

LEGAL EASE



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Debts in an estate: how do they get paid?

A loved one has passed away and still while grieving your loss, you discover that there are creditors asking for payment, bills coming in, and no access to your loved one's money. What do you do now? Elder Law Answers (www.elderlawanswers.com) in a recent newsletter addresses some of these issues.

When someone dies with a Will in place, the person named to handle the estate is an "Executor." If there is no Will, a person can be appointed to administer the Estate, an "Administrator". In either situation, Will or no Will, the person named or one appointed by the Register of Wills will act as the personal representative; it is this person's main job to pay just debts of the estate (that is, debts incurred by the decedent). This task can be overwhelming, and the correct procedures should be followed so that no missteps are made and personal liability is avoided.

The first step is to probate the Will or otherwise be appointed as personal representative. This involves traveling to the office of the Register of Wills in the County where the decedent resided and/or died, establishing an estate, and obtaining the authorization to administer the estate (short certificates). The personal representative then gathers the assets and determines what is owed by the estate. This might require a search of the decedent's papers and notification of creditors. Notification consists of publishing a notice in a local newspaper and a law journal so that you start the statute of limitations running. In Pennsylvania, creditors have one year to file a claim from actual notice.

If there is more debt than there are assets, the debts must be satisfied in a certain order. If after those particular debts, such as the funeral bill, are satisfied, there are still assets, many times the remaining debt is settled in order of priority (per State and Federal law), and payments can be pro-rated. If the estate cannot settle the claims against it, the estate is declared insolvent. In most instances, the personal representative is not responsible for the debt of the estate unless it can be shown the personal representative has mismanaged the assets. Another exception involves a spouse and the type of debt owed.

Not all estates are burdened with creditors' claims that exceed the assets but for those in that situation, the right procedures can avoid unnecessary problems and expense. Dealing with creditor claims can be scary and complicated. A personal representative who makes mistakes could become personally liable. The assistance of an experienced estate attorney can make all of the difference.