

[Billing code 6750-01S]

FEDERAL TRADE COMMISSION

**Statement of Policy Regarding Communications in Connection
with Collection of a Decedent's Debt**

AGENCY: Federal Trade Commission.

ACTION: Request for public comment.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) requests public comment on a proposed statement of enforcement policy regarding communications in connection with collection of a decedent’s debts.¹ The statement addresses three issues pertaining to debt collectors who attempt to collect on the debts of deceased debtors. First, the proposed statement announces that the FTC will not bring enforcement actions for violations of Section 805(b) of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. 1692c(b), against collectors who, in connection with the collection of a decedent’s debt, communicate with a person who has authority to pay the decedent’s debts from the assets of the decedent’s estate. Second, the proposed statement clarifies how a debt collector may locate the appropriate person with whom to discuss the decedent’s debt. Third, the proposed statement emphasizes to collectors that misleading consumers about their personal obligation to pay a decedent’s debt is a

¹ An enforcement policy statement describes the Commission’s future enforcement plans, goals, and objectives with respect to a particular industry or practice. Enforcement policy statements do not have the force or effect of law, but they may reflect the Commission’s interpretation of a legal requirement. The Commission issues this proposed statement pursuant to its general legal authority to enforce the Fair Debt Collection Practices Act, 15 U.S.C. 1692l(a), and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

violation of the FDCPA and Section 5 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. 45.

DATES: Public comments must be received by November 8, 2010.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form by following the instructions in the Invitation To Comment part of the “SUPPLEMENTARY INFORMATION” section below. Comments in electronic form should be submitted by using the following weblink:

<https://ftcpublic.commentworks.com//ftc/deceaseddebtcollection> (and following the instructions on the web-based form). Comments in paper form should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex W), 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326-2252.

FOR FURTHER INFORMATION CONTACT: Christopher Koegel or Quisaira Whitney, Attorneys, Division of Financial Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326-3224.

SUPPLEMENTARY INFORMATION:

I. Background

Media reports and a Congressional inquiry have raised concerns that some debt collectors may be violating federal consumer protection laws when they attempt to collect debts from the relatives of deceased debtors (“decedents”).² Staff has investigated

² See, e.g., *You’re Dead? That Won’t Stop the Debt Collector*, N.Y. Times, Mar. 4, 2009; Dana Dratch, *What Happens to Credit Card Debt after Death*, CREDITCARDS.COM, Apr. 16, 2010, <http://www.creditcards.com/credit-card-news/credit-card-debt-death-1282.php>.

whether, in connection with the collection of decedents' debts, debt collectors have contacted persons other than those they are permitted to contact under Section 805(b) of the FDCPA, 15 U.S.C. 1692c(b). Section 805(b) prohibits collectors, with certain exceptions, from communicating with any person other than the consumer in connection with the collection of the consumer's debt. Section 805(d) provides that the term "consumer," for purposes of third-party contacts, includes "the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator."³

Staff also has investigated whether collectors have engaged in unfair or deceptive acts and practices in violation of Section 5 of the FTC Act or Sections 807 or 808 of the FDCPA, 15 U.S.C. 1692e and 1692f, in collecting or attempting to collect on decedents' debts. In particular, staff has evaluated whether collectors may have deceived relatives of decedents or others about their obligation to pay the decedent's debts.

Although these investigations have been closed, they revealed that, because of the interaction of the FDCPA and state probate laws, there is a great deal of uncertainty among collectors regarding who the proper persons are with whom they lawfully may discuss a decedent's debt. In their efforts to identify the person who is responsible for paying the decedent's debts, collectors in many cases have contacted persons other than those who fall within the definition of "consumer" set forth in Section 805(d) of the

³ Neither the language of the FDCPA nor its legislative history address what is meant by the terms "executor" and "administrator" in Section 805(d). Broadly, an "executor" is a person named by the maker of a will to carry out the directions and requests stated in the will, and an "administrator" is a person appointed by a court to handle the administration of an estate for someone who has died without a will, when there is no executor named in the will, or the person named cannot or will not serve as executor.

FDCPA.

Section 805(b) of the FDCPA was enacted in 1977 to specify, among other things, the persons whom collectors may contact to seek payment for the debts of decedents. Since that time, however, probate law and practice have evolved. Many states have streamlined their probate law and practice by, among other things, recognizing informal probate processes and independent estate administration with little or no court supervision. In addition, a sizable portion of decedents' assets often now are transferred to others outside of the probate process through techniques such as placing assets in trust or naming an individual (rather than the decedent's estate) as the beneficiary of the decedent's life insurance policies.⁴

In response to these developments, the Commission is publishing this proposed enforcement policy statement ("Statement") to clarify how it intends to enforce the FDCPA and Section 5 of the FTC Act in connection with the collection of decedents' debts.

