TULSA PROFESSIONAL COLLECTION SERVICES v. POPE: ANALYSIS AND APPLICATION BY THE COURTS

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I. Introduction

The determination of creditors' claims is one primary purpose of estate administration.[1] The procedures for filing and recovering on claims vary from state to state.[2] However, two competing policies underlie all claims processes.[3] First, states are interested in prompt and efficient administration without unduly infringing on the rights of the decedent's creditors, and second, the creditors want to be paid.[4]

Nonclaim statutes bar the claim of a creditor who fails to present his claim against the estate within the applicable time period defined by the statute.[5] In *Tulsa Professional Collection Services v. Pope*,[6] the United States Supreme Court found unconstitutional an Oklahoma nonclaim statute which required notice only by publication to any interested creditors.[7] According to the majority, the Oklahoma statute violated the due process

1. Medlin, *Creditors' Claims: Traps and Problems*, 1 Prob. Prac. Rep. 1 (1989) [hereinafter Medlin].
2. *Id.*
3. *Id.*
4. *Id.*
5. *Id.*
6. Tulsa Professional Collection Servs. v. Pope, 108 S. Ct. 1340 (1988).
7. *Id.* at 1348.

clause of the fourteenth amendment because it failed to require actual notice to creditors that were either known or reasonably ascertainable to the estate's personal representative.[8] The Court held that actual notice to such creditors was mandatory before their claims, even though not filed within the applicable statutory time limit, could be barred.[9]

The language used by the majority in *Tulsa* was fairly broad and susceptible to several interpretations and applications. Practitioners need to be aware of the various legal issues which have been impacted by the *Tulsa* decision. This Note analyzes *Tulsa Professional Collection Services v. Pope* and discusses subsequent decisions in which courts have determined that the holding in *Tulsa* was either controlling or persuasive authority. Finally, some of the particular problems and challenges posed to the states' claims and lien practices by the *Tulsa* mandate are presented.

II. An Extension of Due Process

The specific nonclaim statute at issue in *Tulsa* was section 333 of the Oklahoma probate code.[10] Immediately after appointment, the executor or executrix of an estate was required to give notice to the deceased's creditors pursuant to section 331 of the Oklahoma probate code.[11] The purpose of this notice was to advise creditors that they must present their claims to the executor or executrix within two months of the date of the first publica-

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8. *Id.*

9. *Id.*

10. *Id.* at 1341-42. This statute reads: "If a claim arising upon a contract heretofore made, be not presented within the time limited in the notice, it is barred forever . . . ." Okla. Stat. tit. 58, § 333 (1988).

11. Tulsa Professional Collection Servs. v. Pope, 108 S. Ct. at 1342. This statute reads:

> Every executor or administrator must, immediately after his appointment, give notice to the creditors of the deceased, requiring all persons having claims against said deceased to present the same, with the necessary vouchers, to such executor or administrator, at the place of his residence or business, to be specified in the notice, within four (4) months from the date of the first publication of said notice (or its posting if publication is not required); such notice must be published in some newspaper printed in said county for two (2) consecutive weeks . . . .
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> . . . .
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> Provided, that in all proceedings wherein intestate decedent or the testator has been dead for a period of more than five (5) years prior to the commencement of said proceeding, only one (1) month's notice to creditors shall be given; and creditors shall be required to file claims within one (1) month from the date of the first publication of said notice;
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> Provided, further, if there be no newspaper in said county in which legal publication may be had, and the court, by order or decree so finds, such notice must be posted up in three (3) public places in the county, one (1) of which shall be at the court house where the county court is held.

Okla. Stat. tit. 58, § 331 (1988).

tion.[12] This statute required only publication as the method of notice.[13] Section 333 operated to bar a creditor's claim not filed within two months.[14] There were certain exceptions to the statute but none were applicable in the *Tulsa* case.[15] This statute was not unique to Oklahoma probate practice. The probate codes of almost all states include such statutes in order to promote each state's interest in facilitating the administration and expeditious closing of estates.[16]

The decedent in *Tulsa* died testate on April 2, 1979 while a patient at the St. John Medical Center in Tulsa, Oklahoma.[17] His wife initiated probate proceedings and pursuant to section 331 of the Oklahoma probate code, notice to creditors was published in the *Tulsa Daily Legal News* for two consecutive weeks.[18] This notice advised creditors that they were required to file any claims that they had against the estate within two months of the first publication of the notice.[19]

The appellant in *Tulsa* was a subsidiary of the hospital and was the assignee of a claim for expenses connected with the decedent's hospital stay.[20] Neither the appellant nor the hospital filed a claim with the appellee within the two month time period following the publication of the notice.[21] Over four years later, in October 1983, the appellant filed an Application for Order Compelling Payment of Expenses of Last Illness pursuant to section

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12. Tulsa Professional Collections Servs. v. Pope, 108 S. Ct. at 1342.

13. *Id. See* OKLA. STAT. tit. 58, § 331, *supra* note 11.

14. Tulsa Professional Collection Servs. v. Pope, 108 S. Ct. at 1342. *See* OKLA. STAT. tit. 58, § 333, *supra* note 10.

15. Tulsa Professional Collection Servs. v. Pope, 108 S. Ct. at 1342. A claim "may be presented at any time before a decree of distribution is entered." *See* OKLA. STAT. tit. 58, § 333, *supra* note 10. Also, mortgages and debts not yet due are excepted from the two month time limit. Tulsa Professional Collection Servs. v. Pope, 108 S. Ct. at 1342-43.

16. *See* UNIFORM PROBATE CODE § 3-801, 8 U.L.A. 351 (1983) [hereinafter UPC]; Falender, *Notice to Creditors in Estate Proceedings: What Process is Due?*, 63 N.C.L. REV. 659, 667-68 (1985) [hereinafter Falender]. There are two basic forms of nonclaim statutes, both of which are included in most states' probate codes. Falender, *supra* at 664-72. The first form provides for a relatively short time period that begins to run after commencement of probate proceedings. *Id.* The second form, calling for a longer period, begins to run from the decedent's death. *Id.* Typically, if probate proceedings are never commenced and therefore the shorter period is never triggered, then the second form becomes operative and claims nonetheless may be barred. *Id. See, e.g.*, ARK. STAT. ANN. § 28-50-101(a), (d) (1987) (3 months if probate proceedings commenced; 5 years if not); IDAHO CODE § 15-3-803(a)(1), (2) (1979) (4 months; 3 years); MO. REV. STAT. § 473.360(1), (3) (1986) (6 months; 3 years). Notification to creditors of the requirement to file claims is often solely by publication. *See* UPC, *supra*; Falender, *supra* at 660, n.7. In most jurisdictions, it is the publication of notice that triggers the nonclaim statute. *See* UPC, *supra*. *See also*, ARIZ. REV. STAT. ANN. § 14-3801 (1975); FLA. STAT. § 733.701 (1987); UTAH CODE ANN. § 75-3-801 (1978).

