For the Families of Some Debtors, Death Offers No Respite

By Jessica Silver-Greenberg

After Linda Long’s husband died of colon cancer last year, the phone calls poured in.

The 68-year-old retired office worker says she got as many as 10 calls a day from a debt-collection firm asking for $16,851.52 that her husband Millard had racked up on a Bank of America Corp. credit card.

An employee at West Asset Management in Omaha, Neb., explained that she wasn’t legally obliged to pay, according to a recording of the November call reviewed by The Wall Street Journal. Then he veered into a discussion about how she could “get this taken off your plate.”

Mrs. Long, of Cape Coral, Fla., told the debt collector she had “lost everything.” She had sold the couple’s motor home to help cover medical bills and funeral costs. All that was left, she said, was $2,000 in life-insurance proceeds.

“I can give you that,” she said when asked for the money, “anything just to get this off my head.”

When you die, your debts usually die with you. Surviving family members rarely have a legal obligation to pay unless they co-signed a loan, such as a mortgage or credit card. That leaves lenders in the lurch.

But debt collectors have found a way to help lenders get their money anyway. Working on behalf of financial giants from Bank of America and Capital One Financial Corp. to Discover Financial Services and Citigroup Inc., collection firms target survivors who might agree to pay at least part of what the dead person owed.

Debt collectors say the survivors have a moral obligation to pay, especially in cases where they benefited from purchases rung up by someone else.

In the Red
Median debt levels among Americans, ages 65 to 74

<table>
<thead>
<tr>
<th>Year</th>
<th>Median Debt Level</th>
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<tbody>
<tr>
<td>1992</td>
<td>$40,200</td>
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<tr>
<td>1995</td>
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<tr>
<td>2000</td>
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<td>2004</td>
<td>$55,000</td>
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<td>2007</td>
<td>$60,000</td>
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Note: Adjusted for inflation. Source: Federal Reserve

ACA International, the industry’s main trade group, says that collecting payments on debts owed by the dead helps ensure that lenders will continue to extend credit at competitive interest rates to older Americans. “They are no different than payments on any type of debt,” says David Chernier, corporate counsel for the ACA. “Just because someone has passed doesn’t mean the debt is wiped clean.”

None of the financial firms would say how much debt-recovery work is outsourced. Nor would they comment on any individual collection cases. The companies note that they comply with all applicable laws and make sure surviving relatives are approached with sensitivity.

Tony Lloyd, a former manager for debt collector DCM Services LLC of Minneapolis, says the benefits of using debt-collection firms are clear. “The big selling point is that these collectors offer banks a cushion that shields them from actually having to do the gritty work of going after dead people’s families,” he says.

No one knows the size of the death-debt collection business, but it appears to be growing, according to court records, regulatory filings and interviews with dozens of lawyers and industry experts. The Federal Trade Commission investigated the industry and issued new guidelines in July after receiving numerous consumer complaints. William Howard, a consumer-rights lawyer with Morgan & Morgan in Tampa, Fla., says he has represented 50 people pursued for debts owed by dead family members so far this year, up from 10 in all of 2010. “Collectors are starting to realize just how much money you can get from someone when they are at their most vulnerable,” he says.

DCM Services, which exclusively focuses on deceased debts, says in its company fact sheet that it “manages collections on more than $1 billion in deceased accounts per year with an extremely low complaint rate.”

One thing isn’t in dispute. Dwindling retirement savings, falling home values and high unemployment mean that more Americans are dying while still in debt, says Sally Hurme, an elder-law lawyer with AARP, an advocacy group for people 50 or older.

Debt among Americans between the ages of 65 and 74 is growing faster than for any other age group, according to the Federal Reserve. As of 2007, the latest year for which figures are available, the median debt level of that age group was $40,130, up from $27,458 in 2004. Research group Strategic Business Insights’ Macromonitor conducted a separate survey and found that households headed by Americans 75 and older carried an average of $7,200 in credit-card debt in 2010, more than triple the 2008 level.

Typically, death-debt collectors get paid based on the amount of money they recoup for the lenders, says lawyers for debt-collection firms. Firms can pocket up to 40% of the payments collected, roughly double the rate for other kinds of delinquent consumer obligations.

Debt collectors that target money owed by dead Americans tout their ability to get a lender’s money back without public-relations headaches. On its website, DCM Services promises help “to protect our clients’ brands and maximize their recoveries.” Estate Information Services LLC, based in Columbus, Ohio, offers “a proven approach that yields high returns at a low risk to the client’s reputation,” the company’s website says. Both companies declined further comment.

In its investigation of the business, the FTC said it listened to recordings of thousands of calls between collectors and mourners. Some debt collectors misled relatives into believing they had to pay, says J. Reilly Dolan, acting director of the FTC’s financial-practices division.

Still, the agency determined the previous guidelines were ineffective and “too constraining,” Mr. Dolan says. So, in July, the agency issued a policy statement. Before the new guidelines, collectors were supposed to discuss a dead person’s debt only with the person’s spouse or someone chosen by the dead person’s estate. But Mr. Dolan said few debtors are formally designating someone to handle their affairs after death, leaving debt-collection firms unable to determine whom to contact for payment of any outstanding debt.

Behind the Bills
Consumer loans at least 60 days overdue

<table>
<thead>
<tr>
<th>Year</th>
<th>$200 billion</th>
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<tbody>
<tr>
<td>2005</td>
<td>$150 billion</td>
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<tr>
<td>2006</td>
<td>$100 billion</td>
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<tr>
<td>2008</td>
<td>$25 billion</td>
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<tr>
<td>2009</td>
<td>$10 billion</td>
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Note: 2011 is as of Oct. 31. Other years as of Dec. 31. Includes credit cards, auto loans and other unsecured consumer-finance debt. Source: Moody’s Analytics.
bills.

