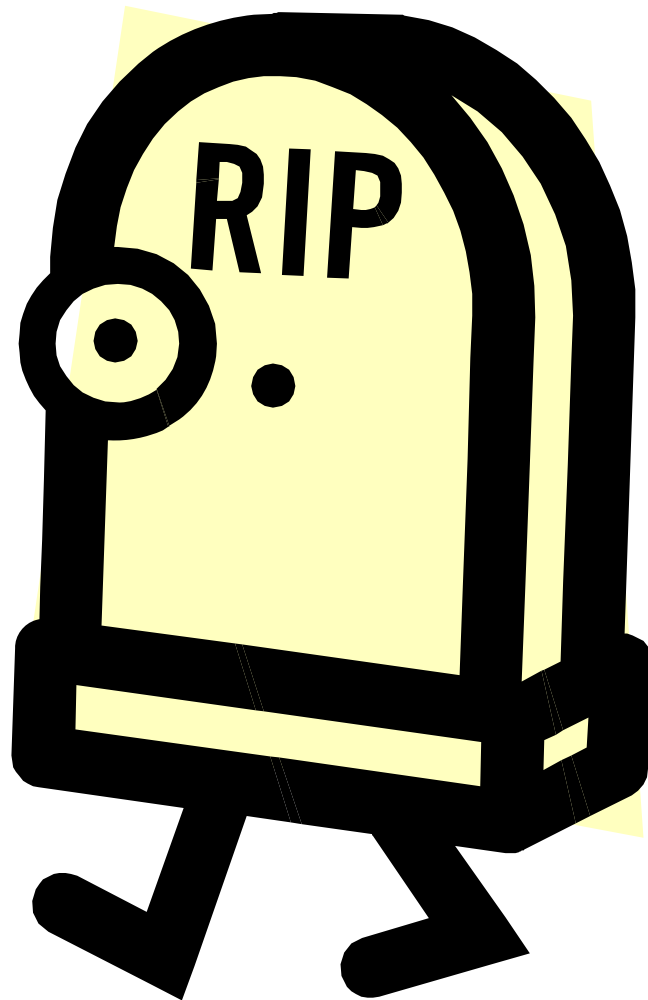


# **Dead Debtors: Creditors Claims in Probate**

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By: Alan Leibel with assistance from Joseph Wyly  
Palmer & Manuel, LLP  
5350 N. Central Expressway, Suite 1111  
Dallas, TX. 75206



## **Creditor's Claims in Probate: A Step-By-Step Approach**

### *Jurisdiction of Probate Proceedings*

In counties that do not have statutory probate courts, a county court at law, or other statutory court exercising jurisdiction of a probate court all applications, administration of probate will heard by the county court. However if there is a contested probate matter the judge on his own motion or by motion of any party to the proceeding may request the the contested portion of the proceeding be assigned to a statutory probate judge or transfer the contested portion to the district court. If the court has not transferred the contested probate matter to the district by the time a party files a motion for assignment to a statutory probate judge the court must grant the motion to assign the contested proceeding to a statutory probate judge. Tex. Prob. Code Ann. § 5 (b) (West 2009)(hereinafter TPC § ...)

In counties that do not have a statutory probate court but has a county court at law or other statutory court exercising probate jurisdiction the all applications, administrations etc will be heard by the constitutional county court. If there is a contested probate matter the judge may on his own motion or by motion of a party transfer the proceeding to the county court at law or other statutory court exercising jurisdiction of a probate court. TPC § 5 (c) (West 2009).

A statutory probate court has jurisdiction over any matter appertaining to an estate or incident to an estate and has jurisdiction over any cause of action in which personal representative of an estate pending in a statutory probate court is a party. TPC § 5(h) (West 2009). In order to ensure that there was no confusion the Probate Code defined matters appertaining and incident to the estate which includes "all claims by or against an estate". TPC § 5A (West 2009).

### *Navigating the Probate Process*

- 1) Beginning the Probate Process
  - a) Debtor ("Decedent") dies
  - b) Application filed to probate the will or to determine the heirs of Decedent
  - c) A will can be offer for probate immediately after death of the decedent. Usually, the application is filed within a couple of weeks however it is not unusual for the beneficiaries of an estate to wait several months before starting probate proceedings (If you want to initiate the probate proceeding see section 7 of the outline)
    - i) When the application is made a notice is posted on the courthouse and the applicant can prove up the will anytime after the first Monday ten days after the that notice has posted
  - d) After the court admits the will to probate and the executor or administrator qualifies either:

- i) Issue Letters Testamentary (“Letters”) will be issued to the independent executor
  - 1. The Statute of Limitations for claims against the debtor are tolled for the earlier of the date of qualification of the executor or administrator or one year from the date of debtor’s death Tex. Civ. Prac. & Rem. Code § 16.062
- ii) Issue Letters of Administration (Dependent”) or Letters of Independent Administration (“Independent Administration”)
  - 1. The will determines whether it is a dependent or independent administration
    - (a) Dependent: Estate is administered under court supervision and the Administrator must seek court approval to pay most claims against the Decedent’s estate
    - (b) Independent: Estate is administered without court supervision
      - (i) Does not have to be asked for in a will, and can be elected even if the debtor dies intestate. However, all the beneficiaries or heirs, if no will must consent and the Court has discretion to grant or deny independent administration. TPC § 145 (West 2009)
      - (ii) Inexpensive
      - (iii) Highly favored

### *Notice to Creditors*

- 2) Notice to Creditors: Same in Independent and Dependent Administrations
  - a) Mandatory Notice by Publication
    - i) Required by TPC § 294(a) (West 2009).
    - ii) Placed in newspaper in the same county where the letters were issued
    - iii) The notice must include...
      - 1. the date of issuance of letters;
      - 2. - the address to which claims may be presented; and
      - 3. - an instruction as to whom the claim should be addressed
    - iv) Publisher must file a “publisher’s affidavit” with the court. TPC § 294(b) (West 2009).
  - b) Notice to Secured Creditors
    - i) Mandatory: must be sent to all known creditors who have a security interest in the decedent’s real or personal property
      - (a) TPC § 295 (West 2009).
    - ii) Must be sent within two months after letters are issued
    - iii) Notice must...
      - 1. Be sent by certified or registered mail
      - 2. With return receipt requested
      - 3. Addressed to the record holder of such indebtedness or claim at the record holder's last known post office address
      - 4. Evidence of the notice must be filed with clerk
  - c) Permissive Notice: TPC § 294(d) (West 2009).
    - i) The administrator *may* send give notice to an *unsecured creditor* by certified or registered mail, with return receipt requested

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