For the Families of Some Debtors, Death Offers No Respite

THE WALL STREET JOURNAL.

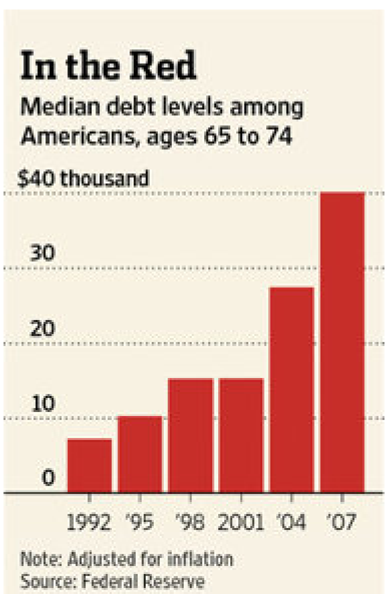
After Linda Long's husband died of colon cancer last year, the phone calls poured in.

The 68-year-old retired office worker says she got as many as 10 calls a day from a debt-collection firm asking for $16,651.52 that her husband, Millard, had racked up on a Bank of America Corp. (BAC-News) credit card.

An employee at West Asset Management in Omaha, Neb., explained that she wasn't legally obliged to pay, according to a recording of the November call reviewed by The Wall Street Journal. Then he veered into a discussion about how she could "get this taken off your plate."

Mrs. Long, of Cape Coral, Fla., told the debt collector she had "lost everything." She had sold the couple's motor home to help cover medical bills and funeral costs. All that was left, she said, was $2,000 in life-insurance proceeds.

"I can give you that," she said when asked for the money, "anything just to get this off of my head."



When you die, your debts usually die with you. Surviving family members rarely have a legal obligation to pay unless they co-signed a loan, such as a mortgage or credit card. That leaves lenders in the lurch.

But debt collectors have found a way to help lenders get their money anyway. Working on behalf of financial giants from Bank of America and Capital One Financial Corp. (COF-News) to Discover Financial Services (DFS-News) and Citigroup Inc. (C-News), collection firms target survivors who might agree to pay at least part of what the dead person owed.

Debt collectors say the survivors have a moral obligation to pay, especially in cases where they benefited from purchases rung up by someone else.

ACA International, the industry's main trade group, says that collecting payments on debts owed by the dead helps ensure that lenders will continue to extend credit at competitive interest rates to older Americans. David Cherner, corporate counsel for the ACA, says lenders must try to collect the debt or else write it off. "Just because someone has passed doesn't mean the debt is wiped clean," he says.

None of the financial firms would say how much debt-recovery work is outsourced. Nor would they comment on any individual collection cases. The companies say that they comply with all applicable laws and make sure surviving relatives are approached with sensitivity.

Tony Lloyd, a former manager for debt collector DCM Services LLC of Minneapolis, says the benefits of using death-debt collectors are clear. "The big selling point is that these collectors offer banks a cushion that shields them from actually having to do the gritty work of going after dead people's families," he says.

No one knows the size of the death-debt collection business, but it appears to be growing, according to court records, regulatory filings and interviews with dozens of lawyers and industry experts. The Federal Trade Commission investigated the industry and issued new guidelines in July after receiving numerous consumer complaints. William Howard, a consumer-rights lawyer with Morgan & Morgan in Tampa, Fla., says he has represented 50 people pursued for debts owed by dead family members so far this year, up from 10 in all of 2010. "Collectors are starting to realize just how much money you can get from someone when they are at their most vulnerable," he says.

DCM Services, which exclusively focuses on deceased debts, says in its company fact sheet that it "manages collections on more than $1 billion in deceased accounts per year with an extremely low complaint rate."

One thing isn't in dispute. Dwindling retirement savings, falling home values and high unemployment mean that more Americans are dying while still in debt, says Sally Hurme, an elder-law lawyer with AARP, an advocacy group for people 50 or older.

Debt among Americans between the ages of 65 and 74 is growing faster than for any other age group, according to the Federal Reserve. As of 2007, the latest year for which figures are available, the median debt level of that age group was $40,130, up from $27,458 in 2004. Research group Strategic Business Insights' Macromonitor conducted a separate survey and found that households headed by Americans 75 and older carried an average of $7,200 in credit-card debt in 2010, more than triple the 2008 level.

Typically, death-debt collectors get paid based on the amount of money they recoup for the lenders, say lawyers for debt-collection firms. Firms can pocket up to 40% of the payments collected, roughly double the rate for other kinds of delinquent consumer obligations.

