

in essence, what might be known, could be known, and I'm not sure what responsibility and/or penalty that the personal representative has for failure to give notice or what process they need to go through to determine known as opposed to unknown creditors.

SENATOR LANDIS: Thank you. Let me see if I understand the question. I'll be happy to respond, Mr. Speaker. What is the obligation of the personal representative to the creditor to let them know that their interests are at stake in the event the personal representative knows that they exist, what duty do they have and what burden or sanction do they have if they don't follow that? Is that a fair characterization of the question?

SENATOR WARNER: That, plus how do you go about determining the known ones?

SENATOR LANDIS: Okay. Personal representatives, and by the way they don't have to be lawyers, you can make your family member a personal representative if you'd like. Personal representatives have a fiduciary duty to the estate and that means the obligation to use loyalty, due diligence and care in the administration of the probate. What a personal representative will do is to usually collect the financial dealings, the bills, the contracts, whatever known information there is for the debts, whether they are monthly statements, whether they are bank loans, whether they are car purchases. Generally speaking, you have, let's say, some mail-in payments or a book of coupons that you're supposed to send back. You have monthly statements. Personal representatives go out and collect that data. They go through them. They see which are what you might call open accounts or debts that are still due and owing. Those then become the body of the known creditors. The duty that the personal representative has is not directly to the creditor, it is to the estate. Their fiduciary relationship is to the estate and that relationship is overseen by the court. The personal representative, at the end of their dealings, goes back in and asks to be released. The creditors' rights are statutory. The creditors' rights are not to complain that the personal representative did or did not do their job. The creditor says this. I got adequate notice, I complied. Or, in the event they didn't receive adequate notice, let's say that a personal representative, had they searched, could have found the existence of a contract but just didn't find it, therefore, didn't mail specific notice to the creditor. What the creditor