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Bankruptcy and the Deceased Debtor: Rule 1016 in Practice

by

Laura B. Bartell*

Sometimes debtors die. It is not surprising that, of the hundreds of thousands of consumer bankruptcy cases filed every year, some are filed by individuals who do not survive to see the benefits of discharge. Indeed, a recent study of bankruptcy cases suggests that filings by older Americans have increased exponentially in the last twenty-five years, with one in seven consumer bankruptcy cases filed by someone 65 years old or older and, in 3.3% of all cases filed, by someone above the age of 74.

What happens to the bankruptcy case when the debtor (or one of two joint debtors) meets his or her end before the case does? Federal Rule of Bankruptcy Procedure 1016 provides that chapter 7 liquidation cases should continue and that cases under chapters 11, 12, and 13 either may be dismissed or proceed, depending on the circumstances:

Death or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred. If a reorganization, family farmer’s debt adjustment, or individual’s debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.

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3Id. at 11.

4FED. R. BANKR. P. 1016.
In this article, I look at what courts actually do in bankruptcy cases on the demise of a debtor. As I anticipated, the data shows that chapter 7 cases almost invariably continue to be administered after the death of the debtor. Contrary to my expectations (and those of the advisory committee when Rule 1016 was originally drafted), dismissal of cases filed under chapters 11, 12 and 13 is not the norm, and bankruptcy courts make every effort to allow these cases to continue, sometimes even discharging a deceased debtor. If a bankruptcy case continues after the death of the debtor, courts must confront certain issues that are not always easily addressed. This article highlights how those questions have been resolved.

I. STATUTES AND RULES

The Bankruptcy Act of 1898 directed that bankruptcy cases should proceed after the debtor's death. Section 8 of the Act provided: "SEC. 8. DEATH OR INSANITY OF BANKRUPTS.—a The death or insanity of a bankrupt shall not abate the proceedings, but the same shall be conducted and concluded in the same manner, so far as possible, as though he had not died or become insane . . . ." Consistent with the statutory guidance, the first Rules of Bankruptcy Procedure, prescribed under 28 U.S.C. § 2075, mirrored the statutory provision. Rule 118, applicable to liquidation cases, provided as follows:

Rule 118. Death or Insanity of Bankrupt

The death of [sic] insanity of the bankrupt shall not abate a bankruptcy case. In such event the estate of the bankrupt shall be administered and the case concluded in the same

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5 I limited my research to those cases for which I could open filings on the docket as it appeared in Bloomberg Law. There are certainly more cases that involved deceased debtors that predate Bloomberg Law availability.

6 The Advisory Committee's Note to the original (1983) version of Rule 1016 provides, "In a chapter 11 reorganization case or chapter 13 individual's debt adjustment case, the likelihood is that the case will be dismissed."


manner, so far as possible, as though the death or insanity had not occurred.\(^\text{10}\)

With respect to Chapter XI cases, Rule 11-16 provided:

\textit{Rule 11-16. Death or Insanity of Debtor}

In the event of death or insanity of the debtor, a Chapter XI case may be dismissed, or if further administration is feasible and in the best interest of the parties, the estate may be administered and the case concluded in the same manner, so far as possible, as though the death or insanity had not occurred.\(^\text{11}\)

No rule existed concerning the death of a debtor in a Chapter XIII case, probably because there was no expectation that that such a case could survive the debtor's death.

No provision comparable to Section 8 of the Bankruptcy Act was included in the Bankruptcy Code\(^\text{12}\) that replaced the Act in 1978. The legislative history of the Code indicated that Congress may have thought the section was “unnecessary”\(^\text{13}\) because of the bankruptcy court’s in \textit{rem} jurisdiction over property of the estate, but Congress failed to consider that only in a chapter 7 case does the deceased debtor’s nonexempt property remain subject to the court’s jurisdiction. Creditors of an individual debtor under chapter 11, 12, or 13 are satisfied not by liquidation of the debtor’s property but by payments pursuant to a plan, generally derived from the debtor’s future earnings.

The Federal Rules of Bankruptcy Procedure,\(^\text{14}\) which were promulgated in the wake of the enactment of the Bankruptcy Code and replaced the former bankruptcy rules, included a new Rule 1016 that incorporated the sub-

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\(^{10}\)H.R. Doc. No. 93-87, \textit{supra} note 9, at 8.

\(^{11}\)H.R. Doc. No. 93-241, \textit{supra} note 9, at 10.


\(^{13}\)The Judiciary Committee report of the House of Representative stated as follows:

Bankruptcy Act Sec. 8 has been deleted as unnecessary. Once the estate is created, no interests in property of the estate remain in the debtor. Consequently, if the debtor dies during the case, only property exempted from property of the estate or acquired by the debtor after commencement of the case and not included as property of the estate will be available to the representative of the debtor’s probate estate. The bankruptcy proceeding will continue in \textit{rem} with respect to property of the state [sic], and the discharge will apply in personam to relieve the debtor, and thus his probate representative, of liability for dischargeable debts.


\(^{14}\)The Federal Rules of Bankruptcy Procedure were adopted by order of the Supreme Court on April 25, 1983, transmitted to Congress by the Chief Justice on the same day, and became effective August 1, 1983. Bankruptcy Rules, 461 U.S. 973 (1983).
stance of former Rules 118 and 11-16. However, the new rule also expanded the scope of the former rule beyond chapter 7 liquidation cases and chapter 11 reorganization cases to include individual debt adjustment cases, permitting dismissal on the debtor’s death but allowing further administration of the case if “possible and in the best interest of the parties.” Nevertheless, the Advisory Committee Note to Rule 1016 expressed the view that “[i]n a chapter 11 reorganization case or [a] chapter 13 individual’s debt adjustment case, the likelihood is that the case will be dismissed.” Commentators on Rule 1016 have echoed this assessment.

II. APPLYING THE RULE

In this part, I look at how courts have applied (or ignored) Rule 1016 in cases under different chapters of the Bankruptcy Code when a debtor dies while the case is pending.

A. CHAPTER 7

Rule 1016 is clear on the effect of a debtor’s death in a chapter 7 case — that death “shall not abate a liquidation case under chapter 7 of the Code . . ., [but] the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death . . . had not occurred.” In hundreds of chapter 7 cases for which I was able to view the dockets, the debtor (or one of two joint debtors) died during the pendency of the case.

15See text accompanying note 4 supra. The original rule used the word “insanity,” as in Rules 118 and 11-15, but that word was changed to “incompetency” by amendment in 1991 to conform to Federal Rule of Civil Procedure 25. See Fed. R. Bankr. P. 1016 advisory committee’s note to 1991 amendment.

16The references to “family farmer’s debt adjustment” and “chapter 12” were included when the rule was amended in 1991 to reflect the addition of chapter 12 to the Bankruptcy Code by the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Pub. L. No. 99-554, 100 Stat. 3088 (1986).

found only seventeen of those chapter 7 cases in which the bankruptcy court dismissed the case after the death of a debtor.

In one case, the principal creditor of the debtor sought dismissal because it would maximize assets available to satisfy the creditor’s claim. The court granted dismissal but concluded that the dismissal was consistent with Rule 1016 because it allows a bankruptcy case to be administered and concluded “in the same manner, so far as possible” as if the death had not occurred, and that includes the operation of 11 U.S.C. § 707(a) (permitting dismissal of a chapter 7 case “for cause”).

In another case, a representative of a deceased chapter 13 debtor converted the case without court order to chapter 7 under Rule 1017(f)(3) after the debtor’s death. Noting that the court had not been provided notification of the debtor’s demise and the debtor’s attorney had failed to obtain permission to permit the probate estate representative to act for the debtor, the court concluded that conversion of the case was improper under Rules 1016 and 1017(f), and the court dismissed the case under § 707(a).

