

CREDITOR CLAIMS IN PROBATE PROCEEDINGS

TAE KELLEY BRONNER, ESQ.



STARTING POINT: ACTUAL NOTICE = DUE PROCESS

- **TULSA PROFESSIONAL COLLECTION SERVICES, INC. V. POPE, 485 U.S. 478, 108 S. CT. 1340, 99 L.ED.2D 565 (1988)**
 - **“A REQUIREMENT OF ACTUAL NOTICE TO KNOWN OR REASONABLY ASCERTAINABLE CREDITORS IS NOT SO CUMBERSOME AS TO UNDULY HINDER THE DISPATCH WITH WHICH PROBATE PROCEEDINGS ARE CONDUCTED. “**
 - **“DUE PROCESS REQUIRES THE CREDITOR BE GIVEN NOTICE BY MAIL OR SUCH OTHER MEANS TO ENSURE ACTUAL NOTICE”**
 - **FOR CREDITORS WHO HAVE “MERE CONJECTURAL CLAIMS,” PUBLICATION CAN SUFFICE.**

FLORIDA'S RESPONSE:

F.S. 733.702

- **State of Limitations**
- **Publication and actual notice to known creditors required**

F.S. 733.710

- **State of Repose**
- **Cannot be waived! Absolute bar!**

NONCLAIM STATUTE – F.S. 733.710

- **MAY V. ILLINOIS NAT. INS. CO., 771 SO.2D 1143.**
- **IF FILED MORE THAN 2 YEARS AFTER DEATH, CLAIM BARRED.**
- **NO NOTICE NECESSARY!**
- **ABSOLUTE DEADLINE THAT CANNOT BE WAIVED! (EVEN BY FRAUD!)**
- **ONLY EXEMPTION IS **DULY RECORDED MORTGAGE OR SECURITY INTEREST, OR THE LIEN OF ANY PERSON IN POSSESSION OF PERSONAL PROPERTY**, INCLUDING THE RIGHT TO FORECLOSE OR ENFORCE THE MORTGAGE OR LIEN.**
- **JUDGMENT CREDITOR DOES NOT FALL WITHIN EXCEPTION!**
- **BUT THIS DOES NOT BAR IRS FROM PURSUING CLAIM AGAINST ESTATE FOR UNPAID INCOME OR OTHER TAXES!**

NOTICE TO CREDITOR:

- **F.S. 733.701** CREATES DUTY TO GIVE NOTICE AND **F.S. 733.2121** AND **RULE 5.241** TELL US HOW TO DO THAT AND WHO TO SERVE. TOGETHER THEY GIVE US GENERAL REQUIREMENTS FOR NOTICE!
- **PR MUST PROMPTLY PUBLISH NTC AND SERVE A COPY ON ALL CREDITORS WHO ARE REASONABLY ASCERTAINABLE.**
- **MUST FILE PROOF OF PUBLICATION**
- **MUST FILE STATEMENT REGARDING CREDITORS.**
- **NOTE NOTICE SERVED ON ACHA MUST INCLUDE DEATH CERTIFICATE**

STATUTE OF LIMITATIONS: 733.702

- **IF NOT BARRED BY S. 733.710, NO CLAIM OR DEMAND AGAINST THE DECEDENT'S ESTATE THAT AROSE BEFORE THE DEATH OF THE DECEDENT . . . , IS BINDING ON THE ESTATE, ON THE PERSONAL REPRESENTATIVE, OR ON ANY BENEFICIARY UNLESS FILED IN THE PROBATE PROCEEDING **ON OR BEFORE THE LATER OF THE DATE THAT IS 3 MONTHS AFTER THE TIME OF THE FIRST PUBLICATION OF THE NOTICE TO CREDITORS OR, AS TO ANY CREDITOR REQUIRED TO BE SERVED WITH A COPY OF THE NOTICE TO CREDITORS, 30 DAYS AFTER THE DATE OF SERVICE ON THE CREDITOR**, EVEN THOUGH THE PERSONAL REPRESENTATIVE HAS RECOGNIZED THE CLAIM OR DEMAND BY PAYING A PART OF IT OR INTEREST ON IT OR OTHERWISE.**

LATE FILED CLAIMS— EXTENSION OF TIME TO FILE CLAIMS

- **TIME PERIOD CAN BE EXTENDED FOR 3 REASONS: FRAUD, ESTOPPEL OR INSUFFICIENT NOTICE.**
- **733.702(3) GIVES US PROCEDURE TO USE WHEN A CLAIM IS FILED OUTSIDE OF 3 MONTH CREDITOR PERIOD. SEND NOTICE TO CREDITOR TO FILE PETITION FOR EXTENSION WITHIN 30 DAYS OR BE FOREVER BARRED. IF NO PETITION FOR EXTENSION FILED, MOTION TO STRIKE CLAIM.**
- **BUT THIS IS NOT ALWAYS APPLICABLE! REASONABLY ASCERTAINABLE CREDITORS WHO DID NOT RECEIVE NOTICE DO NOT HAVE LATE CLAIMS JUST BECAUSE CLAIM FILED OUTSIDE 3 MONTH CREDITOR PERIOD. SEE FLOW CHART!**



**WHAT IS A
REASONABLY
ASCERTAINABLE
CREDITOR?**



**REASONABLY DILIGENT
EFFORTS = SAFE ZONE**





GUIDELINES?????

