

Ask the Probate Judge—Paying Creditors

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Q: I couldn't help but notice that you did not actually answer the question in your last column about paying creditors. The reader said that his friend, now deceased, owed him \$10,000. The reader had filed a claim against the friend's estate for the balance of the loan. If a personal representative allows a claim, as you discussed, how long must one wait to be paid? G.H., Albuquerque

Thanks for pointing out that I didn't quite answer the question. I did allude to the fact that if the estate had insufficient assets, the reader might never be paid.

Let us suppose that the reader's claim has been allowed, and the estate has sufficient assets. New Mexico's law outlines the payment of claims. After the personal representative has given actual notice to known and reasonably ascertainable creditors, "the personal representative shall proceed to pay the claims allowed against the estate in the order of priority described, after making provision for family and personal property allowances, for claims already presented that 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."

This means that personal representatives can pay claims anytime they want, but it is their duty to pay claims in the correct order of priority and to reserve sufficient assets for other potential claims. The reader's \$10,000 claim has the lowest priority for payment under New Mexico's laws. However, if an estate has many assets and few claims, the personal representative could pay claims as soon as they were allowed.

If the creditor thinks the personal representative is taking too long to pay, a claimant whose claim has been allowed but not paid can petition the district court for an order directing the personal representative to pay the claim to the extent funds of the estate are available to pay it. Unfortunately, for cases that have been filed in the probate court, this would require the creditor to pay a \$122 docket fee to open a case in the district court to seek an order for payment of the claim. This is because probate courts lack jurisdiction to determine the validity of creditor's claims and to order a personal representative to pay a claim.

Usually, a creditor does not have to seek a court order to obtain payment. The law also provides that the "personal representative, at any time, may pay any just claim that has not been barred, with or without formal presentation." However, the personal representative "is personally liable to any other claimant whose claim is allowed and who is injured by its payment." This injury might occur if a payment was made before the expiration of the time limit for submitting claims, 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. This could also occur if a payment was made, due to the negligence or willful fault of the personal representative, so as to deprive another claimant of priority.

I suppose the answer to your question is, "It depends." Whether a personal representative can pay a claim immediately upon allowance depends on how many assets the estate contains, how many other claims have been presented, and which claims have a higher priority for payment. In reality, if an estate has sufficient assets to pay all

creditors, allowances, and taxes, it would be unusual to wait more than a few months for payment.

Thanks for your question. I learned something new while researching the answer.

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