In three cases filed in the Northern District of Ohio, the debtors died before the § 341 meeting of creditors, and in each case, the court concluded that Rule 1016 did not allow the court to disregard the requirement of § 343 of the Code that the debtor attend the meeting of creditors. Another three cases were dismissed for the same reason (failure to attend § 341 meeting).
when no objections to dismissal were filed.\textsuperscript{26}

In the other nine chapter 7 cases, the bankruptcy courts dismissed the cases under § 707(a) after the death of the debtors, finding cause for dismissal when there was a pending probate administration, without mentioning Rule 1016.\textsuperscript{27} In five of those cases, the motions to dismiss were made on behalf of the deceased debtors,\textsuperscript{28} and one was an involuntary case.\textsuperscript{29} Most bankruptcy courts have explicitly rejected motions to dismiss under § 707(a), concluding that the dual administration of bankruptcy cases and probate estates does not establish "cause" for dismissal.\textsuperscript{30}

In each of the other chapter 7 cases in which the court mentioned that the debtor (or one of two joint debtors) had died before the case was closed, the court continued to administer the case, at least for some time after the death.\textsuperscript{31} The legislative history of § 727 indicates that Congress intended

\textsuperscript{26}See Order, In re Szymanoski, No. 16-80242 (Bankr. E.D. Okla. July 14, 2016), ECF No. 26; Order Granting Motion of William Todd Drown, Interim Trustee, to Dismiss (Doc. #38), In re Dietrich, No. 06-56344 (Bankr. S.D. Ohio Oct 25, 2011), ECF No. 59; Order of Dismissal for Failure to Comply with Title 11, Section 521(4) and 341, In re Ahmadi, No. 07-51699 (Bankr. D. Nev. Sept. 8, 2008), ECF No. 59.


\textsuperscript{28}See Blackwell; Cherry; Tucker; Ogundeji; Burr; Marra.

\textsuperscript{29}See Blackwell.


that an individual who dies during the pendency of a chapter 7 case should be entitled to a discharge.³²

B. Chapter 11

Rule 1016 expressly contemplates that a chapter 11 case of a deceased debtor “may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death . . . had not occurred.”³³ In light of the Advisory Committee Note to Rule 1016,³⁴ one might expect that in most chapter 11 cases the death of the debtor would lead to dismissal of the case. That in fact has not occurred.

Chapter 11 cases of deceased debtors have been treated in one of three ways. Some indeed have been dismissed shortly after the death,³⁵ often on the

³²See H.R. REP. NO. 95-959, at 384 (1977); S. REP. NO. 95-989, at 98 (1978) (“Individual’ includes a deceased individual, so that if the debtor dies during the bankruptcy case, he will nevertheless be released from his debts, and his estate will not be liable for them.”).

³³See text accompanying note 17 supra.

request of the surviving debtor or the representative of the decedent, or with their consent. Some have been converted to chapter 7, under which they continued. One was converted to chapter 13, where it was subsequently dismissed for failure to make plan payments. But the majority have contin-


36 See Kudrave, Powers, Clark, Butler, Carvalho, Blaurock, Shah, Cioffi, Himmelstorf, Detweiler, Locke, Potter, Strunk, Felix, Gurule, Loehnis, Duffie, Van Dyke, Seligman.

sion on whether it was appropriate to do so.  
Continued administration was always permitted if it was sought by a representative of the debtor's estate and there was no objection by any party in interest. It is also relevant that in almost all those cases, either the plan of reorganization had been confirmed before the debtor died or if not, the case was a joint case with the surviving spouse who wished to pursue plan confirmation. If the debtor died before plan confirmation without a surviving codebtor, with only six exceptions, the case was either converted or dismissed.

One court that dismissed a chapter 11 case suggested that a court cannot order continued administration of a chapter 11 case unless a trustee is appointed because after the debtor’s death there is no debtor in possession and the debtor’s probate estate cannot act in that capacity. Another court agreed with that principle but appointed a trustee to permit continued administration.

The lessons we can take from this sample are that (1) if all parties in interest want the chapter 11 case to continue, the court is likely to permit it to do so; (2) if the surviving codebtor wants the chapter 11 case to continue, the court is likely to agree; and (3) the further the chapter 11 case has proceeded before the debtor’s death, the more likely the court will continue to administer it.

C. CHAPTER 12

As in chapter 11 cases, Rule 1016 provides the court the option on the death of a chapter 12 debtor to dismiss the case or allow it to continue “if further administration is possible and in the best interest of the parties.” Courts have had few opportunities to apply the rule. Chapter 12 cases are rare. For the last five years for which statistics have been published, the

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40If no party in interest moves to dismiss or convert the case under § 1112 (and the judge does not take action sua sponte) the docket would contain no decision on whether the chapter 11 case should continue to be administered under Rule 1016.
41See Antonakos; Ring; Dymmel; Talmadge; Smith.
42See Thrash; Antonakos; Castor; Raun; Wolfe; Zischke; Wahidi; Kelley; Hopkins; Townsend; Biggins; Ring; Gallegos; Pickel; McPeak; Nguyen; Holguin; Wills.
43See McDonough; Zimmermann; Hayes; Gilbert; Bouman; Koesterer; Dymmel; David; Parker; Gribble; Chen; Labriola; LaRosaWyrick.
44See Nucci; Talmadge; Flanders; Redcay; Moss; Lassiter.
45See Michael Brown; Roesser; Severino; Blair; Berman; Pouers; Schuler; Preston.
46See Blaurock; Shah; Ciuffari; Locke; Strunk; Lovett; Parkton; Burden; Duffie; DeGraff; Dalzell-Payne; Kohlheim; Seligman; Justice; Moore; Chester.
47See In re DeGraff, 2012 WL 384938, at *2; see also Order Appointing Chapter 11 Trustee, In re Berman, No. 11-07886 (Bankr. E.D.N.C. Aug. 28, 2012), ECF No. 151 (granting motion to appoint chapter 11 trustee after debtor’s death).
48See Talmadge.
number of annual chapter 12 filings nationwide has never reached 600.50 I located only five chapter 12 cases indicating that the debtor (or one of two joint debtors) had died during the administration of the case.

In one joint case, the widow of the deceased debtor recognized that she could not continue with the reorganization after her husband’s death and moved to dismiss the chapter 12 case.51 The court retained jurisdiction to resolve a dispute between landlords and a mortgagee over debtors’ cash collateral account but imposed a two-year bar on refileing by the debtor under chapters 11, 12, or 13.52 The court never mentioned Rule 1016.

In another case, the court also did not mention Rule 1016 but resolved a dispute over life insurance proceeds that the surviving debtor received on the death of the codebtor three years earlier, which suggests that the case had continued notwithstanding the death.

The court in a third case did mention Rule 1016 but declined to apply it _sua sponte_.53 After the death of the chapter 12 debtor, his son (who was the administrator of his estate) filed a motion seeking authorization to continue administration of the case.54 The debtor was current on his payments when he died, and his family members (who worked with him in running the family business) continued to make all required payments after his death.55 The trustee supported the motion, and the only party who opposed it made arguments that were without substance.56 The court acknowledged there was “no evidence of record to counter the [m]ovant’s assertion that continuing the case would be in the best interests of the creditors that are entitled to ongoing distributions.”57 That conclusion should have authorized the court to


51See _In re Lerch_, 85 B.R. 491 (Bankr. N.D. Ill. 1988).
52Id. at 494.
54Id. at 191.
55Id.
56Id. at 192.
57Id.
order further administration of the chapter 12 case. Nevertheless, the court not only denied the motion but sua sponte ordered dismissal of the case because the court believed that granting the motion "would leave all of the income-generating tangible assets of the estate in the possession and under the immediate control of persons who are not vested by law with the status of fiduciaries." Because that will always be true for the estate of a deceased debtor, the court's reasoning would compel dismissal of all chapter 12 cases after the death of the debtor, without regard to the best interest of the parties.

The next case was a joint case in which the surviving widow continued to operate a dairy farm with the assistance of her son. Shortly after the court conducted a hearing on the debtors' motion to obtain postpetition financing under § 364, the husband died. Without mentioning Rule 1016, the court expressed its condolences to the family, mentioned what a critical role the son would play in the ongoing business, and approved the motion to incur debt under § 364(d).

The final case continued to be administered in chapter 12 for almost two years after one of the joint debtors died and then was voluntarily converted to chapter 7, with both debtors receiving discharges. There was no mention of Rule 1016.

