

Quick Reference Guide

When Can a Family Member be Legally Responsible for the Debts of an Elderly Loved One?

All estates have to go through probate—no matter what they're worth. Most of the time when lawyers refer to probate, they're talking about the more involved process of overseeing the administration of an estate above a certain dollar amount in value. Every state has laws that spell out how much an estate would need to be worth to require the full probate process—anywhere from \$10,000 to \$275,000. If the estate's value is above a certain amount, you'll need more legal oversight and will be taking more steps with the probate court. But for many situations, you'll be able to use simple probate.

If you cosign the debt, you are legally responsible for paying the debt if the primary borrower defaults, even if you did not use the funds or make the charges. This includes:

- Personal loans
- Credit card account
- Property
- Car loans
- Student loans
- Other credit accounts

A [power of attorney](#) is a legal document giving another person authority to handle financial matters in your name. You (the principal) give your power of attorney (agent or attorney-in-fact) authority to perform any financial transactions that you could legally take yourself. Some powers of attorney could limit the actions an agent may take. You need to carefully read the document to determine if it restricts or limits the agent's power to act in any way.

When a person dies, a power of attorney is null and void. The agent cannot take any further action regarding the person's financial matters. That authority transfers to the person's probate estate. The personal representative has the duty of managing the deceased person's assets and debts.

Debt Collection

- State laws vary regarding the duties and rights of family members regarding debt owed by another family member. Therefore, the first step in protecting yourself, so you do not owe your family member's debts is to understand the laws in your state, including state laws regarding [debt collection](#).
- The FDCPA (Fair Debt Collection Practices Act) prevents debt collectors from taking specific actions to collect a debt. For example, a debt collector can contact you about a family member's debt, but they cannot demand you pay the debt if you are not legally liable for the debt. [State Fair Debt Collection Practices Acts \(ncsl.org\)](#)

Surviving Spouse

Spouses may be responsible for medical debts for each other. In [community property states](#), spouses are jointly responsible for any debts they take on after their marriage. So, even if you aren't a cosigner or co-borrower, the lender could come to you looking for payment. 9 states have such laws: Arizona, California, Idaho, Louisiana, Nevada, New Mexico Texas, Washington, Wisconsin. Learn more about community property [here](#).

- If you live in a [community property](#) state, you are equally responsible for paying your spouse's debts acquired during the marriage. It does not matter whose name is on the bill.
- Look up printable advance directive forms by state [here](#)

- If you are not a cosigner, some debts may be eligible for loan forgiveness after a person’s death. Responsibility can also be state specific. Look up laws for your specific state [here](#).

Type of Loan/Bill	Note/Resource Link
Federal Student Loan/PLUS loan Some private loans offer forgiveness, but most debts become the responsibility of the probate estate.	Discharge Due to Death Federal Student Aid https://studentaid.gov/manage-loans/forgiveness-cancellation/death
Car loan	If your estate can’t cover the debt, the person that inherits the vehicle needs to decide whether they want to keep it. If they do want to keep the car, the inheritor can take over the auto loan payments.
Mortgage	Your house isn’t usually considered part of your estate (if your credit card debts exceeded the value of the rest of your assets, the credit card issuer wouldn’t be able to put a lien against your home). Your spouse or the person that inherits your house will typically have the option to take over mortgage payments.
Credit card debt	<ul style="list-style-type: none"> • The executor of your estate should notify credit card issuers as they will stop adding on any fees or penalties to the outstanding debt until the estate is settled. • Prevent identity theft: send copies of the death certificate to one of the three major credit bureaus: Equifax, Experian or TransUnion. You only need to tell one of them, and it will tell the others. • Joint cardholders are responsible for an outstanding bill if you pass away. Authorized users of the credit card are not. However, if an authorized user attempts to use the credit card after you pass away, it could be viewed as fraud • A spouse could be held responsible for the debt if you lived in a community property state.
Medical Bills	<ul style="list-style-type: none"> • assuming you didn’t receive Medicaid, your family would likely only be held responsible if: They made a financial commitment or guarantee to the medical institution • if your family’s legal relationship to you involves a "duty of support" or if they claimed you as a dependent, they could be responsible for the cost of your care. • About 30 states have “filial responsibility” laws. These laws require adult children to pay a parent’s unpaid medical bills. While many states do not enforce these laws very often, states could possibly enforce the laws in the future. • Many states provide exceptions to a child’s filial responsibility if there is evidence that the parent abused, neglected, deserted, or failed to support the child when he or she was a minor.
Nursing Home or Assisted Living Facility	A nursing home or assisted living facility contract may have a “guarantor” clause that requires a family member to be personally responsible for unpaid charges. It is similar to cosigning debt.
Utility Bills	<ul style="list-style-type: none"> • Bills that are typically considered utilities include sewer, gas, trash, electric, water, and recycling bills. Many people also consider internet, TV, phone, and security bills to be utility bills.

	<ul style="list-style-type: none"> • The decedent's estate is responsible for covering the utility bills in the event that they're still being used and the utilities are in the deceased's name. If the person who passed away left a will, the executor of the will is responsible for making sure these bills (and other bills) are paid accordingly. • In some situations, utilities are being used even though the homeowner or person listed on the utilities bill has passed away. These scenarios occur most often when a spouse or family still live in the home or the home is rented with utilities in the decedent's name. If you live in the house, you need to continue paying for utilities. • Can be done by letter and will not normally require a death certificate to be supplied if all you want to do is change the name on the account without interrupting the supply. You will need the address of the property and the account numbers.
Automatic Payments	<p>Payments continue until companies are contacted. The list may include:</p> <ul style="list-style-type: none"> • gym or sports club, cultural organization (ballet, symphony, theater, museums), or organizations or groups that require membership dues, are often non-transferrable, and should be canceled. Call the club or organization to cancel the membership and be prepared to provide the account or member ID number. • Magazines, newspapers, and other print subscriptions can be canceled by calling the customer service number of the publication and requesting cancelation. Many publications will also allow you to cancel a subscription online. Be prepared by having a copy of the publication • Common Online Accounts include: Amazon, Ebay, PayPal, Gmail, Hotmail, Yahoo! Mail AOL, Facebook, Twitter, LinkedIn, Flickr (Picasa or other photo sharing sites), Dating sites, Netflix, Hulu, Playstation, Xbox, or other online gaming accounts, MLB.com, NFL.com, and other sports sites