II. The resolution of estates

A. The decedent's estate

When a consumer dies, his or her assets are transferred to others. These transfers take place either as part of the distribution of the decedent's estate or outside of the estate. Assets that pass outside of the estate include: (1) those that are jointly owned by

⁴ See Grayson M.P. McCouch, *Probate Reform and Nonprobate Transfers*, 62 U. Miami L. Rev. 757 (Apr. 2008).

the decedent and another person;⁵ and (2) those that, for public policy reasons, pass directly to individuals named as beneficiaries. Some common examples of assets that do not become part of the estate are the proceeds of joint bank accounts, real property held by joint tenancy, life insurance policies,⁶ union or pension benefits, Social Security benefits, veterans benefits, and various types of retirement accounts. Assets that never become part of the decedent's estate generally are beyond the reach of creditors and debt collectors. All other assets, including cash and real and personal property that are not jointly owned, become part of the decedent's gross estate. Funeral and administrative expenses, homestead and exempt property allowances, and family allowances⁷ are paid out of the probate estate first, leaving the net estate. Creditors and debt collectors can seek to collect amounts the decedent owes them from the net estate,⁸ after which the

⁵ In the ten community property states, assets accumulated during a marriage generally are considered joint property, but the state laws vary as to which assets of the community can be reached by creditors of one of the spouses. The ten community property states are Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin.

⁶ If the decedent's estate is named as the beneficiary under the life insurance policy, however, the proceeds of the policy become part of the decedent's estate.

⁷ A "family allowance" is an amount of money payable out of the probate estate to support, typically, the spouse and minor children during the pendency of the estate administration.

⁸ In some circumstances, another person may be personally liable for the decedent's debts. Examples include a person who shared a joint credit card account with the decedent or who co-signed or guaranteed repayment of credit extended to the decedent. In such cases, both the other person and the decedent's estate are liable for the account balance at the time of the decedent's death. This Statement does not apply if a creditor or a collector is collecting from a person who is personally liable for the decedent's debt, because in those circumstances the person is a debtor rather than a third party for purposes of Section 805(b) of the FDCPA.

remaining assets in the estate are transferred to the decedent's heirs (if the decedent died without a will) or beneficiaries (if the decedent had a will).

B. Probate law and estate distribution

Probate practices are administered under state laws and procedures that vary significantly. Nineteen states⁹ have adopted the Uniform Probate Code ("UPC"), which was intended to make probating a will and administering an estate simpler and less expensive, and to give more flexibility to executors.¹⁰ Each state that has adopted the UPC, however, has modified it, in some cases extensively.¹¹ Consequently, although the

⁹ Alaska, Arizona, Colorado, Hawaii, Idaho, Maine, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Jersey, New Mexico, North Dakota, Pennsylvania, South Carolina, South Dakota, Utah, and Wisconsin.

¹⁰ UPC, Article III, Part 12, General Comment (2006).

¹¹ *See, e.g.*, Alaska - Adopted 1990 Revision of Article II and 1989 Revision of Article VI - ALASKA STAT. §§ 13.6.5 - 13.36.100; Arizona - Adopted 1990 Revision of Article II and 1989 Revision of Article VI - ARIZ. REV. STAT. ANN. §§ 14-1101 to 14-7308; Colorado - Adopted 1990 Revision of Article II and 1989 Revision of Article VI - COLO. REV. STAT. - §§ 15-10-101 to 15-17-102; Florida - Adopted 1989 Revision of Article VI - FLA. STAT. - §§ 655.82, 711.50 - 711.512, 731.005 - 731.302, 735.101 - 735.302, and 737.101 - 737.512; Hawaii - Adopted 1990 Revision of Article II and Part 3 of 1989 Revision of Article VI - HAW. REV. STAT. §§ 539-1 to 539-12, and 560:1-101 to 560:8-101; Idaho - Adopted Part 3 of 1989 Revision of Article VI - IDAHO CODE ANN. §§ 15-1-101 to 15-7-307; Maine - Adopted Part 3 of 1989 Revision of Article VI - ME. REV. STAT. ANN. tit.18A § 1-101 to § 8-401; Michigan - Adopted Part 3 of 1989 Revision of Article VI - MICH. COMP. LAWS §§ 700.1101 - 700.8102, and 701.1 - 713.6; Minnesota - Adopted 1990 Revision of Article II - MINN. STAT. § 524.1-101 to § 524.8-103; Montana - Adopted 1990 revision of Article II and 1989 Revision of Article VI - MONT. CODE ANN. § 72-1-101 to § 72-6-311; Nebraska - Adopted 1989 Revision of Article VI - NEB. REV. STAT. § 30-2201 to § 30-2902; New Mexico - Adopted 1990 Revision of Article II and 1989 Revision of Article VI - N.M. STAT. § 45-1-101 to § 45-7-522; North Dakota - Adopted 1990 Revision of Article II and 1989 Revision of Article VI - N.D. CENT. CODE § 30.1-01-01 to 30.1-35-01; South Carolina - Adopted Part 3 of 1989 Revision of Article VI - S.C. CODE ANN. §§ 35-6-10 to 35-6-100, and 62-1-100 to 62-7-604; South Dakota - Adopted 1990 Revision of Article II and Part 3 of 1989 Revision of Article VI - S.D.

