

ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)
Act 386 of 1998
Part 8
CREDITORS' CLAIMS

700.3801 Notice of creditors.

Sec. 3801.

(1) Unless notice has already been given, upon appointment a personal representative shall publish, and a special personal representative may publish, a notice as provided by supreme court rule notifying estate creditors to present their claims within 4 months after the date of the notice's publication or be forever barred. A personal representative who has published notice shall also send, within the time prescribed in subsection (2), a copy of the notice or a similar notice to each estate creditor whom the personal representative knows at the time of publication or during the 4 months following publication and to the trustee of a trust described in section 7605(1) as to which the decedent is settlor. For purposes of this section, the personal representative knows a creditor of the decedent if the personal representative has actual notice of the creditor or the creditor's existence is reasonably ascertainable by the personal representative based on an investigation of the decedent's available records for the 2 years immediately preceding death and mail following death.

(2) Notice to a known creditor of the estate shall be given within the following time limits:

(a) Within 4 months after the date of the publication of notice to creditors.

(b) If the personal representative first knows of an estate creditor less than 28 days before the expiration of the time limit in subdivision (a), within 28 days after the personal representative first knows of the creditor.

(3) If the personal representative or the attorney for the estate in good faith believes that notice to a creditor of the estate is or may be required by this section, and if the personal representative gives notice based on that belief, neither the personal representative nor the attorney is liable to any person for having given notice.

(4) If the personal representative or the attorney for the estate in good faith believes that notice to a person is not required by this section and if the personal representative fails to give notice to that person based on that belief, neither the personal representative nor the attorney is personally liable to any person for the failure to give notice. Liability, if any, for failure to give notice is on the estate.

History: 1998, Act 386, Eff. Apr. 1, 2000 ;-- Am. 2009, Act 46, Eff. Apr. 1, 2010

Popular Name: EPIC

700.3802 Statute of limitations.

Sec. 3802.

(1) Unless an estate is insolvent, the personal representative, with the consent of all interested persons whose interests would be affected, may waive a statute of limitations defense available to the estate. If a statute of limitations defense is not waived, a claim that was barred by a statute of limitations at the time of the decedent's death shall not be allowed or paid.

(2) The running of a statute of limitations measured from an event other than death or publication for a claim against a decedent is suspended during the 4 months following the decedent's death but resumes after that time as to a claim not barred under this part.

(3) For purposes of a statute of limitations, the proper presentation of a claim under section 3804 is equivalent to commencement of a proceeding on the claim.

History: 1998, Act 386, Eff. Apr. 1, 2000

Popular Name: EPIC

700.3803 Limitations on time for presentation of claims.

Sec. 3803.

(1) A claim against a decedent's estate that arose before the decedent's death, including a claim of this state or a subdivision of this state, whether due or to become due, absolute or contingent, liquidated or unliquidated, or based on contract, tort, or another legal basis, if not barred earlier by another statute of limitations or nonclaim statute, is barred against the estate, the personal representative, the decedent's heirs and devisees, and nonprobate transferees of the decedent unless presented within 1 of the following time limits:

(a) If notice is given in compliance with section 3801 or 7608, within 4 months after the date of the publication of notice to creditors, except that a claim barred by a statute at the decedent's domicile before the publication for claims in this state is also barred in this state.

(b) For a creditor known to the personal representative at the time of publication or during the 4 months following publication, within 1 month after the subsequent sending of notice or 4 months after the date of the publication of notice to creditors, whichever is later.

(c) If the notice requirements of section 3801 or 7608 have not been met, within 3 years after the decedent's death.

(2) A claim against a decedent's estate that arises at or after the decedent's death, including a claim of this state or a subdivision of this state, whether due or to become due, absolute or contingent, liquidated or unliquidated, or based on contract, tort, or another legal basis, is barred against the estate, the personal representative, and the decedent's heirs and devisees, unless presented within 1 of the following time limits:

(a) For a claim based on a contract with the personal representative, within 4 months after performance by the personal representative is due.

(b) For a claim to which subdivision (a) does not apply, within 4 months after the claim arises or the time specified in subsection (1)(a), whichever is later.

(3) This section does not affect or prevent any of the following:

(a) A proceeding to enforce a mortgage, pledge, or other lien on estate property.

(b) A proceeding to establish the decedent's or the personal representative's liability for which the decedent or the personal representative is protected by liability insurance to the insurance protection limits only.

(c) Collection of compensation for services rendered and reimbursement of expenses advanced by the personal representative or by an attorney, auditor, investment adviser, or other specialized agent or assistant for the personal representative of the estate.

