

Claims Against the Estate

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Claims Against the Estate

- General Rule – Present it or lose it forever
- Creditor's have the burden to properly present the claim within 6 months of the date of death
- If not properly presented, Fiduciary must reject the claim & the creditor is out of luck
- Relatives are not responsible for the bills of the decedent unless they are co-signors on the debt.

Medicaid Estate Recovery

- R.C. 2117.061 requires “person responsible for the estate” to notify MER within 30 days of appointment;
- MER must present claim in 90 days (or within 1 year of date of death, whichever is later)
- MER is the State – they get special rules. They have longer to present the claim.
- Sometimes can negotiate MER debts

Notify MER – SPF 7.0 & 7.0(A)

PROBATE COURT OF _____ COUNTY, OHIO
_____, JUDGE

ESTATE OF: _____, DECEASED

CASE NO. _____

**CERTIFICATION OF NOTICE TO ADMINISTRATOR OF
MEDICAID ESTATE RECOVERY PROGRAM**
[R.C. 2117.061 AND 5162.21]

**THIS FORM SHALL BE FILED IN THE PROBATE COURT UPON COMPLETION OF
NOTICE TO ADMINISTRATOR**

The undersigned certifies that a Notice in compliance with Ohio Revised Code 2117.061 and 5162.21 was served upon the following by a method authorized by Civ.R. 73 on the _____ day of _____, 20____:

Medicaid Estate Recovery
150 E. Gay Street, 21st Floor
Columbus, Ohio 43215

Attorney for Applicant

Typed or Printed Name

Address

City, State, Zip Code

Telephone Number (include area code)

Attorney Registration No. _____

Person Responsible for the Estate

Typed or Printed Name

Address

City, State, Zip Code

Telephone Number (include area code)

Print Form

PROBATE COURT OF _____ COUNTY, OHIO
_____, JUDGE

ESTATE OF: _____

CASE NO. _____

**NOTICE TO ADMINISTRATOR OF
MEDICAID ESTATE RECOVERY PROGRAM**
[R.C. 2117.061 AND 5162.21]

IF THE ESTATE OF THE DECEDENT IS SUBJECT TO THE MEDICAID ESTATE RECOVERY PROGRAM PURSUANT TO R.C. 5162.21, THIS NOTICE SHALL BE FILED WITH THE ADMINISTRATOR OF THE PROGRAM AT THE FOLLOWING ADDRESS:

Medicaid Estate Recovery
150 E. Gay Street, 21st Floor
Columbus, Ohio 43215

**THIS NOTICE IS NOT A PUBLIC RECORD AND SHALL NOT BE FILED IN THE
PROBATE COURT**

The undersigned person responsible for the estate hereby states the following:

1. Name of Decedent: _____
2. Address of Decedent: _____
3. Date of Birth: _____ Age: _____
4. Date of Death: _____
5. Social Security Number: _____

6. Check all applicable boxes:

- A copy of the Schedule of Assets (Form 6.1) or Assets and Liabilities (Form 5.1) is attached;
- A schedule of any other real and personal property and other assets in which the decedent had any legal title or interest at the time of death (to the extent of the interest), including assets conveyed to a survivor, heir, or assign of the individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement;
- The spouse of the decedent was subject to the Medicaid estate recovery program, a separate notice is being submitted for the pre-deceased spouse.

R.C. 2117.06 - Presentment

(A) All creditors having claims against an estate, including claims arising out of contract, out of tort, on cognovit notes, or on judgments, **whether due or not due, secured or unsecured**, liquidated or unliquidated, **shall** present their claims in one of the following manners:

(1) **After the appointment** of an executor or administrator and prior to the filing of a final account or a certificate of termination, in **one** of the following manners:

(a) **To the executor or administrator in a writing;**

(b) To the executor or administrator in a writing, **and to the probate court** by filing a copy of the writing with it;

(c) In a writing that is **sent by ordinary mail addressed to the decedent** and that is **actually received by the executor or administrator within the appropriate time specified in division (B)** of this section. ...

(B) Except as provided [for MER], all claims shall be presented **within six months after the death of the decedent, whether or not the estate is released from administration or an executor or administrator is appointed during that six-month period.** Every claim presented shall set forth the claimant's address.

