The Florida Non-Claim Statute

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INTRODUCTION

Inherent in the settlement of a decedent's estate is the presentation and, if necessary, the payment of claims and debts outstanding against it. To deal with this problem, many states, including Florida, have enacted laws which set out procedures to be followed for the presentation of these claims. These laws are commonly referred to as non-claim statutes. It is impossible to formulate a general rule as to the procedures to be followed in an area in which statutes vary so widely. This comment will attempt to deal generally with problems which have arisen, or could arise, under the Florida non-claim statute and similar enactments. In the absence of statements by the Florida courts bearing upon particular questions, possible solutions will be suggested based upon decisions rendered in other jurisdictions under similar statutes.

In Florida the personal representative of the estate of a decedent is required to publish notice of death to the creditors of the estate, once weekly for four consecutive weeks. Persons with claims against the estate are then allowed six months from the date of first publication to present their claims.

The statutes further provide that:

No claim or demand, whether due or not, direct or contingent, liquidated or unliquidated, or claim for personal property in the possession of the personal representative or for damages . . . shall be valid or binding upon an estate . . . unless the same shall be in writing and contain the place of residence and post office address of the claimant, and shall be sworn to . . . and be filed in the office of the county judge granting letters.

PURPOSE

The non-claim statute has several purposes. One function is to aid in securing the expeditious settlement of estates, or conversely, to provide

3. This period was reduced from 8 months by a 1961 amendment. Fla. Laws 1961, ch. 61-394, § 3. See In re Woods' Estate, 133 Fla. 730, 183 So. 10 (1938) with reference to a previous reduction in the time period. This case held that the time period to be applied was the one in effect at the decedent's death and not the one in effect when the claim in dispute arose.
5. Ibid.
relief against the uncertainty fostered by possible assertion of late claims against an estate. A further purpose is to provide a means of establishing the validity of the claims presented. Lastly, in order for a widow to make an intelligent choice as to whether she should take according to the provisions of her husband's will or elect to take dower in the estate, it is necessary that she be apprised of all claims against the estate. Under Florida law this choice must be exercised within nine months after first publication of notice to creditors, or three months after the date that all unfiled claims become void. Thus, a widow is furnished ample opportunity to weigh and decide which share should provide her the most advantageous financial arrangement.

WAIVER OF PRESENTATION

One important problem raised by the statute is: What is required for presentation of a claim? The statute provides that the claim must be in writing and filed in the office of the county judge granting letters of administration. The county judge must then mail a copy of the claim to the personal representative.

The decided weight of authority is to the effect that the requirement of presentation may not be waived by the personal representative. It has been held in other jurisdictions that even misleading or fraudulent conduct on the part of an administrator will not do away with the presentation requirement. Thus, in New Jersey, the recognition of a claim and an oral agreement by the executor to pay it when there were sufficient funds available did not negative the requirement of filing. In Alabama, the absence of the administrator from the state during the non-claim period, making presentation impossible, did not prevent the period from expiring. In Missouri, an administrator sent a blank claim form to a creditor with instructions to complete and return it. The administrator indicated that he would perform the filing procedures. Although the administrator failed to file the claim, the court held his conduct neither waived the requirement for filing nor estopped him from raising the statute as a defense to the claim.

12. Lewis v. Champion, 40 N.J. Eq. 59 (Ch. 1885).
13. This statute required that presentation be made to the executor. See Branch Bank v. Donelson, 12 Ala. 741 (1848).
The position of the Florida courts seems to be in accord with the majority of states with respect to waiver;\(^\text{16}\) it has been held that neither the administrator's personal knowledge of the existence of the claim,\(^\text{17}\) nor good faith on the part of the claimant in attempting to comply with the statute\(^\text{18}\) will obviate the necessity of filing.

However, it is evident that a more lenient attitude has been adopted toward the allowance of claims when some unconscionable conduct can be found on the part of the personal representative which contributes to the failure to file the claim. In *Adams v. Hackensack Trust Co.*,\(^\text{19}\) the supreme court found that the conduct of the estate's representatives which led the claimant to believe that the estate was being administered in a state other than Florida, and that his claim was properly filed under the laws of the other state, constituted fraud so as to bar the plea of the non-claim statute in a court of equity.