The small size of the case sample makes it difficult to draw any conclusions about the operation of Rule 1016 in chapter 12 cases. In only one of the five chapter 12 cases in which the debtor died was the rule even mentioned, and that court declined to authorize continued administration even though Rule 1016 permitted it. Perhaps we can reach the following conclusions from the four cases that were dismissed. First, if the case is a joint case and the surviving spouse cannot continue to operate the business, the court will dismiss. Second, if the case is a joint case and the surviving spouse can continue to operate the business and wishes to do so (with help from other sources), the court might permit the case to continue. And finally, if the case is not a joint case, so that continued operation would rely on nondebtors, the court might not permit continued administration unless a trustee is appointed because of the lack of a debtor in possession with attendant fiduciary duties.

59 Id. at 634 n.1.
60 Id. at 634.
61 Id. at 639.
62 Id. at 634.
63 See Order, In re Broocke, No. 10-20440 (Bankr. E.D. Mo. Feb. 13, 2013), ECF No. 104. I suggest in Section III.F infra that such a conversion is not authorized for a deceased debtor.
D. Chapter 13

Because chapter 13 cases continue much longer than chapter 7 cases, it is not surprising that many more chapter 13 debtors die during the case than do chapter 7 debtors. Rule 1016 contemplates the same options for chapter 13 cases as for cases filed under chapters 11 or 12—dismissal or "if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." However, as previously discussed, the Advisory Committee Note to Rule 1016, and many commentators, have taken the position that dismissal is the likely outcome of the debtor’s death.

This is hardly surprising. A chapter 13 plan is funded with the debtor’s projected disposable income. “Disposable income” is defined as the debtor’s “current monthly income” less (among other deductions) amounts reasonably necessary for the maintenance or support of the debtor or a dependent of the debtor or for a domestic support obligation during the plan term. Although “current monthly income” is a historical figure, the Supreme Court has directed that “projected disposable income” be computed based on “changes in the debtor’s income or expenses that are known or virtually certain at the time of confirmation.” Therefore, the anticipated payments under the plan will be based on anticipated income of the debtor at the time of confirmation. Once the debtor dies, that income will no longer be available to fund the plan.

In the ordinary course, a chapter 13 case can be concluded in one of four ways: dismissal (generally for failure to make payments under the plan), conversion to chapter 7, discharge on completion of all payments under the plan, and the same, so far as possible, as though the death or incompetency had not occurred." However, as previously discussed, the Advisory Committee Note to Rule 1016, and many commentators, have taken the position that dismissal is the likely outcome of the debtor’s death.

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In the ordinary course, a chapter 13 case can be concluded in one of four ways: dismissal (generally for failure to make payments under the plan), conversion to chapter 7, discharge on completion of all payments under the plan, and dismissal on the petition of a party in interest or the United States trustee for cause.

65 A chapter 13 plan must provide for payments to be made over a three- or five-year “applicable commitment period” unless “the plan provides for payment in full of all allowed unsecured claims over a shorter period.” 11 U.S.C. § 1325(b)(4).
66 FED. R. BANKR. P. 1016.
67 See text accompanying note 17 supra.
68 Under 11 U.S.C. § 1325(b)(1)(B), if the plan does not distribute property sufficient to pay unsecured claims in full, the plan must “provide[ ] that all of the debtor’s projected disposable income to be received in the applicable commitment period . . . will be applied to make payments to unsecured creditors under the plan.” 11 U.S.C. § 1325(b)(2).
69 “Current monthly income” is defined in § 101(10A) to mean “the average monthly income from all sources that the debtor receives . . . derived during the 6-month period ending on . . . the last day of the calendar month immediately preceding the date of the commencement of the case.” 11 U.S.C. § 101(10A).
71 Section 1307(c) provides for dismissal upon request of a party in interest or the United States trustee for cause. 11 U.S.C. § 1307(c). The debtor may dismiss a chapter 13 case at any time if it was not previously converted to chapter 13. 11 U.S.C. § 1307(b).
72 The debtor may convert a chapter 13 case to chapter 7 at any time. 11 U.S.C. § 1307(a).
plan, and a so-called “hardship discharge” given to a debtor who has not completed all payments under the plan but who has met the requirements of § 1328(b).

Although the Advisory Committee and the various commentators anticipated that most chapter 13 cases of deceased debtors would be terminated by dismissal, that is not the case. Certainly, many chapter 13 cases are dismissed shortly after the death of the debtor. (Some cases also continued to be ad-

request of a party in interest or the United States trustee, the court may order conversion to chapter 7 for cause. 11 U.S.C. § 1307(c).


Section 1328(b) allows such a discharge if:

“(1) the debtor’s failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;

(2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor has been liquidated under chapter 7 of this title on such date; and

(3) modification of the plan under section 1329 of this title is not practicable.”

11 U.S.C. § 1328(b)

ministered after the death of the debtor but were dismissed later when plan payments were not made.\textsuperscript{77} Of the cases that were dismissed as a result of the debtor's death, with only seven exceptions,\textsuperscript{78} there was no surviving codebtor\textsuperscript{79} (or the surviving codebtor requested the dismissal\textsuperscript{80}) or the dismissal was limited to the deceased codebtor.\textsuperscript{81} In several cases the debtor died before plan confirmation.\textsuperscript{82} In only one case had the debtor's estate completed all plan payments before the court dismissed, but no one objected to dismissal at the time, and the representatives of the debtor failed to appeal

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\textsuperscript{78}See Anderson; Kevin Williams; Bracken; Thompson; Larry Williams; Sonny Brown; Spiser.

\textsuperscript{79}See Marks; Akcarmen; Williamson; McMurtry; Jerry Moore; Harman; McHaney; Lauber; Weaver; Carrie Williams; Taylor; Devane-Jones; Glen Wilson; Smith; Parker; Burgess; Tarber; Breuer; Ebie; Martinez; Hennessy; Edna Brown; Shad; Shepherd; Huang; Navarro; Kreager; Rodriguez; Powers; Marshall; Melendez Guzman; Vann; Abram; Farinacci; Majkowski; Vazquez Berrios; Lonnie Terry; White; Freeman; Langley; Hancock; Harter; Devoe; Marcario Avila; Sonnemann; Sales; Alvarez Diaz; Krayeski; Jarrett; see also William Brown (in which codebtor voluntarily dismissed her own bankruptcy case one day before the deceased debtor's case was dismissed).

\textsuperscript{80}See Uren; Marty.

\textsuperscript{81}See Karnafel; Hale; Kurkowski; Hixson; McGee; Waring; Mallinger; Willie Jackson; Prouty; Woltouer; Hugh Wright; Bennett; Graybill; Periman; Russo; Evans; Kreavin; Frank Jackson; Pond. In seven of the cases, the prior joint chapter 13 case had been severed, with the surviving debtor converting to chapter 7 and the deceased debtor's chapter 13 case being dismissed. See Lisa Moore; Hixson; Forren; Burson; Brooks; Glen Wilson; Dickerson.

\textsuperscript{82}See McHaney; Waring; Burgess; Martinez; Edna Brown; Thompson; Kreager; Vazquez Berrios; Farinacci; Spiser; Frank Jackson. But see \textit{In re Terry}, 543 B.R. 173 (E.D. Pa. 2015) (Otis Terry) (holding that the bankruptcy court did not abuse its discretion in refusing to dismiss the case of the deceased debtor who died before confirmation of his chapter 13 plan).
the dismissal order, instead (unsuccessfully) seeking reinstatement of the case.\textsuperscript{83}

Many chapter 13 cases were converted to chapter 7 after the death of a debtor,\textsuperscript{84} most of them on a voluntary basis,\textsuperscript{85} and were administered to discharge in chapter 7. I suggest in Section III.F that such conversions are not authorized because a deceased debtor is not eligible to be a debtor under

\textsuperscript{83}See Order Denying Debtor's Motion to Reinstatement Case, \textit{In re} White, No. 06-60363 (Bankr. S.D. Ga. Feb. 1, 2012), ECF No. 100. The court's order seems to suggest that the court was displeased with debtor's counsel for failing to inform the court about the debtor's death for three years while the estate made plan payments.