R.C. 2117.06 - Presentment

(C) Except as provided [for MER], **a claim that is not presented within six months after the death of the decedent shall be forever barred as to all parties**, including, but not limited to, devisees, legatees, and distributees. No payment shall be made on the claim and no action shall be maintained on the claim...

- Bottom line: Creditors must provide a written claim to an appointed fiduciary within 6 months of the DOD.

Wilson v. Lawrence

- 150 Ohio St.3d368, 2017-Ohio-1410
- Creditor provided a writing to decedent's secretary, who passed it to the Executor
- Valid presentment cannot be made on anyone other than an **appointed** Executor or Administrator – i.e., not their spouse, not their attorney, not a Commissioner, and not a person nominated as Executor in the will, but not yet appointed.
- The Ohio Supreme Court stated clearly: “if a creditor fails through indifference, carelessness, delay, or lack of diligence to identify the administrator or executor, or to procure the appointment of one so that a claim can be presented, the law should not come to the creditor's aid.”

Kingston of Miamisburg v. Maute

- 2018-Ohio-2855 (2nd Dist.)
- A family member tells a creditor they “plan to” open an estate and “intend to” pay the claim. Ultimately the Estate is opened after the claims period, the creditor’s claim is presented late and denied. The creditor argues they reasonably relied (to their detriment) on the family’s statements.
- The court ruled, “too bad!” Creditor’s have notice in Ohio to protect themselves within that 6-month period; they cannot **as a matter of law** reasonably rely on a family member’s statement that they will open an estate and “intend to” pay the claim.
Note: The statement in this instance came from a daughter-in-law of the decedent who was not nominated in the Will and never was appointed as Executor (her husband was Commissioner)

Claim of a Fiduciary

- If decedent owes fiduciary money – fiduciary must follow R.C. 2117.01
- Present the claim to the Probate Court
- Prove the claim to Probate Court
- Probate Court determines to allow or reject claim
- Presentment by fiduciary must be within 3 months of the appointment (and 6 months of DOD)

Priority of Claims R.C. 2117.25

- Costs & Expenses of Administration
 - Filing fees, bond premium, appraisal fees, mailing costs, transfer tax (conveyance fee), recording fees
 - Fiduciary compensation (R.C. 2113.35)
 - Attorney fees – must be approved by probate court, must be reasonable, and must follow Prof. Cond. R. 1.5.
 - “Other” Administration expenses: e.g., insurance, real estate taxes, utility bills
- \$4,000 for funeral and \$3,000 for burial

Priority of Claims R.C. 2117.25

- \$40,000 Allowance for Support (2106.13)
- Debts with preference under federal law (e.g., income taxes, overpayment of social security benefits)
- Expenses of “last sickness”
 - “illness from which [decedent] never recovered nor... resume[d] independent life” *In re: Estate of Wilson*, 75 Ohio Misc.2d 11 (Com.Pl.1995)
- Additional \$2,000 towards funeral bill
- Expenses of last continuous stay in nursing home, residential facility, long-term care

Priority of Claims R.C. 2117.25

- State Obligations – e.g., personal property taxes, claims under MER; must be paid if Fiduciary has knowledge of the debt
- Debts for manual labor performed for decedent within 12 months of DOD and up to \$300/person
- All other debts (assuming they were timely presented) including any amount of funeral bill of \$6,000 and burial over \$3,000
- **NOTE**: A lien-holder need not present a claim to keep a valid lien if it was perfected before death

Fiduciary MUST Follow Priority

- Each creditor in one class must be paid in full before you pay anyone in the next class.
- If Fiduciary pays out of order, s/he could be personally liable
- *In Re: Greer*, 2011-Ohio-6721 (1st Dist.) – the Executrix paid about \$23,000 bills to a nursing home and for home repairs made during decedent's life. The claims were first presented more than 2 years after DOD. The probate court, *sua sponte*, objected to those payments when shown on the accounting and told the Executrix to recoup the money from the creditor or repay the funds to the Estate herself. The appellate court affirmed the Supreme Court denied cert.

