

Berkeley County Office of Fiduciary & Probate
Berkeley County Courthouse - Administration Building
400 West Stephen Street, Suite 107
Martinsburg, West Virginia 25401

GENERAL FAQ'S OF THE WEST VIRGINIA CREDITOR CLAIMS PROCESS

A. WHAT IS A CREDITOR CLAIM IN THE CONTEXT OF THE PROBATE PROCESS?

A creditor claim is one of debt against a Decedent. A debt incurred by a Decedent prior to (or during) their passing may be collected by a creditor by filing a claim either directly to an Administrator/Executor/Successor ("Personal Representative") **OR** with the Fiduciary Supervisor's Office (for classic/full probate). Nevertheless, please note that it is the **PERSONAL REPRESENTATIVE'S RESPONSIBILITY** to:

- Make a diligent search to determine the names and addresses of **ALL** creditors who are reasonably ascertainable (not necessarily just those who file debts publicly with our office);
- Contact/respond to creditors to discuss/resolve debt; and
- Consult a tax professional (if necessary) to determine any taxes due on behalf of the decedent or their estate generally.

B. WHAT ARE SOME OF THE ADVANTAGES OF FILING A CLAIM THROUGH THE PROBATE PROCESS?

Simplicity and cost. For the creditor, filing a claim is simple and relatively inexpensive. Furthermore, the filing of a claim with our office publicly halts the Estate from final settlement until the debt is dealt with by the Personal Representative. Indeed, the "carrot" at the end of this process is settling the Estate and distributing the probate shares to beneficiaries/heirs, but an Estate with probate assets and unreleased claims cannot proceed with final settlement. However, as **Question F** indicates, if the Personal Representative disputes a claim, costs and delays can increase dramatically.

C. AS A PERSONAL REPRESENTATIVE, DO I HAVE TO DEAL WITH CREDITORS?

Yes. As stated above, one of the chief duties a Personal Representative has while handling an Estate is dealing with creditors. In some aspects, dealing with creditors is among the easiest duties for a Personal Representative in that creditors will make themselves known to you one way or another. In fact, upon your qualification as Personal Representative, you sign an Affidavit & Oath (under penalty of perjury) stating that you agree to the duties assigned by West Virginia law relating to same.

D. CAN THIS OFFICE CONTACT CREDITORS ON MY BEHALF?

No. Under no circumstances can the Fiduciary Supervisor's Office represent you in any way during the probate process. Similarly, our office cannot prepare specified legal documents nor give you any legal/strategic advice. Should you need the services of an estate professional to aid your administration of an Estate, please consult an Attorney and/or a Certified Public Accountant of your choosing.

E. IF A DECEDENT HAS INSUFFICIENT ASSETS TO PAY CREDITORS, DO I – AS PERSONAL REPRESENTATIVE – HAVE TO PAY CREDITORS MYSELF?

No. Creditors only have rights to claim against a Decedent’s “probate property” (assets solely titled in the Decedent’s own name). Thus, should an Estate have insufficient probate assets to cover its debts, the Estate is declared insolvent via a final accounting at the end of the classic/full probate process. However, just because there are insufficient probate assets, does not necessarily mean creditors get nothing. Indeed, creditors may have to resort to a lesser recovery in accordance with W.Va. Code § 44-3A-26; otherwise, a creditor may be out of luck and take nothing. Each insolvent Estate’s case is different and a Personal Representative may need to seek the advice of an Attorney of his/her choosing. After all, as will be discussed in **Question G**, the Fiduciary System is not the only avenue for Creditors to seek satisfaction of debts against Decedents.

F. WHAT HAPPENS IF A CLAIM IS DISPUTED?

Objection then adjudication. First, a Personal Representative must – in writing – object to the disputed claim and state the legal reasons detailing why the debt should be voided/invalidated.