The FTC sought to improve the process and now allows debt-collection firms to contact anyone believed to be handling the estate, including parents, friends and neighbors. Agency officials wanted to resolve a "tension that was emerging" between state and U.S. laws on how collectors can go after money, Mr. Dolan adds. "When people might think it is horrible for collectors to speak with surviving spouses, we have no power to change that."

FTC officials rejected requests by lawyers representing family members for an outright ban on calling surviving family members. The agency also declined to impose a cooling-off period during which relatives couldn't be contacted by debt collectors.

Jerome Lamet, a former FTC assistant regional director who oversaw debt-collection firms, claims the agency "squandered a spectacular opportunity." Mr. Lamet is now a Chicago lawyer who specializes in debt-relief law.

Mark Schiffman, a spokesman with ACA, the trade group for debt collectors, supports the new guidelines, saying the FTC recognized "the industry needs to have flexibility to find out who handles the estate."

Collecting the debts of the dead is often easier than other collection work, says Mark Russell, a director at debt-collection advisory firm Kaulkin Ginsberg in Rockville, Md. Most borrowers behind on their bills have little or no money. Successfully collecting death debts takes just one relative who is willing to pay, he says.

To target survivors, DCM Services built a massive database of the recently deceased, says Mr. Lloyd, the former employee. The company uses the database to cross-reference accounts handed over by lenders, he says. In addition, low-level employees at DCM Services get paid a daily stipend to scour obituaries and estate notices in newspapers across the U.S.

Debt collectors often tell surviving family members that they aren't personally responsible for paying the debts of the deceased. But those words barely register with grieving relatives, according to interviews with a dozen lawyers who represent about 60 families pursued for money owed by dead relatives. "Each call brought up fresh memories of my husband's death," Patricia Smith, 56, says about the calls she started getting last year about $1,787.04 in credit-card debt owed by her late husband Arthur.

The death-collection calls and letters kept coming and wore her down, says Mrs. Smith, who lives in Jackson, Miss. She agreed to scrape together $50 a month "just to make the calls stop."

After talking to a lawyer, she changed her mind. In March, Mrs. Smith filed a federal lawsuit against the collector, DCM Services, alleging the company harassed her. DCM Services declined to comment but has asked a judge to dismiss the case.

Collectors in the death-debt business use carefully calibrated techniques. Employees often begin their calls with a sprinkle of grief counseling. DCM Services uses what it calls "empathetic active recovery."

"Handled appropriately, we believe that our Account Representatives can create a positive emotional experience with survivors," the company says on its website.

Phillips & Cohen Associates Ltd. employees try to convince families "to make a morality payment," according to a copy of the debt-collection firm's training materials reviewed by the Journal. Employees at the Wilmington, Del., company are also taught how to navigate "crying as a defense."

"You have been through some tough times," employees are told to say. "We need to resolve this issue." Phillips & Cohen, which specializes in collecting debts of the deceased, didn't respond to requests for comment.

Some debt collectors send condolence cards that double as collection letters. In September, Maxine Feinberg of Brooklyn, N.Y., got a letter from AscensionPoint Recovery Services LLC, a debt collector in Coon Rapids, Minn. The company offered its "deepest condolences," referring to the death of her husband David.

The company then brought up the $407.96 owed by Mr. Feinberg on a Macy's Inc. credit card. The letter thanked Mrs. Feinberg for "promptly attending to this important matter in the life of David Feinberg," Macy's didn't respond to requests for comment.

In October, Mrs. Feinberg accused AscensionPoint of harassment in a federal-court suit. AscensionPoint declined to comment. The company has not
filed a response.

Some people claim they are misled into believing they are required by law to pay the debts of dead relatives. Jody Randazzo, a 37-year-old teacher in Farmington Hills, Mich., says DCM Services employees threatened to seize her late father’s Florida home after his 2009 death unless she paid $6,000 he owed on a Citigroup credit card.

She refused. Ms. Randazzo submitted a complaint to the Florida Attorney General’s office. Citigroup and DCM Services declined to comment.

Death-debt collectors can be persistent. Lisa Wood, a 46-year-old legal assistant in Wichita, Kan., says she has gotten roughly 200 calls from them after her mother’s death in January.

Her mother died owing more than $11,000 to American Express Co., HSBC Holdings PLC and J.P. Morgan Chase & Co. “The abuse has gotten so bad that every day I think about just paying,” Ms. Wood says about the debt collectors. The companies declined to comment about her.

Some people sue debt collectors in hopes of making them go away. Lawyers for plaintiffs in such cases typically are paid fees plus a percentage of any damages or settlement.

Mrs. Long, the Cape Coral, Fla., woman who was prodded to pay her dead husband’s credit-card debt of $16,651.52, was surprised when she got a call six months after he died. She assumed his death had snuffed out the bill.

“I have no money,” she said.

“Hang in there,” said Jason Shea, an employee at West Asset Management.

Near the end of the seven-minute call, which was recorded by the debt-collection firm, Mr. Shea offered to write off the credit-card debt for $12,500 “if that makes any difference or if there’s any family that can maybe help out with the situation.”

Two months later, Mr. Shea called back to ask if there had been “any change...to make it possible to address this bill.” She said she was “destitute,” living with her 88-year-old aunt, lost her house to foreclosure and had her car repossessed.

The debt collector listened patiently and then gently prodded Mrs. Long for life-insurance proceeds or “anything at all that can be offered.” “I know that’s really hard to come up with,” Mr. Shea said.

He then offered to accept $2,000 to “get this bill taken care of,” according to a recording of the call. Mrs. Long couldn’t afford to pay but agreed anyway.

“I didn’t want his name dragged through the mud like some kind of deadbeat,” she says.

After talking to a lawyer who said she didn’t owe the money, Mrs. Long sued Bank of America and West Asset Management, a unit of West Corp., in a Florida state court in August, alleging harassment. In court filings, the companies have denied harassing her. West Asset declined to make Mr. Shea available for comment.