Example

- John Doe dies on March 1, 2018. At the time of his death, he is single with 1 adult child, Jane, and a girlfriend, Susie. John named Susie his representative for handling bodily remains on a valid Disposition Declaration. He left a Last Will and Testament appointing Jane his Executrix and sole heir. Jane picks up dad's mail at his home after his death.
- He owns the following at his death:
 - House worth \$75,000 with a recorded mortgage having a balance of \$40,000.
 - Car worth \$8,000, with a loan balance of \$12,000.
 - Bank accounts totaling \$35,000.
 - Life insurance policy that name his daughter, Jane, beneficiary.
- On March 10, Susie contracts for and personally pays \$4,500 to Funeral Home and \$2,900 to Cemetery for opening/closing and a monument.

Example

- On **March 30, 2018**, dad's mail contains the following letters addressed to dad:
 - 1) Car Loan Company demanding \$12,000 for the now-delinquent car loan;
 - 2) State of Ohio stating that John Doe's prior-year income tax was not paid in full and requesting \$350.
- On **August 15**, Jane is **appointed Executrix** of her dad's estate.
- On **August 25**, Jane receives the following letters addressed to her as Executrix:
 - 1) letter from Susie with a copy of the Funeral Home and Cemetery receipts she paid, requesting reimbursement from the Estate;
 - 2) letter from VISA for dad's credit card bill of \$3,500.
- On the same day, Jane picks up dad's mail and it contains a hospital bill addressed to dad for the emergency room on dad's date of death for \$500.
- On September 30, Jane receives a letter addressed to her as Executrix from Car Loan Company demanding \$12,000.
- The probate court fees were \$300; probate attorney fees were \$2,500; Jane's fiduciary fee was \$2,150.
- **What does Jane have to pay? What does Jane inherit?**

Example

- Life Insurance – not an Estate asset, this money can be claimed by Jane and kept regardless of claims against the Estate.
- The remaining debts should be paid in order of priority for claims that were validly received.
- Expenses of Admin – first pay filing fees, her attorney, and her fiduciary fee totaling \$4,950. (NOTE: Jane may want to waive her Executrix fee so she inherits the amount, income tax free)
- First \$4,000 of funeral bill and \$2,900 for burial/cemetery reimbursed to Susie Susie presented her claim in the 6 months, directly to the appointed Executrix. (NOTE: the other \$500 of the funeral bill cannot be paid at this level).

Example

- Allowance for support – \$0; no spouse or minor child
- Priority under federal law - \$0; none presented or known
- Last Sickness - \$500 to the emergency room; this was sent to the decedent at his last known address & actually received by Jane while she was appointed & before 6 months was up
- Funeral additional – here, Susie can get the \$500 remaining
- Nursing home – none presented
- Debts to the state – the Ohio income tax notice was **not** properly presented (Jane was not yet appointed Executrix), **but**, R.C. 2117.25(D)(1) says a claim of the State has to be paid if the Executrix has knowledge of it. So, the Estate owes \$350 to the State of Ohio
- Manual Labor – none presented

Example

- Other debts if validly presented:
 - Car Loan debt was never timely or properly presented **but**, the lien is still good. Jane should surrender the car to the lender; the Estate is not responsible for the shortfall because no claim was timely presented.
 - VISA Bill – this was timely received by Jane while appointed Executrix, so the Estate owes the \$3,500.
 - Mortgage – this is a valid lien on the real estate and would have to be paid at the sale of the home; or, Jane can take the home subject to the mortgage.
- From the \$35,000 in the Estate's bank accounts, Jane will pay out \$16,350 in claims. She will inherit \$18,650 cash plus the house subject to the mortgage and will surrender the car.

Allowing & Rejecting Claims

- R.C. 2117.06(D) – among the most useless codes!
 - the Fiduciary shall “allow or reject” all claims within 30 days of presentation – but, you can also reject it later, or allow it later, or allow it first and then reject it later
- For purported claims received outside the 6 months claims period, you do not have to take action. It is sometimes helpful to send a “sorry, you’re too late, goodbye” letter.

"Sorry too late"



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DCM Services, LLC

_____, 2018

A rejection should be sent Certified Mail (Civ. R. 73) to start the 90-day clock for the creditor to file suit. This sort of "goodbye" courtesy letter does not have to be sent certified, but it is a good idea to do so.

