

CREDITORS' CLAIMS

Anyone claiming that the decedent owed him/her/it money is a creditor of the estate. The general rule is that a formal written claim is required for every debt of the decedent. In addition, claims are required for many other types of debts that one would not expect; for example, claims of public entities (governmental bodies); persons with money judgments against the decedent; Medi-Cal. A corollary, then, of the general rule is: no claim, no payment.

At the time the personal rep is appointed, he or she should give notice to each known or "reasonably ascertainable" creditor. That means that the personal rep must make an effort to find out who is owed and mail them a notice in order to afford them an opportunity to file a claim against the estate. The executor must mail this notice, called a Notice to Creditors or Notice of Administration of Estate, as soon after Letters are issued as possible. This means, obviously, no later than four months after the issuance, because no creditor can file a claim later than four months after the date of appointment or the claim will be barred. If the executor first becomes aware of the creditor less than 30 days before the four months are up, the notice must be given within 30 days after the executor first becomes aware of the claim. That will give the creditor at least 30 days to file the claim, even though the four months is about to expire. (See *Tulsa v. Pope*, 485 U.S. 478 (1988)).

In many cases, neither the executor or the attorney is aware of any creditors, even after a good faith effort to search for them. There is no liability for either of them if this good faith belief exists and notice is not given. Further, there is no duty to actually search for creditors, beyond looking in the decedent's desk and going through his/her papers, mail, etc. Any bill found in the decedent's personal papers should be added to the mailing list. And, any demand for payment by a creditor can be treated as a claim.

Claims must be filed no later than four months after the Letters are first issued, unless the Notice is served late, then 30 days after the Notice is given or mailed. Once filed with the court, the executor must approve or reject the claim within a reasonable period of time. After 30 days, however, the creditor may deem the claim rejected if not acted upon.

Late claims can be allowed by the court if, upon the filing of a petition with the court, the creditor can show good cause by "clear and convincing evidence" that the creditor was out of state during the four months, had no actual knowledge of the estate during the four months, and this was not a business debt. Once final distribution has been made, no late claim can be filed; nor can one be filed after one year from the date of appointment.

Creditors can file amended or revised claims if the original claims are erroneous, but the creditor cannot increase the amount of the claim if the amendment or revision comes after the four months expires. There can be NO amendment after one year from the date Letters are issued, or after final distribution.

Claims must be filed with the court, and a copy should be mailed to the attorney for the

estate. Documentary proof of the claim should be attached to the form.

Once the executor becomes aware of the claim, he/she should approve or reject the claim within thirty days. If he/she takes no action within this time, the creditor can deem it rejected and file suit on the claim. The form Allowance/Rejection of Creditor's Claim is filed with the court with a copy of the claim attached, and a copy is mailed to the creditor. If the executor has an independent powers, no court approval of his/her action is necessary. If the executor has NO independent powers, however, the judge must approve or reject the claim, and can hold a hearing if necessary. If the claimant is the executor or the attorney, the court must approve or reject the claim regardless of independent powers. And, if the claimant is the judge, another judge of the court must approve or reject it.

The filing of the claim tolls (stops) the Statute of Limitations from running. However, no claim that has already been barred by the Statute of Limitations can be approved by the executor; otherwise, he may be surcharged by the court. That goes for claims that have been filed late (without court approval) as well.

If a claim is approved, the creditor may not actually receive payment until the estate is ready to close, as funds may be low until something is sold to pay the creditors off. If a claim is rejected, and the claim is due (such as a promissory note that has come due), a lawsuit must be filed within three months after the notice of rejection is mailed. If the claim is not due, the lawsuit must be filed within three months after the claims becomes due.

Lawsuits must be filed wherever venue is proper, or in the county where the probate is filed. The lawsuit should be filed in the court of proper jurisdiction, as well, i.e., municipal or superior court. The suing party should file a "lis pendens" or notice of pending action with the probate court, with a copy going to the executor or his attorney. That will give the probate court notice that something is going on to keep the probate from closing until some disposition is reached (such as a judgment in favor of the estate). In the alternate, a copy of the lawsuit can be served on the executor, but the lis pendens is still a good idea. Attorney fees can be awarded in these cases if the suit was insti-tuted in bad faith, or the defense was frivolous.

