

Feds set rules for collectors calling on relatives of deceased debtors

Collecting is OK, but must be transparent, guidelines say

By Martin Merzer

They say only two things in life are certain -- death and taxes. But here's another: If someone dies with an unpaid balance on his or her credit card account, or while shouldering any other form of debt, a relative or friend is going to get a call or a letter from a debt collector.

Struggling to find a middle ground between the rights of creditors to collect debts and the grief and vulnerability of spouses and others mourning the deaths of loved ones, the Federal Trade Commission is issuing new guidelines intended to modify the behavior of debt collectors who contact relatives or friends of the recently deceased.

At the same time, however, the FTC's guidelines widen the universe of people who could receive such calls or letters, making it all the more important that anyone on the receiving end of those communications understands his or her legal rights and obligations.

"There are debt collectors out there who follow the obituaries and they search to see if the person who died has a wife or a husband or kids and they immediately start hounding them," said Jerome S. Lamet, a Chicago attorney who worked for the FTC and whose law firm has represented thousands of widows and widowers who felt victimized by what Lamet calls "terrorist collecting tactics."

Representatives of the debt collection industry (they prefer the term "accounts receivable industry") say that the vast majority of their agents behave honorably, treat debtors respectfully and work within a generally accepted and federally monitored framework of rules and regulations.

Rules vary by state

But before we dive more deeply into the give and take between debt collectors and consumers and their representatives, here are a few more aspects of the issue to keep firmly in mind:

First, everything you are about to read depends on the state in which you live and the state of your estate. Laws regarding these matters vary greatly from state to state and depend to some extent on how the deceased handled his or her end-of-life financial affairs.

- Generally speaking, family members (and, of course, friends) are not obligated to pay -- out of their own pockets -- the debts solely acquired by a deceased relative or friend.
- If, however, a family member or friend co-signed a credit card or loan application with the now-deceased person, that relative or friend likely is obligated to repay the debt.
- If the deceased left a will and the estate has gone to probate, debt collectors can attempt to satisfy their claims from the assets of that estate. "Most debts incurred in life do not simply vanish upon death ...," the FTC wrote in its 33-page ["Statement of Policy"](#) issued on July 20, 2011. "Regardless of whether the decedent was current or delinquent on a bill at the time of death, creditors and collectors, for a period of time, generally are permitted under state law to seek to recover from the decedent's estate."

This is one reason why many attorneys now recommend that the elderly and infirm do not leave behind wills that can go to probate. Instead, they often recommend the establishment of trusts and other legal entities other than wills that can control assets after a person dies. At the same time, some states have streamlined the probate procedure to the point where the vast majority of once-probated wills no longer take that route.



- Assets that are specifically bequeathed to individuals or that were owned jointly by the deceased and a spouse (or any other person) generally pass to that person outside of the estate and thus are usually beyond the reach of debt collectors.
- Adding to the potential complexity, in the 10 community property states of Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington and Wisconsin, assets accumulated during a marriage generally are considered joint property and also can't be touched by creditors. "There is no single set of laws and procedures that governs the resolution of a decedent's estate in all or even most states," the FTC noted. "Indeed, even individual counties in some states have their own requirements."

So, right about now, you are thinking: "If I ever find myself in this situation, if I ever get a call from a debt collector about someone else's debt, I have to be careful and I have to get some help." Right on both counts.

Relatives vulnerable

Consumer advocates and attorneys say that if a widow, widower, child, friend or anyone else close to the deceased should say absolutely nothing of consequence if they receive a call or letter from a debt collector about the decedent's debts. Nothing. *Nada*. No matter how banal or benign the question might seem -- because it could open the door to an ongoing relationship that eventually carries the survivor into inappropriately paying off someone else's debt.

"Debt collectors are keenly aware that survivors are particularly vulnerable after the death of their loved one," the AARP told federal regulators as the guidelines were being considered. "Collectors encourage decedent's creditors to use the time of grieving to establish a customer relationship with the decedent's survivors in order to recover on the debt from the estate."

With those assertions in mind, the FTC reviewed thousands of taped phone calls between debt collectors and mourners -- and it didn't like a lot of what it heard.

"Some collectors attempt to recover by cold-calling relatives, asking whether they are the 'person handling the final affairs' of the decedent or are the decedent's 'personal representative,'" the FTC reported. "In some cases, collectors ask whether the family member with whom they are speaking has been opening the decedent's mail or paid for the funeral. Some collectors treat an affirmative response to such questions as sufficient proof that these relatives are responsible for resolving the decedent's estate."

That's often not the case at all. And then it gets worse, with the collectors asking a series of highly detailed questions about the deceased's finances. And then... it gets much worse.

"Finally, in some cases, collectors ask relatives to make a 'voluntary' or 'family' payment," the commission said. "For example, some collectors state or imply that the family has a moral obligation to pay the decedent's debt, or that the decedent would have wanted the debt to be paid."

Representatives of the debt collection industry have an entirely different view of how these contacts transpire.

"From our perspective, the most important element is clear and full disclosure without misrepresentation to those with whom a collector communicates," Greg Hogenmiller, vice president and deputy general counsel of West Asset Management, a large, Omaha, Neb.-based debt collection/accounts receivable agency, told the FTC. "By its nature, this is a very sensitive form of debt collection because often the family members or friends of the decedent are still grieving at a time when they are also trying to sort out financial matters which they may or may not have previously had any involvement with."

