

## Ask the Probate Judge—TOD for Stock and Creditors

By Merri Rudd, appeared January 10, 2008, Albuquerque Journal, Business Outlook  
Reprinted with permission

**Q: I have a will that divides my estate equally between my two daughters. Outside the will, I have stocks in my name with transfer on death (TOD) designations to my daughters and granddaughter, individually. I assume that the stocks will be transferred to them on my death, and that they will not be included in probate. Am I correct in my thinking? M.K., Las Cruces**

Yes, you are correct in your thinking. The stocks should pass without a court proceeding directly to the named TOD beneficiaries, assuming the beneficiaries survive you.

However, the stocks will be counted as part of your *gross estate* for estate tax purposes. The gross estate includes all property owned by a decedent at the time of death, no matter how titled, including assets, such as TOD accounts, that are not subject to probate. The fair market value of the gross estate at the date of death is used to evaluate a decedent's estate tax liability, if any.

The personal representative lists all of a decedent's property, including probate estate assets, joint tenancy property, payable on death accounts, TOD accounts, property that passes via TOD deeds, assets with named beneficiaries, and trust property, and calculates the fair market value of the gross estate.

The first \$2,000,000 of a decedent's estate is exempt from estate tax in 2008, so estates with a total value of \$2,000,000 or less owe no federal or state estate taxes when the person dies. If the value of the gross estate exceeds \$2,000,000 in 2008, estate tax may be due to the IRS.

In 2009 the estate tax exemption rises to \$3,500,000 per person.

**Q: My friend owed me \$10,000 and I have a written IOU that confirms this. He died, a probate was opened, and I filed a claim against his estate for the balance of the loan. How long do I have to wait for payment?**

If a probate is filed within one year of a decedent's death, the Uniform Probate Code (UPC) contains time limits for notifying creditors of the death and that a case has been filed for the estate. The UPC requires personal representatives, within three months of their appointment, to give written notice to known and reasonably ascertainable creditors. You did not mention whether you have received this notice.

Once you receive the notice, you have two months to present a claim. Often a creditor mails a claim directly to the personal representative or his/her attorney. But sometimes the creditor files a claim in the court file instead.

A personal representative has sixty days to act on the claim, allowing or disallowing it. Personal representatives and their attorneys should be sure to check the court file before the sixty-day deadline expires to make sure that no claims have been filed there.

If a personal representative does not respond to a claim against the estate within sixty days, the claim is deemed allowed. Therefore, a personal representative cannot afford to be silent upon receiving a claim because silence equals allowance of the claim.

Any creditor who is unhappy about the denial of a claim must take action in the district court. A creditor has 60 days to file a request for allowance after a claim is disallowed.

It is the responsibility of the personal representative or the attorney representing the estate to check the court case file and determine if any claims have been filed against the estate, evaluate the validity of all claims against the estate, respond in a timely manner, and pay claims in the order set out in the UPC.

Even if your claim is allowed, your friend's estate may or may not have sufficient assets to pay the claim.

© 2008, Albuquerque Journal, All Rights Reserved