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**After Death, Who Has to Pay?**

Some questions and answers about what happens to debts left behind by someone who dies:

**Who is responsible for paying the money?** It depends. If the debt was jointly held, as most mortgages and some credit cards are, then the survivor must keep making payments. Survivors aren’t legally on the hook if the loan account was solely in the name of the dead person.

The cause of death—old age, accident, disease or even suicide—doesn’t have any effect on who is responsible.

**How do debt collectors get what they are owed?** About 44% of all Americans have a will or estate, according to ACA International, the main trade group for debt collectors. In those cases, debt collectors can file a claim in probate court, much like creditors do in bankruptcy proceedings. Assets given to relatives usually are off-limits.

**What happens to a mortgage?** If the mortgage was signed only by the deceased person, then the lender can repossess the house after the death to recoup any losses.

If there’s more than one borrower, the surviving person must continue paying.

—Jessica Silver-Greenberg
In Debt Collecting, Location Matters

BY JESSICA SILVER-GREENBERG

MARION COUNTY, Ind.—For U.S. consumers with too many bills and not enough money, the end of the line is often a small-claims court like the one here in Pike Township.

Judge A. Douglas Stephens, who presides over all the township’s small-claims cases, calls himself a “Renaissance redneck” and wears a small gun strapped to his ankle while on the bench. He says he has little patience for the “feeble protests” of people who try to dodge their financial obligations.

Shortly after his 2003 election, he recalls, two insurance executives in “bad suits” sat silently in the back of his courtroom to see if he would rule in favor of their company in a dispute involving damage from a car accident. He says he did, based on the facts.

These days, his calendar is packed with cases from many insurance companies—sometimes more than 200 a day—against residents who allegedly owe money for insurance premiums or car accidents. The defendants live not only in Pike Township but in townships all over Marion County. Judge Stephens says that American Family Mutual Insurance Co., based in Madison, Wis., files all its cases against county residents in his township because “they had a problem with another judge who was consistently too tough,” whom he declines to name. Judge Stephens says he is “totally impartial.” American Family declined to comment.

As companies and debt collectors try to collect on overdue bills that piled up during the financial crisis, the recession and their aftermath, they are bypassing a tactic from plaintiffs’ lawyers: They shop around for the best places to bring their claims. Debt collectors aren’t so much worried about whether a court will rule that the debtor owes the money—most cases are fairly cut-and-dry—but how aggressively collectors can pursue a debtor’s assets.

Lawsuits to collect on bad debts have to be filed in the state where a debtor lives. In most cases, debtors don’t get to choose the court in which the case will be heard. Unless it involves an especially large debt, it will be the small-claims court in the debtor’s county, and there’s no way for a debt collector to pick the judge.

There are exceptions, however, and they leave debt collectors room to maneuver. Virginia allows companies to file lawsuits in the county where a creditor is based, not where the borrower lives. In Cook County, Ill., collectors can choose between six municipal courts, and in Pulaski County, Ark., they can pick from eight small-claims courts.

Parts of Indiana are particularly unusual. Although the state requires suits to be filed in the county where the borrower lives, in Marion County and one other county, collectors can choose among township courts—each with a single judge. The courts handle all collection disputes involving up to $6,000.

“We lawyers call it forum-shopping,” says Richard Gonon, a lawyer for Accounts Recovery Bureau Inc., a Reading, Pa., medical-debt-collection firm that has filed cases in Marion County.

Companies such as Encore Capital Group Inc. and Portfolio Recovery Associates Inc. buy pools of bad loans at steep discounts, then try to collect on them. They begin by determining which states give them the greatest latitude to seize assets from borrowers who haven’t paid up.

Brokers for distressed debt say investors like states such as Illinois, Maryland and New Jersey, where laws permit them to seize assets such as cars, pension payments and a portion of debtors’ wages. Consequently, they try to buy loan pools from those states.

Brokers say investors shy away from buying bad debt from some other states. In Texas, married couples can shield creditors as much as $1 million in residential real estate and $600,000 in personal property. California doesn’t allow debt collectors to garnishee the bank accounts of delinquent borrowers.

Brokers say geography is the single biggest factor in how much debt fetch. Accommodating laws and judges often mean the difference between a profit and loss on debts pursued in court, says Mark Russell of Kaulkin Ginsberg, a Rockville, Md., adviser to debt collectors.

In states where laws are more favorable to debt collectors, they pay more for such debt. Unpaid consumer debt sells for about seven cents on the dollar in Indiana, compared with two cents in Texas, according to Lou DiPalma, a debt broker in Harrison, N.Y. Such debt also fetches relatively high prices in Illinois, Minnesota, Ohio and Virginia, he says.

Debt collectors regard Indiana as friendly territory. Companies can file small-claims suits by mail rather than sending lawyers to file them in person. If a debt collector wins in court, nearly all of a creditor’s assets can be pursued for payment, including real estate, pension payments and cars, which are off-limits in many other states.

Marion County, where Indianapolis is located, is the state’s most populous county. It is carved into nine townships, each with its own court—a vestige of a time in which every Indiana resident was supposed to be able to reach a courthouse on horseback in one day.

Eighty percent of debt-collection cases against Marion County residents involved less than $6,000 in 2008, the latest year for which figures are available, so they were handled by township courts. State law allows debt collectors to file the suits in any of the nine courts.

Jeff Bennett, who oversees the Warren Township court’s budget and staff, says township courts depend on filing fees of $81 per case to fund a chunk of their operations. He says that creates a “perverse incentive” for judges and their staffs to be “accommodating” to collectors.

Pike Township’s Judge Stephens says debt collectors often choose the court where they expect to recoup the most money. His court is the second-busiest in Marion County, with 8,200 cases filed last year and 2,731 filed through April of this year, according to court officials. “I’m pretty much the insurance-company judge,” he says, noting that suits filed by insurance companies account for about 20% of his caseload.