Waiver of presentation similarly has been found in cases in which the executor has paid interest on outstanding obligations of the estate during the non-claim period. A series of seemingly contrary cases pertaining to this problem has left the law in a state of uncertainty.\(^\text{20}\)

In an early case,\(^\text{21}\) a complaint was said to state a cause of action when it set out facts indicating that no claim had been filed within the statutory period, but that during and for several years after the non-claim period, payments on the mortgage debt had been made. These facts were held to demonstrate a sufficient presentation under the statute to withstand a demurrer to the complaint. In the later case of *Jefferson Standard Life Ins. Co. v. Estate of José Lovera, Inc.*,\(^\text{22}\) it was held that the payment of interest on the debt during the time for filing did not waive the necessity for filing the claim.

Probably the best reconciliation of these seemingly divergent cases is found in the rationale of the court in *Marshall Lodge No. 39, A.F. & A.M. v. Woodson*.\(^\text{23}\) In this case, suit was filed on a promissory note, presentation of which had not been made. During the non-claim period, an interest

\(^{16}\) American Sur. Co. v. Murphy, 151 Fla. 151, 9 So.2d 355 (1942); *In re Woods' Estate*, 133 Fla. 730, 183 So. 10 (1938); *In re Williamson's Estate*, 95 So.2d 244 (Fla. App. 1957).

\(^{17}\) Van Sciver v. Miami Beach First Nat'l Bank, 88 So.2d 912 (Fla. 1956).

\(^{18}\) *In re Woods' Estate*, 133 Fla. 730, 183 So. 10 (1938).

\(^{19}\) 156 Fla. 20, 22 So.2d 392 (1945).


\(^{21}\) Miller v. Crosby, 68 Fla. 365, 67 So. 76 (1914).

\(^{22}\) 125 Fla. 682, 171 So. 512 (1936).

\(^{23}\) 139 Fla. 579, 190 So. 749 (1939).
payment had been made on the note. The court discussed the several conflicting cases and reconciled them by saying that the problem in each case is whether the payment of interest is made in recognition of the debt (in which case presentation is waived), or is made simply for the purpose of deferring institution of suit. Thus it would appear that although there is much language to the contrary, waiver is a question of the intent of the administrator in each case.

This rule, perhaps, has been carried beyond its logical terminus in the recent case of Davis v. Evans. In this case a negligence action was commenced against the decedent while he was still living. The complaint, however, inadvertently misnamed the defendant. Shortly thereafter the defendant died and, without informing the plaintiff of the death, the decedent’s attorney filed an answer using the incorrect name. Subsequent to the expiration of the non-claim period, the attorneys for the estate filed a suggestion of death and the additional defense of failure to present the claim. The defendant’s motion for summary judgment was granted, but this ruling was reversed on appeal. The court held that the continuation of the case under the incorrect name and the failure to inform the plaintiff of the defendant’s death disclosed “the existence of a genuine controversy upon the material question of whether the defendant’s executor is estopped to assert the failure of plaintiff to comply with the non-claim statute . . . .” While it cannot be denied that this decision is an equitable one for the plaintiff, an incongruity is apparent since the advantage of this estoppel was gained by the plaintiff’s negligence in filing suit in the wrong name. This case reflects a greatly increased liberality toward allowance of claims against estates. Whether it is indicative of a trend in Florida, or is only an isolated instance which will not be followed, is a question that remains unanswered. It is submitted that a slightly more restrictive attitude toward these claims would be more in keeping with the purpose of the statute.

MANNER OF PRESENTATION

The common law rule in Florida regarding the filing of suit as a means of presentation was expressed in Jones v. Allen. In this case an action for personal injuries was brought against an administrator within the non-claim period. Shortly after the period expired, the administrator interposed the additional defense of failure to make timely presentation in accordance with the provisions of the statute. The plaintiff argued that his actions constituted sufficient compliance with the statute to validate the claim.