\textsuperscript{85}See Abbott; Weidlich; Voboril; Mayorga; Ogundeji; Clements; Boyer; Eckert; Gerald Wood; Boada; Tenney; King; Herrera; Baker; Henry; Jerry Moore; Conley; Siegel; Ballard; Applegate; Hoppe; Webb; John Moore; Brinkley.
chapter 7. Because, however, a voluntary conversion from chapter 13 to chapter 7 does requires only a "notice of conversion" under § 1307(a), no effective mechanism exists to prevent conversion of a case of a deceased debtor. Indeed, sometimes the surviving debtor does not even notify the court of the codebtor's demise before converting the case.

In almost as many cases, the chapter 13 cases continued to completion by payment of all amounts due under the plan followed by a regular discharge of the decedent, mostly when the case was filed jointly with the decedent's spouse but also in some cases of an individual filer. (Some cases have con-

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86See discussion infra Section III.F.
88See, e.g., Tenney (in which suggestion of death was filed after the notice of conversion); Clements (in which the deceased's name was removed from the case caption on the motion to convert and a suggestion of death was filed after conversion).
continued after the death of the debtor but have not yet concluded with a discharge.)

In a significant number of other chapter 13 cases, the representative of


91See, e.g., Certificate of Death, In re Daniels, No. 16-20475 (Bankr. N.D. Ind. June 30, 2020), ECF No. 121 (in which the debtor died on November 20, 2016); Suggestion of Death, In re Stephens, No. 17-20028 (Bankr. N.D. Ga. June 25, 2019), ECF No. 77 (in which the debtor died or about June 3, 2019); Order Approving Modification of Plan, In re Davis, No. 17-30777 (Bankr. N.D. Ga. Feb. 5, 2019), ECF No. 71 (in which the suggestion of death (ECF No. 66) was filed October 31, 2018); Order Denying Motion to Dismiss, In re Stucky, No. 15-10864 (Bankr. N.D. Ind. December 10, 2018), ECF No. 82 (in which the debtor died March 9, 2018 (ECF No. 80)); Order Modifying Chapter 13 Plan Post Confirmation, In re
the decedent (or the surviving codebtor) requests, and is granted, a hardship discharge. Why would a decedent’s estate wish to have a hardship discharge? The discharge will allow the heirs to take the assets of the estate free and clear of prepetition claims. The issue is whether continuing to administer the case under such circumstances satisfies the condition in Rule 1016 that further administration is in the “best interest of the parties.” Who are the parties whose best interests must be considered? Most courts consider the interests of the debtor’s heirs as well as the debtor’s creditors in considering whether a hardship discharge is appropriate, although a few others disagree, seeing the debtor (now deceased) and the debtor’s creditors as the only legitimate concerns of a chapter 13 case. Why are decedents eligible for a hardship discharge? In fact, no chapter

Tatum, No. 15-31925 (Bankr. D.N.J. October 23, 2018), ECF No. 105 (in which the debtor died on March 19, 2016 (ECF No. 45-1)).


93 See In re Shorter, 544 B.R. at 665-66 ("Mrs. Shorter . . . is his surviving spouse, and is therefore entitled to have her interests considered."); In re Inyard, 532 B.R. at 372 ("Penalizing [the debtor] (or his heirs, if their interests can even be considered) . . . does not comport with the Bankruptcy Code's goal of giving deserving debtors a fresh start."); In re Bond, 36 B.R. at 51 ("If this case is dismissed, the Debtor's minor children will receive nothing."); see also Potts, supra note 18, at 20 ("If there are heirs who could be entitled to assets or stand to reap benefits from the chapter 13 discharge, then the facts will strongly weigh in favor of case completion.").

debtor is more likely eligible for a hardship discharge under § 1328(b) than one who is deceased. The first requirement for a hardship discharge is that debtor’s failure to complete the payments is “due to circumstances for which the debtor should not justly be held accountable.” The inability to make payments because of death is quite obviously a circumstance for which the debtor should not be held accountable. The second requirement is that the present value, as of the effective date of the plan, of payments actually made under the plan are at least as much as the unsecured creditors would have received in a liquidating chapter 7 case. Most chapter 7 cases do not provide any distribution to unsecured creditors, so this, too, is easily satisfied in most cases. Finally, modification of the debtor’s plan must not be practicable. Because the deceased debtor is unable to fund the plan for lack of future income, this requirement is also met. In only eight of the cases in which a representative of the deceased chapter 13 debtor requested a hardship discharge did the court deny the request, and in six of those, the court concluded that the debtor had not satisfied one of the requirements of § 1328(b).

In sum, out of the 203 chapter 13 cases I found in which the debtor died before the case was concluded, 119 were not immediately dismissed, and in 75, the deceased debtor obtained a chapter 13 discharge, either after completion of the plan or on the basis of hardship. Chapter 13 cases are not routinely dismissed after the death of a debtor.

99 See Wilson (in which the surviving spouse amended the plan after the husband’s death and then was unable to keep payments current so that failure to complete plan was not due to circumstances for which she should not justly be held accountable); Devane-Jones (in which heirs were unable to fund the plan to the extent of liquidation value needed under § 1328(b)); Marshall (finding the debtor’s failure to complete plan payments was not due to circumstances for which the debtor should not justly be held accountable because the debtor intentionally failed to pay tax liabilities as they became due); Sonny Brown (in which the surviving debtor who shot her husband could not show that the debtor’s failure to complete the plan was due to circumstances for which debtor should not justly be held accountable); Schlottman (in which the surviving debtor could propose a modified plan with proceeds of the decedent’s life insurance policy); Krayeski (in which creditors had not received as much as they would have received in a chapter 7 liquidation, as required by § 1328(b)(2)).
III. ISSUES WITH FURTHER ADMINISTRATION AFTER DEATH OF DEBTOR.

Continued administration of a bankruptcy case after the death of the debtor under any chapter of the Code presents some issues that the court must resolve. Some of these are discussed below.

A. WHO WILL REPRESENT THE DEBTOR?

Because Rule 1016 contemplates that the bankruptcy cases of a deceased debtor may continue, at least in some circumstances, there must be someone to represent the debtor in the case after the debtor has died. In those cases that discuss the issue, the courts have concluded that the appropriate representative of the debtor in a bankruptcy case continuing after the death of the debtor is the debtor's personal representative (the person who has obtained letters of administration from the probate court with respect to the debtor's probate estate). 100 Most cases simply assume without discussion that such a representative is authorized to act for the debtor after the debtor's death.101


102 11 U.S.C. § 105(a) (authorizing the court to "issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title"); see, e.g., In re Shorter, 544 B.R. 654, 662 (Bankr. E.D. Ark. 2015) (concluding without citation to § 105 that the surviving nondebtor spouse, although she
to represent the deceased's rights in the case.  

B. § 341 Meeting of Creditors

On occasion, the debtor dies very early in the case, before the § 341 meeting of creditors. Section 343 of the Code states that the "debtor shall appear and submit to examination under oath at the meeting of creditors." Although use of the word "shall" in § 343 might be read to make mandatory the appearance by the debtor at the meeting of creditors, most bankruptcy courts have concluded that they possess the authority to ex-
cuse a debtor's appearance at a § 341 meeting on the theory that "literal application of the statute will produce a result demonstrably at odds with the intention of its drafters" or that the plain meaning of the statute would lead to "absurd or impracticable consequences." Indeed, some local court rules include standards for requesting a waiver of attendance at the § 341 meeting. Some of the grounds found sufficient by courts to excuse attendance at the § 341 meeting are medical conditions, imprisonment, dementia, and military service abroad.

In eight chapter 7 cases in which the debtor died before the § 341 meeting of creditors, the bankruptcy court allowed the chapter 7 case to continue despite the debtor's failure to attend. Death of the debtor is explicitly

108 United States v. Ron Pair Enters., Inc., 489 U.S. 235, 242 (1989); see also In re Vilt, 56 B.R. 723, 725 (Bankr. N.D. Ill. 1986) ("When a literal reading of a statute would defeat the statute's purpose or cause extreme hardship, the language may be read to be harmonious with the statute's purpose."); In re Stewart, 14 B.R. 959, 960-61 (Bankr. N.D. Ohio 1981) (concluding that the congressional purpose behind the Bankruptcy Code would be frustrated if the statute were read literally).


