

# SKATOFF, PA

The Florida Law Firm for Probate

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Dear Clients of Skatoff PA:

I am writing to provide an update on the docket, the creditor claim process under Florida law, and the rules regarding the timing and necessity of filing an independent action.

First, the docket has been revised and you can now see all claims filed and many objections to the claims.

Second, under Florida law, creditors must file a claim with the probate court in order to receive payment from the estate. Claims were due to be filed within 3 months from the day of the first publication of the Notice to Creditors. The first publication date of the Notice to Creditors was December 23, 2022. Accordingly, the time for filing claims expired March 23, 2023. Your claim has been timely filed.

Although not applicable to you, please bear in mind that a certain class of creditors is not time barred and may still file a creditor claim in the estate. Any creditor who did not receive a Notice to Creditors and who can be classified as “reasonably ascertainable” as a creditor may still file a creditor claim. If such a creditor never receives a Notice to Creditors, the deadline for filing a claim is two years from the date of death of Mr. Baker, which will be March 26, 2024. If the estate sends such a creditor a Notice to Creditors in the future, that creditor will have only 30 days within which to file a creditor claim.

Third, and most importantly, once an objection to a creditor claim has been filed, you have 30 days within which to file an “independent action.” The independent action is a separate lawsuit filed against the estate, in which you will have an opportunity to prove up your claim against the estate. An independent action is not filed in the probate court, but rather in the general civil jurisdiction of the Collier County Circuit Court. You may also file your action in Federal court if your claim qualifies you to do so. Federal court jurisdiction is outside the scope of this memo, but I would be happy to explain those rules to anyone who asks.

If you go back and review your claim, you will see that it is mostly contingent in nature, meaning that we really do not know the extent of the damages you are owed from the estate, because events have not happened as of yet that need to. The investment fund in which you invested is

the primary obligor to you: if your investment funds were properly placed within the investment company and the investments were made as promised and are currently held in good standing by the investment company, you will receive your investment (or the return on your investment) directly from the investment company. Only if Mr. Baker did something wrong will your primary cause of action be against the estate. That being said, even if the investment is secure, your claim still has some force – the estate will still owe you attorneys fees, perhaps tax penalties, etc. These are secondary in nature, however. The main concern is whether your investment is secure, and, if not, how to receive compensation from the estate.

At this time, we have no way of knowing whether your investment was made pursuant to the terms of your agreement with Mr. Baker. Likewise, we have no idea if the investment, though properly made, is still in good standing.

I have had one conversation with the estate's attorney, Mr. McNamara. He advised that the investment company records are all electronic, and that as of our call, no one associated with the estate has been able to access these electronic systems due to password issues. The estate is attempting to access these electronic systems at the highest level of priority.

At present, I have zero visibility into whether the investment company will be able to establish that your investment is secure. Hopefully this will change with time. In the meantime, it serves very little purpose to incur the time and large expense to file the independent action against the estate when there exists the possibility (probability?) that your investment is in fact secure. To repeat, if your investment can be established as secure, your claim against the estate will be limited to issues of a secondary nature – attorney fees, IRS penalties, and any other damages incurred from Mr. Baker's negligence in not putting in place a succession plan to deal with the occurrence of his passing.

In order to let the process with the investment company play out, and to avoid a large expense in filing and litigating an independent action lawsuit against the estate, I am attempting to remove the 30-day deadline within which to file the independent action.

I have shared a draft tolling agreement with Mr. McNamara. Hopefully I will be able to finalize that agreement with him, at which time I can share it with you and determine whether you wish to have your deadline tolled. If I am unable to reach an agreement with Mr. McNamara, I may file a motion with the probate court and ask that the deadline be eliminated. The problem with that approach is that we have 30 days from today to draft and file the motion and have the motion heard by the court. I do not know whether that will be possible, but I intend to work on that next week, to see if we can get a hearing before the court with enough time before the 30 days passes such that this makes sense.

In the event I am unable to extend the deadline for filing the independent action, Monday, May 22, 2023 is the deadline to file the lawsuit. Should filing become necessary (or desirable) I always recommend that a lawsuit be filed several days before the deadline, preferably at least a week before hand. Our arrangement does not cover be filing this lawsuit on your behalf. If it looks like filing the lawsuits will be required, I will be reaching out to you with enough time to give you your options.

If you have any questions, please do not hesitate to contact me.

Sincerely,

*Jeffrey Skatoff*

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