17. Tulsa Professional Collection Servs. v. Pope, 108 S. Ct. at 1343.

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

594 of the Oklahoma probate code.[22] The appellant argued that this specific statutory command rendered compliance with section 333's two month deadline for filing claims unnecessary.[23] The district court of Tulsa County denied the application, rejected this argument, and ruled that claims under section 594 fell within the general requirements of the nonclaim statute.[24]

The Oklahoma Court of Appeals affirmed the district court's decision.[25] On rehearing, the appellant argued for the first time that the nonclaim statute's notice provision violated due process.[26] This argument was rejected by the court of appeals[27] and the decision was subsequently affirmed by the Oklahoma Supreme Court.[28]

On appeal, the United States Supreme Court recognized that states have a legitimate interest in limiting the time during which a creditor may file a claim, but emphasized that any state action affecting property must be accompanied by proper notice of the action.[29] In order to satisfy due process, such notice must advise the interested parties of the action and allow them a chance to protect their interests.[30] In deciding whether the Oklahoma notice procedure met due process standards, the Court was faced with three determinations: 1) Is the claim of a creditor property protected by the fourteenth amendment? 2) Does the imposition of the claims barring time limit involve sufficient state action to invoke the due process clause? and 3) Do the legitimate interests of the state outweigh the rights of the creditor in this situation?[31]

The Court answered the first question summarily by characterizing the appellant's interest as an unsecured claim: a cause of action against the estate for an unpaid bill.[32] Although an intangible property interest, the Court noted that "little doubt remains that such an intangible interest is property protected by the fourteenth amendment."[33]

The second question was whether the state of Oklahoma's involvement with the nonclaim statute was substantial enough to implicate the due pro-

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22. *Id.* This statute reads in relevant part: "The executor or administrator, as soon as he has sufficient funds in his hands, must pay the funeral expenses, and the expenses of the last sickness . . . ." OKLA. STAT. tit. 58, § 594 (1988).

23. Tulsa Professional Collection Servs. v. Pope, 108 S. Ct. at 1343.

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. Tulsa Professional Collection Servs. v. Pope, 733 P.2d 396 (Okla. 1986).

29. Tulsa Professional Collection Servs. v. Pope, 108 S. Ct. at 1347.

30. *Id.*

31. Medlin, *supra* note 1, at 2.

32. Tulsa Professional Collection Servs. v. Pope, 108 S. Ct. at 1344.

33. *Id.* at 1344-45. *See, e.g.*, Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982) (a cause of action under Illinois' Fair Employment Practices Act is a protected property interest); Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950) (cause of action is a species of property protected by the fourteenth amendment's due process clause).

cess clause.[34] The appellee argued that Oklahoma's nonclaim statute was a self-executing statute of limitation.[35] As such, the appellee cited another Supreme Court decision, *Texaco Inc. v. Short*,[36] to support her argument that due process did not require that potential plaintiffs be given notice of the impending expiration of a period of limitations.[37] The Court noted that the appellee's analysis of the *Texaco* decision was correct, but disagreed with the appellee's characterization of the nonclaim statute, stating "Oklahoma's nonclaim statute is not a self-executing statute of limitations."[38] The Court emphasized that it is the self-executing feature of a statute of limitation which promotes a state's interest in providing repose for potential defendants and avoidance of stale claims.[39] Other than enacting the limitation period, the state plays no role; this limited type of involvement falls short of the type of state action required to implicate the due process clause.[40]

The Court then contrasted the state of Oklahoma's involvement in the nonclaim statute at issue.[41] Throughout Oklahoma probate proceedings, the probate court is intimately involved. Without that involvement, the time bar of section 333 is never activated; essentially the nonclaim statute does not become operative until after proceedings have been commenced in state court.[42] The probate court must appoint the executor or executrix before notice, which triggers the time bar, can be given.[43] It is only after this appointment that the statute provides for notice.[44] After the notice is published, copies of the notice and an affidavit of publication must be filed with the court pursuant to section 332 of the probate code.[45] The time period during which claims must be filed begins to run only after all of these actions take place.[46] The Court concluded that the Oklahoma probate court's "involvement is so pervasive and substantial that it must be considered

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34. Tulsa Professional Collection Servs. v. Pope, 108 S. Ct. at 1345. The fourteenth amendment protects property interests only from deprivation through state action. *Id.* "Private use of state sanctioned private remedies or procedures does not rise to the level of state action . . . . Nor is the State's involvement in the mere running of a general statute of limitation generally sufficient to implicate due process." *Id.* (citing Texaco, Inc. v. Short, 454 U.S. 516 (1982); Flagg Bros., Inc. v. Brooks, 436 U.S. 149 (1978)).

35. Tulsa Professional Collection Servs. v. Pope, 108 S. Ct. at 1345.

36. Texaco, Inc. v. Short, 454 U.S. 516 (1978).

37. Tulsa Professional Collection Servs. v. Pope, 108 S. Ct. at 1345.

38. *Id.*

39. *Id.* (citing Texaco, Inc. v. Short, 454 U.S. at 533, 536).

40. Tulsa Professional Collection Servs. v. Pope, 108 S. Ct. at 1345.

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.* at 1345-46.

45. *Id.* at 1346. Section 332 states: "After notice is given as required by the preceding section (331) copies thereof with the affidavit of due publication or of posting must be filed with the judge of the county court." OKLA. STAT. tit. 58, § 332 (1988).

46. Tulsa Professional Collection Servs. v. Pope, 108 S. Ct. at 1346.

state action subject to the restrictions of the fourteenth amendment."[47]

Finally, the Court balanced the legitimate interests of the state with the rights of the creditors affected by the statute.[48] In assessing this issue the Court considered the practicalities of the situation and the effect that requiring actual notice would have on important state interests.[49] Practical need for actual notice was supported by the fact that "[c]hance alone brings to the attention of even a local resident an advertisement in small type inserted in the back pages of a newspaper."[50] Also, the executor or executrix is often a party with a beneficial interest in the estate and thus is less inclined to bring attention to the potential expiration of a creditor's claim.[51]

The Court recognized the state's interest in the expeditious resolution of probate proceedings and that the almost uniform practice to effectuate this interest was to establish short deadlines for filing claims and to provide notice only by publication.[52] The Court emphasized, however, that "[p]roviding actual notice to known or reasonably ascertainable creditors . . . is not inconsistent with the goals reflected in nonclaim statutes. Actual notice need not be inefficient or burdensome."[53] Quoting from one of its previous decisions, the Court stated "all that the executor or executrix need do is make 'reasonably diligent efforts' . . . to uncover the identities of creditors."[54] Publication notice, however, could suffice for creditors who were not reasonably ascertainable.[55]

In *Tulsa* the Court was unable to determine from the record whether the appellee's identity as a creditor was known or reasonably ascertainable by the appellant as this question was not considered by any of the lower courts.[56] The Supreme Court remanded the case for a determination whether " 'reasonably diligent efforts' would have identified appellant and

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47. *Id.*

48. *Id.*

49. *Id.* (citing Mennonite Bd. of Missions v. Adams, 462 U.S. 791 (1983); Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950)).