110 See BANKR. S.D. ILL. R. 2003(D) (listing grounds of medical condition, imprisonment, and military assignments that prevent attendance); BANKR. S.D. MISS. R. 2003-1(a)(3) (allowing waiver of appearance when the debtor is physically unable to appear or is unable to appear because of a mental incapacity); BANKR. E.D. MO. R. 2003(E) and PROCEDURES MANUAL, p. 11 (including as grounds medical condition, imprisonment, and military assignments that prevent attendance); BANKR. S.D. TEX. PROCEDURES FOR OBTAINING RELIEF FROM REQUIRED ATTENDANCE AT § 341 MEETING OF CREDITORS ¶ 4, https://www.txs.uscourts.gov/sites/txs/files/341_meetattend.pdf (listing grounds of death or complete physical or mental incapacity).


112 See In re Vilt, 56 B.R. at 725.

113 See In re Bergeron, 235 B.R. at 643.


115 See In re Robles, No. 07-30747, 2007 WL 4410395, at *1-2 (Bankr. W.D. Tex. Dec. 13, 2007) (noting that the debtor had died before the § 341 meeting); In re Oliver, 279 B.R. 69, 70 (Bankr. W.D.N.Y. 2002) (concluding that United States trustee failed to show that debtor's inability to attend § 341 meeting would have meaningfully adverse impact on case administration); In re Hamilton, 274 B.R. 265, 268 (Bankr. W.D. Tex. 2001) (authorizing the personal representative to appear at the § 341 meeting); In re Wiesner, 267 B.R. 32, 35 n.4 (Bankr. D. Mass. 2001) (noting that the case trustee can examine the administrator of the debtor's probate estate); In re Lucio, 251 B.R. 705, 709 (Bankr. W.D. Tex. 2000) (indicating that a duly appointed personal representative may appear at the meeting on behalf of the deceased debtor); In re Abrahams, 163 B.R. 606, 607 (Bankr. S.D. Fla. 1993) (authorizing the personal representative to appear at the meeting on behalf of the deceased debtor); In re Gridley, 131 B.R. 447, 448 (Bankr. D.S.D. 1991) (in which the debtor died two days after her son filed the petition under authority of a power of attorney and the court allowed the case to continue over objection of the decedent's husband); In re Costello, 95 B.R. 594, 598-99 (Bankr. S.D. Ill. 1989) (noting that the codebtor died before § 341 meeting).
mentioned as cause for obtaining relief from attendance at a § 341 meeting in the local rules of the bankruptcy court in the Southern District of Texas.\textsuperscript{116} However, if a debtor dies before a § 341 meeting in a jurisdiction in which the bankruptcy court has concluded that it has no power to excuse non-attendance by the debtor, presumably the debtor’s failure to attend by reason of death would provide a basis for dismissal.

In two of the chapter 13 cases in which the debtor died before the § 341 meeting, the court dismissed the case.\textsuperscript{117} In another, the court did not dismiss but denied the deceased debtor a discharge.\textsuperscript{118} In yet another such chapter 13 case, the court concluded that the surviving codebtor, who was also the duly appointed administrator of her husband’s probate estate, could speak on behalf of her husband at the § 341 hearing.\textsuperscript{119}

C. ADDITIONS TO AND SUBTRACTIONS FROM PROPERTY OF THE ESTATE

In a chapter 7 case, the bankruptcy estate of an individual debtor generally is composed of all legal or equitable interests of the debtor in property as of the time the debtor files the bankruptcy petition.\textsuperscript{120} Property obtained by the debtor after the bankruptcy filing is not available to creditors of the debtor to satisfy prepetition debts, with certain exceptions. Under chapters 12 and 13, the bankruptcy estate includes not only the property included in a chapter 7 case but also property of the same kind that the debtor acquires after commencement of the case until the case is closed, dismissed, or converted.\textsuperscript{121} As discussed in this Section, several cases in the sample involved property received after the death of a debtor or property removed from the estate as a result of the debtor’s death.

One exception to the general rule setting the petition date as a snap-shot for bankruptcy estate property is property received by the debtor within 180 days of the petition date from a “bequest, devise, or inheritance” or “as a beneficiary of a life insurance policy or of a death benefit plan.”\textsuperscript{122}


\textsuperscript{117}In re Waring, 555 B.R. 754 (Bankr. D. Colo. 2016) (dismissing only deceased debtor from the joint case); In re Navarro, No. 12-21062, 2012 WL 5193743 (Bankr. D. Md. Oct. 19, 2012) (dismissing after finding that no legitimate reorganizational purpose could be found to continue the chapter 13 case). See generally Militello, supra note 94 (“[A] debtor’s death at such an early stage in a Chapter 13 case may result in dismissal for other reasons [than failure to attend the § 341 meeting].”).

\textsuperscript{118}See Order Granting Motion for Exemption from Financial Management Course and Notice of In- tent to Find Deceased Debtor Ineligible for Discharge, In re Schneider, No. 17-62364 (Bankr. N.D. Ohio Apr. 12, 2018), ECF No. 39.

\textsuperscript{119}In re Seitz, 430 B.R. 761, 764 (Bankr. N.D. Tex. 2010).

\textsuperscript{120}11 U.S.C. § 541(a)(1).

\textsuperscript{121}11 U.S.C. §§ 1207(a)(1) & § 1306(a)(1).

the chapter 7 cases involving a deceased debtor were joint cases in which one of the debtors was the beneficiary of the other's life insurance policy. In those cases in which the death occurred within 180 days after the filing date, the proceeds of that life insurance policy were included in the bankruptcy estate of the surviving codebtor. Such proceeds also were included in the disposable income of surviving chapter 13 codebtors, except to the extent reasonably necessary for the support of the codebtor and the codebtor's dependents.

When the debtor owns property in joint tenancy or tenancy by the entireties at the time of the debtor's death, the property interest that was previously part of the estate disappears and the survivor's interest in the property enlarges to encompass the whole. If the survivor is a joint debtor with the decedent, the survivor's bankruptcy estate is augmented to the extent of the former interest of the deceased spouse.

D. INSTITUTING ADVERSARY PROCEEDINGS AND CONTESTED MATTERS

In some of the chapter 7 cases, a representative of the debtor filed a motion after the debtor's death seeking avoidance of judicial liens under § 522(f). Courts differ on whether such motions may be entertained.


124 See In re Ladd, 448 B.R. at 209; In re McCall, 383 B.R. at 421; In re Brinkley, 323 B.R. 685, 690 (Bankr. W.D. Ark. 2005); In re Collins, 281 B.R. at 381; In re Krak, 2001 WL 1700027, at *2; In re Doyle, 209 B.R. at 906; In re Crowell, 53 B.R. at 559; In re Sharik, 41 B.R. at 390; In re Howard, 6 B.R. at 223. Most of these cases involved a dispute between the trustee and the surviving debtor over whether the insurance proceeds were exempt property.


127 See In re Ballard, 65 F.3d at 372; In re Etoll, 425 B.R. at 748; In re Crowell, 53 B.R. at 558.


129 Section 522(f)(1) states that "the debtor may avoid the fixing of a lien on an interest of the debtor in
Those that deny the motions note that only the “debtor” is given the statutory right to avoid the fixing of liens under the language of § 522(f). Others permit the representative of the debtor to pursue avoidance, citing Rule 1016 and noting that the homestead exemption survives death and would be protected by the motion under § 522(f).

E. Treatment of Existing Adversary Proceedings and Contested Matters

Federal Rule of Bankruptcy Procedure 7025 makes applicable to adversary proceedings Federal Rule of Civil Procedure 25 dealing with substitution of parties. One of the events that might lead to such a substitution is death of a party, described in Rule 25(a)(1) as follows:

(1) Substitution if the Claim Is Not Extinguished. If a party dies and the claim is not extinguished, the court may order substitution of the property party. A motion for substitution may be made by any party or by the decedent’s successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

The chapter 7 cases in which a debtor died during the pendency of an adversary proceeding or contested matter generally fall into one of two categories: adversary proceedings against the debtor under § 523 seeking a determination that a claim is nondischargeable (or under § 727 to deny the debtor a discharge), or contested matters initiated by the debtor against a property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is...
creditor seeking to avoid a lien on exempt property under § 522(f). Other adversary proceedings are far less frequent. In only one case did the court conclude that the claim was extinguished by the debtor's death.

