

Options for Recovery of Unsecured Debt Due From a Deceased Debtor

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While the various different legal, probate court, and civil litigation issues, statutes of limitation, and procedural rules and requirements can be daunting, yes, unsecured debt can be recovered from a deceased debtor. The situations and options run the gamut, at least including:

1. Voluntary post-death payment by the representative of the decedent's estate or the trustee of decedent's trust(s);
2. Acceptance and payment upon a formal, complete and prudently worded, creditor claim filed in a court administration of the decedent's estate that has been voluntarily initiated by the representative of the decedent;
3. Acceptance and payment upon a formal, complete and prudently worded, trust creditor claim made in response to a trustee's voluntary trust creditor notice;
4. The filing by the creditor of a legal action to initiate court administration of the decedent's estate as a means of triggering the right to file a creditor claim against the assets of the decedent that are held in the decedent's estate or trust(s), and also against the community and quasi-community property (and possibly separate property) of the decedent's surviving spouse or legal domestic partner, whether held personally or in trust(s);
5. Litigation and recovery against the decedent's estate assets;
6. Litigation and recovery against assets of the decedent that are held in trust(s);
7. Litigation and recovery against other assets of the decedent that are not held in trust and that are not subject to probate;
8. Litigation and recovery against personal (community and quasi-community, and perhaps separate property) assets of the decedent's surviving spouse or legal domestic partner;

9. Litigation and recovery against (community and quasi-community, and perhaps separate property) assets of the decedent's surviving spouse or legal domestic partner that are held in trust(s);
10. Litigation and recovery against (community and quasi-community, and perhaps separate property) assets of the decedent's surviving spouse or legal domestic partner that are not held in trust and that are not subject to probate;
11. Litigation and recovery against beneficiaries of the of the decedent's estate, trust or other assets; and
12. Litigation to set aside a fraudulent conveyance of the above referenced assets.

Depending upon the amount of debt owed, the obligor(s) of the debt, the assets available to satisfy payment of the debt, and the legal manner in which those assets are held, it might be necessary to file more than one legal proceeding to perfect recovery from each of the various possible sources of recovery. For example, the filing of a creditor claim against the estate of the decedent will allow recovery against some, but not all possible assets. The filing of a trust creditor claim in response to a trustee's notice to creditors will allow recovery against some, but not all possible assets. The assets that are recoverable upon the filing of a trust creditor claim are not identical to the assets that are recoverable upon the filing of an estate creditor claim. In an increasing number of situations, the surviving spouse, the decedent's representative, beneficiaries of the decedent, and the successor trustee decline to voluntarily initiate formal court probate administration or trust creditor proceedings, thus possibly requiring the creditor to initiate those proceedings. And, additionally, several statutes of limitation may apply and variously interact, including 1-year, 4 months, 3 months, 90 days, 60 days and 30 days.

A creditor who wishes to recover upon debt owed by a decedent really needs to be aware of the creditor's recovery rights and the applicable recovery options that are available. The creditor also needs to keep on top of and promptly act to meet the applicable deadlines. On the other hand the good news is that if done properly, unsecured assets of the deceased debtor and of the deceased debtor's surviving spouse or legal domestic partner can be reached to satisfy the debts of the deceased debtor. Contact me if you are a creditor and you wish to discuss some of the practical legal, probate and civil litigation intricacies of recovering a debt from a decedent in your situation. In addition to civil litigation, I represent trustees, beneficiaries and creditors in trust and probate litigation and administration matters.

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