50. Tulsa Professional Collection Servs. v. Pope, 108 S. Ct. at 1347 (quoting Mullane v. Central Hanover Bank & Trust, 339 U.S. at 315).

51. *Id.*

52. *Id. See, e.g.*, Ariz. Rev. Stat. Ann. § 14-3801 (1975); Ark. Stat. Ann. § 28-50-101(a) (1987); Fla. Stat. § 733.701 (1987); Idaho Code § 15-3-803(a) (1979); Mo. Stat. § 473.360(1) (1986); Utah Code Ann. § 75-3-801 (1978). *See also* UPC, *supra* note 16; Falender, *supra* note 16, at 660, n.7.

53. Tulsa Professional Collection Servs. v. Pope, 108 S. Ct. at 1347. The Court noted that "we have repeatedly recognized that mail service is an inexpensive and efficient mechanism that is reasonably calculated to provide actual notice." *Id.* Also considered significant was the fact that notice by mail was already routinely provided at several points in the probate process. *Id. See, e.g.*, Okla. Stat. tit. 58, § 26 (statute requires that "heirs, legatees and devisees" be mailed notice of the initial hearing of the will). *Accord* UPC, *supra* note 16.

54. Tulsa Professional Collection Servs. v. Pope, 108 S. Ct. at 1347 (quoting Mennonite Bd. of Missions v. Adams, 462 U.S. at 798 n.4 (1978)).

55. *Id.*

56. *Id.* at 1348.

uncovered its claim."[57]

III. Legal Issues Impacted by *Tulsa*

Several courts have already relied on *Tulsa* to decide various issues.[58] These decisions differ in their application. Some decisions focus on whether the identity of affected parties was known or reasonably ascertainable, while other decisions focus on the type of notice required in order to satisfy due process. The most obvious application of *Tulsa* has been to probate matters.[59] However, other decisions have applied language from *Tulsa* to a deficiency judgment,[60] a tax sale,[61] an action to quiet title,[62] and a condominium lien.[63]

A. *Probate Decisions*

An appellate court in Florida wasted no time in applying the holding of *Tulsa* to two consolidated probate cases that were already pending in the Florida state courts. In *Public Health Trust v. Estate of Jara*[64] an appeal was brought from an order denying a motion for an extension of time to file a claim against the decedent's estate pursuant to sections 733.212, 733.701 and 733.702 of the Florida Probate Code.[65] The lower court had determined

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57. *Id.* (quoting Mennonite Bd. of Missions v. Adams, 462 U.S. at 798 n.4).

58. *See infra* notes 64-156 and accompanying text. *See also* Birdsell v. Litchfield Bd. of Fire & Police Comm'rs, 854 F.2d 204 (7th Cir. 1988) (police officer did not receive constitutionally adequate notice of disciplinary hearing, to extent that he received no written notice of charges against him); Sollenbarger v. Mountain States Tel. & Tel. Co., 121 F.R.D. 417 (D.N.M. 1988) (notice to individual class action members appropriately given by inclusion in monthly bills).

59. Medlin, *supra* note 1, at 2. *See infra* notes 64-84 and accompanying text. *See also* Estate of Kopely, 159 Ariz. 391, 767 P.2d 1181 (Ct. App. 1988); Estate of Hoss, No. _____ (Tenn. Ct. App. Dec. 30, 1988) (LEXIS, States library, Tenn. file).

60. In re Highway Equip. Co., 91 Bankr. 454 (S.D. Ohio 1988).

61. Weigner v. City of New York, 852 F.2d 646 (2d Cir. 1988).

62. Fulton v. Cornelius, 107 N.M. 362, 758 P.2d 312 (Ct. App. 1988).

63. Golden Sands Club Condominium, Inc. v. Waller, 313 Md. 484, 545 A.2d 1332 (1988).

64. Public Health Trust v. Estate of Jara, 526 So. 2d 745 (Fla. Dist. Ct. App. 1988).

65. *Id.* Section 733.212 states:

> (1) The personal representative shall promptly publish a notice of administration and serve a copy of the notice on the surviving spouse and all beneficiaries known to the personal representative by mail in the manner provided for service of formal notice . . . . The notice shall contain the name of the decedent, the file number of the estate, the court in which the proceedings are pending and its address, the name and address of the personal representative, and the name and address of the personal representative's attorney and state that the publication of the notice has begun. The notice shall require all interested persons to file with the court, within 3 months of the first publication of the notice:
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> (a) All claims against the estate.
>
> . . . .
>
> (2) Publication shall be once a week for 2 consecutive weeks, two publications

that the appellant had not shown a good reason why the claims had not been filed within the three month period provided by the statute, and that notice to the appellant by publication of the commencement of the proceedings was constitutionally sufficient.[66]

The appellant argued that sections 733.212, 733.701 and 733.702 violated the notice requirements of the due process clause of the fourteenth amendment by not requiring notice by mail to known creditors of an estate.[67] According to the Florida District Court of Appeals, the *Public Health Trust* case was indistinguishable from *Tulsa*.[68] The court endorsed the appellant's argument but remanded the case to the lower court for a determination of whether the identity of the creditor in *Public Health Trust* was known or reasonably ascertainable to the estate's personal representative.[69] The companion case, *North Shore Medical Center, Inc. v. Estate of Szilvassy*,[70] was remanded for the same determination.

> being sufficient, in a newspaper published in the county where the estate is administered or, if there is no newspaper published in the county, in a newspaper of general circulation in that county. Proof of publication shall be filed.
>
> . . . .

FLA. STAT. § 733.212 (1988).

Section 733.701, Florida's nonclaim statute, states: "[E]very personal representative shall cause notice of administration to be published as set forth in . . . this chapter, notifying creditors of the decedent and others to present their claims within 3 months after the date of the first publication of such notice or be forever barred." FLA. STAT. § 733.701 (1988).

Section 733.702 is the procedure for filing creditor's claims and states:

> (1) No claim or demand against the decedent's estate that arose before the death of the decedent, including claims of the state and any of its subdivisions, whether due or not, direct or contingent, liquidated or unliquidated, and no claim for personal property in the possession of the personal representative or for damages, including, but not limited to, actions founded on fraud or other wrongful act or omission of the decedent, shall be binding on the estate, on the personal representative, or on any beneficiary, unless presented:
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> (a) Within 3 months from the time of the first publication of the notice of administration, even though the personal representative has recognized the claim or demand by paying a part of it or interest on it or otherwise . . . .
>
> (b) Within 3 years after the decedent's death, if notice of administration has not been published.
>
> (2) No cause of action heretofore or hereafter accruing, including, but not limited to, actions founded upon fraud or other wrongful act or omission, shall survive the death of the person against whom the claim may be made, whether an action is pending at the death of the person or not, unless the claim is filed in the manner provided in this part and within the time limited.
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> . . . .

