

PRESENTED AT

18th Annual

Estate Planning, Guardianship and Elder Law Conference

August 11-12, 2016

Galveston, TX

Creditor's Claims in Estate and Guardianship Administrations

Presented by Keith Morris

Author Contact Information:

Gus G. Tamborello
Tamborello Law Firm
Houston, TX

CREDITOR’S CLAIMS IN ESTATE AND GUARDIANSHIP ADMINISTRATIONS

*by Gus G. Tamborello**

I.	OVERVIEW OF ESTATES CODE PROVISIONS	503
II.	NOTICES TO CREDITORS	504
	A. <i>Notice Is Required</i>	504
	B. <i>General Notice to Creditors</i>	504
	1. <i>Dependent and Independent Executors and</i> <i>Administrators</i>	504
	2. <i>Guardians of the Estate</i>	504
	C. <i>Notice to Comptroller</i>	505
	D. <i>Actual Notice to Unsecured Creditors</i>	505
	1. <i>Notice by Dependent Administrator</i>	505
	2. <i>Notice by Independent Executor</i>	505
	3. <i>Notice by Guardian</i>	506
	4. <i>To Whom Is Notice to an Unsecured Creditor Sent?</i>	507
	E. <i>Notice to Secured Creditors</i>	508
	1. <i>Notice to Secured Creditors by Estate Representatives</i>	508
	2. <i>Notice to Secured Creditors by Guardians of the Estate</i> ...	508
	F. <i>One Notice Sufficient</i>	509
	G. <i>Penalty for Failure to Give Notice</i>	509
III.	PRESENTMENT OF A CREDITOR CLAIM	509
	A. <i>Time for Presentment</i>	509
	B. <i>To Whom a Claim Is Presented</i>	509
	1. <i>Dependent Administration</i>	509
	2. <i>Independent Administration</i>	510
	3. <i>Guardianship of the Estate</i>	510
	C. <i>Exceptions to Presentment</i>	510
	1. <i>Unliquidated Claims</i>	511
	2. <i>Tort Claims</i>	511
	3. <i>Contract Claims</i>	511
	4. <i>Quantum Meruit Claims</i>	511
	5. <i>Specific Performance</i>	511
	6. <i>Title Claims</i>	512
	7. <i>Right of Set-Off</i>	512
	8. <i>Injunctive Relief</i>	512
	9. <i>Administrator’s Claim</i>	512

* Attorney & Mediator, Tamborello Law Firm. J.D., University of Houston Law Center, 1987; B.A., University of St. Thomas, 1983.

10. Claim by Heir or Beneficiary	512
11. Claim Accruing During Administration	512
12. Claim for Delinquent Taxes	513
D. Presentment Required by Judgment Creditor	513
E. Family Caregivers May Not Have a Reimbursement Claim	514
F. Form of Presentment	514
1. Dependent Administration	514
a. Unsecured Creditors	514
b. Secured Creditors	515
2. Independent Administration	516
a. Unsecured Creditors	516
b. Secured Creditors	516
3. Guardianship of the Estate	518
a. Unsecured Creditors	518
b. Secured Creditors	519
c. Lost or Destroyed Evidence Concerning Claim	519
d. Claim by Guardian	519
e. Guardian May Not Purchase Claim	520
IV. ACTION UPON PRESENTED CLAIMS	520
A. Objections to Form of Claim	520
1. Dependent Administration	520
2. Independent Administration	521
3. Guardianship of the Estate	521
B. Allowance or Rejection of Claim in Whole or in Part	521
1. Dependent Administration	521
a. 30 Days to Allow or Reject	521
b. Deemed Rejection	522
c. No Notice of Rejection Required	522
d. No Change of Heart	523
2. Independent Administration	523
3. Guardianship of the Estate	523
a. 30 Days to Allow or Reject	523
b. Deemed Rejection	524
c. Actions on Claims with Lost or Destroyed Evidence Void	524
C. Representative Must Honor Statute of Limitations	524
1. Dependent Administration	524
2. Independent Administration	525
3. Guardianship of the Estate	525
D. Contest, Action by Court, Appeals	526
1. Dependent Administration	526
a. Contest of Claims	526
b. Court's Action Upon Claims	526
c. Hearing on Claims	526
d. Order of the Court	526