UPC creates some commonality among state probate laws, there is no single set of laws that applies in all or even most states.¹²

Probate law seeks to provide finality to those with a purported interest in estate assets by first distributing those assets to pay the funeral and estate administration expenses and family allowances, decedent's taxes, and creditors' allowed claims, and then distributing the remaining assets to beneficiaries as specified by a will, or heirs as specified by state intestacy laws. The Uniform Probate Code and similar state laws have created a "flexible system of administration" designed to provide persons interested in decedents' estates with the level of procedural and adjudicative safeguards as desired and appropriate for their circumstances.¹³ Although there are variations among the states, there are generally three ways of administering the distribution of any estate's assets: formal probate and administration; informal probate and administration; and universal succession or succession without administration. In addition, the Uniform Probate Code and state laws generally exempt certain "small estates" with no real property from probate and administration.¹⁴ The laws provide two additional ways of implementing the

CODIFIED LAWS § 29A-1-101 to § 29A-8-101; Utah - Original 1969 version still in effect- UTAH CODE ANN. § 75-1-101 to § 75-8-101.

¹² Indeed, even individual counties in some states have their own requirements.

¹³ *See, e.g.*, UPC, Article III, General Comment.

¹⁴ For example, in California, probate and administration is required if the amount of the estate is greater than \$100,000. CAL. PROB. CODE § 13100 (2009). In Alabama, however, probate and administration is required if the value of the estate exceeds \$25,000. ALA. CODE § 43-2-692 (2010). As noted above, the probate estate does not include assets held in joint tenancy or certain other types of assets, such as life insurance policies or retirement plans, unless the estate is named as the beneficiary.

distribution of the small estate's assets: collection of personal property using an out-of-court affidavit process and a process known as "summary administration." Extrajudicial disposition of decedents' assets also occurs, whereby heirs distribute the assets without any procedural or adjudicative safeguards provided by the state probate codes.

1. Formal probate and administration

Formal probate and administration requires a court-appointed executor (a person designated in the will by the decedent) or administrator (if no executor has been designated) to assume the responsibility of managing, distributing, and closing the estate, including collecting the decedent's assets and notifying creditors of the pending probate proceeding. Formal probate entails court supervision and approval of all or part of the probate proceeding and imposes significant reporting requirements on the executor or administrator. Most state probate laws require that formal probate and administration be used if either the ability of the executor named in the will to administer the estate is uncertain or there is concern that the beneficiaries (such as minors) cannot look after their own interests. In addition, most state laws require that formal probate and administration be used if someone (such as a beneficiary or a creditor) asserts the right to invoke probate procedures to protect his or her interest in the estate.

Formal probate and administration is designed to provide notice, opportunity to participate, and finality to all who assert a claim to the estate's assets. To this end, the executor or administrator must attempt to notify creditors of the decedent's death and the deadline for submitting any claims against the estate. In addition to mailing notice to all known creditors, many states require that notice be published multiple times in a

newspaper having general circulation in the city where the decedent lived or in the county where the probate proceedings are being held.

Creditors have a fixed period of time to file a claim, after which all claims are barred. If the claim is approved, the bill is paid out of the estate; if it is rejected, the creditor may sue for payment. If there are not enough liquid assets to pay all debts, property in the estate may have to be sold to pay approved creditor claims. State laws vary as to the order in which debts are paid.¹⁵

Although formal probate and administration has advantages in terms of ensuring that all persons with an interest in the estate have an opportunity to assert their interests, it also can be time-consuming and expensive.¹⁶ To address these concerns, especially with respect to smaller estates, many jurisdictions have adopted alternative methods to settle and close certain types of estates that reduce or obviate the need for intervention by the probate courts. These methods are described further below. A substantial number of estates no longer go through the formal probate and administration process.

2. Informal probate and administration

States that have adopted the UPC also have what is described as an “informal probate and administration” process, which is available regardless of the size of the

¹⁵ See Mary Randolph, *The Executor's Guide* 185-186 (3d ed. 2008).