FLA. STAT. § 733.702 (1988).

66. Public Health Trust, Inc. v. Jara, 526 So. 2d at 745.

67. *Id.*

68. *Id.*

69. *Id.* at 745-46.

70. North Shore Medical Center, Inc. v. Estate of Szilvassy, 526 So. 2d 744 (Fla. Dist. Ct. App. 1988).

The Illinois Court of Appeals has applied *Tulsa* to a similar action in *Rose v. Kaszynski.*[71] This appeal arose out of a breach of contract action.[72] While the action was pending, the defendant died.[73] The defendant's wife was appointed executrix of his estate and on October 4, 1984, the death of the decedent was suggested and spread of record pursuant to paragraph 8-12 of the Illinois Probate Code.[74] The executrix was not joined as a defendant to the pending contract action until four and one-half months after this publication.[75] The executrix moved for dismissal of the action on the ground that she was not joined as a party within the proper time limit imposed by paragraph 18-12.[76] This motion was denied.[77] Ultimately, the plaintiff was awarded damages plus costs following a trial.[78]

The defendant's main contention on appeal was that because letters of office were filed on April 10, 1984 and she was not joined until February 19, 1985, over ten months later, the plaintiff's claim against her as executrix was untimely.[79] The Illinois Court of Appeals adopted the *Tulsa* rationale in disposing of the defendant's argument because the defendant never gave notice to the plaintiff in the underlying action.[80] Unlike the court in *Tulsa*, however, the court in *Rose* found it unnecessary to remand the case for a determination of whether the plaintiff's identity as a creditor of the decedent was known or reasonably ascertainable by the defendant.[81] "Given the fact that defendant [was] decedent's widow and the underlying action had been pending for approximately five years prior to decedent's death,"[82] the court felt that the plaintiff was "known" or "reasonably ascertainable" to the ex-

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71. Rose v. Kaszynski, 178 Ill. App. 3d 266, 533 N.E.2d 73 (1988).
72. *Id.* at ____, 533 N.E.2d at 74.
73. *Id.*
74. *Id.* Paragraph 18-12 states:

> (a) All claims against the estate of a decedent, except expenses of administration and surviving spouse's or child's award, not filed within 6 months from the issuance of letters of office are barred as to the estate which has been inventoried within 6 months from the issuance of letters. If after 6 months from the issuance of letters the representative files an inventory listing estate not previously inventoried and thereafter the clerk of the court publishes once each week for 3 consecutive weeks a notice informing all persons that claims may be filed against the estate on or before a date as designated in the publication . . ., all claims not filed on or before the designated date are barred as to the estate listed in such inventory . . . .
>
> (b) All claims barrable under this Section are, in any event, barred unless letters of office are issued upon the estate of the decedent within 3 years after his death.

ILL. REV. STAT. ch. 110 ½, § 18-12 (1978).

75. Rose v. Kaszynski, 178 Ill. App. 3d at ____, 533 N.E.2d at 74.
76. *Id. See* ILL. REV. STAT. ch. 110 ½, § 18-12 *supra* note 73.
77. Rose v. Kaszynski, 178 Ill. App. 3d at ____, 533 N.E.2d at 74.
78. *Id.*
79. *Id.*
80. *Id.* at ____, 533 N.E.2d at 75.
81. *Id.* at ____, 533 N.E.2d at 74.
82. *Id.*

ecutrix.[83] Failure to notify the plaintiff by mail that claims had to be filed within the statutory time period was a violation of due process.[84]

B. *Deficiency Judgment*

A United States bankruptcy court in *In re Highway Equipment Co.*[85] considered language from *Tulsa* to be persuasive authority. At issue in this case was the same Florida nonclaim statute as in the *Public Health Trust* case discussed above.[86]

The plaintiff was a Chapter 11 debtor and a dealer in heavy machinery.[87] When the defendants defaulted in payment, the plaintiff repossessed the equipment and sold it.[88] The plaintiff then brought suit in bankruptcy court to recover from the defendants the deficiency resulting from the sale of the equipment.[89] Two of the defendants died during the pendency of this suit and their personal representatives were substituted as parties to the proceeding.[90] The personal representatives moved to dismiss themselves as parties because the plaintiff had failed to file timely claims against the defendants' estates in the Florida probate court.[91] The bankruptcy court concluded, as did the court in *Public Health Trust*, that the Oklahoma nonclaim statute rendered unconstitutional in *Tulsa* was indistinguishable from the Florida nonclaim statute and stated that this was a strong showing that the Florida statute itself was unconstitutional.[92] However, the bankruptcy court emphasized that its task was to establish liability of the claim, not collectibility.[93] The collectibility of the judgment obtained by the plaintiff against the respective estates was not a part of the bankruptcy proceeding and the court, other than alluding to the likelihood that the Florida statute was unconstitutional, correctly refused to consider that issue.[94]

C. *Tax Lien*

Language from *Tulsa* has been dispositive in deciding lien issues. In *Weigner v. City of New York*[95] the plaintiff was a Florida resident but

83. *Id.*
84. *Id.*
85. In re Highway Equip. Co., 91 Bankr. 454 (S.D. Ohio 1988).
86. *See* Fla. Stat. § 733.212, *supra* note 65.
87. In re Highway Equip. Co., 91 Bankr. at 455.
88. *Id.*
89. *Id.*
90. *Id.*
91. *Id.*
92. *Id.* at 457.
93. *Id.*
94. *Id.*
95. Weigner v. City of New York, 852 F.2d 646 (2d Cir. 1988).

owned property in the borough of Queens in New York City.[96] The plaintiff brought a diversity suit challenging the constitutional validity of the city's tax lien foreclosure procedures.[97] In October 1981, the city had commenced an in rem tax foreclosure action against all real property in Queens on which real estate taxes had not been paid for a year or more.[98] The plaintiff's fourteen lots were included in this action.[99] Pursuant to the city's administrative code, notice of the commencement of the tax foreclosure action was sent by ordinary first-class mail to the plaintiff at her residence in Florida.[100] Receipt of this notice, however, was disputed at trial.[101] Such notice indicated that the property could be redeemed on or before a specified date.[102] The notice further stated that failure to redeem would forever bar and foreclose the owner of any right in the property.[103] Another section of the code permitted late redemption of property after the redemption date but prior to an entry of a judgment of foreclosure.[104] A second section permitted a release of the city's interest in the property after an entry of a judgment of foreclosure.[105] An application for release had to be made within two years from the date the city's deed of foreclosure was recorded.[106] If the application was made within four months of the city's deed, the application was granted provided that it was timely and the applicant paid all back taxes, penalties and interest.[107] An application made after four months and prior to the two year deadline was granted only by the discretion of the Board of Estimate.[108]

