Legal Matters®

Elder Law
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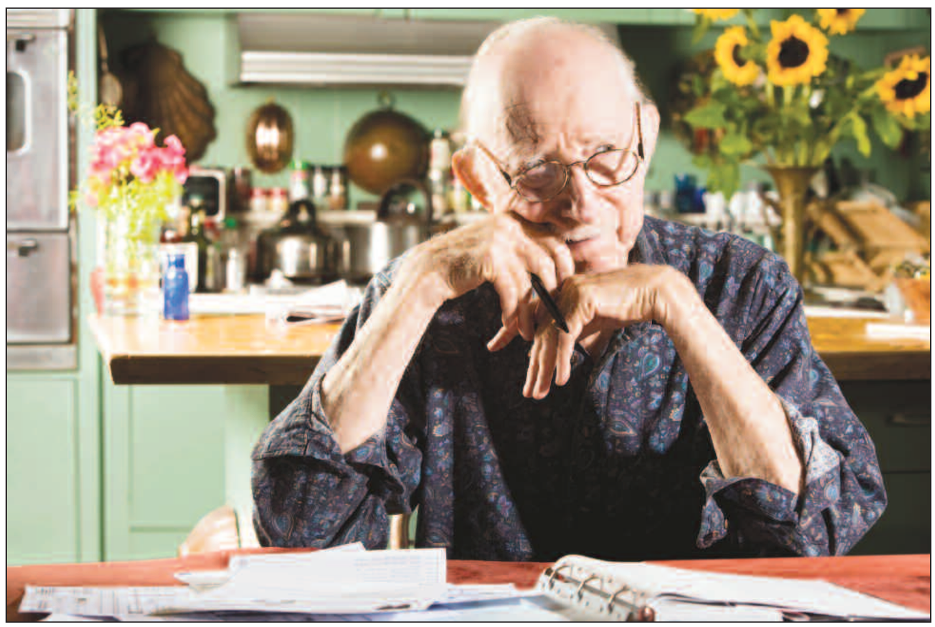
Who is responsible for paying a deceased relative's debts?

The loss of a loved one is difficult to cope with, but if the loved one left debts behind, it can be even tougher. It's important to know who is responsible – and who is *not* responsible – for the debts of a deceased person.

This is even more true now than in the past, because creditors and debt collectors have become very aggressive lately about contacting a deceased person's family members and trying to get them to pay debts. These debt collectors have been known to lie about a family member's obligation to pay a debt. They sometimes have been trained to sound full of sympathy and compassion, but really they just want someone – anyone – to pay them money, whether or not the person actually legally owes it.

In addition, many scam artists will read an obituary and then contact the deceased person's relatives, posing as creditors. They will try to get family members to provide



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Social Security numbers and other information, so that they can steal their identity.

If you're being contacted by creditors about a deceased relative's debts, an attorney can help sort out what you actually owe, and can take steps to force debt collectors to stop contacting you.

In general, when a person dies, that person's estate becomes responsible for any debts the person owed. The person's executor or personal representative is responsible for

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BELIVEAU LAW GROUP, LLC

Massachusetts offices: Waltham, MA; Danvers, MA; and Quincy, MA
New Hampshire offices: Manchester, NH and Salem, NH
Florida offices: Boca Raton, FL and Naples, FL
Main Telephone Number: (781) 890-8600 • Email: firm@beliveaulaw.com • Website: www.beliveaulaw.com

Charitable remainder trusts: Income for life, good deed at death

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At the time you create the trust, you'll receive an income tax deduction for charitable giving. In addition, if you have assets that have appreciated in value, putting them into a trust can avoid capital gains taxes when they're sold.

Many people like the idea of leaving a bequest to a favorite charity in their will. But an interesting alternative is to put assets now into a charitable remainder trust.

A charitable remainder trust is a trust that provides you (and possibly your spouse) with income for life. The trust can pay you a certain amount of income each year from investments, or you can choose to be paid a percentage of the trust assets each year. When you die, the "remainder" in the trust goes to the charity or charities of your choice.