Re: Estate of _____
Summit County Probate Court, Case No. ____ ES _____
Alleged Claim of Fifth Third Bank; \$9,597.52
Your Reference No.: _____

Dear Sir or Madam:

Please be advised that I represent _____, Executor of the Estate of _____.
Mrs. _____ died on November 18, 2006. Your letter dated July 12, 2007 addressed to the Estate of Bernice M. Miniard has been forwarded to me for reply.

Please be advised that under Ohio law, all claims of creditors "shall be presented within six months after the date of death of the decedent, whether or not the estate is released from administration or an executor or administrator is appointed during that six month period" Ohio Revised Code § 2117.06(B). "A claim not presented within six months after the death of the decedent shall be forever barred as to all parties... No payment shall be made on the claim and no action shall be maintained on the claim". Ohio Revised Code § 2117.06(C).

Your claim was not presented within six months from the date of death; therefore, your claim is forever barred and my client is bound by state law to deny the claim. Please accept this as a formal rejection of your claim against the Estate of _____.

Very truly yours,

CICCOLINI & ASSOCIATES CO., L.P.A.

Jessica S. Forrest, Esq.

Encls.
cc: Client

Allowing & Rejecting Claims

- To allow a claim in full, no affirmative action is needed except to pay the claim and reflect payment on the appropriate accounting.
- The authority to pay the just debts of the decedent is authority granted by statute R.C. 2117.25(A); such authority need not be granted by Court or contained in the Will.
 - Generally, it is wise not to pay any claim until the full 6 months claims period has run in case a larger priority claim is received
 - If the creditor also filed a copy of their claim with probate court, request a signed release of claim to be filed on the docket. Probate Court cannot close an Estate if a claim has been filed and is not reflected on the docket as allowed, rejected, or released. R.C. 2117.06(I)

Allowing & Rejecting Claims

- To reject a claim – send **written** rejection pursuant to Civ.R. 73 (i.e., certified mail)
- A rejection must be “plain and unequivocal.” *Miller v. Ewing*, 68 Ohio St. 176 (1903)
- Once the creditor receives rejection, the creditor has 2 months to file suit on the claim.
 - Action by a claimant on the rejected claim must be brought in the court of general jurisdiction (e.g., municipal court or general division common pleas). Probate Court is without jurisdiction to hear such action.
 - The State of Ohio is not subject to the 2 month time limit to bring suit

Rejection – Sample Letter



Ciccolini & Associates Co., L.P.A.

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Casey J. Evans

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Email: jforrest@ciccolinilaw.com
Email: evans@ciccolinilaw.com

DCM Services
Re: Estate of _____
_____, 2018
Page 2

_____, 2018

DCM Services, LLC
4150 Olson Memorial Hwy. Ste. 200
Minneapolis, MN 55422-4811

Via Certified Mail
Return Receipt Requested

Re: Estate of _____
Summit County Probate Court Case # _____

Dear Sir or Madam:

I am writing to you at this time with regard to the Estate of _____. The only asset of this estate was a piece of real estate that has now been sold and I am ready to proceed with closing the estate.

The Estate of _____ was initially opened on March 9, 2011. Karen _____ was appointed as Executrix of the estate on March 24, 2011. Karen _____ died on March 2, 2012 and Gail _____ was appointed as Administratrix, WWA on October 23, 2012.

My files reflect that you are handling the following matters with regard to this Estate:

1. **Discover Card** (your Client ID _____, your Reference # _____, balance of \$8,605.82). I am in possession of a letter dated December 27, 2010 addressed to the Estate of _____ that was sent to 123 Main St, Akron, OH. This date is prior to the appointment of an Executrix and was sent to an address that was not the legal address of the decedent nor is it the address of the appointed Executrix Karen. The second letter I am in possession of is dated April 25, 2011. This letter was addressed to "James" Ciccolini and was sent to 2715 Manchester Road, Akron, OH "44314". Please note that "James" Ciccolini is an attorney who has a legal practice located in Barberton, OH. He is not a member of my firm and does not have an office at my location. My street address was used but the zip code was incorrect. Nonetheless, the post office did deliver your letter to Attorney "James" Ciccolini at his office in Barberton and he then forwarded it to me at my office on May 15, 2011.
2. **Citibank / Sears** (your Client ID _____, your Reference # _____, balance of \$1,282.03). I am in possession of a letter dated January 10, 2011 addressed to the Estate at an address that was not the legal address of the decedent nor was it the address of the appointed Executrix Karen _____. This letter was also sent prior to the date of appointment of an Executrix. The second letter that I am in possession of is again addressed to "James" Ciccolini and is dated June 21, 2011 which is later than six months from the date of death.