The plaintiff failed to redeem her property by the redemption date, and failed to request a late redemption.[109] A judgment of foreclosure was entered and the city took title to the properties.[110] The plaintiff filed an application for a release of her properties three days short of the two-year discretionary

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96. *Id.* at 648.
97. *Id.* at 647.
98. *Id.* at 648.
99. *Id.*
100. *Id. See* ADMINISTRATIVE CODE § 11-417 (Lenz & Reicher 1986).
101. Weigner v. City of New York, 852 F.2d at 648.
102. *Id.*
103. *Id.*
104. *Id. See* ADMINISTRATIVE CODE § 11-407(c) (Lenz & Reicher 1986).
105. Weigner v. City of New York, 852 F.2d at 648. *See* ADMINISTRATIVE CODE § 11-424 (Lenz & Reicher 1986).
106. Weigner v. City of New York, 852 F.2d at 648. *See* ADMINISTRATIVE CODE § 11-424(f) (Lenz & Reicher 1986).
107. Weigner v. City of New York, 852 F.2d at 648. *See* ADMINISTRATIVE CODE § 11-424(f) (Lenz & Reicher 1986).
108. Weigner v. City of New York, 852 F.2d at 648. *See* ADMINISTRATIVE CODE § 11-424(g) (Lenz & Reicher 1986).
109. Weigner v. City of New York, 852 F.2d at 648.
110. *Id.* at 649.

release deadline, but the Board of Estimate denied her application.[111] The plaintiff thus initiated the present suit alleging that she had received inadequate notice of the foreclosure proceeding.[112] The trial court granted summary judgment for the city, finding that due process was satisfied because the trial court determined that the plaintiff had actually received notices of the foreclosure.[113]

On appeal, the plaintiff argued that due process requires notices of a tax lien to be sent by certified mail and not just ordinary first-class mail.[114] In essence, the plaintiff contended that the notice must be actually received in order to be valid. The court in *Weigner* relied on *Tulsa* and supporting cases[115] and concluded that "the mails . . . generally may be relied upon to deliver notice where it is sent"[116] and that "[t]he Supreme Court has repeatedly held that notice by first-class mail is sufficient, notwithstanding the [C]ourt's obvious awareness that not every first-class letter is received by the addressee."[117]

In the instant case the court felt that the small risk that the notice sent by first-class mail would not arrive was acceptable for two reasons.[118] First, in addition to the mailing, the city published foreclosure notices once a week for six successive weeks in the city records and in two newspapers circulated throughout Queens County.[119] Second, notices of foreclosure were posted in the Queens County courthouse and in three other conspicuous locations in the borough of Queens.[120] The first-class mailing was supplemental to these traditional forms of notice.[121] The court considered significant the plaintiff's conduct in failing to pay taxes for over four years and her concession that she had received tax bills and letters from the city apprising her of the delinquencies.[122] According to the court, a person in this position can be reasonably expected to know that foreclosure is imminent and should take the

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111. *Id.*
112. *Id.*
113. *Id.*
114. *Id.*
115. *See, e.g.*, Tulsa Professional Collection Servs. v. Pope, 108 S. Ct. at 1345 (notice to creditors in probate proceedings); Mennonite Bd. of Missions v. Adams, 462 U.S. at 799-800 (notice to mortgagee of tax foreclosure); Greene v. Lindsey, 456 U.S. 444, 445 (1982) (notice to public housing tenants of forcible entry and detainer actions); Schroder v. City of New York, 371 U.S. 208, 214 (1962) (notice of condemnation proceeding); Walker v. City of Hutchinson, 352 U.S. 112, 116 (1956) (notice of condemnation proceeding); Mullane v. Central Hanover Bank & Trust, 339 U.S. at 319 (notice to trust beneficiaries of judicial settlement of trust accounts).
116. Weigner v. City of New York, 852 F.2d at 650.
117. *Id.* at 651.
118. *Id.*
119. *Id.*
120. *Id.*
121. *Id.*
122. *Id.*

steps necessary to protect her interest.[123]

D. *Quiet Title Action*

One case applying *Tulsa* involved an action to set aside a tax sale and to quiet title to property sold for delinquent property taxes. In *Fulton v. Cornelius*[124] the decedent was the owner of residential property in New Mexico. Prior to her death she had received tax correspondence concerning her property.[125] After her death, her grandson was appointed as the executor of her estate. Prior to the tax sale, he filed proof of his appointment as decedent's personal representative with the county.[126] After the 1980 and subsequent property taxes were not paid on decedent's property, notices were mailed to the decedent at the address contained in the tax rolls.[127] These notices were returned by the post office as undeliverable.[128] The property was sold in 1984 because of the delinquent taxes.[129] The decedent's grandson, as executor, first learned of the tax sale in 1984 when he visited the property and discovered that the locks on the doors had been changed.[130] Suit was then instituted to set aside the tax deed and to quiet title based on the allegation that the tax office had failed to comply with proper notice requirements prior to conducting the tax sale.[131] At trial the executor produced evidence that he had mailed a letter to the tax assessor's office advising that his grandmother was deceased, that he had been appointed executor, and that future mail regarding taxes should be sent to him at his Texas address.[132] This letter included a check for the 1979 tax assessment.[133] The trial court dismissed the plaintiff's suit finding that the notices had been mailed to the last address shown in the tax rolls and that there was no credible evidence of a change of address request.[134]

The New Mexico Court of Appeals invalidated the tax sale because the procedures employed by the tax officials did not comport with due process as delineated by *Tulsa* and supporting cases.[135] Upon return of the mailed

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123. *Id.*

124. Fulton v. Cornelius, 107 N.M. 362, 758 P.2d 312 (Ct. App. 1988).

125. *Id.* at ___, 758 P.2d at 313.

126. *Id.* A foreign personal representative may file with the district court of a county in which property belonging to the decedent is located, authenticated copies of his appointment and a statement of his address. *See* N.M. STAT. ANN. § 45-4-204 (1988).

127. Fulton v. Cornelius, 107 N.M. at ___, 752 P.2d at 313.

128. *Id.*

129. *Id.*

130. *Id.* at ___, 758 P.2d at 314.