Once such a writing is filed with our office, a disputed claim against an Estate is handled in a contested hearing before a Fiduciary Commissioner (“Commissioner”). A Commissioner is a West Virginia-licensed Attorney appointed by the Berkeley County Commission specifically to handle conflicted Estate and probate matters. As a private attorney appointed to fulfill a governmental function, the Commissioner is allowed to charge a fee for his or her services. In Berkeley County, the Commission has agreed to an appointment fee – also called a bond – of \$800 per case. Who pays the fee is case determinative, but ultimately the Commissioner will determine which party ultimately pays the fee after a Finding is filed. A Finding is a recommendation to the County Commission by the Commissioner after hearing evidence from each party.

The County Commission then rules on the Commissioner’s Finding and parties can attempt to persuade the Commission themselves, but parties are limited to the evidence originally offered to the Commissioner. Finally, the decision of the County Commission on the claim dispute is then appealable to Circuit Court, with more pleadings being filed and more hearings being held.

As stated, this process can involve further costs and cause severe, unknowable delays in the Probate process.

G. WHAT IF A CREDITOR FILES A CLAIM AFTER THE CLAIM DEADLINE? IS THE CLAIM VOID?

It depends. For instance, should a Creditor mail a claim to our office with a postmarked dated after the claim deadline, the claim would be summarily rejected and returned as untimely. As such, a Creditor who fails to file a timely claim against an Estate within the Fiduciary system is likely barred from recovering against the Personal Representative.¹ See W.Va. Code § 44-3A-32.

However, a Creditor of a West Virginia decedent is not required to file his/her/their claim of debt through the Fiduciary process to make their claim legal. Indeed, a Creditor may bypass the Fiduciary

¹ The statutory bar **only protects the personal representative**, so the Estate heirs/beneficiaries may still be liable to the Decedent’s Creditors. See In re Reynold’s Estate, 116 W.Va. 249, 180 S.E. 6 (1935). The Creditor may bring a civil action directly against the heirs/beneficiaries of the Estate within 2 years of the distribution of the Estate assets surplus, so long as no other statute of limitation bars the debt. W.Va. Code §§ 44-2-27, 44-3A-33.

process entirely and proceed directly with a collection action against the Estate in the Magistrate Court (for claims of \$10,000 or less) or the Circuit Court (for claims \$7,500 or more) of appropriate jurisdiction.

As has been highlighted, Personal Representatives do not inherit debts of Estates. Nevertheless, Personal Representatives are personally liable for the Estate's probate assets and have the duty to deal with Creditors in good faith. To that end, a Personal Representative may be sued "upon any judgment for or against, or any contract of or with, his decedent." W.Va. Code § 44-1-22. As such, **EVEN THOUGH A CREDITOR FAILS TO FILE A PROBATE CLAIM (OR FAILS TO TIMELY DO SO), THE CREDITOR MAY STILL HAVE SEVERAL OPTIONS FOR RECOVERY.**

H. WHY WOULD A CREDITOR FILE A COLLECTION ACTION RATHER THAN A CREDITOR CLAIM?

Timeliness and possibly cost. A collection action filed by a Creditor in the circuit/magistrate court system may be cheaper and most certainly faster than a claim filed in the Fiduciary system. After payment of the initial court filing fees, the magistrate/judge is now an appointed decision maker rather than the private-pay decision maker in the Fiduciary system (via a Fiduciary Commissioner). However, while the circuit/magistrate court system is more expeditious, it is also more formal and may necessitate the involvement of an attorney.

I. WHAT ABOUT SMALL ESTATES? DO THEY HAVE TO GO THROUGH THE FIDUCIARY SYSTEM FOR CLAIMS?

No. In general, a "Small Estate" is a type of estate that does not exceed \$50,000 in probate personal property AND \$100,000 in probate real estate. The Small Estate process is separate from classic/full probate and is far more simplified. For more information regarding the Small Estate process, please find the Small Estate Overview on our website.

A Personal Representative administering a Small Estate files an affidavit, listing all probate assets and their fair market values. Our office then issues a certificate, which only grants authority for a six (6) month period. During a Small Estate's administration, the Personal Representative (called a "Successor") has the same duties to deal with righteous creditors (creditors who can "prove" their claims of debt) in good faith.

However, Creditors of a Small Estate must deal with Successors directly. If a Creditor and a Successor cannot come to an agreement regarding the debt, then the Creditor may commence a collection action against the Estate. Indeed, no claims of debt may be publicly filed with our office for debts against as small estate.

