Dealing with a Deceased Loved One’s Debt Collectors

The last thing anyone wants after the death of a family member is calls from debt collectors dunning the loved one’s estate. While some family members can be contacted by debt collectors, the family is protected from abusive, unfair, or deceptive practices.

Usually the estate is responsible for paying any debts the deceased may have left. If the estate does not have enough money, the debts will go unpaid. A debt collector may not turn to relatives to try to collect payment (unless they were co-signers or guarantors of the debt). However, the spouse of the decedent may have responsibility for any debts that were jointly held.

Debt collectors are allowed to contact the personal representative (executor) of the estate, the decedent’s spouse, or the decedent’s parents (if the decedent was a minor) to discuss the debts. They may not discuss the debts with anyone else. The only reason debt collectors may contact other relatives or friends is to get the name of the personal representative or spouse. But they cannot say anything about the decedent’s debt to those individuals or even say that they are debt collectors. When speaking with family members, debt collectors may not mislead the family into believing that the family members are responsible for the deceased person’s debts. They also can’t use abusive or offensive language.

Even if you are the person who is responsible for paying the estate’s debts, you can request that a debt collector stop contacting you. To do this, you need to send a letter to the debt collector asking the collector not to contact you again. You should keep a copy of the letter for your records and send the letter “certified” with a return receipt. Once the

collector receives the letter, the collector can contact you only to tell you that there will be no further contact or to inform you of a lawsuit. Remember, the estate is still responsible for paying its debts to the extent that it can.

If you have a problem with a debt collector, contact your state attorney general's office or the Federal Trade Commission at ftccomplaintassistant.gov.

Preventing a Will Contest

Emotions can run high at the death of a family member. If a family member is unhappy with the amount they received (or didn't receive) under a will, he or she may contest the will. Will contests can drag out for years, keeping all the heirs from getting what they are entitled to. It may be impossible to prevent relatives from fighting over your will entirely, but there are steps you can take to try to minimize squabbles and ensure your intentions are carried out.

Your will can be contested if a family member believes you did not have the requisite mental capacity to execute the will, someone exerted undue influence over you, someone committed fraud, or the will was not executed properly.

The following are some steps that may make a will contest less likely to succeed:

- **Make sure your will is properly executed**. The best way to do this is to have an experienced elder law or estate planning attorney assist you in drafting and executing the will. Wills need to be signed and witnessed, usually by two independent witnesses.
- **Explain your decision**. If family members understand the reasoning behind the decisions in your will, they may be less likely to contest the will. It is a good idea to talk to family members at the time you draft the

will and explain why someone is getting left out of the will or getting a reduced share. If you don't discuss it in person, state the reason in the will. You may also want to include a letter with the will.

- **Use a no-contest clause**. One of the most effective ways of preventing a challenge to your will is to include a no-contest clause (also called an "in terrorem clause") in the will. This will only work if you are willing to leave something of value to the potentially disgruntled family member. A no-contest clause provides that if an heir challenges the will and loses, then he or she will get nothing. You must leave the heir enough so that a challenge is not worth the risk of losing the inheritance. Some states, however, either do not honor no-contest clauses or have limitations upon them.
- **Prove competency**. One common way of challenging a will is to argue that the deceased family member was not mentally competent at the time he or she signed the will. You can try to avoid this by making sure the attorney drafting the will tests you for competency. This could involve seeing a doctor or answering a series of questions.
- **Video record the will signing**. A video recording of the will signing allows your family members and the court to see that you are freely signing the will and makes it more difficult to argue that you did not have the requisite mental capacity to agree to the will.
- **Remove the appearance of undue influence**. Another common method of challenging a will is to argue that someone exerted undue influence over the deceased family member. For example, if you are planning on leaving everything to your daughter who is also your primary caregiver, your other children may argue that your daughter took advantage of her position to influence you. To avoid the appearance of undue influence, do not involve any family members who are inheriting under your will in drafting your will. Family members should not be present when you discuss the will with your attorney or when you sign it. To be totally safe, family members shouldn't even drive you to the attorney.

Bear in mind that some of these strategies may not be advisable in certain states. Talk to your attorney about the best strategy for you.

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