CREDITORS' CLAIMS
AND ESTATE ADMINISTRATION

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I. INTRODUCTION

A. WHEN ADMINISTRATION BEGINS. Administration of the estate begins when letters testamentary or letters of administration are issued. § 75-3-103[1].

B. WHAT IT INCLUDES. Administration of a decedent's estate includes:

1. Taking possession of the decedent's property. § 75-3-708.

2. Managing, protecting, and preserving the estate. § 75-3-708.

3. Preparing an inventory of property owned by the decedent at death. § 75-3-705 – 75-3-707.

4. Paying necessary estate expenses and keeping track of those expenses so that an accounting can later be rendered. See § 75-3-1003(3). Often this requires opening a checking account for the estate.

5. Making provision, if necessary, for homestead, family, and support allowances. §§ 75-2-401 – 75-2-405, & 75-3-807.

6. Publishing or mailing notice to creditors. § 75-3-801.

7. Paying valid creditors' claims. §§ 75-3-805 – 75-3-807.

8. Making tax elections, paying taxes on the estate, and filing necessary tax returns. *See* § 75-3-708.

9. Selling estate assets, if necessary, for cash to pay debts and taxes.

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[1] All statutory references in this outline are to the Utah Code, 1953, as amended, unless otherwise stated.

C. WHEN IT ENDS. Administration ends when the personal representative makes final distributions to the heirs or devisees and closes the estate. *See* §§ 75-1-201(44), 75-3-1003.

D. DUTY TO ACT EXPEDITIOUSLY. In general, the personal representative has a duty to administer the estate "as expeditiously and efficiently as is consistent with the best interests of the estate." § 75-3-703(1).

II. INVENTORY (§§ 75-3-705 to 75-3-707)

A. WHEN PREPARED – within **three months** of appointment.

B. CONTENTS

1. Lists property owned by decedent at time of death, described in "reasonable detail."

2. Indicates property's fair market value at date of death.

3. Indicates type and amount of any mortgage, lien, or other encumbrance against the property.

4. Discloses name and address of each appraiser.

5. See Utah Uniform Probate Code (**UUPC**) **Form #32**, "Inventory."

C. WHO RECEIVES IT

1. Each interested person who requests it.

2. **May** be filed with the probate court.

D. SUPPLEMENTAL INVENTORY

1. Lists new property later known to P.R.; includes same information as required for original inventory.

2. Corrects description or fair market value in original inventory.

3. Given to same persons who received original inventory, and filed with court if original inventory was filed.

III. HOMESTEAD, FAMILY, AND SUPPORT ALLOWANCES

A. In General

1. Purpose of these allowances is to provide for decedent's surviving spouse and children in small estates; they relate directly to the summary administration procedure described in §§ 75-3-1203 & 75-3-1204.

2. May be waived by a surviving spouse before or after marriage. § 75-2-213(1).

3. Have priority over creditors and devisees; personal representative makes provision for paying these allowances before paying creditors. § 75-3-807(1). Note, however, that under federal law where an estate is insolvent the United States has super priority over all other "debts." 31 U.S.C. § 3713. The cases are in conflict over whether the homestead, exempt property, and family allowances are "debts" and therefore behind or ahead of federal claims. *Compare Schwartz v. Commissioner*, 560 F.2d 311 (8^{th} Cir. 1977) (family allowance is ahead of federal claims) *with Federal Reserve Bank of Dallas v. Smylie*, 134 S.W.2d 838 (Tex. Civ. App. 1939) (opposite view).

4. Apply only to estates of decedents domiciled in Utah. § 75-2-401.

5. Can be approved by the court following the filing of an appropriate petition.

B. Homestead Allowance (§ 75-2-402)

1. Amount is **$15,000**.

2. Paid to decedent's **surviving spouse**. If no spouse survives, then $15,000 is divided equally among decedent's **minor and dependent children**.

3. Has priority over all other claims against the estate.

4. Unless decedent's will or trust provides otherwise, is chargeable against any share passing to the surviving spouse (or minor and dependent children) by:

- **a.** decedent's will,
- **b.** intestate succession,
- **c.** elective share, and
- **d.** nonprobate transfers.