Judge Stephens allows lawyers for companies trying to collect debts to use cubicles next to their courtrooms to hash out payment plans with debtors in lieu of bringing their cases before the court. The judge doesn’t supervise the meetings—the law doesn’t require him to do so—and nearly all of the borrowers come to court without lawyers of their own.

Such settlement meetings occur in several other township courts as well. Debtors sometimes agree to make debt payments using income that is protected from seizure by state law, such as unemployment or disability payments, according to Garland Graves, the judge in Warren Township, who says he doesn’t allow unsupervised settlement meetings. Many defendants make concessions without knowing their rights, he says.

Judge Stephens responds: “I am under no obligation to tell someone else to do that themselves...If someone owes a debt, which they generally do, how much more advantageous is it for a defendant to get in front of a judge?” He adds that debtors can exercise that right if they want. “Defendants don’t frequently make payments from these protected [income] sources,” he says. “Just because they don’t ask to go in front of a judge doesn’t mean that they are being taken advantage of.”

The court in Decatur Township also arranges unsupervised meetings. When defendants arrive, they are told to sit in the courtroom until their names are called. They are called one at a time to meet with debt-collection lawyers, according to court
employees. No judge is present.

Jeff Cook, an unemployed plumber, had a closed-door meeting earlier this year with a lawyer for Med Shield Inc., which collects debts for some of Indiana’s largest nonprofit hospitals and outpatient clinics. He says he agreed to allow Med Shield to tap his unemployment benefits to cover a $651 emergency-room bill. He found out later that debt collectors have no legal right in Indiana to seize unemployment checks to satisfy a verdict in a lawsuit.

Decatur Township Judge William L. Fisher Jr. didn’t return calls seeking comment. Med Shield declined to comment.

Decatur Township has become the preferred courthouse for lawyers who collect soured debt on behalf of medical providers, according to Pam Ricker, who has managed the court’s operations for more than 25 years. The township has no hospitals.

Ms. Ricker says a lack of public transportation discourages many defendants from showing up in court, resulting in automatic win for debt collectors.

“We certainly have our loyal attorneys,” said Ms. Ricker. The court provides lawyers with coffee in a break room and a fax machine for their clerical needs.

Of the 106 Med Shield cases scheduled to be handled by the court one day in February, just three involved defendants who lived in the township, according to an analysis of court records by The Wall Street Journal.

Some township judges are uncomfortable with appearing too accommodating to debt collectors. Last year, Judge Steven Poore of Washington Township barred lawyers from meeting privately with defendants. He says he was worried that the court looked like “an arm of the debt collectors.” He now reviews all debt-collection settlements. The number of debt-collection suits filed in Washington Township is down sharply, he says.

Mr. Connon, the medical debt-collection lawyer, says he stopped filing lawsuits in Washington Township. He says he will file future cases in a township where the judge is less “debt-friendly” and will let him meet one-on-one with defendants. “Hard-liners” like Judge Poore, he says, “hurt business because it’s harder to collect money on each account.”

Judge Poore says the courts aren’t intended to function as “business generators for debt collectors,” noting that his changes in procedure help ensure that everyone gets a fair hearing.

Maxine King, the small-claims-court judge in Washington Township until she lost her re-election bid in January, says she also banned closed-door meetings between defendants and lawyers. She says she did so after learning that debt-collection firms were discouraging debtors from bringing their cases before her. “It was a clear obstruction of the justice that should be given to each defendant,” she says. “Ideal debt-collection firms wouldn’t have such latitude and would have to file where the debtor lives, not where they like the judge most.”

In Center Township, court constables hand out questionnaires outside the small courtroom’s entrance. The forms ask defendants for their telephone numbers, Social Security numbers and employer’s addresses. The defendants hand over the forms and collection agencies when they are called to settlement meetings, which aren’t supervised by the judge. The questionnaire are prepared by an Indiana law firm that sues borrowers on behalf of credit-card issuers, according to township Judge Michelle Smith Scott.

Crystal Dupree, a 32-year-old office manager facing a lawsuit over an alleged debt on a store-issued credit card, says she wrote down her bank-account information and cellphone number because she thought the form was an official court document. “It’s really deceptive, and I never would have given them that information,” she says. She disputes that she owes money on the credit card.

Lawyers at the law firm that prepared the questionnaire declined to comment. Mark Anthony Duncan, the Center Township constable in charge of serving defendants with court documents, says defendants aren’t forced to fill out the questionnaires, adding that the forms inform defendants they are “from a debt-collector.”

Judge Scott, when contacted by the Journal, said she would instruct constables to stop handing out the questionnaires so as to prevent “any wrong perception” that the forms are issued by the court. “I can’t deny that some collectors shop around the township courts to find the one where they will fare best,” she said. “I want to ensure my court is fair.”

Shortly after Judge Graves took over the Warren Township court in January, he says, calls poured in from debt-collection lawyers trying to figure out where he stood. Judge Graves says his predecessor on the bench was unpopular with debt collectors because he hired an administrator to review payment agreements between defendants and collection firms.

Mr. Bennett, who oversees the court’s budget and staff, says debt-collection lawyers threatened to take their cases and filing fees elsewhere if Judge Graves didn’t back down.

Judge Graves says some company lawyers asked court offi-
cials to fax them hundreds of pages of documents on previous judgments, which the judge took to be a test of his willingness to accommodate debt collectors.

He refused. “I don’t want to be a pushover,” he says. “If that means losing business, well, I guess that’s what we’re going to do.”
LEHIGH ACRES, Fla.—Joseph Reilly lost his vacation home here last year when he was out of work and stopped paying his mortgage. The bank took the house and sold it. Mr. Reilly thought that was the end of it.

In June, he learned otherwise. A phone call informed him of a court judgment against him for $192,570.71.