25. The complaint was filed in the name of Anderson Willie Phillips instead of the correct name which was Anderson Woody Phillips.
27. 134 Fla. 751, 184 So. 651 (1938).
The court said that presentation in this manner would not be consistent with the stated purpose of the statute, i.e., the expeditious disposition of estates, and held the claim void.28

The non-claim statute was amended in 194729 to overcome this decision by providing that if suit is filed and service of process perfected against the personal representative of an estate within the statutory period, the claim will not be impaired for failure to file it.30 However, the claimant will be precluded from recovering any costs and attorney's fees incurred as an incident to the suit.31

One exception to the statute is that a suit commenced against a person who subsequently dies will be honored though no formal presentation is made within the non-claim period, provided the executor is substituted as party defendant in place of the decedent.32

The exact procedure for presentation as dictated by the statute is in some respects no more than a directory requirement, and strict compliance is not always necessary. For example, in Ramseyer v. Datson33 a claim was presented directly to the executor of an estate within the statutory time. However, the claim was not filed in the county judge's court as required by the statute. The executor neither denied nor contested the claim within the statutory period. The failure to comply with the statute was raised as a defense subsequent to the expiration of the time period. The supreme court held that, with regard to uncontested claims, presentation directly to the executor is sufficient. The court did say by way of dicta that a different result might obtain if the claim were contested.34

Non-Claim Statute Distinguished From Statute of Limitations

While the non-claim statute appears to be simply another name for a statute of limitations and courts often treat it as such, there is a valid distinction between them. A statute of limitations is purely mechanical in its operation. It commences to run on the accrual of a cause of action and, subject to certain factors which may temporarily toll its running,

28. Ibid.
29. Fla. Laws 1947, ch. 23970, § 1(a), at 742 (now Fla. Stat. § 733.16(1)(a) (1961)).
30. This view appears to be followed by the majority of jurisdictions in the United States. Federal Land Bank v. Ditto, 227 Iowa 475, 288 N.W. 618 (1939); Barton v. Harmon, 207 Okla. 197, 248 P.2d 601 (1952); Carroll v. Eblen, 178 Tenn. 146, 156 S.W.2d 412 (1941).
33. 120 Fla. 414, 162 So. 904 (1935).
34. "Where a claim is denied . . . the effect of [the non-claim statute] . . . is undoubtedly to make it obligatory that the denied or disputed claim be thereupon sworn to and filed with the county judge . . . ." Id. at 420, 162 So. at 906.
extinguishes the cause of action when the limitation period has expired. While the effect of the statute of non-claim may be quite similar, its purpose is to establish certain procedures which must be followed by a claimant to give force and effect to his claim, rather than to lessen the time within which an action may be brought. This is seen in that the commencement of the period in which claims may be presented has no relation to the accrual of the cause of action. Further, the claimant is always in direct control of whether or not the procedures are followed.

In the case of a general statute of limitations, the day on which the cause of action arose is not counted. It has been held under a statute of non-claim similar to Florida's, in which the period of time commences to run on the publication of notice, that the day of publication is counted. Although no case has ruled directly on the point, it would appear that there is no objection to extending the time period an additional day if the terminal date falls on Sunday or on a holiday.

A further distinguishing feature of the non-claim statute in Florida is that, in the absence of a specific statutory provision raising disabilities, it runs against all persons including those under an otherwise legal disability. Thus, the statute of non-claim has been held to run against infants, insane people and married women.

While some might argue that these distinctions are superficial since the ultimate result in both cases is the same, it would seem that the point is sufficiently cogent to merit more than a cursory treatment when it arises.

**Contingent Claims**

When a creditor has a liquidated and mature debt against a person at the time of his death, no problem would seem to arise in presenting the claim. However, as seen from the statute, not only are matured claims required to be presented, but also unmatured and contingent ones.

A contingent claim has been defined as "one where the liability depends upon some future event, which may or may not happen, which renders it uncertain whether there will ever be a liability." While to hold that

39. Florida at one time had such a provision (see Fla. COMP. LAWS ANN. § 2405 (1914)), but it was repealed.
42. Rowell v. Patterson, 76 Me. 196 (1884).
43. Barry v. Minahan, 127 Wis. 570, 107 N.W. 488 (1906).
44. American Sur. Co. v. Murphy, 151 Fla. 151, 158, 9 So.2d 355, 357 (1942).
these claims need not be presented would do obvious violence to the purposes of the statute, it can be seen from this definition that the act is quite encompassing and a claim could easily be lost by even a prudent creditor.

