

## Deceased Members

The CFPB recently issued an [interpretive rule](#) to clarify that the Ability-to-Repay (ATR) rule did not apply in situations where a successor (who has acquired title to a dwelling) is added as an obligor on a consumer mortgage. A credit union can now rely on this interpretation as a safe harbor under the rules. These FAQs will address questions related to this interpretive rule and other common deceased member issues that credit unions frequently need assistance with. Credit unions are also reminded to visit the [existing FAQs](#) on the League InfoSight page.

***Please Note: Michigan Credit Union League & Affiliates services are designed to provide accurate information with regard to the subject matter covered, with the understanding that the League does not render legal services. For specific legal advice, please consult with your credit union's attorney.***

**Q.1. One of our members (Mr. Smith) just passed away and he had a mortgage loan with us. Mr. Smith's daughter just came in with a title showing her ownership of the residential property securing the mortgage loan. She wants to keep the house and continue to make payments. However, she would not qualify for the loan on her own. What can the credit union do?**

A.1. Under the CFPB's interpretive rule, the credit union is permitted to add the daughter as an obligor on the mortgage loan, without having to adhere to the ability to repay requirements under Regulation Z.

**Q.2. One of our members has passed away and the account has no joint owner. The child of the deceased member is here with a will and a death certificate asking for the funds in the deceased member's account. However, that account has a beneficiary listed, who is not the child in our credit union with the will and death certificate. What should the credit union do?**

A.2. The membership account card and corresponding agreement is the contract with your deceased member. According to the contract (membership account agreement), the credit union agreed to provide the funds to the beneficiary the deceased member listed on their account record. Therefore, the funds in that deceased member's account belong to the beneficiary listed on the account, not the deceased member's child in the credit union office. The will would not be relevant in this situation.

**Q.3. One of our members has passed away and the account has no joint owner. The child of the deceased member is here with a will and a death certificate asking for the funds in the deceased member's account. The account does not have a beneficiary. Can the credit union provide the funds to the member's child?**

A.3. No. When a member dies with no beneficiary or no joint owner, funds in the account belong to the estate of the member. Before funds in a deceased member's account can be paid out, the credit union must first establish who is entitled to represent that estate. Additionally, the credit union must determine whether the deceased individual owed money to the credit union. Anyone presenting themselves as the "survivor" of the deceased who believes they are entitled to funds in the account

must first contact the Probate Court or an attorney and obtain the appropriate paperwork. Once the credit union has proper documentation from probate court, such as [letters of authority for personal representative](#), the credit union can issue a check to the deceased member's estate.

**Q.4. The credit union has an account for a deceased member with no joint owner and no beneficiary. The account has less than \$5,000. The deceased member's spouse is here to close out the account with a copy of the death certificate and an [affidavit of decedent's successor for delivery of certain assets owned by decedent](#). Can the credit union release the funds to the spouse?**

A.4. Michigan law does, in some cases, allow the release of money from such accounts to individuals presenting an "Affidavit of Decedent's Successor for Delivery of Certain Assets Owned by Decedent" if the amount in the account and the overall estate are less than \$15,000. But because the credit union takes some risk with regard to the accuracy of the representations in such an affidavit, it should check with its attorney about that procedure. The law does attempt to reduce this risk, but doesn't really eliminate it. For example, if the credit union honors a forged death certificate and the member (still being alive), later wants his/her money, the credit union will have to pay. The credit union must also take care to ensure that it isn't dealing with an imposter.

**Q.5. A member passed away and had an account with 3 beneficiaries. One of the beneficiaries passed away before the member did, but the account was never changed to show just 2 beneficiaries. How should we distribute the funds in the deceased member's account?**

A.5. The funds should be distributed equally among the surviving beneficiaries.

**Q.6. Family members often come into the credit union and inquire about setting up a draft/checking account for a deceased individual's funds. Can we open an account for a deceased individual's estate?**

A.6. Pursuant to both the NCUA and Section 353(5) of the Michigan Credit Union Act, if the deceased was a member of the credit union at the time of his/her death, the credit union may accept the estate of the deceased person as a member. If the deceased individual's account(s) was a single name account with no joint owners or beneficiaries, it may be possible that the account could be continued as an asset of the estate. Keep in mind that accounts with surviving joint owners or beneficiaries will have passed to those individual(s) and the estate will have no interest in them. Thus, they cannot be continued as accounts for the estate of the deceased.

**Q.7. The representative payee of an account with social security benefits has come in and notified us that the beneficiary is deceased. Does the credit union provide the remaining funds to the representative payee to pay for expenses?**

A.7. No. According to the [Social Security Administration's guide for representative payees](#), if the beneficiary dies, any saved benefits belong to his or her estate. They must be given to the legal representative of the estate. Therefore, funds cannot be released until proper paperwork is received from the probate court.

**Q.8. One of our members passed away and the personal representative of their estate came in with a check payable to the estate. They want to negotiate the check through the deceased member's account, is that permissible?**

A.8. No. If the check is made payable to the deceased member's estate, the check should be negotiated through an estate account. The personal representative should go through the process of opening the estate account first, after obtaining an EIN for the estate. Once the credit union either retitles the deceased member's account to the estate, with the new EIN, or opens a new estate account, the check can be negotiated with proper endorsement.