Charitable remainder trusts have many advantages. For instance:

- At the time you create the trust, you'll receive an income tax deduction for charitable giving. The deduction is based on the present value of the amount that will eventually go to charity.
- If you have stocks or other assets that have appreciated in value, putting them into a trust can be a good idea, because you may be able to avoid capital gains taxes when they're sold.
- Any profits from the future sale of other investments within the trust also won't be subject to capital gains tax, which means the trustee may have more freedom in managing the assets.
- When you die, the assets in the trust will pass outside your estate and be eligible for the estate tax charitable deduction.

The downside of a charitable remainder trust is that it is irrevocable, meaning that once you create the trust, you can't cancel it. (While you can't revoke the trust, you may have the ability to change the beneficiary if you decide to give to a different charity. You may also serve as the trustee if you want, giving you control over how the trust assets are invested.)

In addition, you should note that any income you receive from the trust will be subject to income taxes.

To find out if a charitable remainder trust is right for you, talk to your elder law attorney.

Update your estate plan when your finances change

In the recent economic downturn, many homes lost considerable value and stock portfolios gyrated. If this is the case for you, then you should consider reviewing your estate plan.

If your will divides your estate into percentages for beneficiaries, then changes in value won't affect the proportions by which your estate is distributed. However, if you have included specific bequests in your will, then a rise or fall in your net worth could have significant consequences. For example, if your estate plan gives $50,000 to your favorite charity and the rest of your estate to your children, a reduction in the value of your estate could mean your children won't get as much as you intended.

A change in the value of your assets could also affect your estate plan if you intend to treat your children equally by giving them assets of equal value. For example, suppose a person's will gives a house worth $300,000 to a daughter and a stock portfolio worth $300,000 to a son. If the value of either the house or the portfolio increases or decreases significantly in value, the children will no longer receive equal gifts.

Does your will name an alternate beneficiary?

What will happen to your estate if your primary beneficiary – the person you name to inherit your assets – dies before you do? If your will doesn't name an alternate beneficiary, then your estate will be divided according to state law – which might mean it will go to someone you don't like, or someone who is unable to handle significant assets.

For example, suppose your will divides your estate equally among your children. If one child dies before you do, what do you want to happen to that child's portion? Should it be divided among the other children? Should it go to the deceased child's spouse, or to the deceased child's children? What if the grandchildren are young – should it go into a trust for their benefit?

Of course, if something should happen to one of your beneficiaries, it's usually possible to rewrite your will later. But what if you are incapacitated at the time, and can't make amendments to you will? That's why it's always good to include alternate beneficiaries in your will, so your wishes will be observed even if you can't rewrite your will as circumstances change.

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paying those debts out of the property of the estate.

The executor isn't *personally* liable for the debts, of course, and doesn't have to pay them out of his or her own pocket; they can be paid only out of the estate's property.

So in general, no relative of a deceased person should have to pay any debts, unless that person is independently liable for them because he or she co-signed a loan or jointly assumed an obligation.

Here are some specific examples:

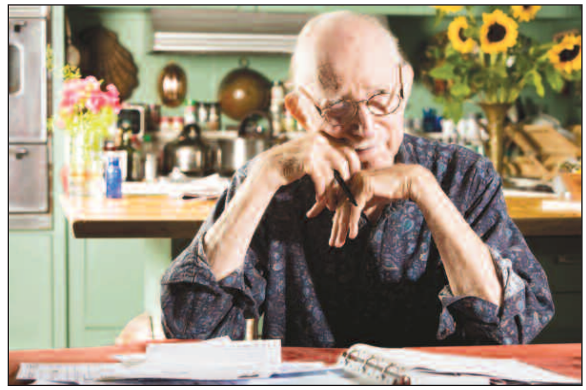
What if the deceased person had a mortgage? Unlike many debts, a home mortgage is a "secured debt," meaning the lender has a right to foreclose on the real estate if the loan isn't paid off.

If the deceased person had a home mortgage, then the result depends on whether someone else co-signed the mortgage. For instance, if a married couple jointly owned a house and both signed a mortgage, then the surviving spouse would get the house, and would be responsible for the mortgage payments.

If the deceased person was the only signer of the mortgage, then typically, whoever inherits the house would receive it subject to the mortgage. Depending on the terms of the mortgage, the heir might be able to simply assume the payments. In other cases, the lender could demand full payment right away, in which case the heir might need to sell the house, pay off the lender, and keep any remaining proceeds.

