

1973 S.C. Op. Atty. Gen. 172 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3539, 1973 WL 20998

Office of the Attorney General

State of South Carolina

Opinion No. 3539

June 11, 1973

*1 The Honorable John C. Williams, Jr.

Member

House of Representatives

Apartanburg County

Apartanburg County Courthouse, Room 321-B

Apartanburg, South Carolina 29301

Dear Mr. Williams:

You have requested an opinion as to whether an oral attestation is sufficient under the definition of the words 'duly attested' as is contained in Section 19-474 of the 1962 Code of Laws of South Carolina. Diligent research indicates that an oral attestation is not sufficient.

Section 19-474 bars all claims not 'filed' within five months after publication of the first notice to creditors, except - - -
' . . . before the expiration of that period, an account thereof, duly attested, shall have been filed with such executor or administrator, or with the judge of probate of the county in which such estate is being administered.'

Although according to Black's Law Dictionary the word 'attest' includes the definition: 'to make solemn declaration in words or writing to support a fact' a part of this definition cannot be applied to 'attested' as used in Section 19-474. Attest also means to affirm to be true or genuine, to certify, formally by signature (Black's Law Dictionary). This has historically been the implied and preferred definition—used when the words of any statute require an account of a claim to be filed with a particular office or person.

If you will notice the wording of the statute, 'an account thereof, duly attested' has to be filed with the executor or other proper person. An 'account of' anything can usually be oral or written. But under Section 19-474, an oral account will not be sufficient. Oral claims cannot be filed. 31 Am. Jur. 2d, Executors and Administrators, § 298, 74 A.L.R. 376.

Generally the word 'filed' applies only where there is writing. 36A C.J.S. File § 1. Traditionally, the word 'filed' carries with it the idea of a permanent preservation of the thing so delivered. Black's Law Dictionary states that 'file' is to deliver an instrument or other paper to the proper officer for purpose of being kept on file by him in proper place. It has been noted also in 8 S.C.L.Q. 164 (1955), that any claim to be in enforceable one against assets of a deceased must be filed within the stated period.

In view of the historical background and the wording of Section 19-474, the oral attestation made by claimant to the executor in the situation you cited is not sufficient. The books left by claimant to show the debt is only evidence which proves the debt.

In the opinion of this office in order for a duly attested account of a debt to be filed as required in Section 19-474, the claim must be written.

Very truly yours,

Raymond G. Halford

Assistant Attorney General

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