

GUIDANCE SHEET: DEBT AND ASSETS UPON DEATH IN MICHIGAN

This guidance sheet is intended to provide a general overview of Michigan laws concerning the collection and avoidance of debts when a spouse with individual assets or debts passes away. This is not a substitute for legal advice. Laws can be complex and a client's specific situation may require a consultation with a qualified legal professional.

1. Debt of a Deceased Spouse: The General Rule

In Michigan, the general rule is that a surviving spouse is **not** personally responsible for the personal debts of their deceased spouse. The debt of the deceased person is the responsibility of their estate. This is true for unsecured debts such as:

- Credit card balances
- Medical bills
- Personal loans

Creditors can only seek repayment from the assets that make up the deceased person's estate. If the estate has insufficient assets to pay all the debts, the remaining debt is generally forgiven, and the surviving spouse and other heirs are not obligated to use their own money to cover the shortfall.

Important Note: Assets that are exempt from the estate and pass directly to the surviving spouse or other beneficiaries—such as life insurance proceeds and retirement accounts (401k, IRA, etc.)—are generally protected from the deceased's creditors.

2. Joint Debts

A key exception to the general rule is for **joint debts**. If the surviving spouse was a co-signer or a joint account holder on a loan, credit card, or mortgage, they remain fully responsible for the debt. This is because they have a separate legal obligation to pay the debt, independent of their spouse's death.

- **Credit Cards:** If a husband and wife shared a credit card account, the surviving spouse remains liable for the entire balance. Being merely an "authorized user" on a credit card is different from being a joint account holder, and an authorized user is generally not responsible for the debt.
- **Secured Debts:** For secured debts like a mortgage or car loan, the surviving spouse is responsible for the debt if their name is also on the loan. If they wish to keep the property, they must continue making payments. If they cannot or do not want to continue payments, the lender can foreclose on the home or repossess the car.

3. Revocable Family Trusts and Creditor Claims

A revocable living trust is a popular estate planning tool in Michigan, but it does **not** protect a grantor's assets from their creditors during their lifetime. Because the grantor retains control over the assets in the trust and can revoke it at any time, the law considers the assets to be a part of the grantor's personal property and available to satisfy their debts.

- **Does a revocable family trust have to pay the personal debts of the first to die?** Yes. Upon the death of the grantor, a revocable trust becomes irrevocable. At this point, the trust's assets are subject to the claims of the deceased grantor's creditors. Michigan law allows for the trust's assets to be used to satisfy the grantor's debts, but only to the extent that the grantor's probate estate is unable to do so.

- **Can a creditor collect a personal debt of a deceased trust grantor from the trust after they die?** Yes. If a creditor has a valid claim against the deceased grantor, they can pursue it against the trust. The trustee has a duty to pay the grantor's valid debts from the trust's assets before distributing the remaining assets to the beneficiaries. In fact, if there is no probate estate, the trustee of the decedent's trust is required to publish a notice to creditors and handle all creditor claims, much like a personal representative in a probate case.
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Conclusion and Action Steps

1. **Do Not Assume Personal Responsibility:** Advise clients not to automatically pay any of their deceased spouse's individual debts. Creditors are not allowed to pressure them into paying a debt they are not legally obligated to pay.
2. **Identify the Debts:** Work with clients to determine which debts were held jointly and which were held individually by the deceased. This may require reviewing loan documents, credit card statements, and credit reports.
3. **Understand the Estate:** Help the client understand what assets are part of the probate estate and what assets pass outside of probate. This is crucial for determining what funds are available to pay creditors.
4. **Consult an Attorney:** Emphasize that navigating the legal requirements of probate and trust administration can be complex. The client should seek advice from an attorney specializing in probate and estate law to ensure all legal obligations are met and their rights are protected. An attorney can help the surviving spouse properly deal with creditors and fulfill the legal duties of a personal representative or trustee, if applicable.