Proof of Legal Representation

I. Introduction

Some successful claims in the lawsuit need one last step for the claim to be paid. This Ombudsman Update describes the rules for people that need to provide proof of representation in order for the claim to be paid.

II. Proof of Legal Representation Needed for Some Claims

According to the Settlement Agreement, a proof of legal representation is needed in three types of cases.

A. Estate Claims

Proof of legal representation is needed for an estate claim. An estate claim means that the person that was discriminated against by USDA is no longer living.

In many cases, that person passed away before the filing deadline of May 11, 2012. In those cases, the person who filled out the Claim Form either provided proof of representation at the time the Claim Form was filed, or explained that he or she would be appointed as the legal representative of the estate, and would provide proof later.

Because most people that need proof of legal representation have an estate claim, most of the examples used in this Update are based on an estate claim.

B. Unable to Submit Claim on Own

Proof of legal representation is needed when the person that was discriminated against by USDA is unable to submit the claim on his or her own behalf because of a physical or mental limitation. In those cases the person who filled out the Claim Form either provided proof of representation at the time, or explained that he or she would be appointed as the legal representative of the claimant, and would provide proof later.

C. Two People Named On Claim – One is Estate or is Unable to Submit Claim

In some cases people filed jointly. The claim, in such a case, would be awarded to them jointly. If one of the two joined claimants is an estate, or is unable to submit a claim on his own or her
own, a legal representative will need to be named for that person, and proof provided.

III. For Some Claims, No Check without Proof of Legal Representation

If proof of legal representation is needed, no check will be sent until that proof is sent to the Claims Administrator. In other words, if the person filing the claim has received what is known in the settlement as a Determination Letter – a letter that tells if the claim was approved – that person will not get a check from the settlement until proof of legal representation is shown.

IV. One Year to Prove Legal Representation

If the claim was approved, and a legal representative has not been named, the award is held for up to one year. If more than a year goes by, the claimant will lose the payment, and no one will be paid for the claim.

A. How the Year is Calculated

The one year period for a person to show that he or she is the legal representative for the approved claim begins with the date the Determination Letter was sent. The Determination Letter is the letter that said the claim was approved. For many people this letter was sent in August 2013. The year is based on the claimant’s letter, so the year could end on different days for different people.

B. Extending the Year Deadline

The one year deadline can be extended by the Claims Administrator – but only under a very narrow exception to the one-year rule. The Claims Administrator may extend this period only if a person can prove that a probate petition has been filed in a court. In other words, the only way the deadline can be extended beyond one year is if when the year expires, the courts have the request to be legal representative in hand and have not yet made a ruling.

V. What Does “Legal Representative” Mean?

As a legal term, to be the “legal representative” of someone else usually means that the legal representative “stands in the place of” another person and “represents the interests” of that person. For example, a legal representative can, in the eyes of the law, carry on the legal responsibilities of a person who has died or is incapacitated.

For this case, a legal representative is someone who is appointed by a court, or some other legal process, to stand in the place of the person that was discriminated against by the USDA. The legal representative has the job of receiving the payment from the settlement and making sure the money from the settlement goes to the person or persons that have a legal right to the money.

In almost all cases, there will only be one legal representative for each person who had the right to make a claim in the case. This will be true even if the person who died, or who is no longer
able to take care of himself or herself, has many family members.

It may be the case that one person filed a claim, and a different person is the legal representative and will be the one who receives the settlement check.

For example, suppose Father was a farmer and was discriminated against by USDA. Father passed away in 2005. Cousin heard about the Black Farmer case and filed a claim for Father. Along the way, Son was named the legal representative of Father’s estate by a Probate Court. This year, Father’s claim was approved. Even though Cousin filed the claim, Cousin will not be able to receive the check for the settlement. Only the Son can receive the check. The Son, then, has the responsibility to follow the law in handling the money from the settlement after the check is cashed.

VI. Proof of Legal Representation – What is Needed

The following sections describe what someone needs to do to show that he or she is a legal representative.

