

PROBATE CORNER

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ARTICLE: DO I HAVE TO FILE A CLAIM?

The purpose of this article is to provide concrete examples of when it is necessary to file a claim against an estate, and to clarify the “trust” exception to the claims statute.

I. "CLAIM" DEFINED:

Sec. 733.702, Fla. Stat. defines a "claim" as a demand against the decedent's estate that arose *before* the death of the decedent, even if the claims are unmatured, contingent, or unliquidated. Therefore, if the demand or expense was incurred by your client post-death, it may not be necessary to file a claim.

II. WHEN IS IT NECESSARY TO FILE A CLAIM:

It is necessary to file a claim against an estate for the following:

- ✓Funeral or burial expenses [§733.702(1)];
- ✓Claimant's personal property in the possession of the personal representative [§733.702(1)];
- ✓Damages against the decedent, including, but not limited to, an action founded on fraud or another wrongful act or omission, whether or not an action is pending at the time of death [§733.702(1)]. Examples: **(a)** a claim for contribution against the decedent joint tortfeasor's estate even though the injured party filed suit after the claim's period expired [*Koschmeder v. Griffin*, 386 So. 2d 625 (Fla. 4th DCA 1980)]; and **(b)** a claim for contribution from the decedent's estate on a jointly signed promissory note prior to a judgment on the note [*Simpson v. First Nat'l Bank & Trust Co.*, 318 So. 2d 209 (Fla. 4th DCA 1975)];
- ✓A claim against the decedent for intentional interference with an expectancy [*Carlton v. Carlton*, 575 So. 2d 239 (Fla. 2d DCA 1991)];

TA contingent claim. A contingent claim is "one where the liability depends on some future event, which may or may not happen, which renders it uncertain whether there ever will be a liability"[*Spohr v. Berryman*, 589 So. 2d 225 (Fla. 1991)]. Example: a breach of contract to make a will that was not discovered by the claimant until after death. The court reasoned that while the claim did not come to fruition until the contents of the will were ascertained following death, the claim, itself, was based upon an agreement which was made many years before his death. Claims against an estate are not limited to obligations of the decedent that could have been enforced against him while living [*Spohr v. Berryman*];

✓ An action to enforce purchaser's rights under the Pollution Control Act against the decedent seller's estate after discovering environmental contamination on the property [*Jones v. SunBank/Miami, N.A.*, 609 So. 2d 98 (Fla. 3d DCA 1992)];

✓ Exercising an option agreement with the decedent to purchase shares of stock if certain events come to pass [*Grossman v. Selewacz*, 417 So. 2d 728 (Fla. 4th DCA 1982)]; and exercising an option agreement with the decedent to purchase certain real estate in the event the claimant survived certain individuals including the decedent [*Kelley v. Burnsed*, 805 So. 2d 1101 (Fla. 1st DCA 2002)];

✓ An action to enforce claimant's rights under the federal Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA). The three-year statute of limitations under CERCLA does not preempt the shorter three-month Florida nonclaim statute [*U.S. Borax, Inc. v. Forster*, 764 So. 2d 24 (Fla. 4th DCA 1999)]; and

✓ A claim for quantum meruit or unjust enrichment for prepared-death services [*Aldebot v. Story*, 534 So.2d 1216 (Fla. 3rd DCA 1988)].

III. WHEN IS IT NOT NECESSARY TO FILE A CLAIM:

It is not necessary to file a claim against an estate for the following:

✓ A proceeding to enforce any mortgage, security interest, or other lien on property of the decedent [733.702(4)];

✓ A claim for the limits of casualty insurance protection in a proceeding to establish liability that is protected by the casualty insurance [733.702(4)];

✓ The filing of a cross-claim or counterclaim against the estate in an action instituted by the estate; however, no recovery on a cross-claim or counterclaim shall exceed the estate's recovery in that action [733.702(4)]; and

✓ Post-death claims. Post-death claims cannot be deemed a liability of the decedent because they arise after death. Examples: (a) reimbursement for mortgage payments made following death from credit life insurance policy proceeds issued to the estate. The plaintiff was not seeking the insurance proceeds that would have been paid to the mortgagee, but rather was seeking reimbursement of payments he was not required to make after the decedent's death by virtue of the credit life insurance [*Swenszkowski v. Compton*, 662 So. 2d 722 (Fla. 1st DCA 1995)]; (b) an insurance company's claim for overpayment of benefits paid to a hospital for services rendered to the decedent that the hospital mistakenly refunded to the personal representative [*In re Estate of Kulow*, 439 So. 2d 280 (Fla. 2d DCA 1983)]; (c) a claim for attorney's fees incurred post-death [*Thompson v. Hodson*, 825 So. 2d 941 (Fla. 1st DCA 2002)]; (d) an interest in real estate that passed by operation of law upon death [*Coba v. Craig*, 881 So. 2d 733 (Fla. 3d DCA 2004)]; and (e) estate expenditures [Langford v. Ferrara, 823 So. 2d 795 (Fla. 1st DCA 2001)].

IV. THE “TRUST” EXCEPTION TO THE CLAIMS STATUTE:

The trust exception refers to a situation where at the time of death the decedent held bare legal title to property, the equitable title or beneficial ownership having become vested in another who now claims the property adverse to the estate [*Estate of Peterson*, 433 So. 2d 1358 (Fla. 4th DCA 1983)]. In *Scott v. Reyes*, 913 So. 2d 13 (Fla. 2nd DCA 2005), the court found that the trust exception did not apply to the claim of a former co-tenant based on the joint ownership of two accounts that the decedent re-established in his sole name without the knowledge or consent of the co-tenant. The court reasoned:

[I]f a decedent asserted beneficial ownership of the property before his death, a claim to the property would be barred unless filed according to section 733.702. The reason being that the dispute as to ownership, creating the cause of action, arose before the decedent's death because the decedent, prior to his death, adversely claimed the property as his own. If, however, the decedent was merely in possession of the property but made no such assertion of ownership prior to his or her death, the assertion of ownership being made by the personal representative or heirs for the first time after the decedent's death would not require the filing of a claim.

It is not clear whether the trust exception applies to resulting trusts and constructive trusts. *See Scott*.