What about car payments? Like a home mortgage, a car loan is usually a "secured debt." Thus, whoever ends up inheriting the car will typically inherit it subject to the obligation to pay off the lender. (An exception would be if the person's will says that the executor should pay off the loan, and the estate has enough assets to do so.)

If someone else besides the deceased person co-signed the car loan, then the lender might be able to require the co-signer to pay off the loan, because that person signed the agreement.



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If the car is worth less than the amount of the outstanding debt, it might be wise to simply ask the lender to repossess the vehicle. Once the vehicle is repossessed, the lender can't collect anything else from anyone.

What about credit card debt? Responsibility for credit card debt depends on whether someone else was a joint owner of the card. If someone else was a joint owner, then the creditor can collect from either the estate or the joint owner. Usually the estate will pay the debt, but if it doesn't (for instance, if there aren't enough assets in the estate), then the joint owner is responsible.

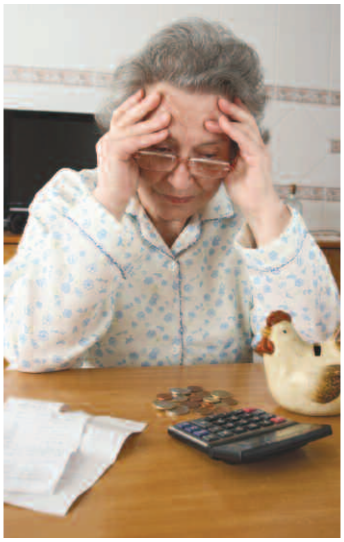
Creditors and debt collectors have become very aggressive lately about contacting a deceased person's family members and trying to get them to pay debts. These debt collectors have been known to lie about a family member's obligation to pay a debt. They sometimes have been trained to sound full of sympathy and compassion, but really they just want someone – anyone – to pay them money, whether or not the person actually legally owes it.

But be careful: A "joint owner" is different from an "authorized user." Just because someone's name is on a credit card doesn't mean they're a joint owner. They're not a joint owner unless they actually signed an agreement promising to be responsible for any charges. Otherwise, they're not liable.

(Note: There is an exception in some states that can make a spouse responsible for certain credit card debts even if he or she is not a joint owner.)

What about medical bills and other debts? Unless someone else signed an agreement promising to pay these debts, only the estate is responsible for paying them. If the estate doesn't have enough assets to pay them, then the creditor is out of luck. Relatives of the deceased person have no legal obligation to repay the debt…even though creditors will sometimes try to make them think otherwise.

In general, no relative of a deceased person should have to pay any of the person's debts, unless that person is independently liable for them because he or she co-signed a loan or jointly assumed an obligation.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'Daily money managers' can help seniors with financial matters

Having difficulty keeping on top of your bills and other financial issues? Maybe a "daily money manager" can help.

A daily money manager is a person who is experienced in dealing with financial matters that can build up and cause problems if they aren't taken care of, ranging from paying routine bills to filling out complex medical claims. Daily money managers are members of a relatively new profession that now has its own professional association.

These managers can aid seniors with physical limitations such as arthritis, or who are simply having difficulty keeping track of their affairs. A manager can also help adult children who are serving as a caregiver for a parent but don't have the time to devote to money management.

Some of the tasks that daily money managers can perform include paying bills, preparing checks, making bank deposits, reconciling bank accounts, dispensing cash, organizing tax documents, keeping track of medical insurance claims, reviewing and sorting mail, negotiating with creditors, and tracking investments.

Daily money managers typically charge between $30 and $100 an hour. However, in some states the AARP offers free daily money management services to low-income seniors. For more about the AARP program, go to: http://www.aarpmmp.org/mm_program.cfm.

To find a money manager near you, you can visit the website of the American Association of Daily Money Managers, at http://www.aadmm.com.

Before selecting a money manager, be sure to ask for references and thoroughly check them out. Also, make sure the money manager is bonded. The Association's website has a helpful list of questions to ask money managers before hiring one.

Beliveau Law Group, LLC
Massachusetts offices: Waltham, MA; Danvers, MA; and Quincy, MA
New Hampshire offices: Manchester, NH and Salem, NH
Florida offices: Boca Raton, FL and Naples, FL
Main Telephone Number: (781) 890-8600
Email: firm@beliveaulaw.com • Website: www.beliveaulaw.com