The harshness of this requirement is exemplified in American Sur. Co. v. Murphy. The surety on a replevin bond failed to file a claim against the estate, since the decedent was solvent at the time of his death. Some two years later, however, the surety was forced to pay the bond. The court held that the surety had no recourse against the estate, since he failed to file notice of the claim.

Another example of a contingent claim may be found in Fowler v. Hartridge. In this case, the plaintiff was the lessor of business premises under a ninety-nine year lease which was binding on the decedent-lessee’s executors and assigns. The decedent’s family continued to maintain the property and make rental payments for nine years. Subsequently, they refused to continue the rental payments. The court held that the plaintiff’s failure to present the claim within the non-claim period precluded his action against the estate for breach of the leasehold agreement.

Some states have met the inequities which spring from this rule by providing that contingent claims need not be filed until a specified time after they mature. Perhaps the most desirable method for dealing with claims of this nature is Professor Atkinson’s suggestion to eliminate entirely the requirement of presentation. Instead, he would permit recovery against the legatee or devisee who holds the decedent’s property at the time the claim becomes absolute. Recovery should, of course, be limited to the amount of the decedent’s property then in the hands of the beneficiary.

CLAIMS THAT NEED NOT BE PRESENTED

a. Government

Some claims which fall, or seem to fall, within the definition of the act have been held to be valid though not presented. The rule is well settled that the non-claim statute has no applicability to claims of the United States Government. The landmark decision is United States v. Summerlin, 310 U.S. 414 (1940).

45. Supra note 44.
46. It has been held in other jurisdictions that a surety who pays a debt of the decedent may avail himself of the prior presentation by the creditor. Braught v. Griffith, 16 Iowa 26 (1864); Gilbert v. Garber, 62 Neb. 464, 87 N.W. 179 (1901).
47. 156 Fla. 585, 24 So.2d 306 (1945).
In which a claim was filed on behalf of the Federal Housing Administration against an estate subsequent to the expiration of the non-claim period. The administrator of the estate argued that the Florida statute of non-claim was not a statute of limitations, but merely a procedure prescribed for the prompt and orderly settlement of estates. The United States Supreme Court held that irrespective of the purpose of the statute, to the extent that it limited the time in which a suit could be brought by or on behalf of the federal government, it was an overstepping of state powers.

This rule has been extended in more recent cases to apply not only to suits on behalf of the government, but also to rights of action created by federal statutes. In Cox v. Roth the Supreme Court held that a judgment recovered under the Jones Act was not barred against the defendant's estate for failure to give timely notice of the claim to the administrator. A state legislature cannot diminish the limitation period prescribed by Congress for a federally created claim. This decision makes no attempt to consider the distinction between a statute of limitations and one of non-claim and frustrates the purpose of the non-claim statute.

In the recent Florida case of Riza v. Estate of Riza, a different result was reached with regard to claims of the United States Government with respect to insurance proceeds of a decedent. The decedent died intestate, leaving an unpaid federal gift tax. After the non-claim period had expired, the government petitioned the court for payment of the tax from the proceeds of the decedent's insurance. The district court of appeal held that the effect of Florida law was to pass title to the insurance proceeds directly to the heirs of the deceased. Thus, the money never became an asset of the estate. The government was precluded from recovering its claim from the insurance proceeds. It was, of course, allowed to recover what assets it could from the balance of assets left in the estate under the rule of the Summerlin case.

Whether the state of Florida is barred by the statute for failure to make timely assertion of its claims has been decided directly in only one case. In Munro v. Bechard a claim against the decedent's estate by the Florida Industrial Commission was held to be barred for failure of the

51. Supra note 50.
52. Ibid.
55. 132 So. 2d 308 (Fla. App. 1961).
56. FLA. STAT. § 222.13 (1961). "Whenever any person shall die in this state leaving insurance on his life, the said insurance shall inure exclusively to the benefit of the surviving child or children and husband or wife of such person in equal portions . . . ."
58. 132 So. 2d 429 (Fla. App. 1961).
agency to make timely presentation of the claim. This case follows what might be considered the majority view as to the applicability of non-claim statutes to state governments.\textsuperscript{59} However, it conflicts with dicta of an older supreme court case. In \textit{Heidt v. Caldwell}\textsuperscript{60} the court stated quite simply that "the language of this section [the non-claim statute] is not made applicable to the state of Florida."\textsuperscript{61} This statement, of course, is in no way controlling on the courts in this state, and it would seem that the sounder principle is that espoused in the more recent \textit{Munro} case. It is submitted that there is no reason why the state government should be allowed to prejudice the rights of heirs and other beneficiaries under a will, or to circumvent the policies and purposes of the statute. If it fails to make a timely presentation, its claim should be lost.

