

# Decedent's Final File: *Creditor's Claim Period*

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**MEMORANDUM**

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**CREDITORS CLAIM PERIOD**

The creditors claim period expires three months after the first publication of the Notice To Creditors. The operation of the claims period procedures presents two concerns. *First*, as a general rule, debts of the estate should only be paid to those creditors who file Statement of Claims with the probate court. *Secondly*, debts to creditors should not be paid until the expiration of the claims period. Applying these procedures is not always practical, particularly where you wish to pay a debt you know is valid without requiring the creditor to file a Statement of Claim, and particularly when you wish to pay a creditor in advance of the expiration of the creditors claim period.

Expenses for which claims are required to be filed are those relating to debts owed by or incurred by the decedent prior to death. Examples are a doctor's bill, charge account at a store, and services contracted for prior to death but not completed until after death. Funeral expenses are also considered debts for which a claim should be filed. Claims are not required to be filed for administration expenses, which are expenses arising after the date of death and are incurred as a result of estate administration.

To address the first concern:

The court allows the personal representative to file a Personal Representative's Proof of Claim. By filing this document, the personal representative is informing the court that certain claims for which no claim was filed were "paid" because you, as personal representative, believed them to be valid. By following this procedure the claim is treated as if it had been filed by the creditor. This solves the first problem of wishing to pay the debt regardless of whether the creditor filed a claim.

Listing these claims on a Personal Representative's Proof of Claim also provides an important estate tax function. Debts are allowed as deductions on the estate's Federal Estate Tax Return, Form 706, only if they are valid debts of the estate under Florida law. Listing these claims on a Personal Representative's Proof of Claim validates them as deductions for estate tax purposes. Any bills you wish to pay but have not been paid by the expiration date of the claims period should also be listed.

To the extent that you, as personal representative, have paid from your personal funds any such debts for which no formal claim is filed, we should include them on the personal representative's proof of claim in order that you may be reimbursed for the payment of these amounts.

**JOHNSON, POPE, BOKOR, RUPPEL & BURNS, LLP**

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## MEMORANDUM

### Let's discuss the second concern:

As your attorney, we must advise you that there is risk to paying a creditor in advance of the expiration of the creditors' claim period. Because all general creditors must be treated alike, if you pay some creditors in full now and a situation arose where other creditors cannot be paid in full, you are personally liable to the extent the amounts paid to the fully paid creditors exceed what those creditors would have received had they received only their pro rata share of the funds available to pay all creditors. As personal representative, you remain at risk personally until the estate has been closed unless any objection by an interested person is raised sooner and settled in an appropriate proceeding.

### To minimize this risk:

We recommend that those debts you wish to pay regardless of whether the creditor files a claim be listed on the Personal Representative's Proof of Claim as debts you "intend to pay." This allows objections to be filed and disposed of as if the creditor had filed its own claim, and if no objection is timely filed, you may then pay these items at the expiration of the creditors' claim period without personal risk. Thus if an unexpected large claim should arise and be filed, you are protected.

The risk described above may appear minimal if you are comfortable that sufficient assets exist with which to pay all imaginable debts.

Remember, however, the expiration of the claims period cuts off only the debts of **unknown** creditors and **only those** "reasonably ascertainable creditors" who have been mailed a Notice To Creditors. In order to cut off the claims of **all** "reasonably ascertainable creditors" it is critical that a search be made for all of them. See separate Creditor Search Memorandum.

Attached is a worksheet for your use in listing all creditors of whom you become aware. After you have completed your search and the worksheet, **send us this worksheet and we will discuss the best way to handle each potential claim.** That is, should the debt be paid now or held until the claims' period expires and listed on a Personal Representative's Proof of Claim? Should we simply send a copy of the Notice To Creditors to the potential creditor and require that they file a claim? In any event, please return the worksheet to us no later than one month before the claims period expires.

Also please furnish us with a copy or the original of the latest statement received from any creditor who has submitted a statement.

We are also required to prepare a statement for your signature which states that you have conducted a diligent search and will list any potential creditor to whom we sent a copy of the Notice and who did not file an independent claim or which we did not include on the Personal Representative's Proof of Claim.

Notice by publication alone will not bar a known or reasonably ascertainable creditor from bringing a claim after expiration of the three-month creditors claim period. By following the procedures set forth above, we can bar claims of any unknown and not reasonably ascertainable creditors.

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