A. Court Document

For a person to show that he or she is the legal representative for a claim, that person will almost always need a court document. That means written papers from a court are needed to show that someone is the legal representative.

Getting the proper court document can be confusing. The courts in different states sometimes go by different names. Depending on where you live, the court that issues the papers naming someone as legal representative might be called the Probate Court, a Chancery Court, a District Court, a Superior Court, or something else.

B. Documents that Will NOT Work to Show Legal Representation

A number of documents will NOT work to show that someone is the legal representative.

For example, a statement from the claimant, even if it is in the form of a legal document, such as an affidavit, is not enough to show that someone is a legal representative.

Along the same lines, a number of documents might show that the person who was discriminated against by USDA has now passed away is not enough to show that someone is a legal representative. For example, a funeral program, or an obituary from the newspaper, a death certificate, or statements from other members of the family that show that the person in question

1 An exception to the rule that you need a court document applies only if state law in the state where the claimant died set something other than a court as the body that says who represents an estate or provides some other means of naming a legal representative.
has died does not give enough information to show that a person is the legal representative. Similarly, showing that someone was related to the person who died, or inherited some property from the person who died, will not be enough to show that a person is the legal representative. That means that a birth certificate, or a will, does not give enough information to show that a person is the legal representative.

Also, if the claimant has died, and the claimant had a will, a copy of the will does not work unless there is also a court document that names a person as legal representative.

C. Court Documents Vary from State to State

In the United States, the law covering what happens to the property of a person who dies, or of a person that is no longer capable of taking care of himself or herself, often varies a great deal based on the state. For example, the rules in Georgia will be at least somewhat different from the rules in Alabama, or Mississippi, or Louisiana. Even within a state it is possible that the court documents are different from one another even though they serve the same purpose.

(1) Different Names for Similar Documents

Part of the difference between states is that they use different names for court documents that actually have the same effect. As a result, in a state there may not be an official document that is called “proof of legal representation.” In some cases, for example, courts issue documents called “Letters Testamentary,” or “Letters of Testamentary,” or orders granting “Letters of Administration.” The names of these documents can be different, but they are similar in that they name a legal representative.

(2) Legal Representatives can Have a Different Official Titles

The official title state law gives to a legal representative can vary. Sometimes, that person is known as a “legal representative,” but can also be known as an “administrator,” a “personal representative,” or an “executor,” or maybe even something else.

Further, some courts use different titles depending on whether the legal representative is a man or a woman. So, the legal representative might be called an “administrator” if he is a man and an “administratrix” if she is a woman.

D. Examples of Papers that Work

Many people in the settlement have been able to prove that they are a legal representative. A collection of examples of the documents that people used (with the names and addresses taken out) will be added to the Ombudsman website at http://www.inreblackfarmersombudsman.com/. They will be divided by state. These may be helpful for those trying to understand what is required.

VII. Some Legal Representatives are Already Named, Some are Not
In some cases there may already be a legal representative. In that case, the legal representative needs to get a copy of the papers that show he or she is that representative.

In other cases, though, there will not yet be a legal representative. In these cases, someone needs to go through the steps of being named the legal representative. In other words, some people will need to go through a legal process that involves the courts in order to be named legal representative.

VIII. To Be Named A Legal Representative You May Need a Lawyer

Most people who want to be named a legal representative need to get a lawyer to do so. In some places it may be possible to become a legal representative without a lawyer, but even then unless you have a great deal of experience you should probably get a lawyer.

The law on these topics can be confusing, and it is easy for a person who is not familiar with the process to make a mistake. Part of what makes it hard to become a legal representative is that in almost all cases complicated court documents need to be filed and legal notice to the public given.

IX. Where to Send Legal Representation Papers

Copies of proof of legal representation should be sent to the Claims Administrator.

Claims Administrator
PO Box 4028
Portland, OR 97208-4028

The toll-free line for the Claims Administrator is 877-810-8110.