3. **Target** (your Client ID _____, your Reference # _____, balance \$865.40). I am in possession of a letter dated February 8, 2011 addressed to the Estate to an address that was not the legal address of the decedent nor was it the address of the appointed Executrix Karen _____. This letter was also sent prior to the date of appointment of an Executrix. The second letter that I am in possession of is again addressed to "James" Ciccolini and is dated June 21, 2011 which is later than six months from the date of death.

Pursuant to the Ohio Revised Code, a creditor must submit their claim after an Executor is appointed and within six months from the date of death. Therefore, the time allowable by law within which to file a valid claim would be after March 24, 2011 (at which time Karen _____ was appointed Executrix) and prior to June 10, 2011 (six months from the date of death).

In light of the above, your claims on behalf of Citibank/Sears and Target were untimely made and, therefore, are hereby rejected as having been untimely presented.

The claim on behalf of Discover received by my office on May 15, 2011; but was not sent to nor received by the Executrix. In addition, it reached my office only because Attorney James Ciccolini kindly forwarded the same. Under the case law of the Ohio Supreme Court, presentment of a claim must be made to the appointed Executrix in the time allowed. Service made to an attorney or passed to an attorney is not proper service. Therefore, your claim on behalf of Discover is hereby rejected.

Thank you for your attention in this regard.

Very truly yours,

CICCOLINI & ASSOCIATES CO., L.P.A.

Jessica S. Forrest

Encl.

Cc: Client

What if I want to pay less?

- Allow in part & Reject in Part – this is permissible under R.C. 2117.11; but be careful! If you pay part of the claim without clearly rejecting the balance, it is presumed you are allowing the entire claim.
- Offer to pay less. **Remember**, the Fiduciary cannot pay untimely claims. But s/he can negotiate timely claims. The power to negotiate claims is often given in the Will.
- If the Fiduciary “effects a bona fide, reasonable and beneficial settlement ... of a claim against the estate,” the agreement to such settlement will be enforceable. *Surber v. Woodruff*, 10 Ohio Misc.2d 1 (Com.Pl. 1983)

Negotiation Sample Letter



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October 5, 2017

Bank of America

Re: Estate of _____
Portage County Probate Court Case # _____
Account Ending #4112

Dear Sir or Madam:

I am writing to you at this time with regard to the Estate of _____, who died on January 28, 2017. The Estate of _____ was opened on March 7, 2017 with the Portage County Probate Court and his daughter _____ was appointed as Administratrix of the estate on that date.

The probate assets of this Estate consist of financial accounts totaling approximately \$21,800.00, various titled assets (including an RV) totaling \$68,885.00, and real estate currently listed for sale at \$160,000.00.

The RV is encumbered by a loan that exceeds its value and the real estate is encumbered by a mortgage of roughly \$107,000.00. The cash in the Estate has also been significantly reduced with the payment of ongoing expenses to maintain the house, pending its sale. Therefore, there are and will be very limited liquid assets in the Estate to pay unsecured creditors.

My records reflect that the total balance due you is \$9,529.50 and at this time, I am extending an offer of twenty percent (20%) of said balance in a lump sum of \$1,905.90 as settlement in full on this account. If you accept this offer, please sign the attached acceptance form and fax back to me at (330) 753-1056 by no later than Friday, October 27, 2017.

Thank you for your cooperation in this regard. Please feel free to call me if you have any questions or wish to discuss this matter further.

Very truly yours,

CICCOLINI & ASSOCIATES CO., L.P.A.

Jessica S. Forrest

Encl.
Cc: _____, Administratrix

ACCEPTANCE

_____, hereby accepts the sum of One Thousand Nine Hundred Five and 90/100 Dollars (\$1,905.90) as payment in full of the claim on behalf of BANK OF AMERICA with regard to the Estate of _____.

BANK OF AMERICA

Date

By: _____
Its: _____