

## Priority of Claims Against an Estate

The first principle to know: an executor or administrator must observe the priorities prescribed by law for payment of a decedent's debts. Failing to observe the priorities could subject the executor or administrator to personal liability for the decedent's debts.

Any claim against an estate by a creditor of the decedent has priority over any claim of a beneficiary or heir for a share of the estate. There are numerous exemptions to this general principle, especially for insolvent intestate estates. These are set out in O.C.G.A. §44-13-100 (attached) and are generally similar to state exemptions for bankruptcy. The exemptions in 44-13-100 specifically apply if a decedent has left a surviving spouse or children (though not necessarily minor children). The exemptions may apply in cases where an intestate decedent is not survived by a spouse or children. The exemptions would likely not apply to a decedent who left a valid Will.

O.C.G.A. §53-7-40 ranks claims against the estate in seven levels of priority.

1. Year's support for the family is the first claim in rank. If a decedent is not survived by a spouse or minor children, year's support does not apply.
2. The second claim in rank is for funeral expenses, in an amount that corresponds with the circumstances of the decedent in life. If the estate is solvent, a suitable protection for the grave may also be provided.
3. The other necessary expenses of administration are third in priority. These expenses include costs due to the probate court, expenses for bond, expenses for the employment of agents and legal counsel, expenses for travel, and commissions paid to the personal representative.
4. Fourth in priority are the reasonable expenses of the decedent's last illness. Note that, service rendered by family members caring for another is considered gratuitous under Georgia law and thus not compensable in this context. Note also, however, that this presumption is rebuttable; for example, if a written personal care contract existed prior to decedent's death.
5. Unpaid taxes or other debts due the state or the United States are fifth in priority.
6. The sixth priority includes judgments, secured interests, and other liens created during the decedent's lifetime. These are paid according to the priority of lien. Secured interests on specific property are preferred only to the extent of that property. A car loan, for example, would be satisfied only by the repossession of the vehicle; any deficiency would fall to the next priority. A mortgage debt on real property would be satisfied to the extent of the sales proceeds; and satisfaction would occur in priority of all liens on that property (first mortgage, second mortgage, etc.) Again, any deficiency would fall to the next priority.
7. The seventh category of priority is that of all other claims. Unsecured debt, such as credit card debt, is an example of a claim that falls within this category. If liabilities exceed available assets, claims within this category may be negotiated or compromised by the personal representative. Any compromise negotiated by the personal representative should not exceed a prorated amount based on the amount of total claims versus the amount of available assets. Otherwise, the personal representative may be personally liable for deficiencies.

Note: generally speaking, the personal representative need not invade non-probate assets to satisfy any of the above claims (for example, life insurance proceeds or qualified retirement accounts paid to designated beneficiaries – named individuals or entities; proceeds paid to the decedent's "estate" will be subject to all claims above).