PRIORITIES IN PAYMENT OF DEBTS

California law allows debts of the estate to be paid according to certain priorities. In general, if the estate is solvent and has plenty of cash, the funeral expenses, expenses of last illness, family allowance, and any wage claims must be paid as soon as possible. But these should only be paid after the executor retains enough money to pay the expenses of administration and if there is enough money to pay the rest of the debts according to the priority list. If the estate is insolvent, that is, does not have enough cash to pay the debts, obviously he or she cannot pay these debts until something is sold, or a loan is taken out.

Under P.C. 11420, debts of the United States or California have the highest priority, followed by expenses of administration (such as attorney and executor fees, costs of the bond,

appraisal by the probate referee, etc.). The priority after that is:

- Secured debts (such as mortgage payments)
- Funeral expenses
- Expenses of last illness
- Family allowance
- Claims for wages owed to some third party
- General debts and unsecured debts (credit card debt, for example)

If the estate is insufficient to pay all of its debts, even after selling off all of the estate assets, the use of the priority list is mandatory. The personal rep must pay each class of debts IN FULL before going down the list to the next class of creditors. If the estate runs out of money before any particular class of creditors is paid in full, then each creditor receives a pro rata payment. Any creditors in a lower class of priority receive nothing, and, of course, the heirs/beneficiaries get nothing as well.

If the estate has sufficient cash, payment of the creditors at almost any time during the probate is allowed, although there is no requirement that the general claims against the estate be paid until the court orders it. And, in many cases, the personal rep will go ahead and pay debts of the decedent even without creditor's claims having been filed. Although this should be discouraged, if the estate has enough cash, and the debt is justly due, the executor can pay such debts. However, the debts must be paid in good faith by the executor and the amount paid cannot exceed the amount reasonably necessary to satisfy the debt. Sometimes, a debt can be negotiated (lower) with the creditor, who fears it might not be paid at all. On the other hand, the executor CANNOT pay any bills or creditor's claims that are submitted after the four month claims' period has expired. An executor who pays such debts can be surcharged by the court.

Claims by the Department of Health Services under P.C. 9202 are common. The DHS is a California agency that provides Medi-Cal payments to qualifying people. Often, the only source of medical insurance for some people is Medi-Cal, especially for convalescent hospitals or "rest homes". Upon a person's death, the executor is required to notify the DHS by sending a copy of the persons death certificate to them. If they have a claim against the estate, they will file it with the court and request Special Notice. Notice of Administration to the DHS, then, should be a must in every estate. (Notice to DHS is required under PC 215 no later than 90 days after the death.)

If a creditor whose claim has been approved later becomes missing, the claim must still be paid. Payment can be made to the county treasurer, who files a receipt with the court. The executor can also deposit money with the court for any disputed debts until the debt is resolved (by compromise or lawsuit). Any creditors that did not have their claims resolved by the court during the administration cannot require contribution from the other creditors or the heirs once distribution has taken place. However, the unpaid creditor may be able to sue on the executor's bond (if there was one) or personally sue the executor.

Expenses for the decedent's funeral and last illness are charged against the estate of the decedent and are not allocated to the surviving spouse's community property, regardless of whether he/she can pay or not. So, if the estate consists of both community and separate property, and the surviving spouse is only one of the beneficiaries/heirs, these debts must be paid from the estate, not the spouse's own property. See P.C. 11446.

In addition, the surviving spouse, the executor, or any beneficiary/heir can petition the court to allocate the debts of the decedent between the estate and the surviving spouse. Remember, a debt of the decedent may not necessarily be a community debt for which the surviving spouse would be automatically liable.

Suppose a creditor files a large claim against the estate for services rendered, and the executor is not sure if the claim is valid or not? The best course of action is to file a Petition for Instructions and ask the court for guidance.

There are always exceptions to the general rules. For example, the IRS does not have to file a claim. And though the best advice is to file a claim whenever in doubt, no claim is necessary where liability insurance will cover any damages. However, if part of the claim isn't covered by insurance, a claim must be filed with the court.