¹⁶ The delay and expense are mostly attributable to the greater detail and accountability the court requires of the estate's executor or administrator. Formal probate and administration may take from one to three years to be completed. See, e.g., *id.* at 319-20.

estate.¹⁷ According to the drafters of the UPC, informal probate and administration is designed to keep simple wills and intestacies that generate no controversy from becoming involved in “*truly* judicial proceedings.”¹⁸ Thus, no court hearings are required in this process.

To begin the informal probate and administration process, a person must apply to the probate registrar for an informal appointment as executor or administrator. Thereafter, many states refer to this person as the “personal representative.” Once appointed, the personal representative has official authority to act on behalf of the estate. Among other things, the personal representative must arrange for publication of notice of the appointment as well as notice to creditors.

Under the UPC, creditors have four months from the date of first publication of the notice of appointment in which to file any claims against the estate, after which they become time-barred.¹⁹ After the personal representative has resolved any claims and the four months have elapsed, the personal representative must file with the court the “final account” of the decedent’s assets and provide a copy to all appropriate parties. The personal representative may then distribute the assets to the beneficiaries and heirs.

¹⁷ *See, e.g.*, UPC §§ 3-301 - 3-311.

¹⁸ UPC § 3-302 Comment (*italics in original*). Accordingly, informal probate and administration is not available if there is a known series of testamentary instruments, such as multiple wills signed by the decedent. UPC § 3-304.

¹⁹ UPC § 3-801.

3. Universal succession or succession without administration

The UPC and similar state laws provide an alternative to formal or informal probate, a process referred to in the UPC as “universal succession” or “succession without administration.”²⁰ Under this approach, the heirs of an intestate estate or the residual devisees²¹ under a will may apply to the probate registrar to become universal successors. Upon the registrar’s granting of the application, the universal successor assumes full ownership of all the assets and full, personal responsibility for the liabilities of the estate, even if the decedent was insolvent, up to the universal successor’s proportional share of the estate.²² Under the UPC, all claims of the decedent’s creditors against the universal successor are barred one year after the decedent’s death.²³

4. Small estate resolution

Many states offer two alternatives to the procedures described above for distributing the assets of small estates: (a) an out-of-court affidavit procedure, which lets beneficiaries claim assets from whomever has possession of them by presenting a sworn statement explaining why they are entitled to the property; and (b) summary administration, which is similar to informal probate and administration. These procedures are designed to make it easier and less expensive for consumers to resolve

²⁰ UPC §§ 3-312 - 3-322.

²¹ A “residual devisee” is the person named in a will who takes any property that remains after distributions specified in the will.

²² *See, e.g.*, UPC § 3-321.

²³ UPC § 3-1006.

small estates – in most cases, they take only a month or two, have minimal court involvement, require few filings, and do not entail attorneys’ fees – and also reduce the administrative and financial burdens on states and counties. According to the UPC commenters, most people are able to use the “small estate” procedures to resolve estates.²⁴

a. Out-of-court affidavit

Many states allow for small estate assets to be distributed through an affidavit process, eliminating altogether the need for appointment of an executor or administrator or for probate court administration.²⁵ State laws vary as to who qualifies to sign an affidavit (“affiant”). For example, in California, only a beneficiary of or heir (*i.e.*, a “successor of the decedent”) to the property sought is authorized to file an affidavit.²⁶ In Alaska, however, any person claiming to be the successor of the decedent entitled to the property may submit an affidavit, and the person paying for or delivering the property to the affiant is not required to inquire into the truth of any statement in the affidavit.²⁷

The transfer affidavit typically must state that: (1) the claimant is legally entitled to inherit the decedent’s assets; (2) the value of the entire estate, less liens, does not exceed the maximum amount permitted by state law; (3) a minimum number of days

²⁴ UPC, Article III, Part 12, General Comment.

²⁵ *See, e.g.* CAL. PROB. CODE § 13109 (2009); 755 ILL. COMP. STAT. 5/25-1 (2010); ALASKA STAT. § 13.16.680 (2010); ARIZ. REV. STAT. § 14-3971 (2010); COLO. REV. STAT. § 15-12-1201 (2009); ARK. CODE ANN. § 28-41-101 (2009).

²⁶ *See* CAL. PROB. CODE §§ 13101(a)(8) and 13006.

²⁷A LASKA STAT. §§ 13.16.680(a) and 13.16.685.