It turned out that at a foreclosure sale, his former house fetched less than a quarter of what Mr. Reilly owed on it. His bank sued him for the rest.

The result was a foreclosure hangover that homeowners rarely anticipate but increasingly face: a “deficiency judgment.”

Forty-one states and the District of Columbia permit lenders to sue borrowers for mortgage debt still left after a foreclosure sale. The economics of today’s battered housing market mean that lenders are doing so more and more.

Foreclosed homes seldom fetch enough to cover the outstanding loan amount, both because buyers financed so much of the purchase price—up to 100% of it during the housing boom—and because today’s foreclosures take place following a four-year decline in values.

“Now there are foreclosures that leave banks holding the bag on more than $100,000 in debt,” says Michael Cramer, president and chief executive of Dyck O’Neal Inc., an Arlington, Texas, firm that invests in debt. “Before, it didn’t make sense [for banks] to expend the resources to go after borrowers; now it doesn’t make sense not to.”

Indeed, $100,000 was roughly the average amount by which foreclosure sales fell short of loan balances in hundreds of foreclosures in seven states reviewed by The Wall Street Journal. And 64% of the 4.5 million foreclosures since the start of 2007 have taken place in states that allow deficiency judgments.

Lenders still sue for loan shortfalls in only a small minority of cases where they legally could. Public relations is a limiting factor, some debt-buyers believe. Banks are reluctant to discuss their strategies, but some lenders say they are more likely to seek a deficiency judgment if they perceive the borrower to be a “strategic defaulter” who chose to stop paying because the property lost so much value.

In Lee County, Fla., where Mr. Reilly’s vacation home was, court records show that 172 deficiency judgments were entered in the first seven months of 2011. That was up 54% from a year earlier. The increase was especially striking because total foreclosures were down sharply in the county, as banks continued to wrestle with paperwork problems that slowed the process.

One Florida lawyer who defends troubled homeowners, Matt Englett of Orlando, says his clients have faced 20 deficiency-judgment suits this year, up from seven during all of last year.

Until recently, “there was a false sense of calm” among borrowers who went through foreclosure, Mr. Englett says. “That’s changing,” he adds, as borrowers learn they may be financially on the hook even after the house is gone.

In Mr. Reilly’s case, “there’s not a snowball’s chance in hell that we can pay” the deficiency judgment, says the 39-year-old man, who remains unemployed. He says he is going to speak to a lawyer about declaring bankruptcy next week, in an effort to escape the debt. The lender that obtained the judgment against him, Great Western Bank Corp. of Sioux Falls, S.D., declined to comment.

Some close observers of the housing scene are convinced this is just the beginning of a surge in deficiency judgments. Sharon Bock, clerk and comptroller of Palm Beach County, Fla., expects “a massive wave of these cases as banks start selling the judgments to debt collectors.”

In a paradox of the battered housing industry, trying to squeeze more money out of distressed borrowers contrasts with other initiatives that aim instead to help struggling homeowners, including by reducing what they owe.

The increase in deficiency judgments has sparked a growing secondary market. Sophisticated investors are “ravenous for this debt and ramping up their purchases,” says Jeffrey Shachat, a managing director at Arca Capital Partners LLC, a Palo Alto, Calif., firm that finances distressed-debt deals. He says deficiency judgments will eventually be bundled into packages that resemble mortgage-backed securities.

Because most targets have scant savings, the judgments sell for only about two cents on the dollar, versus seven cents for credit-card debt, according to debt-industry brokers.

Silverleaf Advisors LLC, a Miami private-equity firm, is one investor in battered mortgage debt. Instead of buying ready-made deficiency judgments, it buys banks’ sourced mortgages and goes to court itself to get judgments for debt that remains after foreclosure sales.

Silverleaf says its collection efforts are limited. “We are waiting for the economy to somewhat heal so that it’s a better time to go after people,” says Douglas Hannah, managing director of Silverleaf.

Investors know that most states allow up to 20 years to try to collect the debts, ample time for the borrowers to get back on their feet. Meanwhile, the debts grow at about an 8% interest rate, depending on the state.

Mr. Hannah expects the market to expand as banks “aggressively unload” their distressed mortgages in the next year, driving up the number of deficiency judgments being sought.

They are pretty easy to get. “If the house sold for less than you owe, the lender wins, plain and simple,” says Roy Foxall, a real-estate lawyer in Fort Myers on Florida’s west coast.

Mr. Foxall says five deficiency suits were filed against his clients this year, and he couldn’t poke any holes in any of them. Lenders typically have five years following a foreclosure sale to sue for remaining mortgage debt.

Mr. Englett, the Orlando lawyer who has handled 27 such suits for homeowners in the past 21 months, says he didn’t get the bank to waive the deficiency in any of the cases, but did reach six settlements in which the plaintiff accepted less.

Florida is among the biggest deficiency-judgment states. Since the start of 2007, it has had more foreclosures than any other state that allows deficiency judgments—more than 9% of the U.S. total, according to research firm Lender Processing Services Inc.

A loan-deficiency suit can
yank borrowers back to a nightmare they thought was over.

Ray Falero, a truck driver whose Orlando home was foreclosed on and sold in August 2010, says he thought he was hallucinating when, months later, he opened the door and saw a sheriff’s deputy. The visitor handed him a notice saying he was being sued for $78,500 by the lender on the home purchase, EverBank Financial Corp., of Jacksonville, Fla.

“I thought I was done with this whole mess,” he says.

Mr. Falero, 37, says he was about nine months behind on his loan when the bank foreclosed. Before it did, he bought another home in Minneola, Fla., where he now lives and where he says he is up to date on mortgage payments. Like Mr. Reilly, Mr. Falero says he didn’t swell the foreclosed-on loan through refinancing or home-equity borrowing.