- **NO SET GUIDELINES AS TO WHAT CONSTITUTES “REASONABLE DILIGENCE” – NO SAFE HARBOR!**
- **IMPRACTICAL AND EXTENDED SEARCHES NOT REQUIRED.**
- **SEE ATTACHED CHECKLIST.**

WHAT SHOULD YOU DO AS THE ATTORNEY FOR THE PR?

- **HAVE DECEDENT'S MAIL FORWARDED**
- **PROVIDE STANDARD CHECKLIST FOR GENERAL GUIDANCE**
- **KEEP COPIES OF THE DECEDENT'S CHECKBOOK, BANK STATEMENTS, AND PERSONAL PAPERS REVIEWED**
- **KEEP NOTES OF CONVERSATIONS WITH FAMILY, FRIENDS AND BUSINESS ASSOCIATES**
- **CONDUCT ONLINE SEARCHES AND SAVE RESULTS – OFFICIAL RECORDS, UCC SEARCHES, CORPORATE/PARTNERSHIP ENTITY SEARCHES.**

SERVICE OF NOTICE AND PROOF OF SERVICE

- **CAN SERVE BY EITHER INFORMAL SERVICE (U.S. MAIL) OR IN MANNER PROVIDED FOR FORMAL NOTICE (CERTIFIED OR REGISTERED MAIL). CAN SERVE DIFFERENT CREDITORS IN DIFFERENT METHODS.**
- **EITHER WAY, NEED TO FILE PROOF OF SERVICE. IF IN MANNER PROVIDED FOR FORMAL NOTICE, INCLUDE COPY OF PROOF OF SERVICE BECAUSE SERVICE IS NOT COMPLETE UNTIL RECEIVED.**
- **IF SOMEONE DOES NOT PICK UP CERTIFIED LETTER, RE-SEND BY U.S. MAIL! OTHERWISE YOU HAVE NOT COMPLETED SERVICE.**

STATEMENT OF CLAIM AND FILING

- **A CREDITOR MUST FILE A CLAIM – NOT ENOUGH TO MAIL TO ATTORNEY FOR PR.**
- **LAWSUIT IS NOT SUBSTITUTE FOR CLAIM. MUST FILE CLAIM FIRST BEFORE FILING LAWSUIT.**
- **RULE 5.490 GIVES REQUIREMENTS FOR CONTENTS OF CLAIM.**
- **E-FILING – GOTCHA! CLAIMS ARE PLEADINGS AND MUST BE E-FILED UNLESS THEY FALL WITHIN AN EXCEPTION. IF ATTORNEY MAILES CLAIM, CLERK MAY REJECT.**

EXCEPTIONS – NO CLAIM REQUIRED!

- **POST DEATH LIABILITIES**
- **EXPENSES OF ADMINISTRATION**
- **STATUTORY EXCEPTIONS: MORTGAGE, SECURITY INTEREST OR CLAIM AGAINST INSURANCE PROCEEDS, CROSS-CLAIM AGAINST ESTATE.**
- **TRUST EXCEPTION – SEE VELZY V. ESTATE OF MILLER**
- **PROPERTY AGAINST WHICH RECOVERY SOUGHT IS NOT ASSET OF ESTATE**
- **CLAIMANT INCLUDED IN PR PROOF OF CLAIM**



OBJECTION



F. S. 733.705 AND RULE 5.496

- **4 MONTHS FROM DATE OF 1ST PUBLICATION OR 30 DAYS FROM DATE CLAIM FILED.**
- **INFORMAL SERVICE – BUT MUST SERVE ON CREDITOR OR ABANDONED.**
- **CREDITOR HAS 30 DAYS TO FILE IA**

PAYMENT OF CLAIMS

- **WITHIN 1 YEAR UNLESS EXTENDED!**
- **UNMATURED CLAIMS (MOST COMMON MORTGAGES OR PROMISSORY NOTES)**
- **CONTINGENT CLAIMS – 733.705(8)**
- **COORDINATION OF PAYMENT BETWEEN ANCILLARY AND DOMICILIARY ESTATE**
- **SEE 733.707 FOR PRIORITY OF PAYMENT**

