

## **RULE 4:90. Sale Of Property Subject To Escheat To Pay Debts**

### **4:90-1. Complaint by Personal Representative for Sale**

The complaint in an action by a personal representative to sell real or personal property of an estate subject to escheat in order to pay debts shall state the description of all the real and personal estate whereof the decedent died seized, its location, its character, condition and value, as near as may be, and a true account of all of the debts as can be discovered.

**Note:** Source-R.R. 4:109-1, 4:109-8; caption and text amended June 29, 1990 to be effective September 4, 1990.

### **4:90-2. Complaint by Creditor for Sale**

The complaint of a creditor in an action to sell real or personal property of an estate subject to escheat to pay debts, shall state that:

- **(a)** the creditor has reduced the claim against the executor or administrator to judgment;
- **(b)** the judgment remains partly or wholly unsatisfied for want of assets;
- **(c)** there is property, specifying its description, location, character, condition and value, as near as may be; and
- **(d)** the executor or administrator, notwithstanding that demand has been made upon him or her more than one month previously, has failed to commence an action for the sale of estate property.

**Note:** Source-R.R. 4:109-2, 4:109-8; caption and text amended June 29, 1990 to be effective September 4, 1990.

### **4:90-3. Order to Show Cause**

Upon filing of the complaint, and if the complaint is made by a creditor upon notice to the executor or administrator, the court may make an order requiring all persons interested in the decedent's real or personal estate, including the State Treasurer and the Attorney General, to show cause on a specified date not less than two months after the date of the order why so much of the real or personal estate should not be sold as will be sufficient to pay the decedent's debts or the residue thereof. A copy of the order to show cause together with a copy of the complaint shall be sent by registered or certified mail to the State Treasurer and the Attorney General and no further proceedings shall be taken unless a certificate, signed by the Attorney General and the State Treasurer certifying that the State will interpose no objection to the making of an Order authorizing the sale of such property, has been received by the Court. The order to show cause shall, one month prior to the date fixed in the order for the hearing, be published once in a newspaper of this State, as the court directs.

**Note:** Source-R.R. 4:109-4, 4:109-8. Amended July 7, 1971 to be effective September 13, 1971; amended June 29, 1990 to be effective September 4, 1990.

### **4:90-4. Objections to Claim**

An objection to any claim set forth in the complaint may be made in writing by the executor or administrator, any person interested in the real or personal estate, the State Treasurer, the Attorney General or any other person in interest. The claimant shall be given ten days notice, in such manner as the court directs, that the objection will be brought on for hearing on the return day of the order to show cause.

**Note:** Source-R.R. 4:109-5, 4:109-8. Amended June 29, 1990 to be effective September 4, 1990.

#### **4:90-5. Judgment for Sale**

If only part of the real or personal estate of which the decedent died seized is to be sold, the judgment for sale shall specify the part to be sold.

Note: Source-R.R. 4:109-6, 4:109-7, 4:109-8. Amended July 22, 1983 to be effective September 12, 1983; caption and text amended June 29, 1990 to be effective September 4, 1990.

#### **4:90-6. Notice of Application for Prosecution of Bonds of Heirs and Devisees**

If upon the filing of a complaint to sell property subject to escheat to pay debts of an estate wherein heirs or devisees of the decedent have previously given bond to the executor or administrator, the court may provide in the order to show cause not only for the sale of the property but also for prosecution on the bonds. In such case the order to show cause shall provide for notice to be given to such heirs or devisees if they are still living and to their sureties or, if dead, to their personal representatives. Notice may be given to them by ordinary mail whether they reside within or outside this State.

Note: Source-R.R. 4:109-8, 4:109-9, former R. 4:90-7 amended and redesignated June 29, 1990 to be effective September 4, 1990.