\textbf{b. Mortgage Claims}

At common law, the failure to file notice of a mortgage claim would bar any suit against the estate, including one to foreclose on the mortgaged property.\textsuperscript{62} This rule was in force at a time when there was a non-claim statute in effect.\textsuperscript{63} However, no specific statutory provision existed with respect to these claims. The Florida Probate Act of 1933\textsuperscript{64} introduced a proviso in the statute that any claim of a duly recorded mortgage or of a lien on personal property not in the hands of the claimant must be presented if a deficiency decree is to be entered.

Therefore, the rule today is that even without filing notice of the mortgage claim, the mortgagee will always have recourse to foreclosure on the encumbered property. This, combined with the rule which requires notice to be given in order to validate the claim on the mortgage note, has led to some rather interesting decisions.

For instance, if a mortgage is executed by a married couple on homestead property, the remainder rights of their children may be extinguished in a foreclosure proceeding.\textsuperscript{65} However, if the husband dies, the indebtedness becomes a claim which should be satisfied from the assets of his estate, without recourse to the mortgaged property.\textsuperscript{66} This situation has

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\textsuperscript{59} State v. Crocker's Estate, 38 Ala. 306, 83 So.2d 261 (1955); In re Ashing's Estate, 250 Iowa 259, 93 N.W.2d 587 (1958); Reith v. County of Mountrail, 104 N.W.2d 667 (N.D. 1960).

\textsuperscript{60} 41 So.2d 303 (Fla. 1949).

\textsuperscript{61} Id. at 305.

\textsuperscript{62} Brooks v. Federal Land Bank, 106 Fla. 412, 143 So. 749 (1932).

\textsuperscript{63} FlA. COMP. LAWS ANN. §§ 2398, 2405 (1914).

\textsuperscript{64} Fla. Laws 1933, ch. 16103. The specific provision is now FlA. STAT. § 733.16(1)(b) (1961).

\textsuperscript{65} "Nothing in this Article shall be construed to prevent the holder of a homestead from alienating his or her homestead so exempted by deed or mortgage duly executed by himself or herself, and by husband and wife, if such relation exists . . . ." FlA. CONST. art. 10, § 4.

\textsuperscript{66} See In re Comstock's Estate, 143 Fla. 500, 197 So. 121 (1940).
given rise to the anomalous result that the failure of the mortgagee to present his claim will absolve the estate completely, yet subject the homestead property to foreclosure proceedings, effectively defeating all rights of the remaindermen.\textsuperscript{67}

An attempt by the remaindermen to file notice on behalf of the mortgagee to preserve their interest in the homestead has been held ineffective.\textsuperscript{68} Even when the mortgage claim is filed, if it is later withdrawn, the mortgagee must look to the encumbered property for recovery, and the estate is not liable for the debt.\textsuperscript{69} Since a mortgage is primarily a personal debt, the proper procedure would seem to require satisfaction of the claim from the general assets of the estate without recourse to the mortgaged property. However, Florida courts have reasoned that a mortgagee need not seek satisfaction from the assets of the estate, but may choose to rely solely on the encumbered property. This choice is his alone to make, and the executor's knowledge of the claim, or its presentation by another, in no way serves to reflect the mortgagee's choice. The validity of this reasoning breaks down, however, when it is remembered that the presentation of the claim in no way prejudices the mortgagee's right to proceed against the property itself if the estate is insufficient to satisfy the debt.\textsuperscript{70}