History: 1998, Act 386, Eff. Apr. 1, 2000 ;-- Am. 2004, Act 314, Eff. Sept. 1, 2004 ;-- Am. 2009, Act 46, Eff. Apr. 1, 2010

Popular Name: EPIC

700.3804 Manner of presentation of claims; commencement; claims by personal representative.

Sec. 3804.

(1) A claimant must present a claim against a decedent's estate in either of the following ways:

(a) By delivering or mailing a written statement to the personal representative indicating the claim's basis, the claimant's name and address, and the amount claimed, or by filing with the court a written statement of the claim in the form prescribed by supreme court rule and delivering or mailing a copy of the statement to the personal representative. The claim shall be considered presented on receipt of the claim statement by the personal representative or the filing of the claim statement with the court, whichever occurs first. If a claim is not yet due, the statement shall state the date when it will become due. If the claim is contingent or unliquidated, the statement shall state the nature of the uncertainty. If the claim is secured, the statement shall describe the security. Failure to describe correctly the security, the nature of any uncertainty, or the due date of a claim not yet due does not invalidate the claim's presentation.

(b) By commencing a proceeding to obtain payment of a claim against the estate in a court in which the personal representative may be subjected to jurisdiction. The commencement of the proceeding shall occur within the time limit for presenting the claim. The presentation of a claim is not required in regard to a matter claimed in a proceeding against the decedent that is pending at the time of death.

(2) Except as otherwise provided in this subsection, if a claim is presented under subsection (1)(a), a proceeding on the claim shall not be commenced more than 63 days after the personal representative delivers or mails a notice of disallowance to the claimant. For a claim that is not presently due or that is contingent or unliquidated, the personal representative may consent to an extension of the 63-day period or, to avoid injustice, the court, on petition, may order an extension of the 63-day period, but an extension shall not be consented to or ordered if the extension would run beyond the applicable statute of limitations.

(3) A claim by the personal representative against the estate shall be in the form prescribed by supreme court rule. The personal representative must give a copy of the claim to all interested persons not later than 7 days after the time for the claim's original presentation expires. The claim must contain a warning that the personal representative's claim will be allowed unless a notice of objection is delivered or mailed to the personal representative within 63 days after the time for the claim's original presentation expires. This subsection does not apply to a claim for compensation for services rendered or for reimbursement of expenses advanced by the personal representative.

History: 1998, Act 386, Eff. Apr. 1, 2000 ;-- Am. 2005, Act 204, Imd. Eff. Nov. 10, 2005

Popular Name: EPIC

700.3805 Priority of claim payments; insufficient assets.

Sec. 3805.

(1) If the applicable estate property is insufficient to pay all claims and allowances in full, the personal representative shall make payment in the following order of priority:

- (a) Costs and expenses of administration.
- (b) Reasonable funeral and burial expenses.
- (c) Homestead allowance.
- (d) Family allowance.
- (e) Exempt property.

(f) Debts and taxes with priority under federal law, including, but not limited to, medical assistance payments that are subject to adjustment or recovery from an estate under section 1917 of the social security act, 42 USC 1396p.

(g) Reasonable and necessary medical and hospital expenses of the decedent's last illness, including a compensation of persons attending the decedent.

(h) Debts and taxes with priority under other laws of this state.

(i) All other claims.

(2) A preference shall not be given in the payment of a claim over another claim of the same class, and a claim due and payable is not entitled to a preference over a claim not due.

(3) If there are insufficient assets to pay all claims in full or to satisfy homestead allowance, family allowance, and exempt property, the personal representative shall certify the amount and nature of the deficiency to the trustee of a trust described in section 7605(1) for payment by the trustee in accordance with section 7606. If the personal representative is aware of other nonprobate transfers that may be liable for claims and allowances, then, unless the will provides otherwise, the personal representative shall proceed to collect the deficiency in a manner reasonable under the circumstances so that each nonprobate transfer, including those made under a trust described in section 7605(1), bears a proportionate share or equitable share of the total burden.

History: 1998, Act 386, Eff. Apr. 1, 2000 ;-- Am. 2000, Act 177, Imd. Eff. June 20, 2000 ;-- Am. 2007, Act 73, Imd. Eff. Sept. 30, 2007 ;-- Am. 2009, Act 46, Eff. Apr. 1, 2010

Popular Name: EPIC

700.3806 Allowance and disallowance of claims.

Sec. 3806.

(1) If a claim is presented in the manner described in section 3804 and within the time limit prescribed in section 3803, the personal representative may deliver or mail a notice to a claimant stating that the claim has been disallowed in whole or in part. If, after allowing or disallowing a claim, the personal representative changes a decision concerning the claim, the personal representative shall notify the claimant. The personal representative shall not change a decision disallowing a claim if the time for the claimant to commence a proceeding for allowance expires or if the time to commence a proceeding on the claim expires and the claim is barred. A claim that the personal representative disallows in whole or in part is barred to the extent disallowed unless the claimant

commences a proceeding against the personal representative not later than 63 days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar.