(often 30 to 45) has elapsed since the death; and (4) no petition for the appointment of an executor or administrator is pending or has been granted by a probate court.²⁸

Frequently, the affiant also must declare that the debts of the decedent have been satisfied.²⁹ These same laws often hold either the affiant, or the beneficiaries to whom assets are distributed, personally liable for the decedent's debts, up to the value of the asset they received, for a period of time after title is transferred.³⁰

b. Summary administration

Summary administration procedures generally are very similar to informal probate and administration procedures – they require little court involvement or supervision and can be used whether or not the decedent left a will. Summary administration, however, is limited to small estates, as defined by state law, and requires less notice to creditors than informal probate.³¹

²⁸ See, e.g., CAL. PROB. CODE § 13101 (2009); COLO. REV. STAT., § 15-12-1201 (2009), ARIZ. REV. STAT. § 14-3971 (2010); ARK. CODE ANN. § 28-41-1101 (2009); 755 ILL. COMP. STAT. 5/25-1 (2010).

²⁹ See, e.g., ARK. CODE ANN. § 28-41-101 (2009); 755 ILL. COMP. STAT. 5/25-1 (2010).

³⁰ See, e.g. CAL. PROB. CODE § 13109 (2009) (3 years); 755 ILL. COMP. STAT. 5/25-1 (2010) (2 years); ARK. CODE ANN. § 28-41-102 (2009) (same as decedent); ARIZ. REV. STAT. § 14-3972 (2010) (1 year); ALASKA STAT. § 13.16.685 (2010) (3 years); COLO. REV. STAT. § 15-12-1201 (2009) (1 year).

³¹ See, e.g., Mark T. Johnson, Comment, *A “Simple” Probate Should Not Be this Complicated: Principles and Proposals for Revising Wisconsin’s Statutes for Probate Summary Procedures*, Table 1: Comparison of Informal Probate, Summary Settlement, Summary Assignment, and Transfer by Affidavit, 2008 Wis. L. Rev. 575, 585 (2008).

Summary administration procedures are usually available if: (1) assets do not exceed a specified value; (2) no interested party (such as a creditor) objects to the use of those procedures; and (3) a will does not mandate a different procedure. In Florida, for example, summary administration is available when the decedent's will does not direct otherwise, and either the value of assets subject to probate does not exceed \$75,000 or the decedent has been dead for more than two years.³² Surviving family members may petition the probate court for a distribution of the estate assets. The petitioners must make a diligent search and reasonable inquiry to identify any creditors who have a claim against the estate, serve a copy of the petition on those creditors, and provide for payment to those creditors to the extent that assets are available. At that point, the court may enter an order of summary administration allowing immediate distribution of the remaining assets to the persons entitled to them.³³

5. Extra-judicial resolution of estates

If an estate has only minimal assets, many survivors choose to forgo the use of any legal process to distribute a decedent's assets. An individual (usually a family member) may pay the decedent's debts out of the assets of the estate. It appears that a significant number of very small estates are resolved in this manner.

³²F LA. STAT. § 735.201 (2009).

³³ *Id.* § 735.206. The recipients of the decedent's property remain personally liable for lawful claims against the estate to the extent of the value of the property each actually received, but no claim may be filed against the estate or the recipients of the estate assets more than two years after the decedent's death.

This method forgoes some of the benefits of the probate process, such as obtaining a final legal resolution and the barring, after a specified period of time, of claims of creditors against the assets of the estate. Thus, if a creditor or collector sues the individual who distributes the assets or the recipients of those assets, they are potentially liable to pay an unpaid debt of the decedent up to the amount of the estate's assets.

III. FTC policy statement on collection of decedent's debts

When Congress passed the FDCPA, it sought to protect consumers from abusive, deceptive, and unfair debt collection practices, as well as unwarranted invasions of privacy.³⁴ At the same time, Congress also recognized that the collection of legitimate debts, so long as it is done in a fair and honest manner, by requiring people to honor their obligations and decreasing the cost of credit, is thus beneficial to consumers.

Section 805(b) of the FDCPA, with certain exceptions, prohibits debt collectors from communicating with anyone other than the "consumer" whose debt is being collected. This prohibition prevents debt collectors from unnecessarily revealing debts to others and thereby inflicting harm to the privacy and reputation of the debtor.³⁵ It also

³⁴ See S. REP. NO. 95-3821, at 4 (1977), *as reprinted in* 1977 U.S.C.C.A.N. 1695. ("This legislation * * * * prohibits disclosing the consumer's personal affairs to third persons. Other than to obtain location information, [] such contacts are not legitimate collection practices and result in serious invasions of privacy.").

³⁵ Other FDCPA provisions similarly are intended to protect the privacy of consumers. Section 806(3) prohibits publishing a debtor's list, Section 808(7) prohibits communicating with a consumer regarding a debt by post card, and Section 808(8) prohibits using any language or symbol on an envelope that reveals that the sender is a debt collector. 15 U.S.C. 1692d, 1692f(7), 1692f(8).

prevents collectors from communicating with those who have no legal responsibility for paying the debt.