C. EXEMPT PROPERTY ALLOWANCE (§ 75-2-403)

1. Amount not to exceed **$10,000**.

2. Paid to decedent's **surviving spouse**. If no spouse survives, then the decedent's **children** (minor or adult) are jointly entitled to the allowance.

3. Satisfied by the decedent's "**exempt property**," i.e., household furniture, automobiles, furnishings, appliances and personal effects.

a. Amount of any security interests in the exempt property is excluded from their value.

b. Has priority over all other claims against the estate.

4. If value of exempt property (minus security interests) is less than $10,000, then **other estate assets** can be used to make up the $10,000 value.

a. This right to a deficiency make-up also has priority over other claims against the estate.

b. **<u>But</u>**, deficiency make-up abates as necessary to permit earlier payment of homestead allowance and family allowance.

5. Unless decedent's will or trust provides otherwise, is chargeable against any share passing to the surviving spouse (or children) by:

a. decedent's will,

b. intestate succession,

c. elective share, and

d. nonprobate transfers.

D. FAMILY ALLOWANCE (§ 75-2-404)

1. **<u>Purpose</u>** is to provide maintenance for decedent's:

a. surviving spouse,

b. minor children who decedent was obligated to support (this would include minor children living with an ex-spouse to whom decedent owed child support), and

c. dependent children, i.e, minor or adult children who decedent was in fact supporting.

2. **<u>Recipients</u>**

a. Paid to surviving spouse, if living;

b. Otherwise, paid to the children or to the persons having care and custody of the children.

c. If a minor or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or his guardian and partially to the spouse, according to their needs.

3. **<u>Manner and amount of payments</u>**

a. May be paid in lump sum or in installments

b. Installments may not continue for more than one year if estate is inadequate to discharge allowed claims.

c. Unless a court order is obtained, amount may not exceed **$18,000** paid either in a lump sum or in monthly payments of $1,500 for one year. § 75-2-405.

d. See **UUPC Form #38**, "Petition for Family Allowance" and **UUPC Form #39**, "Order Granting Family Allowance."

4. Family allowance has priority over all other claims against estate, except the homestead allowance.

5. Unless decedent's will or trust provides otherwise, is chargeable against any share passing to the surviving spouse or minor children by:

a. decedent's will,

b. intestate succession,

c. elective share, and

d. nonprobate transfers.

E. **SELECTION AND TRANSFER OF PROPERTY (§ 75-2-405)**

1. **<u>Selection of property for homestead allowance or exempt property</u>**

a. Selected by the surviving spouse, the guardians of the minor children, or the adult children.

b. Personal representative may make the selections, if persons entitled to make them fail to do so within a reasonable time.

c. **<u>But</u>** specifically devised property may not be selected, if the estate is otherwise sufficient to satisfy these allowances.

2. **<u>Transfer of property.</u>** The personal representative may execute an **instrument** or **deed of distribution** to establish ownership of property taken as homestead allowance or exempt property.

IV. CREDITORS' CLAIMS -- NOTICE AND PRESENTATION

A. NOTICE TO CREDITORS BY PUBLICATION (§ 75-3-801(1))

1. **<u>Required</u>**: "a personal representative . . . **<u>shall</u>** publish"

a. Although the personal representative has a duty to publish notice, the personal representative is not liable to a creditor or to a successor of the decedent for giving or failing to give notice. § 75-3-801(3).

b. In possible conflict with the foregoing, the Editorial Board's comments state that failure to publish notice is a breach of duty by the personal representative which could render the P.R. liable to a distributee who is sued by a creditor under § 75-3-1004. Section 75-3-801, Editorial Board Comment.

c. An **exception** to this duty exists for small (insolvent) estates under § 75-3-1203.

2. **<u>Timing</u>**: notice is published "upon appointment" of the personal representative.

3. **<u>Manner:</u>** published in newspaper of general circulation in county where probate is filed for three successive weeks.

a. <u>Query</u>: Is the Intermountain Commercial Record a newspaper of "general circulation"?

b. Some practitioners prefer the Salt Lake Tribune or Deseret News.

