

Special Care is Required When Collecting on Accounts From the Deceased

Collecting the debt of a deceased consumer presents many unique issues for debt collectors.

A debt collector must approach estate collection with compassion. Collecting on accounts from the deceased is an incredibly sensitive matter, requiring a delicate appreciation for seeking recovery of legitimate financial obligations and for the context in which such collections are undertaken. Collection efforts regarding a financial obligation where a consumer has passed must comply with the Fair Debt Collection Practices Act (FDCPA) and state law.

The FDCPA expressly prohibits debt collectors from engaging in any harassment or abuse; from making any false, deceptive or misleading representations; and from using any unfair means in connection with the collection of a debt from any person, including the executor or representative of an estate or other relative.

In order to comply with the FDCPA, a collector may not communicate that an individual, other than the deceased, is obligated to pay the decedent's debt unless the collector has obtained information that indicates otherwise.

In order to commence collection from the decedent's estate or through probate, a collector must contact the administrator or executor of the decedent's estate, often referred to as the personal representative. The law permits debt collectors to contact relatives or other third parties to identify the personal representative.

The personal representative is afforded the full protection of the FDCPA. This includes the ability to cease communications with the collector regarding the debt. If a collector receives a written notice from the personal representative requesting the collector cease communication or refusing to pay the obligation, the collector is obligated to comply with this request.

If a collector seeks payment of a debt from proceeds or an estate administered by a personal representative, the debt collector must provide a validation notice informing the personal representative of certain information regarding the existing obligation. The communication should include the Mini-Miranda as well as any state-required text.

In situations when the estate is insolvent or unable to pay all debts, state law further determines the order in which creditors are satisfied. In these cases, the personal representative will sell some of the estate's property to pay the outstanding debts. After liquidation if claims still remain, the assets are divided and distributed to the creditors proportionally. Although personal representatives have the authority to act on behalf of the estate, a personal representative generally is never personally liable for the decedent's debt.

Collecting the debt of a deceased consumer presents many unique issues for debt collectors. Therefore, it is important to develop policies and procedures to assist in the collection process. It is possible for creditors to recover debts from deceased consumers, but due to the specific time parameters, it is of the utmost importance that debt collectors act with compassion, diligence and efficiency.