Section 805(d) expands the definition of a “consumer” whom a collector can contact, but, for purposes of collecting on a deceased debtor’s debts, only to those who are likely to be responsible for paying a decedent’s debts out of the assets of the estate. Thus, Section 805(d) includes the debtor’s “spouse, parent (if the consumer is a minor), guardian, executor, or administrator” as persons the collector can contact about a debt. As discussed above, however, probate law and practice have evolved since Congress passed the FDCPA, and there are now additional categories of persons who have the authority to pay the decedent’s debts from the assets of the estate. These include personal representatives under the informal probate and summary administration procedures of many states, persons appointed as universal successors, persons who sign declarations or affidavits to effectuate the transfer of estate assets, and persons who dispose of the decedent’s assets extrajudicially.

The Commission believes that it is consistent with the purposes of the FDCPA, and in the public interest, to allow debt collectors to communicate with the person who has authority to pay a decedent’s debts from the assets of the estate, even if that person does not fall within the specific categories listed in Section 805(d). Such communications do not reveal the decedent’s debts unnecessarily because they are made to an individual who has authority to pay those debts from the assets of the estate. Moreover, permitting such communications often would make it faster, simpler, and less expensive for consumers, creditors, and collectors to resolve the decedent’s debts without

unduly burdening the decedent's representative or beneficiaries. Such communication benefits both creditors and consumers by facilitating appropriate payments without the need for creditors to initiate formal probate administration or file actions in court to recover from individuals who have distributed the estate's assets, or received the assets that were distributed, without proper notice to creditors. But, when seeking payment for a decedent's debt from an individual not personally liable for the debt, in order to avoid creating the misimpression that the individual is personally liable for the decedent's debt, it may be necessary for the collector to disclose clearly and prominently that the collector is seeking payment from the estate and not the individual.

Accordingly, the Commission proposes a policy not to initiate enforcement actions against debt collectors who communicate about a decedent's debt with: (1) the executor or administrator of the decedent's estate; (2) the decedent's spouse; (3) a minor decedent's parent; (4) the decedent's guardian; or (5) a person who otherwise has authority to pay the debts of the decedent out of the decedent's assets, such as a personal representative under an informal or summary administration procedure, a person appointed as a universal successor, a person who signs a declaration or affidavit to effectuate the transfer of estate assets, or a person who assumes the responsibility of disposing of the decedent's assets extrajudicially.

Before communicating with any individual in connection with the collection of a decedent's debt, a collector must assess whether the potential recipient of any such communication has authority to pay the decedent's debts from the estate's assets (*i.e.*, falls within one of the categories listed above). In many cases, the collector will know

that it is contacting the decedent's spouse, parent, or guardian, or a person appointed by the probate court or the registrar to administer the decedent's estate. For example, the collector's review of the probate registrar's filings would identify persons who have been appointed as executor, administrator, personal representative under informal or summary administration, or universal successor. If the collector has identified the person with such authority, it may direct communications seeking collection of the debt to that person. In seeking to have these individuals pay the decedent's debts out of the decedent's estate, the collector must comply with all of the requirements of the FDCPA and Section 5 of the FTC Act with respect to collector communications with debtors. For instance, the collector is prohibited from threatening to use violence against these individuals in violation of Section 806 of the FDCPA, and from falsely representing to them the amount of the debt owed -- or the assets that must be used to pay the debt -- in violation of Section 807(2)(A) of the FDCPA and Section 5 of the FTC Act.

In some cases, even if a collector has reviewed probate court filings and records, the collector may not know who has the authority to pay the decedent's debts from the estate's assets. To locate the person with such authority, the collector may initiate a written or oral communication to the decedent's estate. The collector should state clearly and prominently at the outset that the communication is directed to the executor or administrator of the decedent's estate, or to the estate itself. But until a named individual with authority to pay the decedent's debts is identified and located, collectors generally should treat these communications as location communications under Section 804 of the FDCPA. The communication should state that the collector is seeking to identify and

locate the person who has the authority to pay any outstanding bills of the decedent out of the decedent's estate,³⁶ but cannot make any other references to the debts of the decedent, including providing any information about the specific debts at issue.³⁷

³⁶ For example, if a collector is seeking to identify and locate the person who has the authority to pay the decedent's debts out of the assets of the estate, the collector may send a letter in an envelope addressed to either "The Estate of * * * * *" or "The executor or administrator of the estate of * * * * *." The body of the enclosed letter, however, cannot include information relating to the decedent's debt. As discussed elsewhere in this statement, some individuals who do not have the authority to pay the debts of the decedent out of the assets of his estate often undertake various activities concerning the decedent, including opening his mail. To avoid thereby revealing the decedent's debts to such individuals, collectors should not include information relating to these debts in the body of the letter.