4. **<u>Content:</u>** announces the personal representative's appointment, gives his address, and notifies creditors of the estate to "present their claims within three months after the date of the first publication of the notice or be forever barred." See **UUPC Form #31**, "Announcement of Appointment and Notice to Creditors."

B. **ACTUAL NOTICE TO KNOWN CREDITORS** (§ 75-3-801(2))

1. **Discretionary:** under the statute, "a personal **may** give written notice." **But** failure to give actual notice to a known creditor may allow the creditor to claim violation of **due process**.

a. In *Tulsa Collection Services v. Pope*, 108 S.Ct. 1340, 485 U.S. 478 (1988), the Supreme Court held that due process requires that the personal representative make "reasonably diligent efforts" to uncover the identities of creditors and that actual notice be given to creditors who are known or "reasonably ascertainable." The required notice can be given "by mail or other means as certain to ensure actual notice."

b. The Utah Supreme Court has held, applying *Tulsa*, that notice by publication is insufficient to bar a known creditor's late-filed claim. *In re Estate of Anderson*, 821 P.2d 1169 (Utah 1991) (per curiam).

2. **Timing:** statute is silent; good practice is to mail written notice within 30 days of when notice to creditors is published, so that the period for known creditors to file claims does not extend beyond the period for unknown creditors.

3. **Manner:** "by mail or other delivery" to creditor.

a. Although certified mail, return receipt requested is not required, this would provide proof that mailing was sent.

b. Query: Would e-mail satisfy the "other delivery" requirement?

4. **Content:** notifies the creditor to present his claim (i) within 90 days from the published notice or (ii) within 60 days from the mailing or other delivery of the notice, whichever is later, or be forever barred. Same format as notice by publication "or a similar notice." (See attached example.)

C. **PRESENTATION OF CLAIMS**

1. **Presentation by Written Statement** (§ 75-3-804(1)(a))

a. Creditor prepares a written statement of the claim and either mails it to the P.R. or the P.R.'s attorney, or files it with the court.

b. Written statement must indicate the basis for the claim, the name and address of the claimant, and the amount claimed. (See **UUPC Form # 33**, "Claim Against Estate.") In general, a claim is sufficiently descriptive if it "acquaints a personal representative with a specific amount allegedly due and the general nature of the obligation." *Quinn v. Quinn*, 772 P.2d 979, 980 (Utah App. 1989), *quoting Dementas v. Estate of Tallas*, 764 P.2d 628, 630 (Utah App. 1988).

c. Claim is deemed presented when it is **received** by the P.R. or the P.R.'s attorney, or is **filed** with the court, whichever occurs first.

2. **<u>Presentation by Filing Suit</u>** (§ 75-3-804(1)(b))

a. Creditor may commence a proceeding against the P.R. in any court where the P.R. may be subjected to jurisdiction.

b. Commencement must occur within time limit for presenting claims.

3. **<u>Pending Proceedings</u>.** No presentation is required for matters claimed in proceedings pending when decedent died. § 75-3-804(1)(b).

D. TIME LIMITS FOR PRESENTATION OF CLAIMS

1. **<u>Time Limits for Presenting Claims Arising Before Decedent's Death.</u>** **(§ 75-3-803(1).)** A claim that arose before the decedent's death is time-barred if not presented within the **earlier** of:

a. **three months** of the publication of notice to creditors, if notice is published;

b. for creditors given actual notice, **within 90 days** from the published notice, or **within 60 days** from the mailing or other delivery of the actual notice, whichever is later; or

c. in any event, **one year** after the decedent's death.

2. **<u>Query: What Does a Creditor Do if No Probate Is Filed and the One Year Deadline Is Approaching?</u>** Before one-year deadline, the creditor could file a probate (pursuant to § 75-3-202(1)(f)) and the creditor's claim in that probate.

