

Title

FREQUENTLY ASKED ^ QUESTIONS

June 2011

The present owner of the real estate we are examining died over a year ago. There is a creditor's claim filed in the Surrogate's file for this estate. Can I ignore it?

Not necessarily.

Under NJ law (NJSA 3B:22-4), a creditor of a deceased party seeking payment must present its claim to the executor or administrator within nine (9) months of the decedent's death. Within 3 months of that event, the personal representative of the decedent must advise the creditor of whether or not the claim will be paid in part or in full. Within 3 months of that notification, the creditor must file suit to recover any portion of the claim which was rejected.

When examination of the Surrogate's records relating to the deceased owner's estate reveals that such a claim was filed, proof must be sought from the personal representative that the claim was paid or in the alternative that the requirements of the statute were observed (a written response directed to the claimant outlining that all or a portion of the claim is rejected) and that more than 3 months have expired since that notice and no action to recover has been instituted. If these proofs cannot be obtained, the claim must be paid or a satisfactory escrow created (after consulting with a member of our underwriting department).

Many real estate professionals erroneously rely on NJSA 3B:22-22 et seq. (the "Decedent's Debts" law) to pass on all debts and obligations of a decedent after one year has expired since the date of death, including filed claims. This reliance is misplaced as this statute applies to debts of the decedent which have not risen to the level of a judgment or other form of perfected lien. (An example of this type of debt might be unpaid medical bills or credit cards.) While a filed claim is not "perfected", it still provides notice of a potential debt and must be properly addressed as set forth above.

As always, please feel free to address any questions to a member of our underwriting staff.