³⁷ Section 804 of the FDCPA governs the process by which a collector can obtain location information for a debtor. That section prohibits collectors, in seeking location information, from revealing that the debtor owes a debt. The application of this provision is relatively straightforward in the typical situation involving a living debtor – the collector knows who the debtor is but simply lacks contact information, such as the debtor's home address and telephone number or place of employment. In this situation, the collector may contact a third party for location information for the debtor and has no need to ascertain who the debtor is or mention the debt.

When the debtor is deceased, however, the procedure becomes more complicated. The collector must first identify the person who has authority to pay the decedent's debts out of the estate's assets. In some cases, collectors will know who that person is, for example, if a court has named an executor or administrator; in these cases, the collector, if it needs contact information, can follow the normal process of seeking such information from a third party without revealing the debt.

If the collector does not know the identity of the person with authority to pay the decedent's debts from the estate, it may wish to contact third parties who may themselves have the requisite authority or know who does, and then seek location information for the person they identify. But, in asking a third party for identification and location information for a person with the requisite authority, the collector almost inevitably will have to state or imply that the decedent owed a debt, for example "I am trying to find the person who has the authority to pay John Smith's outstanding bills out of assets in John's estate." The Commission is interested in comments on: (1) whether such a limited and general reference to debt in these specific circumstances would result in harm to the decedent's privacy or reputation, especially given that even consumers who remained current on their debts while alive often have bills their estate must resolve after they pass

If the recipient of the location communication states with certainty that he or she has the requisite authority – and that assertion is not inconsistent with information reasonably available from another source (*e.g.*, a probate registrar identifying the appointment of someone else as administrator) – collectors may commence seeking payment from the estate through that recipient. On the other hand, if the recipient expresses any uncertainty about whether he or she has the authority to pay the decedent’s debts from the estate’s assets (*e.g.*, “I think it is me” or “it could be me”), the collector may ask the recipient clarifying questions. The collector, however, should not use leading questions or otherwise attempt to persuade the person to assert that he or she has the requisite authority, or engage in any deceptive, unfair, or abusive acts or practices. For example, asking if the person contacted is “handling the decedent’s final affairs” is so vague that the person may interpret it as signifying authority when it does not. Similarly, asking whether a person “paid for the decedent’s funeral,” or is “opening the decedent’s mail” also would not provide sufficient evidence of authority, because relatives often undertake these types of activities to help out without assuming the general authority to pay the decedent’s debts out of the estate’s assets.³⁸ Furthermore, in

away; (2) other appropriate ways of identifying the person with authority while minimizing any reference to the decedent’s debts, consistent with Section 804(2); and (3) the relative costs and benefits of facilitating communications between collectors and individuals who have the authority to pay the decedent’s debts, including, for example, the possible harm to the decedent’s privacy interests from revealing the debt versus the possible benefits to consumers in fostering the efficient payment of debts without the costs and inconvenience of a formal probate process or litigation.

³⁸ In addition, simply asking if the person “has paid any of the decedent’s bills” is not conclusive evidence that the person has the authority. *See* UPC § 3-701 (“A personal representative may ratify and accept acts on behalf of the estate done by others where the

seeking to have those who assert they have the requisite authority (including those who make such an assertion in response to clarifying questions) pay the decedent's debts from the estate, the collector must comply with all other requirements of the FDCPA and Section 5 of the FTC Act regarding collector communications with debtors.³⁹

Finally, in communicating with persons who have the authority to pay the decedent's debts out of the estate's assets, the Commission emphasizes that it would violate Section 5 of the FTC Act and Section 807 of the FDCPA to mislead those persons about whether they are personally liable for those debts, or about which assets a creditor

acts would have been proper for a personal representative.”). But until a named individual with authority to pay the decedent's debts is identified and located, all communication may only be for the purpose of seeking location information for that person and must comply with Section 804 of the FDCPA.

³⁹ If a recipient of a communication denies having the authority, or is not certain if he or she has the authority, to pay the decedent's debts out of the assets of the estate, and if in the future the collector reasonably believes that the response was erroneous or incomplete and that the recipient now has correct or complete information as to who has the requisite authority, then the collector can contact the recipient again for location information. FDCPA § 804(3), 15 U.S.C. 1692b(3). For example, assume that a decedent died intestate and was survived by a brother and sister. A collector calls the brother shortly after the decedent's death, and the brother states he does not know whether he or his sister will have the authority to distribute the decedent's assets. A court subsequently appoints the sister as the administrator of the decedent's estate, and the collector learns of the appointment, but the sister's location information provided in the appointment is no longer accurate. The collector would be allowed to contact the brother for more accurate information concerning how to reach his sister.

