

Filing Your Claim Against an Estate

Common questions by creditors with claims against a person who is now deceased:

Who is authorized to file?

Any person who is owed money by the deceased person whose estate is being probated in Cherokee County.

Where is the claim filed?

Cherokee County Probate Court
Cherokee County Justice Center
90 North Street, Suite 340
Canton, GA 30114

Is there a filing fee to record my judgment or claim in probate court?

Yes, a cost of \$2.00 per page for recording.

When is the claim due?

A legal notice to creditors will be published in the newspaper. Claims must be filed within ninety (90) days of the last publication.

What if the claim is a “secured” claim, like a mortgage?

You should consult with your legal counsel if there is any question about this. Generally speaking, a secured claim continues against the property whether or not filed with the court.

Do I have to obtain a judgment first?

No, but it helps. Where there are limited funds, creditors are paid in order of their “priority,” meaning the date they got their judgment(s) recorded. If you do not have a judgment recorded on the General Execution Docket of the Superior Court Clerk’s office, it will be one of the last to be paid.

Can I get a judgment in probate court?

No. Suits are filed in magistrate court, state court, and superior court. If you do not already have a judgment, you may file in one of those courts against the representative of the estate, who is appointed by the court.

How do I find out who the representative of the estate is?

You need to come by this office to review the estate files in person. Estate records are open records. You may also write and request the

Court provide you the information but there will be a research charge of \$10.00.

Will the probate court make the executor/administrator pay my claim?

No. The court has limited power to help you enforce payment of your claim. For example:

(1) While the estate is still open, if the creditor has not been paid but should have been, the creditor can file a petition to have the executor or administrator removed and ask to be appointed in order to take over the handling of the estate.

(2) Before allowing “discharge” or the act of closing an estate, the judge will review whether there were claims filed in the case and, if so, might hold up discharge until there is proof of payment. If there were insufficient funds, there is no reason for the court to withhold discharge. Also, some estate executors or administrators never bother to file for discharge, in which case this review would not be made.

How else can I get my claim paid?

The estate is like any other person, business, or entity that you might try to collect against. If you obtain a judgment against the estate and file it on the GED (General Execution Docket), you can proceed with the same types of remedies, like post judgment discovery, garnishment, etc. The probate court does not handle discovery or collection proceedings. Check with your attorney about filing in magistrate court, state court, or superior court.



This informational brochure is not intended to be used as legal advice. Please consult with your attorney.

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Presented as a public service by:

**Keith Wood, Judge
John Cline, Assoc. Judge**

**Cherokee County Probate Court
90 North Street, Suite 340
Cherokee County Justice Center
Canton, Georgia 30114**

**Take exit 19 off of I-575;
then Hwy. 20 West into Canton**

Main office number: 678/493-6160