The decisions in these cases can be criticized for two reasons. First the requirement of a presentation by the claimant alone is, in effect, a holding that form governs over substance, a conclusion which is not supported by the previously discussed cases bearing on this problem.\textsuperscript{71} Secondly, it does work some degree of prejudice to the homestead remaindermen. It would seem that at least to the extent that substantial compliance is made with the statute, i.e., the administrator is apprised of the claim by a formal presentation from any interested party, the mortgagee should be made to proceed first against the assets of the estate. In this way, the purpose of the statute will be fulfilled.

c. Property Held in Trust

It is a well established principle that a claim for property held in trust by the decedent need not be presented.\textsuperscript{72} The reason for this is that trust

\begin{itemize}
  \item \textsuperscript{67} In re Comstock's Estate, \textit{supra} note 66.
  \item \textsuperscript{68} Furlong v. Coral Gables Fed. Sav. & Loan Ass'n, 121 So.2d 797 (Fla. App. 1960).
  \item \textsuperscript{69} In re Simpson's Estate, 113 So.2d 766 (Fla. App. 1959).
  \item \textsuperscript{70} "We find the general rule is that a mortgagee filing claim against an estate does not waive his right to enforce the mortgage lien." \textit{Id.} at 768.
  \item \textsuperscript{71} See discussion of Ramseyer v. Datson in the text accompanying note 33 \textit{supra} and the discussion of Starke v. Pfender in the text accompanying note 78 \textit{infra}.
  \item \textsuperscript{72} Hodges v. Logan, 82 So.2d 885 (Fla. 1955); Sewell v. Sewell Properties, 159 Fla. 570, 30 So.2d 361 (1947); Cooey v. Cooey, 132 Fla. 716, 182 So. 202 (1938); Tibbetts Comer v. Arnold, 108 Fla. 239, 146 So. 218 (1933); \textit{2 REDFERN, WILLS AND ADMINISTRATION OF ESTATES IN FLORIDA § 285, at 531 (3d ed. 1957).}
property does not become an asset of the decedent’s estate on his death.\textsuperscript{73} One exception to this rule might be found in the case of a trust corpus which cannot be traced or adequately separated from the balance of the deceased’s assets. Under these circumstances, it might be wise for the cestui que trust to file his claim notwithstanding the rules or theories to the contrary.\textsuperscript{74}

d. Replevin and Ejectment

The claim of a person to replevy property,\textsuperscript{75} and probably a claim sounding in ejectment,\textsuperscript{76} need not be presented. The reason for this is closely analogous to the absence of a requirement for presentation of claims for trust property. In these actions, the claimant seeks recovery on a title superior to that of the estate. When the claimant prevails, it is on the strength of his better title. To hold that he was barred from recovering his property for failing to present his claim would be, in effect, a change in the property ownership by reason of the non-claim statute. This result obviously was not intended.\textsuperscript{77}

\textit{Starke v. Pfender}\textsuperscript{78} indicates that Florida will look to the purposes of the act to determine if the requirement of presentation will be imposed. In this case, the plaintiff sued to cancel a mortgage on property, an act which the decedent had agreed to do in exchange for food and lodging to be provided by the plaintiff. The court pointed out that the purpose of the act was not only to expedite settlement of estates, but also to protect the rights of creditors. The right of the mortgagor was in the nature of a defense to a foreclosure action and, thus, not a claim requiring presentation.

\textbf{Conclusion}

It cannot be gainsaid that the non-claim statute serves a utilitarian purpose in the law of estate administration. Florida courts have, for the most part, sensibly interpreted the act. If the constructions of the statute are tempered with reason, and it is not used as an absolute rule to invalidate otherwise just claims, the non-claim statute will ably serve its purpose.

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\textsuperscript{73} See Lopez v. Lopez, 96 So.2d 463 (Fla. 1957).
\textsuperscript{74} See Cooey v. Cooey, 132 Fla. 716, 182 So. 202 (1938).
\textsuperscript{75} Moore v. Moore, 141 Miss. 795, 105 So. 850 (1925).
\textsuperscript{76} ATKINSON, WILLS § 127, at 697 (2d ed. 1953).
\textsuperscript{77} But see, \textit{In re Del Paronto's Estate}, 172 Kan. 7, 238 P.2d 464 (1951) in which replevin of a ring was denied for failure to file a claim.
\textsuperscript{78} 146 Fla. 262, 200 So. 850 (1941).