In addition, if the initial communication recipient subsequently is appointed as the administrator or personal representative through formal or informal probate or files an affidavit under the “small estate” administration provisions, the collector then may contact that person in connection with the collection of the debt.

could legally seek to satisfy those debts.⁴⁰ Even in the absence of any specific representations,⁴¹ depending on the circumstances, a collector's communication with an individual might convey the misimpression that the individual is personally liable for the decedent's debts, or that the creditor could seek certain assets to satisfy the debt.⁴² To avoid creating such a misimpression, it may be necessary for the collector to disclose clearly and prominently that: (1) it is seeking payment from the assets in the decedent's estate; and (2) the individual could not be required to use the individual's assets or assets the individual owned jointly with the decedent to pay the decedent's debt. In determining whether individuals are taking away the misimpression that they are

⁴⁰ There are times when a collector attempts to collect a decedent's debt from the person with the requisite authority, but learns that the decedent's estate has insufficient assets to pay the debt. In some instances, collectors in this situation attempt to persuade the person to pay the debt out of her own assets. In doing so, the collector must avoid (1) stating or implying that the person has a legal obligation to use her own assets to pay the debt, in violation of Section 807 of the FDCPA and/or Section 5 of the FTC Act; and (2) engaging in harassing, oppressive, or abusive conduct to collect the debt in violation of Section 806 of the FDCPA and/or Section 5 of the FTC Act. With respect to the latter, the Commission notes that using high pressure tactics, which could include appeals to the person's purported moral obligation to pay the debt, could violate Section 806 of the FDCPA and/or Section 5 of the FTC Act, depending on the specific facts of the case.

⁴¹ Simply by virtue of the fact that the communication is coming from a debt collector, an individual might believe that the collector is seeking payment from the individual's assets.

⁴² For example, asking whether the recipient received any money as the beneficiary of a life insurance policy or retirement account, absent an effective disclaimer, could create a false or misleading impression to a consumer acting reasonably under the circumstances that the consumer may have to pay some or all of the received money to satisfy the decedent's debts, notwithstanding that the money is not part of the net probate estate from which creditors can seek payment. Similarly, asking about jointly-held assets, such as a jointly-titled car or a joint banking account, could also create the false or misleading impression that the consumer may have to use that asset to pay the decedent's debt, notwithstanding that the asset is not part of the net probate estate from which creditors can seek payment.

personally liable for the decedent's debts, the Commission will consider, among other things, whether the collector has clearly and prominently made this disclosure. The Commission will also consider whether the collector has obtained an acknowledgment at the time of the first payment that the person understands that he or she is obligated to pay debts only out of the decedent's assets and is not legally obligated to use his or her own assets – including those jointly owned with the decedent – to pay the debts.

III. Conclusion

The Commission proposes to adopt a policy under which it would not take enforcement action against collectors who comply with the principles set forth in this Statement in collecting on a decedent's debts, as well as comply with all applicable laws and regulations, including Section 5 of the FTC Act and the FDCPA.

Invitation to Comment

Interested persons are invited to submit written comments electronically or in paper form. Comments should state "Deceased Debt Collection Policy Statement" in the text and, if applicable, on the envelope.

The FTC will place your comment -- including your name and your state -- on the public record of this proceeding, and to the extent practicable, will make it available to the public on the FTC website at <http://www.ftc.gov/os/publiccomments.shtml>. As a matter of discretion, the Commission endeavors to remove individuals' home contact information from the comments before placing them on its website. Because comments will be made public, they should not include: (1) any sensitive personal information,

such as any individual's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number; (2) any sensitive health information, such as medical records or other individually identifiable health information; or (3) any trade secret or any commercial or financial information which is privileged or confidential, as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).⁴³

Because postal mail addressed to the FTC is subject to delay due to heightened security screening, if possible, please submit your comments in electronic form or send them by courier or overnight service. To ensure that the Commission considers an electronic comment, you must file it at <https://ftcpublic.commentworks.com//ftc/deceaseddebtcollection> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/search/Regs/home.html#home>, you may also file a comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at <http://www.ftc.gov> to read the Notice and the news release describing it.

⁴³ The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The FTC's General Counsel will grant or deny the request consistent with applicable law and the public interest. See FTC Rule 4.9(c), 16 CFR 4.9(c).

A comment filed in paper form should include the reference “Deceased Debt Collection Policy Statement” in the text of the comment and, if applicable, on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex W), 600 Pennsylvania Avenue, NW, Washington, DC 20580.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive comments it receives. More information, including routine uses permitted by the Privacy Act, may be found in the FTC’s privacy policy at <http://www.ftc.gov/ftc/privacy.shtm>.

By direction of the Commission.

Donald S. Clark
Secretary.