e. Appeal	527
2. Independent Administration	527
3. Guardianship of the Estate	527
a. Claim Entered on Claim Docket	527
b. Contest of Claim	527
c. Court's Action on Claim	527
d. Hearing on Certain Claims	528
e. Court Order Regarding Action on Claim	528
f. Appeal of Court's Action on Claim	528
E. Suit on Rejected Claim	528
1. Dependent Administration	528
2. Independent Administration	529
3. Guardianship of the Estate	529
F. Costs of Suit	530
1. Dependent Administration	530
2. Independent Administration	530
3. Guardianship of the Estate	530
V. CLASSIFICATION AND PAYMENT OF CLAIMS	531
A. Dependent and Independent Administrations	531
1. Classification	531
a. All Claims Are Classified	531
b. The Classes	531
c. Debts Due to the United States	532
2. Claim Payment	532
a. Claim Must First Be Established	532
b. Order of Payment	533
c. Court Orders for Payment	533
i. By Claimant Before Determination	533
ii. By Creditor After Determination	533
iii. By Personal Representative	534
3. Deficiency of Assets	534
4. Failure to Pay Claim	534
5. No Fiduciary Duty to Creditors	535
B. Payment of Claims in Guardianship of the Estate	536
1. Payment of Approved or Established Claim	536
2. Payment of Unauthenticated Claim	536
3. Priority of Payment of Claims	536
4. Payment of Proceeds from Sale of Property Securing Debt	537
5. Claimant's Petition for Allowance and Payment of Claim	537
6. Payment When Assets Insufficient to Pay Certain Claims	537
7. Liability for Nonpayment of Claim	537
VI. MISCELLANEOUS ISSUES UPON CLOSING OF ESTATES	538

A.	<i>Claims Not Allowed After Partition</i>	538
B.	<i>Requiring Heirs to Give Bond</i>	539
C.	<i>Garnishment of Estate Assets</i>	539
VII.	PROCEDURE FOR RESOLVING SECURED CLAIMS	540
A.	<i>Dependent Administrations</i>	540
1.	<i>Matured Secured Claims</i>	540
2.	<i>Preferred Debt and Liens</i>	540
3.	<i>Foreclosure Process</i>	541
a.	<i>Affidavit</i>	541
b.	<i>Issuance of Citation</i>	541
c.	<i>Hearing on Application</i>	542
d.	<i>Order to Be Entered</i>	542
e.	<i>Terms of Foreclosure</i>	542
f.	<i>Right of Appeal</i>	543
g.	<i>Unsuccessful Foreclosure</i>	543
4.	<i>Power of Sale Under Deed of Trust</i>	543
a.	<i>When No Administration Is Pending but Is Later Opened</i>	543
b.	<i>During the Pendency of a Dependent Administration</i> ..	543
c.	<i>Temporary Administration</i>	543
d.	<i>Value of Use of Property</i>	543
e.	<i>Executory Contracts</i>	544
f.	<i>When No Administration Is Opened</i>	544
g.	<i>Joint Obligation</i>	544
B.	<i>Independent Administrations</i>	544
1.	<i>Matured Secured Claims</i>	544
2.	<i>Preferred Debt and Liens</i>	545
C.	<i>Guardianship of the Estate</i>	545
1.	<i>Option to Treat Claim as Matured Secured Claim or Preferred Debt and Lien</i>	545
2.	<i>Preferred Debt and Lien</i>	546
3.	<i>Payment of Maturities on Preferred Debt and Lien</i>	546
VIII.	CAN CREDITORS OF BENEFICIARIES INTERVENE IN ESTATE PROCEEDINGS?	547
IX.	METHODS FOR HANDLING CLAIMS FOR CHILD SUPPORT	548
A.	<i>Child Support in Arrears at the Time of Decedent's Death</i>	548
B.	<i>Child Support Accruing After the Decedent's Death</i>	549
X.	MEDICAID ESTATE RECOVERY PROGRAM	550
A.	<i>Federal Mandate</i>	550
B.	<i>Recovery Only Against Certain Decedent's Probate Estates</i> ...	551
C.	<i>Medicaid Claim Process</i>	551
1.	<i>Notice of Intent to File Claim</i>	551
2.	<i>Contents of Notice</i>	552
3.	<i>Presentment of Claim</i>	552
D.	<i>Exemptions from Claims</i>	553

<i>E. Request for Waiver Based Upon Undue Hardship</i>	553
<i>F. Certain Deductions for Home Maintenance and Costs of</i> <i>Care</i>	554
<i>G. No Claim Sought If Not Cost Effective</i>	555
<i>H. Interplay Between MERP Rules and Estates Code</i>	555
XI. CONCLUSION	556

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.¹

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: 1157.001–1157.202.²

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.³ The forms of notice vary depending on the type of creditor.⁴

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.⁵ 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.⁶

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.⁷

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).⁸

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).

Also available as part of the eCourse

[Working with Creditors and Claims in Guardianship, Dependent and Independent Administration](#)

First appeared as part of the conference materials for the

18th Annual Estate Planning, Guardianship and Elder Law Conference session

"Working with Creditors and Claims in Guardianship, Dependent and Independent Administration"