An Unwanted Legacy

Death is a fact of life and when someone dies, their family might naturally wonder what happens to their mortgage, car loan, credit card bills, unpaid income taxes and other debts. The simple answer is that debts become part of the deceased's estate and typically should be paid before the remaining assets are distributed to the beneficiaries.

Beyond that, debts after death are a very complicated subject best approached with professional help. When somebody dies, the executor or personal representative is responsible for collecting the assets of the estate and paying all the debts.

Exactly how debts should be paid depends on the nature of the debt and the terms of the deceased's Will or intestacy law. For example, a loan secured on an asset usually stays with the asset, which means someone who inherits a house might get a mortgage as well. However, sometimes a debt may be paid off by the estate.

Executors and heirs also need to consider the possibility of hidden debts. To find out about undisclosed loans – or to ensure there aren't any – an executor must carry out diligent checks including monitoring the deceased's mail, reviewing recent bank statements and speaking with the deceased's financial advisers.

Credit card bills can be among the easiest debts to resolve, unless the estate is insolvent, because credit card companies may reduce or stop the accumulation of interest and fees on an account once they're notified of a death.

Debts also can come to light when a legal notice is published, as required by law. Before an estate can go through administration, notices required by statute have to be published to alert any potential creditors of the estate that the person has died. Creditors then have a fixed period in which to respond to the notice.

Debts after death can become even more complicated if the deceased owned a business or guaranteed or co-signed someone else's loan. The estate may be responsible for such debts depending on the ownership structure of the business and the legal wording of any loan guarantees.

An asset held jointly does not escape from any debt attached to it simply by the death of a joint proprietor which is why life insurance is so important. Where a property is subject to a mortgage, the surviving party will be responsible for that mortgage and if they cannot afford to take on the payments the property may need to be sold to clear the debt.

If an estate is insolvent, meaning the assets aren't enough to pay off the debts, the executor has a difficult and sensitive job and this is becoming more common in the current economic climate. If there is insufficient money to pay off all the debts being claimed, you need to know legally what the priorities are of who gets paid and who doesn't. Such situations can get ugly, because people may be grieving over the death of the relative.

When someone dies, it's a very emotionally charged event for the family and loved ones. When you combine that with the potential of not getting an inheritance but instead having to deal with debt, the situation can get very heated. It is always advisable to use a professional in such circumstances and we are always available to offer support and guidance.

We hope you find this useful, but please do not hesitate to contact us for further information.

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