(2) The personal representative's failure to deliver or mail to a claimant notice of action on the claim within 63 days after the time for the claim's presentation expires or within 63 days after the personal representative's appointment, whichever is later, constitutes a notice of allowance. An interested person's failure to deliver or mail to the personal representative notice of an objection to a personal representative's claim within 63 days after the time the claim's original presentation expires constitutes a notice of allowance.

(3) After allowing or disallowing a claim, the personal representative may change the allowance or disallowance as provided in this subsection. Before payment of a claim, the personal representative may change the allowance to a disallowance in whole or in part, but not after allowance by a court order or judgment or an order directing the claim's payment. The personal representative shall notify the claimant of the change to disallowance, and the disallowed claim is then subject to bar as provided in subsection (1). The personal representative may change a disallowance to an allowance, in whole or in part, until it is barred under subsection (1). After a claim is barred, it may be allowed and paid only if the estate is solvent and all successors whose interests would be affected consent.

(4) Upon the personal representative's or a claimant's commencement of a proceeding, the court may allow in whole or in part a claim properly presented in due time and not barred by subsection (1). Upon an interested person's petition concerning a personal representative's claim, the court may allow in whole or in part the personal representative's claim properly presented in due time and not previously allowed under subsection (1).

(5) A judgment in a proceeding in another court against a personal representative to enforce a claim against a decedent's estate constitutes an allowance of the claim.

(6) Unless otherwise provided in a judgment in another court entered against the personal representative, an allowed claim bears interest at a rate determined under section 6013 of the revised judicature act of 1961, MCL 600.6013, for the period commencing 63 days after the time for the claim's original presentation expires unless based on a contract providing for interest, in which case the claim bears interest in accordance with the contract.

History: 1998, Act 386, Eff. Apr. 1, 2000 ;-- Am. 2000, Act 54, Eff. Apr. 1, 2000

Popular Name: EPIC

700.3807 Payment of claims.

Sec. 3807.

(1) Upon the expiration of 4 months after the publication date of the notice to creditors, and after providing for administration costs and expenses, for reasonable funeral and burial expenses, for the homestead, family, and exempt 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, the personal representative shall pay the claims allowed against the estate in the order of priority as provided in this act. A claimant whose claim has been allowed, but not paid as provided in this section, may petition the court to secure an order directing the personal representative to pay the claim to the extent that property of the estate is available for the payment.

(2) The personal representative may pay a claim that is not barred at any time, with or without formal presentation, but is individually liable to another claimant whose claim is allowed and who is injured by the payment if either of the following occurs:

(a) Payment is made before the expiration of the time limit stated in subsection (1) and the personal representative fails to require the payee to give adequate security for the refund of any of the payment necessary to pay another claimant.

(b) Payment is made, due to the negligence or willful fault of the personal representative, in a manner that deprives the injured claimant of priority.

(3) If a claim is allowed, but the claimant's whereabouts are unknown at the time the personal representative attempts to pay the claim, upon petition by the personal representative and after notice that the court considers advisable, the court may disallow the claim. If the court disallows a claim under this subsection, the claim is barred.

History: 1998, Act 386, Eff. Apr. 1, 2000 ;-- Am. 2000, Act 54, Eff. Apr. 1, 2000 ;-- Am. 2000, Act 177, Imd. Eff. June 20, 2000 ;-- Am. 2016, Act 490, Eff. Apr. 6, 2017

Popular Name: EPIC

700.3808 Individual liability of personal representative.

Sec. 3808.

(1) Unless otherwise provided in the contract, a personal representative is not individually liable on a contract properly entered into in the personal representative's fiduciary capacity in the course of administration of the estate unless the personal representative fails to reveal his or her representative capacity and to identify the estate in the contract.

(2) A personal representative is individually liable for an obligation arising from ownership or control of the estate or for a tort committed in the course of estate administration only if the personal representative is personally at fault.

(3) A claim based on a contract entered into by a personal representative in the personal representative's fiduciary capacity, on an obligation arising from ownership or control of the estate, or on a tort committed in the course of estate administration may be asserted against the estate by proceeding against the personal representative in the personal representative's fiduciary capacity, whether or not the personal representative is individually liable.

(4) An issue of liability between the estate and the personal representative individually may be determined in a proceeding for accounting, surcharge, or indemnification or in another appropriate proceeding.

History: 1998, Act 386, Eff. Apr. 1, 2000

Popular Name: EPIC

700.3809 Secured claims.

Sec. 3809.