J. HOW DO I FILE A CLAIM OF DEBT AGAINST AN ESTATE?

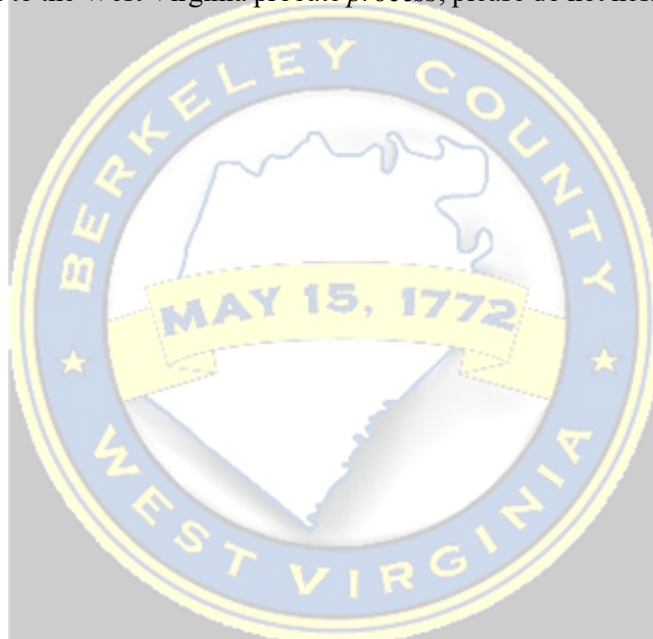
West Virginia requires that a claim be itemized, verified by affidavit (attached to this document – see Page 5), and "accompanied by proper vouchers and shall state the character of the claim whether open account, note, bond, bill writing obligatory, judgement, decree or other evidence of debt and the amount thereof and from what date and on what items interest runs..." W.Va. Code § 44-3A-6. Be also advised that CLAIMS WILL NOT BE ACCEPTED AFTER AN ESTATE'S CLAIM PERIOD HAS EXPIRED. See W.Va. Code § 44-3A-4(b).

Thus, to file a claim of debt against an Estate, one must fill out the attached Affidavit and attach "proof" of your claim of debt against the decedent prior to the claim deadline. Claims of debt cost \$12.00 – payable to the Berkeley County Clerk as a filing fee – for the first five pages, then an additional dollar each

additional page. Claims are first delivered to our office to copy and send to the Personal Representative to give them notice that a claim had been filed against their Estate.

LASTLY, THE FIDUCIARY OFFICE CANNOT PROVIDE ADVICE RELATED TO STRATEGY PER YOUR INDIVIDUAL CIRCUMSTANCES. FOR ANY SUCH ADVICE, PLEASE CONTACT AN ATTORNEY OF YOUR CHOOSING.

For any questions related to the West Virginia probate *process*, please do not hesitate to contact our office.²



² A special thanks to Christopher J. Winton, Esq. of Ray, Winton & Kelley, PLLC for providing supplemental information in aid of this handout.

Creditor Claim

ESTATE OF _____

Now comes the undersigned creditor and being first duly sworn deposes and says that the character of his/her claim against the above estate is: ___ Open Account, ___ Bond, ___ Writing, ___ Obligator, ___ Judgement, Decree, for _____ in the amount of \$ _____; there is interest due in the amount of \$ _____ from the ___ day of _____ at the rate of _____% per annum.

Affiant further says that the claim is just and true and that neither he/she, nor any prior owner of the claim has received any part of the money above stated to be due, or any security or satisfaction for the same, except what is credited. Attached hereto is a completed itemized statement of the claim so filed and shall be considered part of this affidavit.¹

Signature: _____

Company/Print: _____

Address: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ day of _____, _____.

My Commission expires: _____

Notary Public

¹ West Virginia Code § 44-2-5 states "The voucher for a judgment or decree shall be an abstract thereof; for a specialty, bond, note, bill of exchange, writing obligatory, or other instrument, shall be the instrument itself, or a true copy thereof, or proof of the same in case the instrument to be lost; and for an open account, and itemized copy of the account." Emphasis added.