EverBank won a deficiency judgment on Mr. Falero’s Orlando loan. Mr. Falero and his lawyer are fighting to reduce the amount owed. EverBank declined to comment on his case.

Credit unions and smaller banks are the most aggressive pursuers of deficiency judgments, a review of court records in several states shows.

At Suncoast Schools Federal Credit Union in Tampa, Jim Simon, manager of loss and risk mitigation, says the institution has a responsibility to its members, and that means trying to recoup losses by going after loan deficiencies. He calls such legal action the credit union’s “last arrow in the quiver.”

The biggest banks appear to have stayed largely on the sidelines as they deal with the foreclosure-paperwork mess. One big bank, J.P. Morgan Chase & Co., “may obtain a deficiency” judgment in foreclosure cases but will “often waive” the left-over debt when a homeowner agrees to a so-called short sale of a house for less than is owed on it, a bank spokesman says.

Among the hardest-hit spots in Florida is Lehigh Acres, a 95-square-mile unincorporated sprawl of narrow, cracked-pavement streets about 15 miles inland from Fort Myers.

Lehigh Acres was carved out of scrub land and cattle farms in the 1950s by a Chicago businessman, Lee Ratner, who had made a fortune on d-CON rat poison, says Gary Mormino, a history professor at the University of South Florida in St. Petersburg.

Before he died, Mr. Ratner sold prefabricated houses to families hungry for a slice of paradise.

Decades later, Lehigh Acres (population 68,265) attracted people eager to cash in on the housing boom, even though it is distant from the sugary white beaches on the Gulf of Mexico. Speculative investors bought more than half of homes sold in Lehigh Acres in 2005 and 2006, Bob Peterson, a real-estate agent, estimates.

Many of those stucco homes now stand empty, priced at about a third of the value they had at the peak of the housing boom, which was often around $300,000.

In the first seven months of this year, courts entered 42 deficiency judgments in Lehigh Acres, for a total of $7 million, up from 26 judgments for $4.6 million in the same period of 2010, according to a Wall Street Journal analysis of state-court records.

Fifth Third Bancorp, of Cincinnati, filed for the largest share of deficiency judgments in Lehigh Acres last year. The bank declined to comment.

“It’s eerily quiet here,” says Jon Divencenzo, who bought a house in Lehigh Acres at a May foreclosure sale for $50,000. Some nights, he says, the only sounds are rustling pine trees and the idling car engines of former homeowners circling the block to glimpse what they lost.

The hard-hit area reveals a sharp contrast in homeowners’ attitudes toward deficiency judgments.

Julia Ingham invested in four Lehigh Acres properties in June 2005, hoping to “drum up some real money for retirement.”

All have since been foreclosed on by lenders, says the 62-year-old retired programmer for International Business Machines Corp.

A credit union, after selling one of the foreclosed houses for less than the debt on it, obtained a deficiency judgment against Ms. Ingham for $181,659.54. She worries she could face such judgments on the other properties, too.

Ms. Ingham says when she bought them, she misunderstood how much her investments put her on the hook for. Her builder, she says, promised she could invest $10,000 in four properties and then flip them for a profit. Ms. Ingham says de-
ficiency judgments punish borrowers who were taken advantage of by lenders and builders.

Catherine Ortega, who owns a Lehigh Acres home around the corner from one of Ms. Ingham’s foreclosed homes, says banks should leave people like her former neighbor alone. “Those people have suffered enough,” she says.

In July 2005, Mr. Reilly took out a $223,000 mortgage to build a vacation home here, about 160 miles from his primary home in Odessa, Fla. He was laid off just as construction was being completed.

Mr. Reilly says he is current on the loan on his primary residence but couldn’t afford the vacation home’s $2,000-a-month loan payment. Great Western Bank, which is owned by National Australia Bank Ltd., foreclosed on his house in Lehigh Acres in July 2010.

Mr. Reilly, who was a mortgage broker before his layoff, says he knew that deficiency judgments were possible after a foreclosure but didn’t expect to face one because he doesn’t have any financial assets, and you can’t get “blood from a stone.”

Alfredo Callado, who lives next door to Mr. Reilly’s former house, is unsympathetic. Like Ms. Ortega, Mr. Callado is troubled by the crime that a neighborhood full of empty houses attracts. He started watching over Mr. Reilly’s former house to ward off thieves who steal air conditioners from vacant properties.

Mr. Callado, sitting on a lawn chair in his driveway, says lenders should use deficiency suits to punish defaulting homeowners for the damage they do to neighborhoods, including driving down property values.

“You have to make them pay for what they do to those of us left behind,” he says.
Bringing Expired Debt Back to Life

BY JESSICA SILVER-GREENBERG

No one was more surprised than Thomas Carpenito with the credit-card invitation that landed in his mailbox earlier this year. The 27-year-old deli owner from White Plains, N.Y., had about $10,000 in old debts and a credit rating 200 points below "good." He recalled thinking the post office had delivered the letter to the wrong house.

Far from a mistake, the offer was part of a controversial and growing partnership between debt collectors and banks that profits both. To get the new credit card, Mr. Carpenito agreed to repay $400 on a seven-year-old debt that had expired under New York's statute of limitations.

"It was totally worth it," he said. Having no credit cards made Mr. Carpenito feel "like dirt," he said, especially when out on dates. His new credit card, stamped with the MasterCard Inc. logo, was offered by Jefferson Capital Systems LLC, the debt-collection arm of CompuCredit Holdings Corp., in Atlanta.

CompuCredit, a leader in the business, collected about $15 million in newly resurrected debts and fees by issuing credit cards to people with blemished credit in the first nine months of this year, according to a securities filing. It also has drawn scrutiny by federal authorities for allegedly deceptive practices.

Many U.S. banks, hungry for new revenue streams, are eager partners. They receive fees and higher-than-average interest rates by granting debt collectors access to their license with MasterCard. The debt companies typically agree to cover losses to banks if borrowers stop paying.

