



Pennsylvania Creditors Bar Association

THE LATEST NEWS AND UPDATES REGARDING CREDIT AND COLLECTION AND THE FINANCIAL SERVICES INDUSTRIES



Welcome Message From The President

by Brit J. Suttell

Happy Holidays from PACBA! We had an extraordinary successful annual conference in October at the Desmond Hotel. I would like to extend another big thank you to our Education Chair, Matt Urban, for putting together a great event. In case you missed it, there's a recap of the conference in this newsletter.

About this time last year, the Bureau of Consumer Financial Protection was in the midst of a change-in-power as the Bureau's first director, Richard Cordray resigned, and Mick Mulvaney was installed as Acting Director. After almost a full year, the Senate recently confirmed Kathleen Kraninger as the Bureau's new Director. While the Bureau originally anticipated releasing proposed debt collection rules in February 2018, that date came and went. It is generally expected among industry professionals, however, that the industry will see proposed rules in the first quarter of 2019.

Not to be left behind, the United States Supreme Court granted certiorari in the matter of *Obduskey v. McCarthy & Holthus LLP*. The issue presented to the Court is whether the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq., applies to non-judicial foreclosures. Although the case might not effect Pennsylvania attorneys, it is always exciting and worth paying attention when there is a question of FDCPA applicability before the U.S. Supreme Court.

Many industry groups have filed amicus briefs, including the National Creditors Bar Association, The Commercial Law League, U.S. Congress, Michigan Creditors Bar and USFN – America's Mortgage Banking Attorneys.

The matter has been scheduled for argument on Monday, January 7, 2019. Thus, we should have an opinion in the first half of next year. As 2018 comes to close, I'd like to take a moment to thank the PACBA Board of Directors for their time and dedication to serving this organization. I'd also like to thank all of our members. If you would like to get more involved, please reach out as we welcome new ideas and opportunities for advancing the practice of law in the creditors' rights area.

PACBA wishes everyone a Happy and Prosperous New Year!

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Pennsylvania Creditors Bar Association

HANDLING CLAIMS AGAINST DECEDENT'S ESTATES A PRIMER FOR CREDITOR'S COUNSEL

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All too often, creditors and/or their collection counsel close an account when notified of the death of the debtor without any further investigation or attempts to collect the balance due. This article highlights the process in which claims against decedents' can be asserted with the possibility of collecting an otherwise uncollected charged-off account from a decedent. This primer is not a substitute for professional legal advice that only counsel with experience in estate administration can provide based on the facts/circumstances of each individual case.

When someone dies, the assets they owned become part of their estate, and the debts they owed are liabilities of the estate. A "personal representative" (i.e. executor/executrix or administrator/administratrix) must be formally appointed to administer the estate by the Register of Wills of the county in which the estate is probated. The personal representative is responsible for proper administration of the estate, which includes, but is not limited to, payment of all viable but unpaid claims that arose prior to the decedent's date of death.

Must all wills be probated? Can money be distributed to heirs without probate? If there are no assets in the decedent's name alone, the will does not need to be probated. There are also cases where distribution can occur without a will being probated. Any depository institution can release up to \$10,000 to family members when the decedent's accounts do not exceed \$10,000, the funeral bill has been paid, and a receipt from the funeral home has been presented. Other payments from life insurers and certain patient accounts (not exceeding \$4,000) are also exempt from probate. When in doubt, seek proper guidance from an experienced estate planning professional.

Distributions to beneficiaries of probated assets can be made only after (1) all inheritance and estate taxes have been paid and (2) all of the other claims against the estate have been paid in full. The majority of estates administered in Pennsylvania are closed "informally" or "out of court" which means that the accounting (usually informal) of the estate assets and expenses is presented to the beneficiaries, along with a release document. The beneficiaries approve this accounting and permit the personal representative to proceed with distribution. However, there are occasions when a formal accounting must be filed with the Orphan's Court and an Adjudication issued by the Orphan's Court Judge. Some examples that necessitate this process would be if the will is ambiguous, there are family disputes or minor beneficiaries involved, or if there are outstanding debts owed to creditors by the decedent. The formal accounting and a Petition which includes a proposed schedule of distribution are filed with the Orphan's Court, and all parties of interest are given notice of the audit date. Unpaid creditors may appear in Court at that time to voice any objections. The Orphan's Court judge will then



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issue an adjudication based on the information presented under oath to the Court. This process is more expensive, requires strict adherence to the rules, and can delay the closing of an estate anywhere from months to years depending upon the complexity of the case.

What steps should a creditor take to collect an unpaid debt from a decedent's estate? In most cases, if you notify the personal representative (or his/her counsel) of the basis of your claim along with supporting documentation, and they agree of the validity of the claim, payment is usually promptly remitted. However, if the personal representative does not agree to pay the claim promptly, or if the estate assets are not sufficient to pay it in full, the creditor should file a formal claim in the estate proceedings with the Clerk of the Orphan's Court. Claim forms are readily available on-line with most Registers of Wills. A sample is of a Notice of Claim utilizing Form 11 attached. Generally, a claim against a decedent must be filed within one year of the decedent's death, or at or prior to the call for audit by the Orphan's Court of the personal representative's account.