When the plaintiff in an adversary proceeding against the debtor failed to comply with the ninety-day period for filing a motion to substitute under Rule 7025, the court dismissed the adversary proceeding in its entirety. In all other cases, the court allowed the adversary proceeding or contested matter to continue with the representative of the debtor substituting for the debtor in the litigation.

The debtor in one case died while appealing summary judgment granted by the bankruptcy court in a nondischargeability proceeding under § 523(a)(2)(A). The appellate court affirmed on the merits, although it mused that the appeal might be moot because reversing the summary judgment and sending the matter back for trial on the merits might not be possible given that the debtor was no longer available to provide testimony.

F. Conversion of the Case After Death

Sometimes after the death of a chapter 11, 12, or 13 debtor (and the loss of the income provided by such debtor towards funding a plan), a codebtor or representative of the decedent, or the court itself, might decide that it would be a good idea to convert the case to chapter 7 to obtain a discharge.

Under § 1112(a), the chapter 11 debtor is given the absolute right to convert the case to chapter 7 after death.
convert to chapter 7 unless the debtor is not a debtor in possession, the case was originally commenced on an involuntary basis, or the case was previously converted to chapter 11 from another chapter. The debtor also may convert a chapter 11 case to chapter 12 or 13 if the debtor requests the conversion, the debtor has not been discharged, and if the conversion is to chapter 12, if such conversion is equitable. However, as is true under §706, conversion is prohibited “unless the debtor may be a debtor under such chapter.”

A chapter 12 or 13 case may be converted to a case under chapter 7 at any time. In addition, a court may convert a chapter 13 case to chapter 11 or 12 on a request of a party in interest (including the debtor); however, no such case may be converted “unless the debtor may be a debtor under [the] chapter” to which it is converted.

If the debtor dies, can the case be converted to one under another chapter? Although many courts have ordered such conversions, generally in joint cases on the motion of the surviving co-debtor, but sometimes even in the

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146. U.S.C. §§ 1307(a), 1307(d).
case of a single debtor. However, the statutory requirement that the debtor may convert only if he or she "may be a debtor under [the] chapter" to which conversion is sought should preclude conversion, whether sought by a codebtor or by the representative of the probate estate of the deceased debtor or when raised by the court on its own initiative. The language "unless the debtor may be a debtor under such chapter" indicates that the test of whether the debtor is eligible to file under the chapter to which conversion is proposed should be made at the time of the proposed conversion, not at the time of the original filing. At the time of the proposed conversion in these cases, the debtor is dead, and the probate estate of the debtor is not an "individual" who is a "person" within the meaning of § 101(41) entitled to file for bankruptcy protection under chapter 7 pursuant to § 109(b).

If a surviving codebtor in a jointly administered case wishes to convert his or her case to one under chapter 7, the survivor should first obtain court approval to terminate the joint administration of the cases (i.e., sever the cases) and then convert the survivor's case, leaving the decedent's case to be

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152 See Marrama v. Citizens Bank of Mass., 549 U.S. 365, 367 (2007) (indicating that bad-faith conduct by the debtor in the course of a chapter 13 case may bar conversion to chapter 7 because the debtor would not be eligible to remain in chapter 7).

153 Section 101(41) defines a "person" to include "individual, partnership, and corporation." 11 U.S.C. § 101(41)

154 Section 109(b) provides that "a person may be a debtor under chapter 7 of this title" unless excluded by the provisions of that section. 11 U.S.C. § 109(b)
administered under — or dismissed from — the original chapter. If there is no surviving codebtor, the motion to convert, whether made by a representative of the debtor or by the trustee, should be denied, even if that means that the decedent cannot satisfy the conditions for discharge.

G. CONDITIONS TO DISCHARGE

1. Personal Financial Management Course and Certificate.

The 2005 amendments to the Bankruptcy Code added new provisions in §§ 727(a) and 1328(g) to condition a discharge on the debtor having completed “an instructional course concerning personal financial management described in section 111.” This requirement, however, does not apply “with respect to a debtor who is a person described in section 109(h)(4),” which excuses debtors from the pre-bankruptcy credit-counseling requirement of 109(h)(1) if “the court determines [that such debtor] is unable to complete those requirements because of incapacity, disability, or active military duty in a military combat zone.” The term “incapacity” is defined to mean “the debtor is impaired by reason of mental illness or mental deficiency so that he is incapable of realizing and making rational decisions with respect to his financial responsibilities.” A debtor suffers from a “disability” if “the debtor


15811 U.S.C. §§ 727(a)(11), 1328(g)(2).

159Section 109(h)(1) generally requires an individual debtor to receive, “during the 180 day period ending on the date of the filing of the petition . . . , from an approved nonprofit budget and credit counseling agency . . . an individual or group briefing . . . outlining the opportunities for available credit counseling and assistance . . . in performing a related budget analysis.” 11 U.S.C. § 109(h)(1)


161Id.
is so physically impaired as to be unable, after reasonable effort, to participate in an in person, telephone, or Internet briefing required under [§ 109(h)](1).”

Under Federal Rule of Bankruptcy Procedure 1007(b)(7), unless the provider of the personal financial management course notifies the court of the debtor’s completion of the course after filing, the individual chapter 7 or chapter 13 debtor is required to complete a “statement of completion of the course, prepared as prescribed by [Official Bankruptcy Form 423].” In a chapter 7 case, the certificate of completion must be filed “within 60 days after the first date set for the meeting of creditors under § 341 of the Code.” In a chapter 13 case (or a chapter 11 case in which the debtor is required to file the statement), the statement must be filed “no later than the date when the last payment was made by the debtor as required by the plan or the filing of a motion for discharge under § 1141(d)(5)(B) or § 1328(b) of the Code.”

In many of the cases involving a deceased debtor, the debtor completed the instructional course concerning personal financial management and filed the required certificate with the court before dying. When, however, debtor dies before completing the course and so is unable to submit the certificate, the issue for the court is whether the debtor’s death excuses the obligation to complete the course and submit the certificate as a condition to discharge. When asked to excuse the requirement, courts uniformly have concluded that death constitutes a “disability” within the meaning of § 109(h)(4), that a debtor who is dead is suffering from “incapacity,” or

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162Id.
163The individual chapter 11 debtor is also required to file the statement if § 1141(d)(3) is applicable. FED. R. BANKR. P. 1007(b)(7)(B).
164FED. R. BANKR. P. 1007(b)(7)(A).
165FED. R. BANKR. P. 1007(c). “The court may at any time and in its discretion, enlarge the time to file the statement required by subdivision (b)(7).” Id.
166Id.
167See, e.g., In re Boddy, 593 B.R. 643, 649 (Bankr. D. Colo. 2018); In re Lizzi, Nos. 09-10097, 10-13875, 2015 WL 1576513, at *6 (Bankr. N.D.N.Y. Apr. 3, 2015); In re Ferguson, No. 11-50950, 2015 WL 4131596 (Bankr. W.D. Tex. Feb. 24, 2015); In re Levy, No. 11-60130, 2014 WL 1323165, at *1 (Bankr. N.D. Ohio Mar. 31, 2014); Debtor’s Certification of Completion of Instructional Course Concerning Personal Financial Management, In re Quint, No. 11-04296 (Bankr. D.S.C. Sept. 9, 2011), ECF No. 12; Certificate of Debtor Education, In re Childers, No. 10-10405 (Bankr. N.D. Tex. Jan. 24, 2011), ECF No. 30; Certificate of Debtor Education, In re Medina Resto, No. 07-04385 (Bankr. D.P.R. July 3, 2009), ECF No. 29; Certificate of Debtor Education, In re Roldan Rosa, No. 07-00649 (Bankr. D.P.R. June 17, 2009), ECF No. 26; Certificate of Completion of Financial Management Course, In re Runfola, No. 06-11140 (Bankr. E.D. Va. Oct. 25, 2006), ECF No. 9. Under Rule 1007(c), the certificate for the course in personal financial management is required to be filed in a chapter 7 “within 60 days after the first date set for the meeting of creditors under § 341 of the Code, and in a chapter 11 or 13 case no later than the date when the last payment was made by the debtor as required by the plan or the filing of a motion for a discharge under § 1141(d)(5)(B) or § 1328(b) of the Code.” FED. R. BANKR. P. 1007(c).
168See In re Fogel, 550 B.R. 532, 537 (D. Colo. 2015); Order, White v. Glennville Bank, No. 6:11-cv-
merely that the deceased debtor is excused from completing the instructional course on personal financial management without specifying a reason.170