Some lenders say borrowers have a moral obligation to pay their debts even if they are no longer legally responsible. Others are leery about subprime borrowers. But the debt-driven credit cards show some banks tiptoeing back into subprime lending after suffering big losses during the financial crisis.

Collectors aren't afraid of the risks in issuing new credit cards because they instantly turn a profit on virtually worthless debts—purchased for pennies on the dollar—when people agree to start making payments on them. The credit-card agreements essentially create assets out of thin air.

The cards, born a decade ago, are gaining new momentum as debt-collection firms look for new ways to collect, said William Weinstein, chief executive of Weinstein & Riley, a Seattle debt collector.

No one knows how many of these credit cards, usually stamped with the MasterCard logo, are in people's wallets.

MasterCard declined to comment.

Genesis Financial Solutions of Beaverton, Ore., said it was opening about 100,000 new accounts a year in its "Balance Transfer Program." Unlike typical balance-transfer offers, where consumers are lured with low interest rates to move credit balances, Genesis borrowers move expired debts onto the new card.

Irving Levin, the chief executive of Genesis, said the company's credit cards were an opportunity for consumers in "a very much underserved segment.

"I got a bunch of cards when I was younger, and the companies were basically giving them away," said Mr. Carpenito of his past debt troubles. "I couldn't really handle the bills, and I fell way behind." Federal authorities have declared some of the offers deceptive because they failed to clearly explain to people they didn't pay back even a penny of the past debts because the obligations had expired under statutes of limitations set by individual states.

Mr. Carpenito's credit card from CompuCredit carried the name of Monterey County Bank, a unit of Northern California Bancorp. In 2010, the Federal Deposit Insurance Corp. accused Monterey of helping Tighorn Financial Services LLC disguise efforts to resurrect expired debts through new credit-card offers.

Tighorn, a debt collector based in Sioux Falls, S.D., didn't return calls for comment.

Bank officials last year agreed to a $3 million settlement without admitting or denying wrongdoing. "Our bank no longer participates in any balance transfer card programs," Mr. Chretien, Jr., Monterey County Bank's chairman, president and chief executive, said in a statement in response to questions.

Mr. Carpenito's credit card is now underwritten by another lender. In November, CompuCredit's debt-collection arm got a credit line from another bank, PrivateBancorp Inc. in LaSalle, Ill., according to a securities filing, "to facilitate the growth of this segment's operations.

CompuCredit didn't respond to requests for comment.

Last month, its chairman and chief executive, David Hanna, told investors that the "current economic environment could lead to increased opportunities as consumers with less access to credit create additional demand.

In 2008, CompuCredit agreed to return more than $114 million to customers after the Federal Trade Commission accused the company of deceptive practices that included failure to disclose high credit-card fees and failure to tell customers that accepting a Majestic credit card—embazoned with a Visa Inc. logo—essentially turned them into a debt-repayment program. The company didn't admit to any wrongdoing in the settlement.

Visa, which declined to comment, is no longer in the debt-collection credit-card business, according to lawyers for debtors who have gotten card offers.

People who stop paying bills earn lousy credit ratings but eventually are freed of old debt under statutes of limitations that vary by state and range from three years to 10 years from the last loan payment.

But if a debtor agrees to make even a single payment on an expired debt, the clock starts anew on some part of the old obligation, a process called "re-agaging."

So if borrowers again fall behind on their payments, debt collectors can turn to their usual tools: letters, phone calls and lawsuits. By restarting a debt's
Regulators Weigh In

Two allegations of deception were settled with no admission of wrongdoing. Excerpts from the actions:

FDIC v. Monterey County Bank

The FDIC has reason to believe that the Bank has engaged in unsafe or unsound banking practices, and engaged in deceptive practices ... in connection with the Bank's credit card relationship with two other firms.

FTC v. CompuCredit Corporation and Jefferson Capital Systems

The Commission requests [relief] against CompuCredit Corporation and Jefferson Capital Systems for engaging in unfair or deceptive acts or practices in violation of ... the FTC Act and for engaging in acts and practices in violation of the Fair Debt Collection Practices Act.

statute of limitations, the collectors have years to retrieve payments.

Regulators scrutinize offers to see whether they clearly state that borrowers are agreeing to repay part—or in some cases all—of an expired debt if they agree to a new credit card.

The pitches usually come in the form of a letter.

“Make your fresh start today,” said one Emblem credit card offer featured by The Wall Street Journal. A sentence near the top of the offer said, “This communication is from a debt collector.”

Kindra Weaver, an office administrator who lives in Artesia, N.M., said she had no idea the $300 she paid in March for a Milestone credit card from Genesis Financial Solutions settled a debt long past the statute of limitations.

But she said she would happily do it again. “No one else wanted to even work with me,” said Ms. Weaver, 26 years old. “I lost my job at one point and couldn’t make ends meet. But I feel so much better about my life now that I was able to pay and get back on track.”

Ms. Weaver has a $300 credit limit that can go up if she stays current with her monthly payments. Her credit card carries an annual interest rate of 19%, compared with an average rate of 13.7%.

Milestone credit cards are issued by Mid America Bank & Trust Co., a 91-year-old bank in Dixon, Mo. A regulatory filing shows the bank collected $1.1 million in “credit card program fee income” in the first nine months of 2011. The bank had profits of $1.2 million over the same period. Mid America declined to comment for this article.

Card Acquisition LLC says on its website that the Sioux Falls company’s Affirm credit card can help debt collectors wring profits out of seemingly lost causes. The cards give “the debtor a positive way to settle their debt,” the website said. Company officials didn’t respond to calls for comment.

Participating banks say borrowers with poor credit—stemming from lost jobs or other financial catastrophes, for example—deserve another chance.

How to restart lending to them is “a question at the very center of the recovery,” John D. Hawke Jr., the nation’s top regulator of national banks from 1998 to 2008, said in an interview.