3. **<u>Other Time Limits</u>**

a. In all events, claims barred by the **nonclaim statute** in the decedent's domicile are also barred in Utah. § 75-3-803(2).

b. Claims based on a contract with the personal representative are barred within **three months** after performance by the P.R. is due. § 75-3-803(3)(a).

c. Other claims **arising after** the decedent's death are barred within the later of three months after the claim arises or one year after the decedent's death. § 75-3-803(3)(b).

4. **<u>Claims Exempt from Time Limits.</u>** The following claims are exempt from the time limits discussed above:

a. A proceeding to enforce a mortgage or lien against real property or a security interest against personal property.

b. A proceeding to establish the decedent's or personal representative's liability on a claim covered by liability insurance (but only to the limits of the insurance protection).

c. A claim for compensation or reimbursement by the personal representative or by the P.R.'s attorney or accountant.

d. Medicaid claims, which can be perfected at any time prior to final distribution by filing a notice in the court in the same manner as a creditor's claim. § 26-19.13.5(3)(a).

V. PAYMENT AND DISALLOWANCE OF CREDITORS' CLAIMS

A. PROVISION FOR OTHER ITEMS. (§ 75-3-807(1).) Before paying claims, personal representative first makes provision for:

1. Homestead, family, and support allowances,

2. For appealed claims and claims not yet allowed, and

3. Unbarred claims not yet presented, including costs and expenses of administration.

B. **WHEN PAID** - ordinarily, creditors claims are not paid until after the expiration of the **earliest** of the time limits for presentation of claims. § 75-3-807(1).

C. **EARLY PAYMENT**. (§ 75-3-807(2).) Personal representative can pay a "just" creditor's claim early (before the applicable time limit expires), but the P.R. will be **personally liable** to a creditor injured by such payment if:

1. The P.R. failed to require the payee to give adequate security for a refund of any portion of the payment necessary to pay other claimants, or

2. The payment was negligently or wilfully made so as to deprive an injured claimant of priority.

D. **CLASSIFICATION OF CLAIMS** (§ 75-3-805)

1. Order of payment. Claims are paid in the following order:

a. Reasonable funeral expenses.

b. Costs and expenses of administration.

c. Debts and taxes with preference under federal law.

d. Reasonable and necessary medical and hospital expenses of last illness.

e. Debts and taxes with preference under "other laws" of Utah

f. All other claims.

2. **Pro-rata within class.** Claims are paid pro-rata within a class.

3. **No preference.** A claim that is due is not given preference in payment over a claim that is not due.

E. **ALLOWANCE OR DISALLOWANCE OF CLAIMS** (§ 75-3-806)

1. Personal representative can choose to "disallow" a claim, wholly or partially.

a. Must send a notice of disallowance within **60 days** after time for original presentation of claim has expired. (See **UUPC Form #37**, "Notice of Disallowance of Claims.")

b. Any claim not disallowed within the 60-day time limit is deemed to be allowed.

c. **Query**: should the notice be sent by certified mail, return receipt requested, to prove it was sent and was timely? *See In re Estate of Robins*, 463 So. 2d 273 (Fla. App. 1984) (objection to claim against estate must be served by registered or certified mail).

2. A timely notice of disallowance will bar a claim if:

a. The notice warns the claimant of the impending bar, and

b. The claimant fails to file a petition for allowance or to commence a proceeding against the personal representative within **60 days** after the mailing of the notice of disallowance. (See **UUPC Form #35**, "Petition for Allowance of Claims and Order of Hearing.")

3. A petition for allowance of a claim results in a court proceeding, in which:

a. Notice of the proceeding must be given to the claimant, the personal representative, and other interested persons as directed by the court.

b. The court may order the claim to be allowed, in whole or in part.

4. **<u>Late-filed claims</u>**

a. Under the Probate Code, they are "barred" claims and therefore subject to being disallowed.

b. But some courts have allowed late-filed claims based on a "good cause" standard. *E.g.*, *In re Morse*, 364 N.W.2d 842 (Minn. App. 1985).