A personal representative shall pay a secured claim on the basis of the amount allowed if the creditor surrenders the security. Otherwise, the personal representative shall pay on the basis of 1 of the following:

(a) If the creditor exhausts the security before receiving payment, upon the amount of the claim allowed less the fair value of the security.

(b) If the creditor does not have the right to exhaust the security or has not done so, upon the amount of the claim allowed less the value of the security determined by converting it into money according to the terms of the agreement under which the security was delivered to the creditor or by the creditor and personal representative by agreement, arbitration, compromise, or litigation.

History: 1998, Act 386, Eff. Apr. 1, 2000

Popular Name: EPIC

700.3810 Claims not due and contingent or unliquidated claims.

Sec. 3810.

(1) This section applies to a claim that will become due at a future time, a contingent claim, and an unliquidated claim.

(2) If a claim becomes due or certain before distribution of the estate and if the claim has been allowed or established by a proceeding, the claim shall be paid in the same manner as a presently due and absolute claim of the same class.

(3) For a claim not covered by subsection (2), the personal representative or, on the personal representative's or claimant's petition in a proceeding for the purpose, the court may provide for payment in 1 of the following manners:

(a) If the claimant consents, the claimant may be paid the claim's present or agreed value, taking any uncertainty into account.

(b) Arrangement for future payment, or possible payment, on the happening of a contingency or on liquidation

may be made by creating a trust, giving a mortgage, obtaining a bond or security from a distributee, or otherwise.

History: 1998, Act 386, Eff. Apr. 1, 2000

Popular Name: EPIC

700.3811 Counterclaims.

Sec. 3811.

In allowing a claim, the personal representative may deduct a counterclaim that the estate has against the claimant. In determining a claim against an estate, the court shall reduce the amount allowed by the amount of a counterclaim and, if counterclaims exceed the claim, render a judgment against the claimant in the excess amount. A counterclaim, liquidated or unliquidated, may arise from a transaction other than that upon which the claim is based. A counterclaim may give rise to relief exceeding in amount or different in kind from that sought in the claim.

History: 1998, Act 386, Eff. Apr. 1, 2000

Popular Name: EPIC

700.3812 Limitation on execution or levy against property of estate.

Sec. 3812.

An execution shall not issue upon nor shall a levy be made against estate property under a judgment against a decedent or personal representative. This section shall not be construed to prevent the enforcement of a mortgage, pledge, or lien upon property in an appropriate proceeding.

History: 1998, Act 386, Eff. Apr. 1, 2000

Popular Name: EPIC

700.3813 Settlement of claims.

Sec. 3813.

If a claim against the estate is presented in the manner provided in section 3804 and it appears to be in the estate's best interest, the personal representative may settle the claim, whether due or not due, absolute or contingent, liquidated or unliquidated.

History: 1998, Act 386, Eff. Apr. 1, 2000

Popular Name: EPIC

700.3814 Encumbered assets.

Sec. 3814.

If property of the estate is encumbered by mortgage, pledge, lien, or other security interest and it appears to be in the estate's best interest, the personal representative may pay the encumbrance or a part of the encumbrance, renew or extend an obligation secured by the encumbrance, or convey or transfer the property to the creditor in

satisfaction of the lien, in whole or in part, whether or not the encumbrance holder has presented a claim. Payment of an encumbrance does not increase the share of the distributee entitled to the encumbered property unless the distributee is entitled to exoneration.

History: 1998, Act 386, Eff. Apr. 1, 2000
Popular Name: EPIC

700.3815 Effect of administration in more than one state.

Sec. 3815.

(1) Estate property being administered in this state is subject to a claim, allowance, or charge existing or established against the personal representative wherever appointed.

(2) If the estate, either in this state or as a whole, is insufficient to cover all family exemptions and allowances determined by the law of the decedent's domicile, prior charges, and claims, after satisfaction of the exemptions, allowances, and charges, each claimant whose claim has been allowed, either in this state or elsewhere in administrations of which the personal representative is aware, is entitled to receive payment of an equal proportion of the claim. If a preference or security in regard to a claim is allowed in another jurisdiction but not in this state, the benefited creditor shall receive dividends from property located in this state only upon the balance of the claim after deducting the amount of the benefit.

(3) If the family exemptions, allowances, prior charges, and claims of the entire estate exceed the total value of the portions of the estate being administered in separate states and if this state is not the state of the decedent's last domicile, a claim allowed in this state shall be paid from property located in this state if that property is adequate for the purpose, and after that payment, the balance of that property shall be transferred to the domiciliary personal representative. If local property located in this state is not sufficient to pay all claims allowed in this state, that property shall be marshaled so that each claim allowed in this state shall be paid its proportion as far as possible, after taking into account all dividends on claims allowed in this state from property in other jurisdictions.

History: 1998, Act 386, Eff. Apr. 1, 2000
Popular Name: EPIC