Last year, West Virginia Attorney General Darrell McGraw barred Jefferson Capital Systems, the debt-collection unit of CompuCredit, from offering state residents an Emblem credit card through the company’s “Fresh Start Solution Program.”

Mr. McGraw said the program was “abusive” because people didn’t realize they were agreeing to pay debt that had expired. Other issuers still can do business in West Virginia. Some companies are concerned regulatory scrutiny could slow growth.

Angela Hoover, a 47-year-old laboratory assistant from Strasburg, Pa., said she was ready to sign up for an Emblem credit card in November. After reading the offer letter three times, she realized she would have to pay $434 in old debts before she could get the card.

The letter’s “legal hogwash” was confusing, she said. “I am just grateful I didn’t accept it.”
Consumers Cry Foul Over Debt Collectors

BY JESSICA SILVER-GREENBERG

Complaints about debt collectors are pouring into a federal database that tracks allegations of illegal late-night phone calls, arrest threats and other abuse. But few of the complaints are likely to result in enforcement actions.

The debt-collection industry, booming as many Americans struggle to catch up on their payments or walk away from what they owe, was the subject of a record 164,361 complaints through Dec. 8 of this year, according to the Federal Trade Commission. The total is 17% higher than the 140,036 debt-collection complaints the FTC got for all of 2010.

Since the start of this year, though, the FTC has launched just four enforcement actions against debt-collection firms under the primary federal law used to oversee the industry. From 2005 to 2010, the average was two cases a year.

The actions often target companies that are responsible for hundreds, if not thousands, of consumer complaints.

The agency usually goes after debt collectors by filing lawsuits against companies in federal court. Officials also can levy fines and demand that violators reimburse consumers for any money that was obtained illegally.

FTC officials said the small number of enforcement actions against debt collectors is a misleading indicator of its determination to punish violators. J. Reilly Dolan, acting director of the agency's financial-practices division, said in an interview that the FTC is cracking down on abusive debt collection practices and directing its resources to go after some of the largest debt collectors.

In March, the FTC announced its largest civil penalty against a debt collector in U.S. history. West Asset Management of Omaha, Neb., agreed to pay $2.8 million to settle accusations that included threatening to arrest people who owed money.

West Asset Management, a unit of West Corp., neither admitted nor denied wrongdoing as part of the settlement. The company declined to comment.

Mr. Dolan added in a statement that the FTC is conducting "an inquiry of the debt buying industry" that includes the "quality of information" in lawsuits filed against borrowers.

He declined to be more specific, but law-enforcement officials in several U.S. states have accused some debt buyers of submitting incomplete, sloppy and even fraudulent documents in courts as proof of what a borrower owes. Such companies purchase batches of soured loans in bulk, often for pennies on the dollar, and then try to collect.

Still, J. Howard Beales, who led the FTC's consumer-protection bureau from 2001 to 2004, said the recent jump in complaints against debt collectors should have triggered an increase in enforcement actions, despite the agency's limited resources. He now is a marketing and public-policy professor at George Washington University.

The number of debt-collection complaints is surging even though the mountain of overdue bills is shrinking. As of Nov. 30, a total of $96.8 billion in auto loans, credit cards and other unsecured consumer-finance debt was at least 60 days past due, down 19% from $119.5 billion at the end of 2010, according to data from Equifax Inc. and Moody's Analytics.

Debt collectors are regulated under a patchwork of state and federal laws. U.S. oversight is shared by the FTC and Consumer Financial Protection Bureau.

The Fair Debt Collection Practices Act dictates how debt collectors can contact consumers behind on their bills. Late-night phone calls are illegal, as are physical threats and repeated calls after the collector has been asked to stop calling.

This year's number of complaints made to the FTC about debt collectors won't be publicly released until early next year. The agency disclosed the total as of Dec. 8 to The Wall Street Journal following a public-records request. The Journal also obtained individual debt-collection complaints from the FTC.

The tally includes complaints received by mail, phone and online. On the FTC's home page, a brown button near the top encourages consumers to "Report it to the FTC," steering them through a form that concludes with: "We have received your complaint."

People who file complaints with the FTC get a toll-free phone number for follow-up questions and are encouraged to contact state regulators.

The agency compiles information from consumers, law-enforcement officials, the Better Business Bureau and other sources in a database called Consumer Sentinel, which now holds about 6.1 million complaints.

The FTC's enforcement statistics don't include actions taken by more than 2,000 other law-enforcement agencies that have access to the Consumer Sentinel database, which purges complaints after five years. Mr. Dolan said those agencies tap the database hundreds of times a week, but the FTC doesn't keep track of resulting prosecutions, financial penalties or other actions.

Some lawmakers complain that the database is a waste of money. "Collecting information is important," said Rep. Jo Ann Emerson (R., Mo.), a member of the House Appropriations Committee, in a statement. "But acting on that information is at the heart of the FTC's responsibility."

FTC officials wouldn't comment on the database's cost. Last year, the FTC spent an estimated $12 million, or about 4% of its operating budget, on items that include the complaint database and National Do Not Call Registry.

Thomas Maronick, a former FTC director who now is a marketing professor at Towson University in Maryland, said he worried when the database was being developed that it would expose the FTC to disappointment. "It creates the impression among consumers that a single complaint will result in regulatory action, but that is not how things work," Mr. Maronick said.

Mr. Dolan said officials target their enforcement firepower so it will have the maximum impact on consumers and a strong deterrent effect on other debt-collection companies. The FTC also uses the database to spot new
problems before they spread more widely, he added.

The biggest subject of complaints so far this year has been Portfolio Recovery Associates Inc., a buyer of distressed consumer debts. The FTC got 2,641 complaints about the Norfolk, Va., company through Nov. 15, a 15% increase from 2,292 during 2010. The company declined to comment.

—Rob Barry contributed to this article.