F. **UNPAID CREDITORS WHOSE CLAIMS ARE NOT BARRED**

1. During administration of estate, must follow procedures outlined above. § 75-3-104.

2. If estate is closed informally, have a right to receive a copy of the verified statement closing the estate. § 75-3-1003(1)(c).

3. After distribution of the estate, can sue distributees for up to amount distributed, less amounts received as exempt property, homestead, or family allowances. § 75-3-1004. Such claims are barred, however, one year after the decedent's death. § 75-3-1006(1)(a).

4. Can also sue personal representative for breach of fiduciary duty, fraud, misrepresentation, or inadequate disclosure related to settlement of the estate. If the estate is closed informally, claims for breach of fiduciary duty are barred unless filed within 6 months of the filing of a closing statement. § 75-3-1005.

5. **Query**: could an unpaid creditor sue the surviving spouse for family expenses? *See* § 30-9-2.

VI. SPECIAL CREDITOR SITUATIONS

A. ENCUMBERED ASSETS (§ 75-3-814)

1. Personal representative may pay a mortgage, lien, security interest, or other encumbrance; doing so does not increase share of a distributee entitled to the encumbered asset unless the distributee is entitled to exoneration under the will.

2. Personal representative may transfer an encumbered asset to a creditor (even if no claim has been filed) in satisfaction of his lien if doing so is in "best interest of estate." Example: deed in lieu of foreclosure.

B. SECURED CLAIMS (§ 75-3-809)

1. Creditor may surrender security and receive amount allowed by personal representative, or

2. Creditor may exhaust security and receive allowed amount of claim less the "fair value" of security, or

3. Creditor may sell the security (with P.R.'s consent) and receive allowed amount of claim less sale proceeds.

C. CLAIMS NOT DUE; CONTINGENT AND UNLIQUIDATED CLAIMS (§ 75-3-810)

1. If, before distribution of the estate, the claim falls due or becomes certain, then the creditor is paid in same manner as presently due, absolute claims.

2. In other cases, the parties may agree or the court may order:

a. That the creditor be paid now for the claim's present value, taking into account any uncertainty; or

b. That the creditor be paid in the future when the claim falls due or becomes certain, and that payment be secured by creating a trust, giving a mortgage, obtaining a bond or security, or otherwise.

D. **COUNTERCLAIMS** (§ 75-3-811). A claim against the estate should be reduced by any counterclaims the estate has against the claimant. If the counterclaim exceeds the claim, the court should render a judgment against the claimant for the excess.

E. **COMPROMISE OF CLAIMS** (§ 75-3-813). The personal representative may compromise any claim against the estate, including contingent and unliquidated claims.

VII. TRUST CODE PROVISIONS FOR DEALING WITH CREDITORS CLAIMS (§§ 75-7-308 – 75-7-319)

A. **PARALLEL TO ESTATE PROVISIONS.** These provisions closely parallel the provisions for estates.

B. **NOTICE TO CREDITORS.** Trustee for an "inter vivos revocable trust" may publish notice to creditors or give actual notice to known creditors. § 75-7-308.

1. Notice gives trustee's name and address and notifies creditors to present their claims or be barred.

2. Notice is published in county where settlor resided at time of death.

C. **PRESENTATION.** Claims are presented by either a written statement mailed to the trustee or by commencing a proceeding against the trustee . § 75-7-310.

D. **TIME LIMITS.** Claims against deceased settlor are barred unless presented within time limits that parallel the time limits for claims against an estate. § 75-7-309.

E. **PAYMENT OF CLAIMS**

1. **Provision for other items.** Unlike the provision for estates, the trust code provision does not require that the trust first "make provision" for appealed and unbarred claims before paying the presented claims. § 75-7-313.

a. It appears that this is unintentional; the words "after making provision for" were apparently deleted along with the words "homestead, family, and support allowances," and ought to be reinserted in a technical correction.

b. Compare the first sentence of § 75-7-313 with the first sentence of 75-3-807(1).

2. **<u>When claims are paid.</u>** Paid upon expiration of earliest time limit; early payment is allowed. § 75-7-313.

3. **<u>Classification</u>**. A similar classification scheme is established. Claims are paid pro-rata within a class. § 75-7-311.