Notably, the waiver for completing the course does not excuse the obliga-

100See In re Szynanoski, No. 16-80242, 2016 Bankr. LEXIS 2421, at *1 (Bankr. E.D. Okla. June 27, 2016); In re Thomas, No. 07-00097, 2008 WL 4835911, at *2 (Bankr. D.D.C. Nov. 6, 2008); cf. Order, In re Clark, No. 10-63514 (Bankr. W.D. Va. Jan. 19, 2011), ECF No. 20 (excusing debtor from completing the course and filing a statement before her death while she was incapacitated). Interpreting death as incapacity is somewhat problematic as a matter of statutory analysis because the definition of "incapacity" in § 109(h)(4) requires that the debtor's impairment be "by reason of mental illness or mental deficiency." 11 U.S.C. § 109(h).

tion to provide the certificate with respect to the course under Rule 1007(b)(7). The rule contains no language waiving the obligation to submit “a statement of completion of the course” if the course itself is not required, and Official Bankruptcy Form 423 contains an alternative in Part 1 in which the debtor may check a box to indicate that the debtor is “not required to complete a course in personal financial management because the court has granted [a] motion for a waiver of the requirement,” with additional boxes to specify the basis of the waiver – incapacity, disability, active duty, or residence in a district in which approved instructional courses cannot adequately meet the debtor’s needs. Sometimes someone other than the deceased debtor, such as a probate estate representative or the debtor’s lawyer, files the form, checks the box indicating that compliance with the requirement is excused, and signs the form. In other cases, the court purports to excuse the obligation to provide the certificate. No court has declined to provide

N.D. Ohio Apr. 12, 2018), ECF No. 39 (finding “no purpose in completion of the financial management course for a deceased debtor”).


172 Official Bankruptcy Form 423, Part 1.


a deceased debtor a discharge based on the failure to submit the required certificate after the court has concluded that the debtor is not required to take the course, although courts may deny a discharge based on the failure to provide the certificate when no request had been made to excuse the course.\footnote{175} Indeed, only one court has addressed the requirement of Rule 1007(b)(7) concerning a deceased debtor, and that court simply stated that “the debtor’s failure to file [the official form] shall not prevent the clerk from entering an order granting the debtor a discharge.”\footnote{176}

2. Certification with Respect to Domestic Support Obligations.

New language was inserted in §§ 1228(a) and 1328(a) by the 2005 amendments to the Bankruptcy Code\footnote{177} requiring that, as a condition to obtaining a discharge on completion of all plan payments, “a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation” must “certif[y] that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid.”\footnote{178} No Federal Rule of Bankruptcy Procedure requires that this certificate conform to an official form, although Director’s Form B2830 includes an appropriate certification for a chapter 13 case. Many local rules impose an obligation on a debtor seeking discharge under §§ 1328(a) or 1228(a) to provide a specified form of certificate for domestic support obligations and state that failure to provide such a certificate prevents discharge.\footnote{179}

\footnote{175}{See Notice of Chapter 7 Case Closed Without Discharge, In re Brown, No. 13-35892 (Bankr. S.D. Tex. Jan. 3, 2019), ECF No. 2797 (Michael Brown); Notice of Chapter 7 or 11 Closed Without Discharge, In re Kaiser, No. 11-41553 (Bankr. N.D. Ill. May 17, 2017), ECF No. 284.}

\footnote{176}{In re Thomas, No. 07-00097, 2008 WL 4835911, at *1 (Bankr. D.D.C. Nov. 6, 2008).}


\footnote{178}{11 U.S.C. §§ 1228(a), 1328(a). No requirement exists for an individual chapter 11 debtor to certify concerning domestic support obligations, although § 1129(a)(14) requires, as a condition to confirmation of the plan, “If the debtor is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, the debtor has paid all amounts payable under such order or such statute for such obligation that first become payable after the date of the filing of the petition.”}

The statutory obligation to certify for domestic support obligations attaches only to "a debtor who is required . . . to pay a domestic support obligation." Many courts, therefore, look at sources other than the normal certificate and conclude that the debtor had no domestic support obligations when he or she filed the bankruptcy case. In such a case, the court finds that the debtor had no statutory obligation to provide a certificate as a condition to discharge so that the debtor need not provide the certificate required under a local rule. Indeed, local rules may provide for waiver of the certificate requirement. Other courts have excused a deceased debtor from the obligation to provide the certificate because no party objected, and some sources may include the debtor’s schedules of unsecured claims, affidavits from parties close to the debtor as to the absence of domestic support obligations or representations of counsel, and an examination of the claims register for claim based on a domestic support obligation.
courts have allowed someone else to submit the certificate on behalf of the debtor.\textsuperscript{185}


In an effort to prevent serial filers from obtaining a chapter 13 discharge in a case filed shortly after the debtor obtained a prior discharge, Congress included a new paragraph (f) in § 1328 under the 2005 amendments to the Bankruptcy Code.\textsuperscript{186} The court may not grant a discharge to a chapter 13 debtor “if the debtor has received a discharge - (1) in a case filed under chapter 7, 11, or 12 . . . during the 4-year period preceding the date of the order for relief under this chapter, or (2) in a case filed under chapter 13 . . . during the 2-year period preceding the date of such order.”\textsuperscript{187}

The test is objective and presumably could be ascertained by the trustee with a search of the court filings on PACER. No official or director’s bankruptcy form for certification exists for disclosing prior discharges in a bank-

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\textsuperscript{185} See Chapter 13 Debtor’s Certifications Regarding Domestic Support Obligations, Discharges in Prior Cases, and Section 522(q), In re Smedley, No. 14-00475 (Bankr. E.D.N.C. Nov. 14, 2018), ECF No. 72 (in which the codebtor/executor of the estate filed the form); Debtor’s Certifications in Support of Discharge and Notice of Opportunity for Hearing, In re Train, No. 12-11686 (Bankr. N.D. Cal. Aug. 29, 2017), ECF No. 28 (allowing the sole heir to make certifications); Verification and Request for Discharge, In re Brumfield, No. 11-23031 (Bankr. D. Utah Dec. 12, 2014), ECF No. 49 (in which the certificate was signed by the surviving codebtor); Order Granting Motion to Enter Discharge for Deceased Debtor, In re Levy, No. 11-60130 (Bankr. N.D. Ohio June 5, 2014), ECF No. 74 (allowing the surviving codebtor to sign the certificate); Statement of Plan Completion and Request for Discharge, In re Collins, No. 10-52224 (Bankr. M.D. Ga. Feb. 21, 2014), ECF No. 50 (in which the statement was filed by the attorney for the deceased debtor); Debtor(s) Certification and Motion for Entry of Chapter 13 Discharge Pursuant to 11 U.S.C. § 1328(a), In re Seitz, No. 09-70535 (Bankr. N.D. Tex. Nov. 12, 2010), ECF No. 65 (reflecting that the codebtor and personal administrator signed the certificate on behalf of decedent-debtor).


\textsuperscript{187} 11 U.S.C. § 1328(f).
Many courts include in their local forms certifications concerning § 1328(f). When the bankruptcy court permits a discharge after the death of the chapter 13 debtor, it either waives the obligation to provide the certificate or allows someone other than the debtor to sign it.

4. § 522(q)(1) Certification.

