

## **THE WALKING DEBT**

By Daniel J. Goldberg and John Mark Long

“He that dies pays all debts.” - **William Shakespeare**

Or does he? Welcome to the world of the zombie debt, where you must dispossess yourselves of the certainty that all good debts go to heaven along with the debtors behind them. Only if creditors allow those debts to die, will they pass this world to another. In this little known, dark world of probate collection, creditors are the Dr. Frankenstein that can, and often should, resurrect a claim even after the death of the debtor.

Too many companies and non-profit organizations will just abandon sums they are owed by the recently deceased. But Texas Probate Law allows creditors, claimants and beneficiaries listed in a Trust or a Last Will and Testament to forcefully pursue their claims against an estate. And there may be good reasons to abandon such a claim: sorrow for the widow or widower; a desire that the family inherit more, at the altruistic expense of the creditor/beneficiary; knowledge that the decedent left this earth without any assets to take from; etc. Yet an organization, whether for-profit or charity, should never walk away from their claim due to their or their attorneys' inexperience or ignorance of the rights Texas probate law guarantees.

Below is our firm's Guide to the Owner of a Recently Deceased's Debt or Promise:

1. **Stay Informed and Alert!** Do you track all outstanding billing? Do you know the name and contact information for the sole proprietor behind the business that owes you money? Do you maintain a regularly updated database of all individuals who pledged to include your non-profit organization in their Will? Do you have the ability to learn if any such person passed recently? While the representative of any estate must give public notice to all potential creditors or beneficiaries, such a notice is often buried in the back section of a scantily-read regional newspaper, or sent to your old address, or just posted in a courthouse. An estate, while seeking to uphold the minimal notice requirements under the law, is still incentivized to hold on to as much of the assets as possible by alerting as few creditors as possible.
2. **Hire Competent Counsel!** An in-house or retained house attorney - [I don't know the terminology, so leave it if it's attorney jargon, but "out-house" connotes "toilet" to me] – even those experienced enough in collections litigation - may have his employer's/client's best interests in mind; he may simply lack the knowledge of probate law. Similarly, a skilled collections attorney might not know how to enforce a perfectly valid claim against an estate. The process to collect within the probate courts is not extremely complex or hyper-technical, but there is an established procedure that must be employed.
3. **Serve up Your Claim Hot and Fresh!** A creditor or beneficiary must serve up notice of its claim on the representative of the estate – and must do so quickly. The requirements

for method (e.g. affidavit or none?) and timing of service (4 months or less?), and the contents of the claim vary depending on whether the claim is secured or unsecured, and on whether the representative is an Executor, Independent Administrator or Dependent Administrator. Many a resurrected zombie claims return to the ground for reburial because of mistakes made at this phase.

4. Pay Attention and Do Not Lose Focus! Did the estate's personal representative reject your claim? Did he accept the claim but is merely failing to act on it? Is it rejected or accepted by default? If you or your lawyer fail to follow up, the debt-owing estate may escape your grasp yet again. Calendar! Calendar! Calendar! But the calendar dates change depending on what type of estate is set up.
5. File Suit Already! When and if an estate's representative rejects a claim and often when no action is taken at all, there is often little time to draft and file a suit. Again, the deadlines vary depending on the type of the administration. But such suits for creditors are essentially the same as the suit may have been if filed before the debtor passed away in the first place, regardless of whether the cause of action is for *Breach of Contract*, or *Suit on Sworn Account*, or even for a personal injury. If the claimant is a non-profit entity promised sums under a Will, the suit may be to force the Administrator or Executor to perform as per the decedent's wishes.
6. Take Over the Estate! Under limited circumstances, a creditor or beneficiary can actually take over the estate as a whole. This often happens when no family member is appointed or volunteer or accepts the role of the representative. It could happen if a court merely is convinced that a personal representative of the estate needs replacement for failure to properly perform or mismanagement of the estate.

Oh, how many good options exist for those willing to learn and apply the law.

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