

# FTC Releases Final Statement of Policy Regarding Communications in Connection with the Collection of Decedents' Debts

July 28, 2011

The FTC's final Statement of Policy Regarding Communications in Connection with the Collection of Decedents' Debts was published on July 27, 2011 in the [Federal Register](#). The policy statement clarifies that the agency will not take enforcement action under the Fair Debt Collection Practices Act (FDCPA) or the FTC Act against a debt collector for communicating with certain classes of individuals specified in the FDCPA or an individual who has the authority to pay debts out of the assets of the decedent's estate. This final Statement will be effective on August 29, 2011.

Under Sections 805(b) and (d) of the FDCPA, debt collectors are prohibited from contacting individuals other than the debtor to collect a debt, with exceptions for the debtor's spouse, parent (in the case of a minor), guardian, executor, or administrator. Because of the evolution of probate law, however, most estates no longer go through formal probate and thus no executor or administrator is appointed. As a result, the FTC sought comment on its proposed Statement to provide clarification on the parties that may be contacted in collecting decedents' debts and processes that may be used to identify the person with the authority to pay such debts.

The final Statement states that persons with the requisite authority to pay decedents' debts may include personal representatives under informal probate or summary administration procedures, 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 Statement further describes the means by which collectors may locate such individuals, stating that collectors should make a good faith effort to conduct record searches before contacting individuals other than executors and administrators. If a collector makes a location call, governed by FDCPA Section 804, to locate the person with the authority to pay the decedent's debt, the Commission will not take an enforcement action under Section 804(2) for general references to payment of "outstanding bills" of the decedent. Collectors using such language should, however, be cautious of implying that the decedent was delinquent on those bills in a way that would violate Section 804.

Additionally, the statement addresses compliance in communicating with a person who has the authority to pay the decedent's debts on three specific issues, time of communication, authority to pay, and personal obligation to pay the debt.

Time of Communication:

- The final Statement does not include a "cooling off" period after the debtor's death during which collectors are prohibited from commencing communications. The Commission, however,

“emphasizes that such restraint is a key business practice in allaying concerns arising from collection of deceased accounts.”

- The Statement emphasizes that Section 805(a)(1) prohibits collectors from contacting family members or others at unusual or inconvenient times or places.

#### Questions About Authority to Pay:

- The Commission declined to prescribe precise language that may be used by a collector seeking to determine whether a person has authority to pay the decedent’s debts but stated that a collector should not use “inappropriate leading questions or engage in any other conduct that may cause the person contacted to assert mistakenly that he or she has the requisite authority.”
- As an example, questions about whether the person is “handling the decedent’s final affairs” paid for the decedent’s funeral “are not likely to elicit sufficient evidence of authority on their own and may lead the person contacted to assert authority mistakenly.”

#### Misleading Consumers About Their Personal Obligation to Pay the Decedent’s Debt

- The Commission concluded that the information that must be disclosed to avoid misleading consumers about their personal obligation to pay the decedent’s debt will depend upon the circumstances. The final Statement does not require a particular disclosure but instead references two disclosures in the proposed Statement and states that “[t]hese disclosures generally will be sufficient to prevent deception” while also noting that “there may be circumstances in which these disclosures are not applicable or sufficient to prevent deception.”
- As part of the evaluation as to whether a consumer had the misimpression that they are personally liable for the decedent’s debts, the Commission will consider whether the collector 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 or joint assets, to pay the debt.