Interest CAN be charged by creditors, though many never ask for it. However, under Health and Safety Code Section 7101, interest can be charged at 10% per annum after 60 days have passed from the date of death. If a funeral home files a claim asking for interest, the best advice is to pay the claim as soon as it becomes feasible, subject to the rules above. An executor who allows interest to pile up may be surcharged by the court.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): FAX: (562) 407-1417 Alan D. Davis, Esq., #81783 Attorney at Law 14241 E. Firestone Blvd., Suite 400 La Mirada, CA 90638-5534 ATTORNEY FOR (Name): I. L. GETRICH	TELEPHONE AND FAX NOS.: (562) 407-1415	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Orange STREET ADDRESS: 341 THE CITY DRIVE MAILING ADDRESS: P.O. BOX 14169 CITY AND ZIP CODE: ORANGE, CA 92613-1569 BRANCH NAME:		
ESTATE OF (Name): I. M. DECEASED,		
CREDITOR'S CLAIM		CASE NUMBER: A 123456
DECEDENT		

You must file this claim with the court clerk at the court address above before the LATER of (a) four months after the date letters (authority to act for the estate) were first issued to the personal representative, or (b) sixty days after the date the *Notice of Administration* was given to the creditor, if notice was given as provided in Probate Code section 9051. You must also mail or deliver a copy of this claim to the personal representative and his or her attorney. A proof of service is on the reverse.

WARNING: Your claim will in most instances be invalid if you do not properly complete this form, file it on time with the court, and mail or deliver a copy to the personal representative and his or her attorney.

- Total amount of the claim: \$ 1,000.00
 - Claimant (name): Montgomery Roebuck
 - an individual
 - an individual or entity doing business under the fictitious name of (specify):
 - a partnership. The person signing has authority to sign on behalf of the partnership.
 - a corporation. The person signing has authority to sign on behalf of the corporation.
 - other (specify):
 - Address of claimant (specify): 9999 Business Blvd.
Commerce, CA 90001
 - Claimant is the creditor a person acting on behalf of creditor (state reason):
 - Claimant is the personal representative the attorney for the personal representative.
 - I am authorized to make this claim which is just and due or may become due. All payments on or offsets to the claim have been credited. Facts supporting the claim are on reverse attached.
- I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- Date:

Bill Mee

(TYPE OR PRINT NAME AND TITLE)

(SIGNATURE OF CLAIMANT)

INSTRUCTIONS TO CLAIMANT

- On the reverse, itemize the claim and show the date the service was rendered or the debt incurred. Describe the item or service in detail, and indicate the amount claimed for each item. Do not include debts incurred after the date of death, except funeral claims.
- If the claim is not due or contingent, or the amount is not yet ascertainable, state the facts supporting the claim.
- If the claim is secured by a note or other written instrument, the original or a copy must be attached (state why original is unavailable.) If secured by mortgage, deed of trust, or other lien on property that is of record, it is sufficient to describe the security and refer to the date or volume and page, and county where recorded. (See Prob. Code § 9152.)
- Mail or take this original claim to the court clerk's office for filing. If mailed, use certified mail, with return receipt requested.
- Mail or deliver a copy to the personal representative and his or her attorney. Complete the *Proof of Mailing or Personal Delivery* on the reverse.
- The personal representative or his or her attorney will notify you when your claim is allowed or rejected.
- Claims against the estate by the personal representative and the attorney for the personal representative must be filed within the claim period allowed in Probate Code section 9100. See the notice box above.

(Continued on reverse)

CREDITOR'S CLAIM
 (Probate)

Probate Code, §§ 9000 et seq. 9153

ESTATE OF (Name): I. M. DECEASED,	CASE NUMBER: A 123456
DECEDENT	

FACTS SUPPORTING THE CREDITOR'S CLAIM

Date of item	<input type="checkbox"/> See attachment <i>(if space is insufficient)</i> Item and supporting facts	Amount claimed
3/5/97	Credit card purchases:	1,000.00 0.00
TOTAL:		\$ 1,000.00

PROOF OF MAILING PERSONAL DELIVERY TO PERSONAL REPRESENTATIVE

(Be sure to mail or take the original to the court clerk's office for filing)

