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**Outline for**  
***Priority of Creditor Claims Against an Estate***  
***Administered in the New York State Courts***

*Reference: SCPA § 1811*

This outline is intended to be only a general outline for the identification of the priority of creditor claims against the estate of a decedent, where New York State Law is applied.

Priority or Class	Statutory Reference	Comment
I	SCPA § 1811 (1)	<b>Reasonable funeral expenses</b> of the decedent and <b>expenses of administration</b> are given preference to all debts and claims against the estate and shall be paid out of the first monies received by the fiduciary.
II	SCPA § 1811 (2)(a)	Debts entitled to a preference under the laws of the United State or the State of New York.
III	SCPA § 1811 (2)(b)	Taxes on property assessed prior to death.  <b>Note this exception:</b> Any taxes paid by the fiduciary on real property which descends to a distributee or passes to a devisee shall be a charge thereon, for which the beneficiary must reimburse the estate, unless the Will of the decedent provides to the contrary.
IV	SCPA § 1811 (2)(c)	Judgments docketed and decrees entered against the decedent according to the priority thereof respectively.
V	SCPA § 1811 (2)(d)	All recognizances, bonds, sealed instruments, notes, bills and unliquidated demands and accounts.

**Preferences within each priority or class:** SCPA § 1811(3) provides that “preference shall not be given in the payment of any debt over other debts of the same class, except those specified in sub-paragraph (c) of subdivision 2” [i.e. claims in priority II and III are apportioned while claims in priority IV are not apportioned, but rather preference is given according to the priority of the debt within that class – e.g. date of recording of the judgment and the lien thereof].

**Statutory priority for the Department of Social Services/Public Welfare Official.**

§ 105 and § 104 of the NY Social Services Law (NYSSL) gives a priority within Class IV (referring to SCPA 1811(2)©) for the benefit of the Department of Social Services. In effect these sections provides:

1. NYSSL § 105 gives the Department of Social Services a **preferred claim** to be paid out of any **life insurance** payable to the estate.
2. NYSSL § 104 provides that the Public Welfare Official shall be “deemed a preferred creditor as to priority or class IV claims.”

***BUT NOTE:*** There are certain claims that come ahead of and defeat the preferred creditor status of the Public Welfare Official, which may be summarized as follows:

1. **Specific Prior Lien:** A judgment creditor with a “specific prior lien” has priority over the preferred status granted under NYSSL § 104 and § 105. A specific prior lien is established in the following cases:
  - a. ***Re: Real Property:*** Where the judgment creditor has a judgment which has become a specific lien on the decedent’s real property, i.e. the lien attaches to the real property within the county when the judgment is filed at the County Clerk’s Office. In re: Pierce 472 N.Y.S. 2d 275 (Sur. Ct. Onondoga County 1984), *aff’d*, 483 NYS 2d 500 (App. Div., 4<sup>th</sup> Dep’t. 1984), in a one paragraph memorandum decision the Appellate Division stated that the preference granted under the Social Services Law § 104 was only as to general creditors and not as to specific prior lienors.
  - b. ***Re: Personal Property:*** Where there is a judgment against the decedent’s estate and where the judgment creditor has filed an execution with the sheriff or has utilized other devices found in CPLR Article 52 in order to have established a lien on the personal property.

Note: A simple judgment against the decedent without executing thereon will not give the specific prior lien status to the judgment creditor.

- c. The decision in *In re: Robinson*, 754 N.Y.S.2nd (Sur. Ct., Nassau Co. 2003) states the black letter law rule on specific prior liens as follows: the statutory preference of the Department of Social Services under SSL § 104 and § 105 defeats prior docketed judgments in all cases, except, where there is real property held in an insolvent estate or where the judgment debtor has executed one of the devices under CPLR Chapter 52 to establish a lien on the personal property.

**2. Equitable Liens.** There are some cases which indicate there is a class of equitable liens that can operate as a specific prior lien, which would defeat the preferred status of the Department of Social Services. In one such case, *Stathos v. Murphy*, 276 N.Y.S. 2d 727 (App. Div., 1<sup>st</sup> Dep't 1966), an assignee of a right (but not a judgment) to the proceeds of a pending lawsuit were present claims that gave rise to an equitable lien, which defeated the right of the judgment creditor whose rights rose later in time than the assignment. In effect this specific property subject to the lien had been "set apart and identified" equitably.

For further explanation of claims against the estate please reference an article entitled "Priority of Creditor Claims Against Estates" by Bruce M. DiCisso in the NYSBA Trust and Estates Law Section Newsletter, Fall 2006, Vol. 39, No. 3.

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