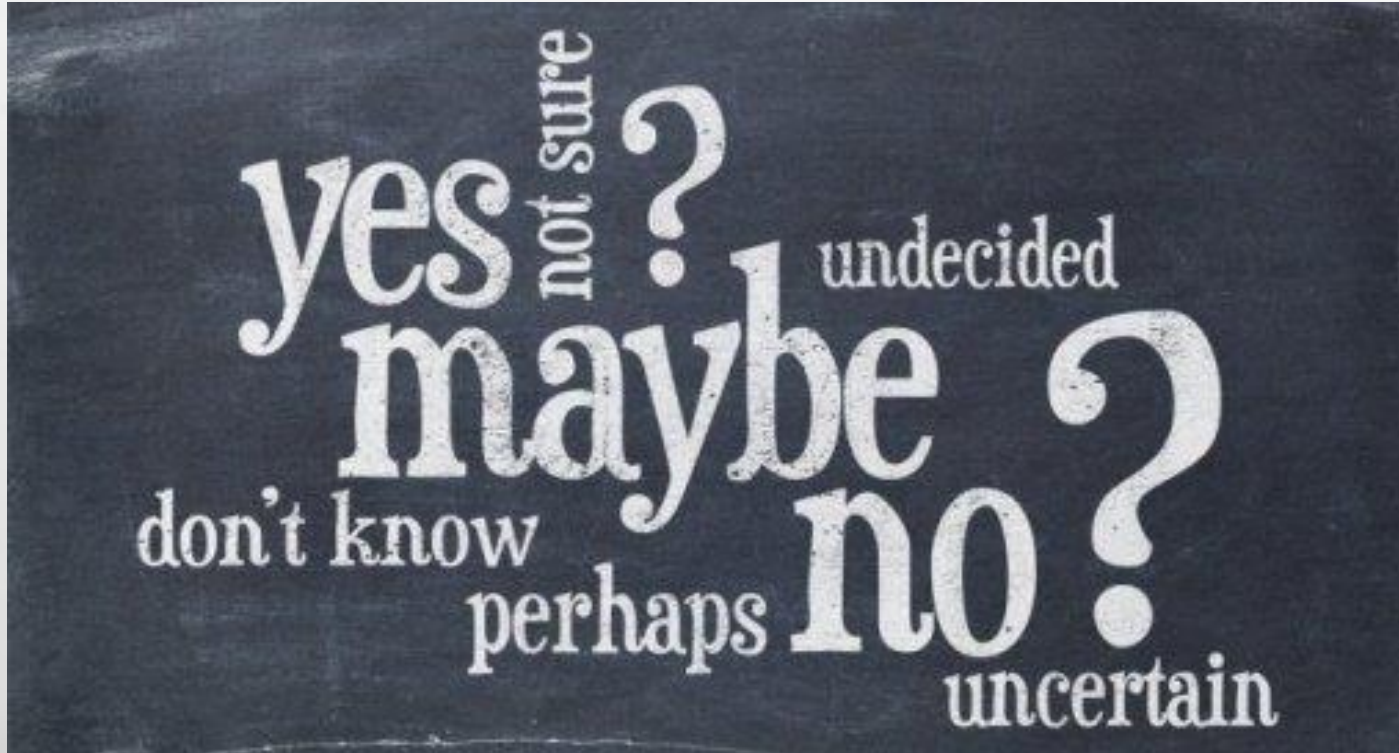
LIABILITY OF TRUSTS AND TRUSTEES

- **PR MUST SERVE NOA ON TRUSTEE OF DECEDENT'S REVOCABLE TRUST AND TRUSTEE MUST FILE NOTICE OF TRUST – THESE REQUIREMENTS ARE DESIGNED TO ASSURE EACH HAS NOTICE OF THE OTHER.**
- **CLAIMS AGAINST DECEDENT MUST BE FILED IN PROBATE ESTATE AND CANNOT BE PURSUED AGAINST TRUST DIRECTLY – EXCEPT IF LIABILITY IS PROPERLY ONE OF TRUST, NOT ESTATE.**
- **TRUSTEE HAS DUTY TO PAY EXPENSES AND OBLIGATIONS OF ESTATE TO EXTENT ESTATE ASSETS ARE INSUFFICIENT. PR MUST CERTIFY TO TRUSTEE.**
- **TRUST CODE GIVES US ORDER FROM WHICH EXPENSES ARE PAID. NOTE EXPENSES OF ADMINISTRATION OF THE TRUST ARE PAID BEFORE AMOUNTS CERTIFIED BY PR. SO PAY TRUSTEE FEES AND ATTORNEY FEE BEFORE PR FEE OR ATTORNEY FEES FOR PR.**

IMPORTANT EXCEPTION

- **ASSETS PAID DIRECTLY TO A TESTAMENTARY TRUST NOT AVAILABLE TO ESTATE FOR PAYMENT OF EXPENSES OR LIABILITIES.**
- **INCLUDES LIFE INSURANCE PAID DIRECTLY TO TRUSTEE OF TESTAMENTARY TRUST, IRAS, KEOUGH ACCOUNTS.**
- **AFTER MOREY FIX, ALSO EXCLUDES LIFE INSURANCE PAID DIRECTLY TO TRUSTEE OF REVOCABLE TRUST.**

NON – PROBATE ASSETS



CLOSING WARNING!



- **PERSONAL REPRESENTATIVES OWE FIDUCIARY DUTIES TO CREDITORS.**
- **MUST SERVE KNOWN CREDITORS WITH NOTICE TO CREDITORS.**
- **PERSONAL LIABILITY FOR BREACH OF DUTY TO NOTIFY KNOWN OR REASONABLY ASCERTAINABLE CREDITOR (TENNESSEE CASE).**