F. **ALLOWANCE OR DISALLOWANCE.** The same procedure for disallowing claims, with the same 60-day time limit, is established. Claims not timely disallowed are deemed allowed. An aggrieved creditor may file a petition for allowance. § 75-7-312.

G. **UNPAID CREDITORS.** No parallel remedies are established for unpaid creditors whose claims are not barred.

H. **SPECIAL CREDITOR SITUATIONS.** Similar provisions are established for encumbered assets, secured claims, claims not due, contingent or unliquidated claims, counterclaims, and compromise of claims. §§ 75-7-314 – 75-7-319.

VIII. OTHER ESTATE ADMINISTRATION ISSUES

A. **SUMMARY PROCEDURE FOR SMALL ESTATES** (§§ 75-3-1203 and 75-3-1204)

1. A summary procedure is established for "small" estates, i.e., an estate with assets that do not exceed:

a. Homestead, exempt property, and family allowances,

b. Costs and expenses of administration,

c. Reasonable funeral expenses, and

d. Reasonable and necessary medical and hospital expenses of last illness.

2. Notice to creditors is **<u>not</u>** required.

3. Personal representative immediately distributes the estate to the persons entitled thereto and files a verified statement closing the estate in accordance with § 75-3-1204. See **UUPC Form #49**, "Verified Statement Closing Small Estate."

4. **<u>Effect.</u>** If no actions or proceedings involving the personal representative are pending in the court one year after the closing statement is filed, the appointment of the personal representative terminates. § 75-3-1204(2).

B. **MANAGING THE ESTATE'S ASSETS.** The prudent investor rule, which applies to trustees, also applies to a personal representative's investments and management of the estate's assets. §§ 75-3-703, 75-7-302.

C. **INTERIM DISTRIBUTIONS**

1. **<u>Not expressly authorized in probate code.</u>** The probate code does not expressly authorize the personal representative to make distributions during administration.

2. **<u>Mentioned in probate forms</u>**. The probate forms for formal closing (**UUPC Forms ## 52 & 53**) mention "periodic distributions" and "prior distributions" made before final distribution of the estate.

3. **<u>Could subject personal representative to personal liability.</u>** If the personal representative makes interim distributions and fails to maintain enough funds to pay creditors claims, the personal representative could be personally liable for breach of fiduciary duty. *See* § 75-3-1005; *compare* § 75-3-807(2) (in some cases, personal liability for early payment of creditors claims).

4. **<u>Could be safely made if less than applicable allowances.</u>** Interim distributions could be safely made to the persons entitled to homestead and family allowances if the distributions do not exceed the allowance amounts, because those allowances have priority over creditors claims.

D. **DISCLAIMERS**. If an heir or deviseee wishes to disclaim their share of the estate, the disclaimer must be filed within nine months of the decedent's death in compliance with § 75-2-801 and IRC § 2518 and applicable regulations.

(FORM LETTER FOR NOTICE TO KNOWN CREDITORS)

Mary Smith
123 Center St.
Anywhere, Utah 84123

____
(Date)

[CREDITOR'S NAME]
[CREDITOR'S ADDRESS]
[CREDITOR'S CITY, STATE, ZIP]

Re: Estate of John Smith, deceased
Probate No. 033901234

Dear ____________:

I am writing to inform you that I have been appointed personal representative of the above-entitled estate. If you are a creditor of the estate, you are hereby notified to (1) deliver or mail your written claim to me at 123 Center St., Anywhere, Utah 84123; (2) deliver or mail your written claim to Mark J. Morrise, the Personal Representative's attorney of record, at Callister, Nekeber & McCullough,10 East South Temple, Suite 900, Salt Lake City, Utah 84133, or (3) file your written claim with the Clerk of the District Court in Salt Lake County. To be timely, your claim must be received by me or Mark J. Morrise or filed with the district court within the later of (a) 60 days after the mailing of this letter or (b) 90 days after notice to creditors was first published, or be forever barred.

Yours truly,

Mary Smith
Personal Representative of
the Estate of John Smith