Consumer debt in the U.S. currently stands at over $4.6 trillion according to the Federal Reserve. Even families in good financial standing hold considerable debts in their financial portfolios.

So what happens to it when the debt holder dies? Does the debt go away? Does a family member have to pay it? Many people are afraid to serve as the executor of an estate because they believe they may become responsible for the deceased person's debts.

Liability of the Estate

To understand what happens to debt when we die, we need to understand the concept of an estate. While we sometimes use the term to refer to a large home in the country, an estate is also the term used to describe the assets owned by someone when they pass away. Everyone leaves an estate behind when they die, although the estate may be very small.

The estate is its own entity. An estate must file a tax return. And the estate takes on the responsibility for the debts left behind by the deceased person.

As a practical matter, the executor, estate administrator, or their attorney will file tax returns and pay debts on behalf of the estate during the probate process. But none of these agents will be required to pay those debts from their own personal funds. They pay the debts from the assets held by the estate. In many cases, they need to sell or convert assets to be able to pay all their debts.

When an Estate is Insolvent

If the deceased person owed more money than they owned, the estate is said to be insolvent. Texas probate laws provide specific rules for how creditors should be paid and establish some specific protections for family members.

Executors need to be aware of the rules because failure to follow them could lead to personal liability. They need to provide proper notice to creditors and potential creditors to give them an opportunity to file a claim against the estate. Creditors must also follow rules and file their claims by certain deadlines.

An attorney can provide guidance about how to proceed in compliance with the legal requirements. It may be that some creditors, such as the funeral home, will get paid in full while others may receive partial repayment or none at all, particularly if they fail to file a claim by the deadline.

The Type of Debt Matters

The circumstances surrounding the debt also affect the way it is handled after death. If someone else is a party to the debt, they may end up liable for the entire debt if the estate is unable to pay. A surviving spouse may be liable for any debts contracted during the marriage even if their name is not on any loan documents or accounts. If a debt is secured by property such as a vehicle or home, then the person taking title also takes on responsibility for repaying the loan.

Certain types of debts require special handling. If the deceased person owed child support, for instance, someone acting in the child’s interests can get a judgment from the Family Court for the amount of support the deceased person would have paid if they had lived until the child reached the age of 18. Then that judgment can be used to establish a valid claim against the estate.

An Attorney Can Ensure Debts are Handled Properly

A death in the family often sends creditors to your door at a time when you are overwhelmed with grief and uncertain of your obligations. An attorney can help you answer the concerns of creditors and determine your best path toward managing debts in compliance with Texas rules. For a confidential consultation to learn how The Nordhaus Firm could help you handle debts after a death, contact us today.