New FTC guidelines

It is this divide that the FTC sought to bridge with its new guidelines, which take effect on Aug. 29, 2011. Here are some highlights:

- Debt collectors may communicate with a deceased person's spouse (or parent or guardian, if the deceased was a minor), the executor or administrator of the estate, or anyone else who is authorized to pay the debts from assets in the estate. Debt collectors also may communicate with family members and others to locate someone who is authorized to pay the deceased person's

debts from the estate. The commission said this was in the best interest of everyone involved because it could help prevent some estates from going through the lengthy probate process.

"The commission has learned that, to recover on a decedent's debts, some debt collectors contact the decedent's relatives, although these relatives may have no authority to pay the debts from the decedent's estate and no legal obligation to pay the debts from their own assets," the regulators wrote.

"The commission recognizes, however, that imposing unnecessary restrictions on a debt collector's ability to collect a decedent's debt from the person authorized to pay those debts may instead cause some debt collectors to seek to recover by invoking the probate process, imposing substantial costs on the estate and delaying the distribution of assets to heirs and beneficiaries."

- At the same time, however, debt collectors may not mislead individuals into believing that they have the authority -- or, worse, the obligation -- to pay the decedent's debts when they do not.
- "A consumer in this vulnerable condition may mistakenly identify himself as the person with whom the debt collector should be speaking," FTC Commissioner Julie Brill said in concurring with the panel's decision. "Worse still, he may end up feeling as if he has an obligation -- legal, moral or otherwise -- to pay the debt from personal funds, even though debt collectors cannot legally ask him to do so."

She said the policy is crafted to limit potential abuses. Debt collectors, for instance, must specifically mention that repayment must come from the deceased's estate and that the person being contacted is not required to repay the debt out of his or her own pocket or with assets jointly held with the deceased.

- Debt collectors seeking to identify someone who is authorized to pay the deceased person's debts from the estate may not use the word "debts." Instead, they can say they "wish to discuss payment of the deceased person's bills."

"Such a reference balances the legitimate needs of the collector with the privacy interests of the decedent," the FTC ruled.

- Debt collectors may not contact family members and others "at unusual or inconvenient times or places." On the other hand, they do not have to observe any sort of "cooling-off period" in the immediate aftermath of a person's death.

"The FTC recognizes that many family members may be vulnerable emotionally and psychologically in the aftermath of a relative's death," the commission concluded. "But the record does not indicate a significant incidence of calls by collectors immediately following the debtor's death."

Consumer advocates want more

Still, the guidelines don't go nearly far enough for many consumer advocates and legal representatives.

Lamet, for instance, said the burden should fall on debt collectors when it comes to identifying who -- if anyone -- can be tagged with the deceased person's debts. Court record and other documentation should be researched, he said. Cold calling by debt collectors should be ruled off limits.

"They should be required to find out whether or not this individual they're calling is responsible for the debt before they call," Lamet said. "If not, they should not be permitted to call these people. Allowing them to call and put the burden on the consumer to determine whether they owe that debt is very, very weak."

He and other consumer advocates advise people receiving such calls or letters to, once again, say nothing of substance during the initial contact. Then, they should seek assistance from a local credit counselor or attorney, or at least do their own research by reading carefully through the FTC's new guidelines or its [consumer advisory](#).

Leading representatives of the collection industry, however, said the new guidelines seemed fair and balanced to them.

David Cherner, corporate counsel at ACA International, an association that represents 5,000 debt collection companies and other entities worldwide, said it "strongly supports the FTC's policy statement to bring clarity to the complexities involved when collecting on a decedent's debt."

"The FTC's policy statement provides essential clarity, which is helpful for debt collectors to continue engaging in decedent collection while being mindful and noting the appropriate precautions debt collectors must consider when communicating with consumers regarding a very sensitive matter," he said.

Regulators approve

The North American Collection Agency Regulatory Association, which represents collection agency regulators in 25 states and Canada, endorsed the FTC's action.

"We are in favor of this policy statement and believe that it certainly provides clear guidelines in the collection of these sensitive financial obligations," said Kelly Mack, the group's president and a lead financial examiner for Maryland's commissioner of financial regulation.

Mack said the group believes the moves "are tailored to effectively collect these type of debts and at same time protect the grieving parties from feeling obligated to personally settle the financial affairs of their deceased loved ones."

The group, however, urged regulators at all levels, to remain diligent, given the past performance of some in the debt collection industry.

"We are hopeful that the FTC and state regulators will aggressively police the new standards to ensure that collection letters and phone calls do not have the effect of pressuring relatives of the decedent to personally pay debts for which they are not legally liable," Mack said.

See related: [What happens to credit card debt after death](#), [Checklist: How to handle collection calls for a deceased person's debts](#)

Published: July 26, 2011

Read more: <http://www.creditcards.com/credit-card-news/bill-collection-rules-dead-deceased-creditor-relatives-ftc-1282.php#ixzz1TJjVe1jX>

Compare credit cards here - [CreditCards.com](#)