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.* at ___, 758 P.2d at 315-16. It appears that applicable New Mexico statutes were not complied with. *Id.* at ___, 758 P.2d at 314-15. The county assessor was required to prepare

notices, the tax officials failed to notify the executor.[136] In addition, the New Mexico estate tax office contained evidence that the taxpayer was deceased.[137] The court decided that the identity and the address of the executor was reasonably ascertainable under these circumstances because, by statute, the personal representative was required to file the state estate tax return and a copy of the federal estate tax return.[138] Further, the district court records contained notice of the grandson's appointment.[139] The court concluded that "the requirement that the [tax division] search its own records for evidence to determine whether a taxpayer is deceased prior to conducting a tax sale of realty does not impose an unreasonable burden upon state or local tax officials"[140] and that "reasonable diligence is such action as an individual of ordinary prudence would undertake under the circumstances in order to be successful."[141]

E. *Condominium Lien*

The constitutionality of the Maryland Contract Lien Act was questioned in *Golden Sands Club Condominium, Inc. v. Waller.*[142] In this case, the appellee was the owner of a condominium unit in a condominium com-

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a property tax schedule containing "the property owner's name and address and the name and address of any person other than the owner to whom the [property] tax bill is to be sent." *See* N.M. Stat. Ann. 7-38-35(A) (1988). The county treasurer was required to prepare and mail property tax bills to either the owner of the property or any person other than the owner to whom the bill is requested to be delivered. *See* N.M. Stat. Ann. § 7-38-36(B) (1988). It was the duty of all persons charged with the administration and collection of the property tax to make diligent search and inquiry to determine the correct name and address of the owner of the property subject to valuation for property taxation purposes and the imposition of the property tax. *See* N.M. Stat. Ann § 7-38-82(a) (1988). The county treasurer mailed a notice of delinquency to the owner of the property at the address shown on the tax schedule and any person other than the owner to whom the tax bill was sent. *See* N.M. Stat. Ann § 7-38-51 (1988). If property taxes remained delinquent and a tax sale was held in order to satisfy the tax debt, the tax division was required to notify the property owner of the impending sale at least twenty days before the date of the sale, by certified mail, return receipt requested, at the address shown on the most recent tax schedule. *See* N.M. Stat. Ann. § 7-38-66(A) (1988).

136. Fulton v. Cornelius, 107 N.M. at ____, 758 P.2d at 316.

137. *Id.* at ____, 758 P.2d at 316 n.2. The New Mexico Estate Tax Act imposed a state tax on the transfer of the net estate located in New Mexico of every nonresident. *See* N.M. Stat Ann. § 7-7-4 (1988). The tax division was required to file a certificate with the clerk of the county in which the estate or any part of it was located indicating either that no New Mexico estate taxes were due or that the taxes due have been paid. *See* N.M. Stat. Ann. § 7-7-8 (1988). It was the personal representative who had to file the return and a copy of the federal estate tax return. *See* N.M. Stat. Ann. § 7-7-5 (1988).

138. Fulton v. Cornelius, 107 N.M. at ____, 758 P.2d at 316.

139. *Id.*

140. *Id.* at ____, 758 P.2d at 317.

141. *Id.*

142. Golden Sands Club Condominium, Inc. v. Waller, 313 Md. 484, 545 A.2d 1332 (1988).

plex owned by the appellant, Golden Sands Club Condominium, Inc.[143] The appellant levied assessments against the appellee pursuant to the condominium's master deed, declarations, and bylaws.[144] When a substantial amount of assessments had accumulated, the appellant sent the appellee a written notice of its intent to create a lien against the property.[145]

The appellee, pursuant to the provisions of section 14-203(c)(1) of the Maryland Contract Lien Act, sued the appellant, alleging that the statutory lien provisions were unconstitutional.[146] The circuit court agreed and determined that the lien claim by the appellant against the appellee was invalid because it was based on an unconstitutional enactment.[147]

Under section 14-203(c)(1) and (3), the owner of the property against which a lien was sought could obtain a hearing through a two-step process. First, the owner had to file an action in the circuit court against the lien claimant and second, the owner had to request a hearing.[148] If the owner took this action, no lien could be imposed until the hearing had been held.[149] If this action was not taken by the owner, a lien could be established upon the expiration of 120 days from the mailing of the notice to the property owner.[150] The lower court judge held that this procedure failed to provide due process to the property owner.[151] The judge felt that a hearing or an opportunity for a hearing was constitutionally required and that neither of the two options available to the owner—(1) doing nothing thereby allowing an encumbrance to attach to the property after the expiration of 120 days; or (2) suing himself—was constitutionally reasonable.[152]

The Maryland Court of Appeals reversed the circuit court's determination.[153] On appeal, the appellee did not contest the sufficiency of the notice

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143. *Id.* at ____, 545 A.2d at 1333.

144. *Id.* These assessments were authorized by Md. Ann. Code art. X, § 11-110(d) (1957).

145. Golden Sands Club Condominium, Inc. v. Waller, 313 Md. at ____, 545 A.2d at 1333-34.

146. *Id.* at ____, 545 A.2d at 1334. This section states: "A party to whom notice is given under . . . this section may, within 30 days after the notice is mailed to the party, file a complaint in the circuit court for the county in which any part of the property is located to determine whether probable cause exists for the establishment of a lien." Md. Ann. Code art. X, § 14-203(c)(1) (1957).

Section 14-203(c)(3) states: "A party filing a complaint under this subsection may request a hearing at which any party may appear to present evidence." Md. Ann. Code art. X, § 14-203(c)(3) (1957).

147. Golden Sands Club Condominium, Inc. v. Waller, 313 Md. at ____, 545 A.2d at 1334.

148. *Id.* at ____, 545 A.2d at 1335. *See* Md. Ann. Code art. X, § 14-203(c)(1), *supra* note 146.

149. Golden Sands Club Condominium, Inc. v. Waller, 313 Md. at ____, 545 A.2d at 1335. *See* Md. Ann. Code art. X, § 14-203(g)(1), (h)(1) (1957).

150. Golden Sands Club Condominium, Inc. v. Waller, 313 Md. at ____, 545 A.2d at 1335. *See* Md. Ann. Code art. X, § 14-203(g)(1), (h)(1) (1957).

151. Golden Sands Club Condominium, Inc. v. Waller, 313 Md. at ____, 545 A.2d at 1335.

152. *Id.*

153. *Id.* at ____, 545 A.2d at 1342.

of the possible lien.[154] Notice in this situation was provided by certified or registered mail.[155] The appellee did argue, however, that he was entitled to a second notice or double notice as provided in some circumstances under Maryland's Mechanics' Lien Act.[156] The appellee argued that the double notice was essential to the validity of the condominium assessment lien.[157] As in the *Weigner* decision noted above, the court determined that ordinary first-class mail was a sufficient means to satisfy due process.[158] The notice provisions of the Maryland Contract Lien Act went beyond due process standards by requiring notice by certified or registered mail, return receipt requested.[159] The Maryland Court of Appeals reversed the circuit court because the *Tulsa* mandate of "reasonable notice" was satisfied by this contract lien statute.[160]

IV. Analysis

The majority of situations in which the courts have followed the Supreme Court's language in *Tulsa* have been in the areas of probate or real property. Essentially, in these two areas, the strictures of the fourteenth amendment's due process clause are often encountered. First, statutes in these areas typically impact property interests. Second, the states' involvement in the operation of these statutes is significant. Third, the individual's interest which is affected by the statute is as great or greater than the states' interest which is affected by the statute. Where courts have declined to apply *Tulsa*, one of these three standards is usually absent.[161]

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154. *Id.* at ____, 545 A.2d at 1339.