Debt collectors that target money owed by dead Americans tout their ability to get a lender's money back without public-relations headaches. On its website, DCM Services promises help "to protect our clients' brands and maximize their recoveries." Estate Information Services LLC, based in Columbus, Ohio, offers "a proven approach that yields high returns at a low risk to the client's reputation," the company's website says. Both companies declined further comment.

In its investigation of the business, the FTC said it listened to recordings of thousands of calls between collectors and mourners. Some debt collectors misled relatives into believing they had to pay, says J. Reilly Dolan, acting director of the FTC's financial-practices division.

Still, the agency determined the previous guidelines were ineffective and "too constricting," Mr. Dolan says. So, in July, the agency issued a policy statement. Before the new guidelines, collectors were supposed to discuss a dead person's debt only with the person's spouse or someone chosen by the dead person's estate. But Mr. Dolan said few debtors are formally designating someone to handle their affairs after death, leaving debt-collection firms unable to determine whom to contact for payment of any outstanding bills.

After Death, Who Has to Pay?

Some questions and answers about what happens to debts left behind by someone who dies:

Who is responsible for paying the money? It depends. If the debt was jointly held, as most mortgages and some credit cards are, then the survivor must keep making payments. Survivors aren't legally on the hook if the loan account was solely in the name of the dead person.

The cause of death—old age, accident, disease or even suicide—doesn't have any effect on who is responsible.

How do debt collectors get what they are owed? About 44% of all Americans have a will or estate, according to ACA International, the main trade group for debt collectors. In those cases, debt collectors can file a claim in probate court, much like creditors do in bankruptcy proceedings. Assets given to relatives usually are off-limits.

What if there isn't a will? The only option for debt collectors is to persuade someone else to pay, usually a relative, even though they aren't required to. Most death debts are related to credit cards.

Hospitals seldom try to collect unpaid medical bills from family members, according to consumer lawyers.

How do lenders protect themselves? Before extending credit, lenders check credit reports for a borrower's record of timely payment. Borrowers considered risky sometimes pay higher interest rates, especially on unsecured loans like credit cards, according to the American Bankers Association.

Is it possible to cheat the system? Yes. Someone who is terminally ill could apply for a credit card and then rack up charges without ever intending to pay. But that rarely happens, says Mark Schiffman, an ACA spokesman.

What happens to a mortgage? If the mortgage was signed only by the deceased person, then the lender can repossess the house after the death to recoup any losses.

If there's more than one borrower, the surviving person must continue paying.

--Jessica Silver-Greenberg

The FTC sought to improve the process and now allows debt-collection firms to contact anyone believed to be handling the estate, including parents, friends and neighbors. Agency officials wanted to resolve a "tension that was emerging" between state and U.S. laws on how collectors can go after money, Mr. Dolan adds. "While people might think it is horrible for collectors to speak with surviving spouses, we have no power to change that."

FTC officials rejected requests by lawyers representing family members for an outright ban on calling surviving family members. The agency also declined to impose a cooling-off period during which relatives couldn't be contacted by debt collectors.

Jerome Lamet, a former FTC assistant regional director who oversaw debt-collection firms, claims the agency "squandered a spectacular opportunity." Mr. Lamet is now a Chicago lawyer who specializes in debt-relief law.

Mark Schiffman, a spokesman with ACA, the trade group for debt collectors, supports the new guidelines, saying the FTC recognized "the industry needs to have flexibility to find out who handles the estate."

Collecting the debts of the dead is often easier than other collection work, says Mark Russell, a director at debt-collection advisory firm Kaulkin Ginsberg in Rockville, Md. Most borrowers behind on their bills have little or no money. Successfully collecting death debts takes just one relative who is willing to pay, he says.

To target survivors, DCM Services built a massive database of the recently deceased, says Mr. Lloyd, the former employee. The company uses the database to cross-reference accounts handed over by lenders, he says. In addition, low-level employees at DCM Services get paid a daily stipend to scour obituaries and estate notices in newspapers across the U.S.

Debt collectors often tell surviving family members that they aren't personally responsible for paying the debts of the deceased. But those words barely register with grieving relatives, according to interviews with a dozen lawyers who represent about 60 families pursued for money owed by dead relatives.

"Each call brought up fresh memories of my husband's death," Patricia Smith, 56, says about the calls she started getting last year about $1,787.04 in credit-card debt owed by her late husband, Arthur.

The debt-collection calls and letters kept coming and wore her down, says Mrs. Smith, who lives in Jackson, Miss. She agreed to scrounge together $50 a month "just to make the calls stop."

