



# Fein, Such, Kahn & Shepard, P.C.

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## **Insolvent Estates - Who gets paid What when an Estates Debts are more than its Assets?**

February 14, 2012 by [Deirdre Wheatley-Liss](#)



A decedent doesn't always leave assets to his or her heirs - instead there may only be a pile of debt. An estate is known as an "Insolvent Estate" when its liabilities exceed its assets. What to do in that situation?

**When determining if there are any assets that will pass to heirs, it is first important to understand that certain assets in New Jersey are excluded from satisfying a decedent's debts.** There are special categories of assets, such as retirement plans (IRA, 401(K), 403(b)) and life insurance, that are exempt from the claims of creditors under state law in New Jersey. Accordingly, there could be beneficiaries of a 401(k) plan and

a life insurance policy who will receive assets as a result of the decedent's death, but creditors will go unpaid because there are not sufficient assets outside of the retirement plan and life insurance to satisfy the decedent steps. Look to [NJSA 25:2-1](#) regarding the exclusion of retirement plans, and NJSA §§ [17B:24-6](#) regarding the exclusion of life insurance. See [here](#) for a great guide of creditor protection for life insurance in all states. **One important caveat is that if the "estate" is the named beneficiary of the retirement plan or the life insurance policy, then the proceeds will be available to satisfy the claims of creditors.** Therefore, to get the benefit of creditor protection it is important to name a person or trust as the beneficiary of that asset, and not the "estate".

**The next question in this case is if the person is named as the Executor under the Will wants to take on that role under the Will.** If there are no assets that are distributable to heirs, and the Executor is only going to be acting for the benefit of creditors, the Executor may be concerned about taking on that role and liability. Remember, being named as a Executor is only a nomination to that role – the Executor is free to decline for any reason.

**In paying the claims of creditors, certain claims have priority over other claims.** The theory behind this is that if certain claims were not paid, there will be no incentive to provide the necessary services to an estate that may be insolvent. The priority of payment is (See [NJSA 3B:22-32](#)):

- Reasonable funeral expenses;
- Costs and expenses of administration (including attorney fees, accountant fees, surrogate fees, executor commission, and other costs necessary to the handling of an estate);
- Debts for the reasonable value of services rendered to the decedent by the Office of the Public Guardian for Elderly Adults;
- Debts and taxes with preference under federal law or the laws of this State (including any current or back taxes, interest and penalties);
- Reasonable medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him;
- Judgments entered against the decedent according to the priorities of their entries respectively;
- All other claims.



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If there is more than one claim in any class of claims, and insufficient dollars to pay all of that class of claims, then the **claimants of the same class will be paid in proportion to the amount claimed**. This might happen if there were six different medical bills dealing with the decedent's final illness, and not enough dollars to pay all those bills. See [NJSA 3B:22-32](#).

Executors dealing with insolvent estates therefore have to be very carefully aware of (1) what assets of the estate are available to satisfy claims, and (2) a plan to address a situation where there are not enough assets to pay all debts.

Tags: [Estate Administration](#), [Probate](#), [Probate and Estate Administration](#), [Surrogate](#), [insolvent](#)

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