155. *Id.* Section 14-203(a)(2) states: "Notice under this section shall be given by certified or registered mail, return receipt requested, and shall be addressed to the owner of the property against which the lien is sought to be imposed at the owner's last known address." Md. Ann. Code art. X, § 14-203(a)(2) (1957).

156. Golden Sands Club Condominium, Inc. v. Waller, 313 Md. at ____, 545 A.2d at 1339-40. *See* Md. Ann. Code art. X, §§ 9-105(a), 106(a) (1957) (a person entitled to a lien must give written notice to the property owner but must also file a petition to establish the mechanic's lien in the appropriate circuit court; if the petition appears to be in order, the property owner receives another notice in the form of an order to show cause why the lien should not attach).

157. Golden Sands Club Condominium, Inc. v. Waller, 313 Md. at ____, 545 A.2d at 1340.

158. *Id.* at ____, 545 A.2d at 1342.

159. *Id.*

160. *Id.*

161. *See, e.g.*, Palmetto Bay Marine Center, Inc. v. 32' Wellcraft St. Tropez, No. CV 487-310 (S.D. Ga. June 13, 1988) (LEXIS, Genfed library, Dist file) (due process requirements of *Tulsa*, *Mennonite* and *Mullane* not applicable because an admiralty action in rem does not involve state action); In re Guardianship of James Bissmeyer, No. C-87-783 (Ohio App. Aug. 31, 1988) (LEXIS, States library, Ohio file) (concern for incompetent brother's well-being cannot be termed a property interest under the fourteenth amendment); Fortier v. City of Spearfish, 433 N.W.2d 228 (S.D. 1988) (landowner does not have due process right to personal notice of proposed zoning ordinance; notice by publication afforded due process for property changes in zoning ordinance).

A. *Challenges Posed to Claim Practices*

Many states have yet to adjudicate the *Tulsa* issue or to enact corrective legislation if necessary.[162] Currently, the practitioner is faced with two problems posed by *Tulsa*. First, he must decide in what instances actual notice is required.[163] Second, the constitutional parameters of "reasonably ascertainable" and "reasonably diligent efforts" remain unsettled, since the *Tulsa* court gave little indication of when creditors would be reasonably ascertainable or what efforts would qualify as reasonably diligent.

A second major concern involves the courts' disposition of both *Tulsa* and *Public Health Trust*.[164] Both cases were remanded to determine if the claimant deserved the status of a known or reasonably ascertainable creditor.[165] The effect of this disposition could be a flood of litigation.[166] The courts may be bombarded by dilatory creditors seeking a determination that they were either known or reasonably ascertainable to the personal representative.[167]

Open-ended claim periods may exist even if a state amends its notice requirements to comply with the *Tulsa* mandate.[168] Even if a state amends its notice provisions to require the personal representative to send actual notice to known or reasonably ascertainable creditors, creditors failing to file a claim within the time period which runs from publication might sue to obtain known or reasonably ascertainable status deserving of actual notice.[169] The personal representative might never be assured that he gave actual notice to all known or reasonably ascertainable creditors.[170] Essentially, the claim period running from publication might never operate to bar all possible claims.[171] In these situations, the personal representative is only protected from creditors by relying on the claims period which runs from the date of death.[172]

Several other administrative deadlines in the probate process use the running of the claims period as a reference.[173] Uncertainty as to the claims period may spawn uncertainty in these other administrative actions.

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162. Medlin, *supra* note 1, at 2.
163. *Id.* at 2-3.
164. *Id.* at 3.
165. *Id.*
166. *Id.*
167. *Id.*
168. *Id.*
169. *Id.*
170. *Id.*
171. *Id.*
172. *Id.*
173. *Id.*

B. *Challenges Posed to Lien Practices*

Challenges in the lien area revolve around the type of notice to the property owner required before the attachment of the lien or the subsequent sale of the property can be effected.[174] The minimum required by *Tulsa* in this area appears to be notification to the property owner by first-class mail.[175] It is likely that the entity desiring to establish a lien has an affirmative duty to ascertain either the property owner's correct address or the property owner's personal representative's correct address. The states are thus faced with reexamining their various lien statutes to ensure that sufficient notice is provided and that officials are required to make reasonably diligent efforts to ascertain the property owner's address.

C. *Effect on Real Property Statutes of Limitation and Curative Acts*

Legislatures have long attempted to make real property titles more certain and to simplify the process of title searches by enactments which cut off state nonpossessory title claims.[176] Such enactments are usually termed statutes of limitations.[177] There has also been a history of legislation which seeks to make titles more certain by validating defective instruments or transactions.[178] These statutes are commonly classified as curative acts.[179] It is likely that these acts will survive challenges based on the *Tulsa* standard because of another Supreme Court decision, *Texaco Inc. v. Short*.[180]

At issue in *Texaco Inc. v. Short* was the constitutionality of the Indiana Dormant Mineral Interests Act.[181] This act provides that a severed mineral interest which is not used for a period of twenty years automatically lapses and reverts to the current surface owner of the property unless the mineral owner takes certain steps.[182] The mineral owner, prior to the end of the twenty-year period or within a two-year grace period after the effective date of the act, must file a statement of claim in the local county recorder's

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174. *See supra* notes 96-161 and accompanying text.

175. *Id.*

176. A. Axelrod, C. Berger & Q. Johnstone, Land Transfer and Finance ch. 5, at 724 (3d ed. 1986).

177. *Id.*

178. *Id.*

179. *Id.*

180. Texaco, Inc. v. Short, 454 U.S. 516 (1982).

181. *Id.* at 518.