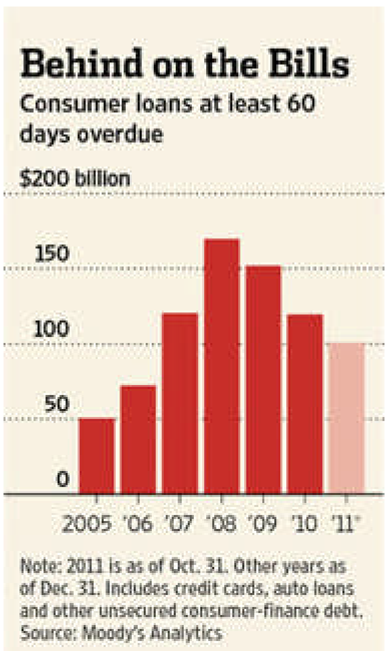
After talking to a lawyer, she changed her mind. In March, Mrs. Smith filed a federal lawsuit against the collector, DCM Services, alleging the company harassed her. DCM Services declined to comment but has asked a judge to dismiss the case.

Collectors in the death-debt business use carefully calibrated techniques. Employees often begin their calls with a sprinkle of grief counseling. DCM Services uses what it calls "empathetic active recovery."

"Handled appropriately, we believe that our Account Representatives can create a positive emotional experience with survivors," the company says on its website.

Phillips & Cohen Associates Ltd. employees try to persuade families "to make a morality payment," according to a copy of the debt-collection firm's training materials reviewed by the Journal. Employees at the Wilmington, Del., company are also taught how to navigate "crying as a defense."

"You have been through some tough times," employees are told to say. "But we need to resolve this issue." Phillips & Cohen, which specializes in collecting debts of the deceased, didn't respond to requests for comment.Some debt collectors send condolence cards that double as collection letters. In September, Maxine Feinberg of Brooklyn, N.Y., got a letter from AscensionPoint Recovery Services LLC, a debt collector in Coon Rapids, Minn. The company offered its "deepest condolences," referring to the death of her husband, David.



The company then brought up the $407.96 owed by Mr. Feinberg on a Macy's Inc. credit card. The letter thanked Mrs. Feinberg for "promptly attending to this important matter in the life of David Feinberg." Macy's didn't respond to requests for comment.

In October, Mrs. Feinberg accused AscensionPoint of harassment in a federal-court suit. AscensionPoint declined to comment. The company has not filed a response.

Some people claim they are misled into believing they are required by law to pay the debts of dead relatives. Jody Randazzo, a 37-year-old teacher in Farmington Hills, Mich., says DCM Services employees threatened to seize her late father's Florida home after his 2009 death unless she paid $6,000 he owed on a Citigroup credit card.

She refused. Ms. Randazzo submitted a complaint to the Florida Attorney General's office. Citigroup and DCM Services declined to comment.

Death-debt collectors can be persistent. Lisa Wood, a 46-year-old legal assistant in Wichita, Kan., says she has gotten roughly 200 calls from them after her mother's death in January.

Her mother died owing more than $11,000 to American Express Co. (AXP-News), HSBC Holdings PLC (HBC-News) and J.P. Morgan Chase & Co. (JPM-News). "The abuse has gotten so bad that every day I think about just paying," Ms. Wood says about the debt collectors. The companies declined to comment about her.

Some people sue debt collectors in hopes of making them go away. Lawyers for plaintiffs in such cases typically are paid fees plus a percentage of any damages or settlement.

Mrs. Long, the Cape Coral, Fla., woman who was prodded to pay her dead husband's credit-card debt of $16,651.52, was surprised when she got a call six months after he died. She assumed his death had snuffed out the bill.

"I have no money," she said.

"Hang in there," said Jason Shea, an employee at West Asset Management.

Near the end of the seven-minute call, which was recorded by the debt-collection firm, Mr. Shea offered to write off the credit-card debt for $12,500 "if that makes any difference or if there's any family that can maybe help out with the situation."

Two months later, Mr. Shea called back to ask if there had been "any change…to make it possible to address this bill." She said she was "destitute," living with her 88-year-old aunt, lost her house to foreclosure and had her car repossessed.

The debt collector listened patiently and then gently prodded Mrs. Long for life-insurance proceeds or "anything at all that can be offered." "I know that's really hard to come up with," Mr. Shea said.

He then offered to accept $2,000 to "get this bill taken care of," according to a recording of the call. Mrs. Long couldn't afford to pay but agreed anyway.

"I didn't want his name dragged through the mud like some kind of deadbeat," she says.

After talking to a lawyer who said she didn't owe the money, Mrs. Long sued Bank of America and West Asset Management, a unit of West Corp., in a Florida state court in August, alleging harassment. In court filings, the companies have denied harassing her. West Asset declined to make Mr. Shea available for comment.