If you file a claim and (a) the personal representative fails to file an audit for adjudication and (b) the creditor fails to receive payment when due, (or if the personal representative will not agree to pay the claim and the creditor elects to further pursue the matter), consider filing a Petition to Compel Accounting to initiate the appropriate proceedings in the Orphan's Court. In some instances, the personal representative or counsel may argue that the estate is "insolvent." The burden to prove insolvency is on the decedent's representative, not the creditor filing a Notice of Claim.

When in doubt, seek assistance of competent counsel experienced in handling estate administrative proceedings for further guidance in pursuing unpaid claims. Proper due diligence and understanding of the claims process in estate administration may result in unexpected but welcome recoveries to the creditor who is persistent and follows the rules.

Why Membership in the Pennsylvania Creditors Bar Association is Beneficial:

- Access to member-only listserv: an internet discussion group
- Receive quarterly Newsletter to stay abreast of industry trends
- Seminars on relevant, practical topics
- Attorney to attorney networking opportunities

[Click for Membership Registration](#)

NOTICE OF CLAIM
(Filed Pursuant to 20 Pa.C.S. § 3532)

COURT OF COMMON PLEAS OF
_____ COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION

ESTATE OF _____, DECEASED
No. _____

To the Clerk of the Orphans' Court Division:

Enter the claim of _____ in the
(Claimant)
amount of \$ _____, against the above entitled Estate.

The Decedent, who resided at _____
(Street Address)
_____, died on _____
(Date of Death). Written notice of
said claim was given to _____
(Personal Representative or his/her counsel)
at _____
(Address)
on _____
(Date).

(Claimant)

(Street Address)

(City, State, Zip)

(Claimant's Counsel) _____
(Supreme Court I.D. No.)

(Address)

(Telephone)



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2018 Annual Meeting Summary

- Matt Urban

Education Committee Chairperson

On October 12, 2018, PACBA held its annual seminar and meeting at the Desmond Hotel in Malvern Pennsylvania. This year's conference saw creditors rights attorneys from across Pennsylvania converge on the Desmond for a wide ranging and informative educational session that was approved for 5 continuing legal education credits (4 Substantive, 1 Ethics).

The day began with a full breakfast followed by our first speaker of the morning, Jason Wehrle, who went over the hot topics in debt collection during the past year. Jason was followed by John Abel of the Pennsylvania Attorney General's Office who offered an excellent presentation that discussed the priorities of his office in the area of consumer financial protection. Before lunch Joann Needleman gave an informative presentation on the prospect of upcoming debt collection rules. After lunch Jim Valecko of Weltman, Weinberg & Reis gave an insider's view the Wetlman firm's case with the CFPB that went to trial earlier this year. Jim gave an insightful discussion of the case from the first CID all the way through to Weltman's victory at trial. Our final presenter of the day was Jim Warmbrodt who provided the group with a bankruptcy update and excellent discussion of the ethical pitfalls that can arise in a bankruptcy case.

As always the seminar could not have been a success without the support of the PACBA's great sponsor, Tim Clark of [ForSure Legal Services](#). On behalf of the Board of Directors of the PACBA, I want to thank our sponsors for their continued support and would encourage our members to reach out to them to learn more about the services they offer.

Thanks again to everyone who attended this year's seminar. We hope you found the speakers informative. We are in the process of finalizing the date and location of our 2019 event. Please stay tuned for an announcement in the near future!



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Why You Should Join the Credit & Collection Education Forum

Submitted by Jay Winston
President of CCEF

Compliance is more important than ever in our industry due to CFPB (BCFP) oversight. The Credit & Collection Education Forum (CCEF) has become an indispensable educational resource for Creditors, Law Firms, Collection Agencies and Debt Buyers in less than 5 years.

CCEF provides regular case law and regulatory updates to its 300+ member companies (over 1000 readers); CCEF offers a library of sample procedures, policies, guidelines, and cases; a regularly-updated online -self grading multiple-choice FDCPA tests for employees; discounted industry-specific CLE; and other real-time information that simply isn't available elsewhere. CCEF publishes a 40-50 page monthly bulletin (10x a year). Most subscribers pay less than \$400 per year.

CCEF is managed by Jay Winston, the co-author of [The Complete Guide to Credit and Collection](#) (Over 2500pp; 1996-current). Jay has over 20 years of practical experience in the industry, something that no list-serve has. Jay has also served as an expert witness. Unlike other groups, subscribers can ask an industry leader question as part of the basic subscription, and receive constructive feedback. For more info call 914-582-0285, or email info@ccefgroup.com. You can also check out their website at www.ccefgroup.com.

As a special offer, PACBA members who join CCEF before 12/31/18 can receive \$50 off their membership application.