182. *Id. See* Ind. Code §§ 32-5-11-1 through 32-5-11-8 (1976). Section 32-5-11-1 states: "Any interest in coal, oil and gas, and other minerals, shall, if unused for a period of 20 years, be extinguished, unless a statement of claim is filed in accordance with section five hereof, and the ownership shall revert to the then owner of the interest out of which it was carved." Section 32-5-11-4 states that "[t]he statement of claim provided in section one above shall be filed by the owner of the mineral interest prior to the end of the twenty year period set forth in section one or within two years after the effective date of this act, whichever is later . . . ."

office.[183]

The appellants, whose unused mineral interest had lapsed upon expiration of the grace period under the act, claimed that, under the fourteenth amendment, "the lack of prior notice of the lapse . . . deprived them of property without due process of law . . . ."[184] The Supreme Court rejected this fourteenth amendment attack, stating that it was "essential to recognize the difference between the self-executing feature of the statute and a subsequent judicial determination that a particular lapse did in fact occur."[185] The Court distinguished its earlier decision in *Mullane v. Central Hanover Bank & Trust*, in which the Court considered the constitutional sufficiency of notice given to the beneficiaries of a common trust fund of a judicial settlement of accounts by the trustee of the fund.[186] In *Mullane* the Court held that the notice by publication authorized by the relevant New York statute was not sufficient, since it was not reasonably calculated to apprise the beneficiaries of the pendency of the judicial proceeding.[187] In *Texaco*, however, the Court emphasized that "the reasoning in *Mullane* is applicable to a judicial proceeding brought to determine whether a lapse of a mineral estate did or did not occur, but not to the self-executing feature of the Indiana Dormant Mineral Interests Act" and that the "due process standards of *Mullane* apply to an 'adjudication' that is 'to be accorded finality.' "[188]

One statute similar to the Indiana Dormant Mineral Interests Act is section 614.24 of the Iowa Code.[189] This statute is more commonly known as the Iowa Stale Uses and Reversions Act. In essence, this statute bars a claimant from enforcing a reversion, reverted interest, or use restriction against the holder of record title to real property unless the claimant files a claim with the county recorder within twenty-one years from the recording

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183. Texaco, Inc. v. Short, 454 U.S. at 518-19.

184. *Id.* at 522.

185. *Id.* at 533.

186. *Id.* at 534.

187. *Id.* at 534-35.

188. *Id.* at 535.

189. Iowa Code § 614.24 (1987). This section states:

> No action based upon any claim arising or existing by reason of the provision of any deed or conveyance or contract or will reserving or providing for any reversion, reverted interests or use restrictions in and to the land therein described shall be maintained either at law or in equity in any court to recover real estate in this state or to recover or establish any interest therein or claim thereto, legal or equitable, against the holder of the record title to such real estate in possession after twenty-one years from the recording of such deed of conveyance or contract or after twenty-one years from the admission of said will to probate unless the claimant shall . . . file a verified claim with the recorder of the county wherein said real estate is located within said twenty-one year period. In the event said deed was recorded or will was admitted to probate more than twenty years prior to July 4, 1965, then said claim may be filed on or before one year after July 4, 1965 . . . .

Id.

of the instrument creating the reversion, reverted interest or use restriction.[190] If the reversion, reverted interest, or use restriction was created more than twenty years before July 4, 1965, then the claimant must file such claim within one year after that date.[191] This statute is not tolled because a claimant is under a legal disability or is a minor[192] and the statute does not provide for any type of notice before cutting off the vested interest.[193]

Another Iowa statute, section 614.17, is termed the Affidavit of Possession Statute.[194] This statute provides that no action may be brought against the holder of record title to real property who has been in possession with chain of title since January 1, 1970, to enforce a claim or establish an interest arising before January 1, 1970, unless such claim or interest is preserved by filing between July 1, 1980, and June 30, 1981.[195] Possession may be shown by the filing of an affidavit by the person in possession.[196] Again, as in section 614.24, this statute is not tolled by the fact that the claimant may be under a legal disability or a minor[197] and the statute does not provide for any type of notice before cutting off any interest of a possible claimant.[198]

Statutes such as sections 614.17 and 614.24 of the Iowa Code appear to be constitutional and exempt from the *Tulsa* mandate. As the Supreme Court emphasized in *Texaco Inc. v. Short*, "a legislature need do nothing more than enact and publish the law, and afford the citizenry a reasonable opportunity to familiarize itself with its terms and to comply"[199] and "[i]t is well established that persons owning property within a State are charged with knowledge of relevant statutory provisions affecting the control or disposition of such property."[200] The Court also stated that "a legislative body is in a far better position than a court to form a correct judgment concern-

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190. *Id.*

191. *Id.*

192. Iowa Code § 614.27 (1987).

193. Iowa Code § 614.24 (1987).

194. Iowa Code § 614.17 (1987). This statute states:

> An action based upon a claim arising or existing prior to January 1, 1970, shall not be maintained, either at law or in equity, in any court to recover real estate in this state or to recover or establish any interest in or claim to real estate, legal or equitable, against the holder of the record title to the real estate in possession, when the holder of the record title and the holder's immediate or remote grantors are shown by the record to have held chain of title to the real estate since January 1, 1970, unless the claimant . . . files in the office of the recorder of deeds of the county in which the realty estate is situated, a statement in writing, which is duly acknowledged, definitely describing the real estate involved, the nature and extent of the right or interest claimed, and stating the facts upon which the claim is based . . . .

Id.

195. *Id.*

196. *Id.*

197. Iowa Code § 614.19 (1987).

198. Iowa Code § 614.17 (1987).

199. Texaco, Inc. v. Short, 454 U.S. at 532.

200. *Id.*

ing the number of persons affected by a change in the law, the means by which information concerning the law is disseminated in the community, and the likelihood that innocent persons may be harmed by the failure to receive adequate notice."[201]

In applying the *Tulsa* mandate to these real property statutes, prongs two and three of the *Tulsa* analysis are diminished.[202] The Court in *Tulsa* did not impair its decision in *Texaco Inc. v. Short* and, in fact, reaffirmed that, other than enacting the statutes of limitation or curative acts, the state plays no further role in their operation.[203] In addition, the states have a paramount interest in attempting to simplify American land title law. These statutes of limitation and curative acts are judgments of state legislatures as to the means for that simplification. Given the complexity and the wide dispersal of legal rights in land parcels, the Supreme Court appears to have given wide deference to the state legislatures in these particular enactments.

V. Conclusion

Several questions remain unanswered by the Supreme Court's decision in *Tulsa Professional Collection Services v. Pope*. Courts are struggling to determine to which state practices *Tulsa* applies. As can be seen from the various decisions above, the courts have applied *Tulsa* fairly broadly to various types of issues. Legislatures and their committees are struggling with two other unanswered questions: what did the Supreme Court mean by both "reasonably diligent efforts" and "reasonably ascertainable"? The answers to these two questions are elusive but legislatures are scrambling to enact corrective legislation in compliance with *Tulsa*. It is likely that there will be future litigation in the form of test cases in order to determine specifically what the *Tulsa* due process mandate requires.

Stephanie G. Sarcone

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201. *Id.*

202. These prongs are the magnitude of the state's involvement with the statute at issue and the balancing of the individual interest at stake and the interests of the state. *See supra* note 31 and accompanying text.

203. *See supra* notes 34-40 and accompanying text.