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## **Creditor's Claims in Estate and Guardianship Administrations**

**Presented by Keith Morris**

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# CREDITOR'S CLAIMS IN ESTATE AND GUARDIANSHIP ADMINISTRATIONS

by Gus G. Tamborello \*

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This article will explore the rules and procedures for handling claims in both independent and dependent estate administrations as well as guardianship administrations in Texas.

### I. OVERVIEW OF ESTATES CODE PROVISIONS

Before the Texas Estates Code became effective on January 1, 2014, the Texas Probate Code set forth provisions regarding estates and guardianships, which, although it was called a “code,” really was not a code. The Texas Probate Code sections pertaining to creditor claims were often confusing and misunderstood. It was at times unclear as to whether certain rules applied only to dependent administrations or whether they also applied to independent administrations. Over the last few sessions, and as a part of the process of codifying the new Estates Code, the Texas Legislature has made an effort to clarify which statutes apply to which type of administrations and evaluated procedures relating to secured creditors in independent administrations.<sup>1</sup>

The Estates Code organizes creditor-related issues into the following sections:

- A. Notices to creditors: 308.051–308.056 (administrations), 1153.001–1153.005 (guardianships);
- B. Presentment and payment of claims: 355.001–355.203;
- C. Provisions relating specifically to independent administrations: 403.051–403.060; and
- D. Provisions relating specifically to guardianships: 1157.001–1157.202.<sup>2</sup>

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1. See TEX. EST. CODE ANN. §§ 308.001, 403.051 (West 2014).

2. *Id.* §§ 308.051–.056, 355.001–.203, 403.051–.060, 1153.001–.005, 1157.001–.056.

## II. NOTICES TO CREDITORS

### A. Notice Is Required

The Estates Code requires all personal representatives (executors and administrators) and guardians of the estate to give notice to creditors.<sup>3</sup> The forms of notice vary depending on the type of creditor.<sup>4</sup>

### B. General Notice to Creditors

#### 1. Dependent and Independent Executors and Administrators

Within one month after receiving letters, a personal representative of a decedent's estate (independent and dependent) and a guardian of the estate are required to give notice to all persons having claims against the estate by publishing notice in a newspaper in the county in which the letters were issued.<sup>5</sup> If the practitioner is unsure of which publication to use, most clerks' offices have a list of approved publications. The notice the executor or administrator publishes must include:

1. The date of issuance of letters;
2. The address to which one may send a claim; and
3. An instruction as to whom the claim should be addressed.<sup>6</sup>

After the publication of the notice, the publisher provides what is known as a publisher's affidavit, which the personal representative must file with the clerk of the court where the estate is pending.<sup>7</sup>

#### 2. Guardians of the Estate

The notice provided by the guardian of the estate must include the following information:

1. The date of issuance of the letters of guardianship to the guardian;
2. The address where a claim may be presented; and
3. An instruction of the guardian's choice that the claim be addressed to: the guardian; the guardian's attorney; or Guardian, Estate of \_\_\_\_\_ (naming the estate).<sup>8</sup>

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3. *Id.* §§ 308.051–.056

4. *See id.* §§ 308.051–.056.

5. *Id.* §§ 308.051, 403.051(a), 1153.001(a).

6. *Id.* § 308.051.

7. *Id.* § 308.052.

8. *Id.* § 1153.001(b).

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