Relatives generally not on the hook for debts of the deceased

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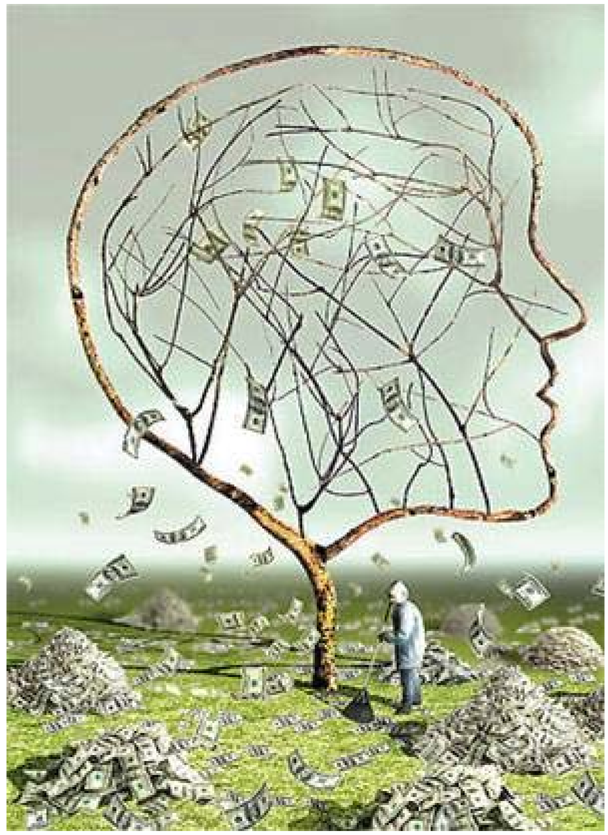

After the death of a loved one, an important task facing survivors is to settle the estate and pay off any outstanding debts.

The job description doesn't include having debt collectors hound grieving relatives to pay the bills out of their pocket.

That's the last thing you need — and you don't have to put up with the harassment.

As a rule, the debts left by the deceased are paid by his or her estate — not by the survivors, according to the Federal Trade Commission. If there isn't enough money in the estate to cover the debt, it typically goes unpaid.

"Family members typically are not obligated to pay the debts of a deceased relative from their own assets," the FTC said. "What's more, family members — and all consumers — are protected by the federal Fair Debt Collection Practices Act, which prohibits debt collectors from using abusive, unfair or deceptive practices to try to collect a debt."

Of course, there are exceptions to the rule.

"If I signed the credit card application, if I've signed the instrument which creates the debt along with my mother or my brother, then I'm going to be responsible because I've contractually agreed to do so," said Norm Lofgren, an estate planning attorney at Looper, Reed & McGraw in Dallas.

You also may be on the hook if you live in a community property state, such as Texas, and your spouse dies.

In Texas, any debts incurred by one spouse may be collected from community property owned by both spouses.

Lofgren said Texas law requires creditors to file a formal claim with the personal representative — typically the executor or administrator — of a deceased person's estate.

"Essentially, the personal representative is the only person who has the authority to spend the dead person's money," he said.

If formal claims have been filed and the estate hasn't paid its bills, creditors can go after the money inherited by any beneficiaries, Lofgren said.

"If I inherited $5,000 and the estate owes $10,000, then the estate's creditor can only get $5,000 from me," he said. "They're basically chasing the assets to whoever gets them."

Texas law protects IRAs, including inherited IRAs, from creditor claims, Lofgren said.

Life insurance benefits and annuities are also exempt from creditors.

John Bauer, estate planning attorney at Shackelford, Melton & McKinley LLP in Dallas, said federal law also protects 401(k)s from the reach of creditors.

The FTC issued a policy statement this summer clarifying the law on collecting debts of the deceased and how the FTC would enforce it.

"What we had was a number of reports of [collection] agencies engaging in what we found to be at least questionable behavior, so we investigated several of those debt collection companies," said Christopher Koegel, an FTC attorney. "We believe the best way to address this was with a policy statement to clarify what we thought were some gray areas."

The statement said the FTC will not take enforcement action against debt collectors as long as they communicate with someone who is authorized to pay debts from the estate of a deceased consumer.

The policy statement also emphasizes that debt collectors may not mislead relatives into thinking that they are personally liable for a deceased consumer's debts, or use other deceptive or abusive tactics.

The collections industry supports the FTC’s policy statement.

“The FTC’s policy recognizes the challenges with estate administration and provides much-needed clarity on how collectors may communicate with people to find those authorized to settle outstanding debts from a decedent’s estate,” said Patrick J. Morris, chief executive of ACA International, which represents the debt collections industry. “ACA International agrees with the FTC guideline that rightfully owed debt should be collected from an estate respectfully, without misleading relatives or by using deceptive or abusive tactics.”

Tom Stockton, chief executive of the CMI Group in Carrollton, a collections company, said the problem lies with “rogue collectors” who don’t comply with the law.

“There are a lot of problems with people who get into this business who think that they know what to do and they don’t realize or don’t care,” Stockton said. “There’s a lot of that.”

That’s why it’s important that you know your rights:

Phone call limits

A debt collector may not contact you at inconvenient times, such as before 8 a.m. or after 9 p.m., unless you agree to it.

Collectors also may not contact you at work if they’re told orally or in writing that you’re not allowed to get calls there.

Unauthorized contact

If an attorney is representing you on the debt, the debt collector must contact the attorney, not you.

If you don’t have an attorney, a collector may contact other people, but only to find out your address, your home phone number and where you work.

Collectors usually are prohibited from contacting third parties more than once. Other than to obtain this location information about you, a debt collector generally is not permitted to discuss your debt with anyone other than you, your spouse or your attorney.

Harassment

Debt collectors may not harass, oppress or abuse you or any third parties they contact.

For example, they may not use threats of violence or harm or publish a list of names of people who refuse to pay their debts.

However, they can give this information to the credit bureaus.

Collectors may not use obscene or profane language or repeatedly use the phone to annoy someone.

False statements

Debt collectors may not lie when they are trying to collect a debt. For example, they may not falsely claim that they are attorneys or government representatives and are prohibited from saying that you will be arrested if you don’t pay your debt.

Grieving the death of a loved one is hard enough. You don’t need, or deserve, the additional stress imposed by unscrupulous debt collectors.

Report any problems you have with a debt collector to the FTC or the Texas attorney general’s office. The FTC says it receives more complaints about debt collectors than any other industry.

But understand this point: Even if a debt collector violates the Fair Debt Collection Practices Act, the debt doesn’t go away if you owe it.

So know your rights. It may save you money, time and aggravation.

If you feel a debt collector has violated your rights, here’s what you can do:

You have the right to sue in state or federal court within one year from the date the law was violated.

You can file a complaint with the FTC at www.ftccomplaintassistant.gov or call toll-free 1-877-382-4357.

You should also file a complaint with the Texas attorney general’s office at www.oag.state.tx.us/consumer/complain.shtml.