

At a high level, administering a decedent's estate in Texas involves a three-step process: (i) inventory and collect the decedent's assets, (ii) pay the decedent's creditor's, and then (iii) distribute the remaining assets to the decedent's beneficiaries (according to his or her estate plan) or heirs (in accordance with the law). You will notice in this chain of events that creditors are entitled to payment *before* any assets get distributed to the decedent's loved ones.

Our debts do not die with us. Following a person's death, the personal representative of the estate is charged with undertaking a series of measures designed to ensure that the decedent's creditors - both secured and unsecured - have a reasonable opportunity to collect the amounts they are rightfully owed. This starts with providing notice.

Notices to Creditors After Death

Texas probate law requires the personal representative of an estate to provide certain notices to creditors disclosing the decedent's passing. These generally include:

- Public notice in a newspaper circulated in the county where the estate will be dependently or independently administered;
- Notice by mail to the Texas Comptroller of Public Accounts; and,
- Notice by mail to secured creditors.

The personal representative must provide each notice within a prescribed timeframe, and failure to provide timely notice can expose the personal representative to personal liability. The personal representative also has the *option* to provide a fourth notice:

- Notice by mail to unsecured creditors.

Although not required (and not subject to a deadline), this notice starts the clock on a four-month window for unsecured creditors to assert their claims. If an unsecured creditor does not present its claim within four months of receiving notice, it will generally lose its right to collect from the estate.

Order of Payment for Debts of the Estate

Importantly, there are exceptions to the general rules outlined above, and certain creditors of the estate will not need to formally assert claims in probate in order to be entitled to payment. For example, the Internal Revenue Service generally has first priority to an estate's assets. Following satisfaction of outstanding federal tax obligations, the standard order of priority in Texas for payment of an estate's debts can generally be summarized as follows:

1. Funeral expenses and medical expenses of the decedent's last illnesses, up to \$15,000. Any excess funeral and medical expenses are treated as unsecured debt;
2. Estate administration expenses, and expenses incurred in safeguarding assets and managing the estate;
3. Secured debts, to the extent they can be satisfied from the sale of estate assets;
4. Outstanding child payments and interest;
5. Texas state taxes, penalties and interest;
6. Claims for the cost of confinement established by the Texas Department of Criminal Justice;
7. Claims for repayment of medical assistance payments made by the State of Texas;
8. All other claims.

If beneficiaries take possession of or sell estate assets before all enforceable creditor claims have been satisfied, they can face personal liability up to the value of any

property sold.

Contact a McKinney Probate Lawyer at The Nordhaus Firm

Our probate lawyers provide experienced legal representation for personal representatives, creditors, beneficiaries and other interested parties in independent and dependent estate administration in McKinney, TX. If you would like to speak with a probate attorney, please call (214) 726-1450 or inquire online today.