The final condition to discharge under §§ 1228 and 1328 that was added

after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge finds that there is no reasonable cause to believe that –

(1) section 522(q)(1) may be applicable to the debtor; and

(2) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 523(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).\footnote{11 U.S.C. §§ 1228(f), 1328(h). Section 522(q)(1) limits the ability of a debtor to elect under § 522(b)(3) to exempt under state or local law property that is used as a residence, or claimed as a homestead, or acquired as a burial plot, as specified in § 522(p)(1), exceeding $170,350 (the current figure, subject to adjustment every three years beginning April 1, 2022). 11 U.S.C. § 522(q)(1).}

discharged.195

In cases in which the court granted the deceased debtor a waiver of the requirement to file the prescribed local certificate concerning domestic support obligations, the waiver also applied to the portion of the certificate covering § 522(q)(1).196 When a separate certificate was required, the court either excused it197 or allowed someone other than the debtor to sign it.198

H. REOPENING CLOSED CASES

If the bankruptcy case of a deceased debtor has been closed, the question arises whether, at the request of either the representative of the deceased debtor, the Trustee, or a creditor, the case can be reopened under § 350(b).199 The argument against reopening is that the debtor is no longer eligible for bankruptcy.200 Many courts have held that a probate estate is not eligible to file for

195 Under 11 U.S.C. § 1328(c)(2), a discharge under § 1328(b) does not include debts "of a kind specified in section 523(a) of this title." Section 523(a)(15) describes domestic support obligations. 11 U.S.C. § 523(a)(15).

196 See Order Granting Waiver of Financial Management Course & Debtor’s Certifications in Support of Discharge, In re Bruno, No. 12-31168 (Bankr. N.D. Cal. Sept. 8, 2017), ECF No. 84; Order Approving Motion to Proceed with Case Under Rule 1016 and Waiving Pre-Discharge Certification Requirements for Deceased Joint Debtor, In re Dorsey, No. 12-48580 (Bankr. N.D. Cal. Dec. 4, 2017), ECF No. 81; Order Approving Application to Waive Certification in Support of Discharge and Required Financial Management Course, In re Hoover, No. 09-71464 (Bankr. N.D. Cal. Mar. 24, 2013), ECF No. 61 (waiving requirement because there was no objection filed to motion).


198 See Chapter 13 Debtor’s Certifications Regarding Domestic Support Obligations, Discharges in Prior Cases, and Section 522(q), In re Smedley, No. 14-00475 (Bankr. E.D.N.C. Nov. 14, 2018), ECF No. 72 (codebtor/executor of estate filed form); Debtor’s Certifications in Support of Discharge and Notice of Opportunity for Hearing, In re Train, No. 12-11686 (Bankr. N.D. Cal. Aug. 29, 2017), ECF No. 28 (allowing sole heir to make certifications); In re Chaffer, No. 6:12-bk-23201, 2017 Bankr. LEXIS 1621 (Bankr. C.D. Cal. May 15, 2017) (allowing joint debtor who had specific knowledge of debtor’s finances to file certificate); In re Lizzi, Nos. 09-10097, 10-13875, 2015 WL 1576513 (Bankr. N.D.N.Y. Apr. 3, 2015) (allowing “someone with personal knowledge” to sign the certificate); Verification and Request for Discharge, In re Brumfield, No. 11-25031 (Bankr. D. Utah Dec. 12, 2014), ECF No. 49 (in which the certificate was signed by the surviving codebtor); Order Granting Motion to Enter Discharge for Deceased Debtor, In re Levy, No. 11-60130 (Bankr. N.D. Ohio June 5, 2014), ECF No. 74 (allowing surviving codebtor to sign certificate); Statement of Plan Completion and Request for Discharge, In re Collins, No. 10-52224 (Bankr. M.D. Ga. Feb. 21, 2014), ECF No. 50 (in which statement was filed by attorney for deceased debtor); Debtor(a) Certification and Motion for Entry of Chapter 13 Discharge Pursuant to 11 U.S.C. § 1328(a), In re Seitz, No. 09-70535 (Bankr. N.D. Tex. Nov. 12, 2010), ECF No. 65 (reflecting signature of codebtor and personal administrator on behalf of deceased debtor).

199 Section 350(b) allows a case to be reopened “to administer assets, to accord relief to the debtor, or for other cause.” 11 U.S.C. § 350(b)

200 See supra Section III.H.
bankruptcy protection.\textsuperscript{201} Courts, however, uniformly have concluded that a case filed by a debtor who was eligible at the time of filing but died thereafter can be reopened.\textsuperscript{202}

IV. CONCLUSION

Contrary to expectations, most bankruptcy cases of deceased debtors continue to be administered after their death whenever death occurs during the course of the case. This is true not only of chapter 7 cases, for which Rule 1016 states that death of the debtor “shall not abate” the case,\textsuperscript{203} but also for chapter 11 and 13 cases,\textsuperscript{204} for which the rule expressly permits further administration after the debtor’s death only “if further administration is possible and in the best interest of the parties.”\textsuperscript{205}

Why do bankruptcy judges tend to accede to requests by surviving co-debtors and representatives of a decedent in reorganization cases to continue administration of their bankruptcy cases when the drafters of Rule 1016 and many commentators believed that these cases would likely be dismissed? I suspect that there is no group of persons in this country who believe more in the efficacy of bankruptcy than those who are appointed to serve as bankruptcy judges. They see the impact of financial distress on individual debtors


\textsuperscript{202}See, e.g., Burcena v. Bank One, No. 06-00422, 2007 WL 2915621, *5 (D. Haw. Oct. 1, 2007), aff’d sub nom., Burcena v. Bank One (In re Cabuloy), 339 F. App’x 814 (9th Cir. 2009) (reopening sought by creditor to annual automatic stay on retroactive basis); In re Roberts, 570 B.R. 532 (Bankr. S.D. Miss. 2017) (reopened to administer new asset); In re Kennedy, 08-81687, 2016 WL 6649200 (Bankr. M.D.N.C. Apr. 6, 2016) (allowing personal representative to reopen case to avoid judicial liens); Order, In re Garza, No. 05-14970 (Bankr. D. Colo. Dec. 12, 2011), ECF No. 21 (reopening case to administer proceeds in asbestos lawsuit that was asset of estate); Order Granting Motion to Reopen Chapter 7 Case, In re Duncan, No. 04-43115 (Bankr. D. Neb. Jan. 10, 2006), ECF No. 16 (reopening to determine dischargeability of student loans); In re Mobley, No. 99-92579, 2004 WL 377679 (Bankr. C.D. Ill. Mar. 1, 2004) (allowing administrator to reopen chapter 7 case to seek avoidance of liens); Order Granting Motion to Reopen Case, In re Gurley, No. 97-35255 (Bankr. W.D. Tenn. Feb. 6, 2004), ECF No. 754 (reopening case to determine tax liabilities); Order Granting Motion to Reopen Case, In re Estrada, 96-14109 (Bankr. S.D. Cal. July 31, 1997), ECF No. 16 (reopening case to allow administration of life insurance proceeds received by one debtor upon death of the other after case was closed, and to permit surviving debtor to bifurcate her case and convert to chapter 13); In re Walters, 113 B.R. 602 (Bankr. D.S.D. 1990) (reopening case to clear tax liens).

\textsuperscript{203}FED. R. BANKR. P. 1016.

\textsuperscript{204}can draw no conclusion about chapter 12 cases given the scarcity of examples. See supra Section II.C.

\textsuperscript{205}FED. R. BANKR. P. 1016.
and those who love them, and they see the benefits that accrue to those individuals through the bankruptcy process and ultimate discharge. Although bankruptcy judges certainly are sensitive to the concerns of creditors of deceased debtors, if they can permit a deceased debtor’s representative to pursue the orderly administration of the estate and obtain a discharge of prepetition debts without imposing undue harm on the creditors, they are generally inclined to do so.

Sometimes, in the desire to help these deceased debtors obtain discharges, bankruptcy judges ride roughshod over requirements for discharge established by the Federal Rules of Bankruptcy Procedure and by local bankruptcy rules. They sometimes also endorse creative interpretations or implement workarounds for inconvenient provisions in the Bankruptcy Code itself. Absent objection, however, the courts’ orders become effective and further the greater good of ensuring that death takes only the debtor’s life, not the debtor’s opportunity for financial reorganization.

\[206^{\text{See supra Section III.G.1.}}
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\[207^{\text{See supra Section III.G.}}
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\[208^{\text{See supra Sections III.B, -F, & -G.1.}}
\]
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