk's approval;**
 - **Clerk may order retention of funds in the estate to pay future obligation (if any); or**
 - **Clerk may order distribution of estate property subject to contingent claim, making heirs liable.**



Payment of Claims

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- **Generally, debts and claims should not be paid until the creditor's period has expired.**
 - **(three months from date of first publication)**
 - **PR risks personal liability to creditors if PR makes a premature claim payment or distribution and the estate becomes insolvent.**
- **N.C.G.S. Section 28A-19-6 sets out priorities in paying estate claims.**



Summary of Claim Priorities

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- (1) costs and expenses of administering the estate;
- (2) claims which have a specific lien on property
- (3) funeral expenses up to \$3,500
- (4) costs associated with gravestones & burial place up to \$1,500;
- (5) taxes and claims due the United States;
- (6) taxes and claims due the State of North Carolina;
- (7) judgments which are a lien on property of the decedent and Medicaid Recovery;
- (8) wages due an employee of the decedent;
- (9) a claim for equitable distribution; and
- (10) all other claims.



Access to All Assets to Satisfy Claims?

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- Exempt assets:**
 - Spousal allowance, child's allowance
 - Life Insurance payable to spouse and/or children
 - Qualified Retirement Accounts and IRAs
- Non-probate assets subject to being added to the estate for payment of claims:**
 - Real estate
 - Payable on death accounts
 - Joint accounts with right of survivorship



Other Concerns

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- **What if an estate hasn't been opened?**
 - **Creditor may apply to serve as PR (rare)**
 - **Creditor may file an Affidavit for Collection**



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