1. I am the creditor or a person acting on behalf of the creditor. At the time of mailing or delivery I was at least 18 years of age.
2. My residence or business address is (specify): 9999 Business Blvd.
Commerce, CA 90001
3. I mailed or personally delivered a copy of this *Creditor's Claim* to the personal representative as follows (check either a or b below):
 - a. Mail. I am a resident of or employed in the county where the mailing occurred.
 - (1) I enclosed a copy in an envelope AND
 - (a) deposited the sealed envelope with the United States Postal Service with the postage fully prepaid.
 - (b) placed the envelope for collection and mailing on the date and at the place shown in items below following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
 - (2) The envelope was addressed and mailed first-class as follows:
 - (a) Name of personal representative served: I.L. Getrich
 - (b) Address on envelope: 12345 Main St.
Santa Ana, CA 92705
 - (c) Date of mailing:
 - (d) Place of mailing (city and state): Commerce, CA
 - b. Personal delivery. I personally delivered a copy of the claim to the personal representative as follows:
 - (1) Name of personal representative served:
 - (2) Address where delivered:
 - (3) Date delivered:
 - (4) Time delivered:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: Bill Mee

.....

(TYPE OR PRINT NAME OF CLAIMANT)

(SIGNATURE OF CLAIMANT)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): TELEPHONE NO.: _____ FAX NO.: _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
ESTATE OF (Name): _____ <div style="text-align: right;">DECEDENT</div>	
ALLOWANCE OR REJECTION OF CREDITOR'S CLAIM	CASE NUMBER: _____

NOTE: Attach a copy of the creditor's claim. If allowance or rejection by the court is not required, do not include any pages attached to the creditor claim form.

PERSONAL REPRESENTATIVE'S ALLOWANCE OR REJECTION

1. Name of creditor (specify):
2. The claim was filed on (date):
3. Date of first issuance of letters:
4. Date of *Notice of Administration*:
5. Date of decedent's death:
6. Estimated value of estate: \$
7. Total amount of the claim: \$
8. Claim is allowed for: \$ *(The court must approve certain claims before they are paid.)*
9. Claim is rejected for: \$ *(A creditor has three months to act on a rejected claim. See box below.)*
10. Notice of allowance or rejection given on (date):
11. The personal representative is authorized to administer the estate under the Independent Administration of Estates Act.

Date: _____

..... (TYPE OR PRINT NAME)

(SIGNATURE OF PERSONAL REPRESENTATIVE)

REJECTED CLAIMS: From the date notice of rejection is given, the creditor must act on the rejected claim (e.g., file a lawsuit) as follows:

- a. **Claim due:** within three months after the notice of rejection.
- b. **Claim not due:** within three months after the claim becomes due.

COURT'S APPROVAL OR REJECTION

12. Approved for: \$

13. Rejected for: \$

Date: _____

14. Number of pages attached: _____

SIGNATURE OF JUDGE COMMISSIONER
 SIGNATURE FOLLOWS LAST ATTACHMENT

(Proof of Service on reverse)

ESTATE OF I. M. DECEASED, (Name):	CASE NUMBER: A 123456
DECEDENT	

PROOF OF MAILING PERSONAL DELIVERY TO CREDITOR

1. At the time of mailing or personal delivery I was at least 18 years of age and not a party to this proceeding.
2. My residence or business address is (specify): 1323 N. BROADWAY
3. I mailed or personally delivered a copy of the *Allowance or Rejection of Creditor's Claim* as follows (complete either a or b):
 - a. **Mail.** I am a resident of or employed in the county where the mailing occurred.
 - (1) I enclosed a copy in an envelope AND
 - (a) **deposited** the sealed envelope with the United States Postal Service with the postage fully prepaid.
 - (b) **placed** the envelope for collection and mailing on the date and at the place shown in items below following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
 - (2) The envelope was addressed and mailed first-class as follows:
 - (a) Name of creditor served:
 - (b) Address on envelope:
 - (c) Date of mailing:
 - (d) Place of mailing (city and state):
 - b. **Personal delivery.** I personally delivered a copy to the creditor as follows:
 - (1) Name of creditor served:
 - (2) Address where delivered:
 - (3) Date delivered:
 - (4) Time delivered:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

ALAN D. DAVIS

(TYPE OR PRINT NAME OF DECLARANT)



(SIGNATURE OF DECLARANT)

**NOTICE OF ADMINISTRATION
OF THE ESTATE OF**

I. M. DECEASED

(NAME)

DECEDENT

NOTICE TO CREDITORS

1. (Name): I. L. GETRICH
(Address): 12345 Main St.
Santa Ana, CA 92701

(Telephone): 714-987-6543

is the **personal representative** of the **ESTATE OF** (name): I. M. DECEASED, who is deceased.

2. The personal representative HAS BEGUN ADMINISTRATION of the decedent's estate in the
- a. **SUPERIOR COURT OF CALIFORNIA, COUNTY OF** (specify): ORANGE
STREET ADDRESS: 341 THE CITY DRIVE
MAILING ADDRESS: P.O. BOX 14169
CITY AND ZIP CODE: ORANGE, CA 92613-1569
BRANCH NAME: LAMOREAUX JUSTICE CENTER
- b. Case number (specify): A 123456
3. You must **FILE YOUR CLAIM** with the court clerk (address in item 2a) AND mail or deliver a copy to the personal representative before the **last to occur** of the following dates:
- a. **four months after** (date): 1-31-13, the date letters (authority to act for the estate) were first issued to a general personal representative, as defined in subdivision (b) of section 58 of the California Probate Code, OR
- b. **60 days after** (date): _____, the date this notice was mailed or personally delivered to you.
4. **LATE CLAIMS:** If you do not file your claim within the time required by law, you must file a petition with the court for permission to file a late claim as provided in Probate Code section 9103. Not all claims are eligible for additional time to file. See section 9103(a).

EFFECT OF OTHER LAWS: Other California statutes and legal authority may affect your rights as a creditor. You may want to consult with an attorney knowledgeable in California law.

WHERE TO GET A CREDITOR'S CLAIM FORM: If a *Creditor's Claim* (form DE-172) did not accompany this notice, you may obtain a copy of the form from any superior court clerk or from the person who sent you this notice. You may also access a fillable version of the form on the Internet at www.courts.ca.gov/forms under the form group Probate—Decedents' Estates. A letter to the court stating your claim is *not* sufficient.

FAILURE TO FILE A CLAIM: Failure to file a claim with the court and serve a copy of the claim on the personal representative will in most instances invalidate your claim.

IF YOU MAIL YOUR CLAIM: If you use the mail to file your claim with the court, for your protection you should send your claim by certified mail, with return receipt requested. If you use the mail to serve a copy of your claim on the personal representative, you should also use certified mail.

Note: To assist the creditor and the court, please send a blank copy of the *Creditor's Claim* form with this notice.

(Proof of Service by Mail on reverse)

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ESTATE OF (Name): I. M. DECEASED	CASE NUMBER: A 123456
DECEDENT	

[Optional]

PROOF OF SERVICE BY MAIL

1. I am over the age of 18 and not a party to this cause. I am a resident of or employed in the county where the mailing occurred.
2. My residence or business address is (specify):
1323 N. BROADWAY, SANTA ANA, CA 92706
3. I served the foregoing *Notice of Administration to Creditors* and a blank *Creditor's Claim* form* on each person named below by enclosing a copy in an envelope addressed as shown below AND
 - a. depositing the sealed envelope with the United States Postal Service with the postage fully prepaid.
 - b. placing the envelope for collection and mailing on the date and at the place shown in item 4 following our ordinary business practices. I am readily familiar with the business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
4. a. Date of deposit: 1-31-13 b. Place of deposit (city and state): SANTA ANA, CA

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 1-31-13

ALAN D. DAVIS

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

	<u>Name of person</u>	<u>Address (number, street, city, state, and zip code)</u>
1.	Visa	11111 Visa Drive Visa, CA
2.		
3.		
4.		
5.		
6.		
7.		
8.		

List of names and addresses continued in attachment. (You may use form POS-30(P) to show additional persons to whom a copy of this notice was mailed. Do not use page 2 of this form or form POS-030(P) to show that you personally delivered a copy of this notice to a creditor. You may use forms POS-020 and POS-020(P) for that purpose.)

* NOTE: To assist the creditor and the court, please send a blank copy of the Creditor's Claim (form DE-172) with the notice.