WHEN A DEBTOR DIES IN CHAPTERS 7 AND 13: BEST PRACTICES

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I. INTRODUCTION

When a chapter 7 or 13 debtor dies, their legal counsel's role and duties may change, and unforeseen issues may arise. The Bankruptcy Code ("Code") and Federal Rules of Bankruptcy Procedure ("Fed. R. Bankr. P." or "Rules") contemplate the possibility of a debtor's death, but the guidance is sparse, and caselaw on this subject is in conflict.[1] This article highlights the practical concerns counsel should consider in the event of their client's death during bankruptcy. The attached article provides a broad survey of the various approaches courts have taken regarding a debtor's death and an ongoing bankruptcy. Bear in mind, however, there is no binding caselaw on the subject in this district. This article does not provide, and should not be construed as providing, legal advice.

II. RULE 1016

The issue of the effect of the debtor's death on a bankruptcy proceeding came before the Supreme Court in 1915 in the case of *Hull v. Dicks*.[2] In this opinion, the Court made it clear that § 8 of the Bankruptcy Act of 1898 "makes no exception or qualification; after the proceedings have been commenced, they are not to be abated by death."[3] Some of the key language of § 8 has survived in Rule 1016(a), which states that "[i]n a Chapter 7 case, the debtor's death or incompetency does not abate the case. The case continues, as far as possible, as though the death or incompetency had not occurred."[4] Because the involvement of the individual chapter 7 debtor after filing schedules and appearing at the 11 U.S.C. § 341 meeting is relatively minor in the majority of cases, the debtor's death usually should not present an obstacle to case completion and the discharge of debts.[5]

On the other hand, Rule 1016(b) provides:

> [u]pon the debtor's death . . . in a Chapter . . . 13 case, the court may dismiss the case or may permit it to continue if further administration is possible and is in the parties' best interests. If the case continues, it

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* Additional contributions were provided by Christina Welch, Extern to Hon. Mary Jo Heston.

[1] Unlike some jurisdictions, the Bankruptcy Court for the Western District of Washington has not adopted a local rule covering the death of a debtor. *See, e.g.* LBR 1016-1 for the Central and Eastern Districts of California and LBR 1016 for the District of Nevada.

[2] *Hull v. Dicks*, 235 U.S. 584 (1915).

[3] *Id.* at 588.

[4] Fed. R. Bankr. P. 1016(a).

[5] *See* H.R. Rep. No. 95-595, at 367-68 (1977); S. Rep. No. 95-989, at 82-3 (1978) ("Once the [chapter 7 bankruptcy] estate is created, no interests in the 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 the 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 rem with respect to the property of the estate, and the discharge will apply in personam to relieve the debtor, and thus his probate representative, of liability for dischargeable debts.").

> must proceed and be concluded in the same manner as though the death . . . had not occurred.[6]

Therefore, in the context of chapter 13, the judge has discretion to decide between (1) dismissal or (2) proceeding and concluding as if the debtor had not died (provided that it is both possible and in the best interest of the parties). This grant of discretion, as well as the ambiguity of the Rule's language, are why the caselaw reflects a wide range of possible outcomes.[7]

III. NOTIFYING THE COURT

Although neither the Code nor the Rules explicitly require it, counsel should notify the bankruptcy court of a debtor's death as soon as practicable.[8] The best practice in the Western District of Washington is for counsel to promptly file the client's death certificate and a Notice of Death (also called a Suggestion of Death) with the court. When filing the death certificate, the filer should select "Certificate of Death – PDF Only Viewable by Court" from the 'Available Events' menu to ensure that the document viewing is restricted. The Notice of Death, on the other hand, is a public document.

IV. WHO MAY REPRESENT A DECEASED DEBTOR

a. Personal Representative of the Probate Estate

In Washington State, "[a]n attorney's authority to act for a client is terminated by the client's death."[9] Therefore, before taking any action beyond filing the death certificate and the Notice of Death, counsel should be certain that they are acting under the proper authority. A motion to substitute a party pursuant to Rule 7025 (which incorporates Federal Rule of Civil Procedure 25(a)(1)), is one mechanism by which a party, such as the personal representative (or executor or administrator) of a decedent's probate estate, may be authorized to make representations on behalf of the deceased debtor.[10] A Motion to Continue Administration, on the other hand, is how counsel gives notice of an intent to proceed with the case and pursue the "further administration" contemplated by Rule 1016.[11]

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[6] Fed. R. Bankr. P. 1016(b).
[7] It is also for these reasons that the bulk of this article and the entirety of the attached article are focused on the death of the debtor in chapter 13 proceedings.
[8] *See, e.g., In re Vetter*, No. 11-03988-DD, 2012 WL 1597378 (Bankr. D. S.C. 2012) (dismissing case after conversion to chapter 7 because counsel failed to notify the court or the parties in interest of debtor's death); *In re Meadows*, No. 15-31667, 2020 Bankr. LEXIS 3050, at *4-5 (Bankr. D. Utah 2020) (noting that "it would usually be prudent and proper practice to file [a notice of death] at the time of death rather than use a wait and see approach").
[9] 15 Wash. Prac., Civil Procedure § 52:3 (3d ed. 2024).
[10] Fed. R. Civ. P. 25(a)(1), requires a motion for substitution to be filed within 90 days of service of a notice of death.
[11] This motion should be noted for hearing pursuant to Local Rule W.D. Wash. Bankr. 9013-1.

A survey of the caselaw on this subject reveals that the probate estate's personal representative is the usual means by which the interests of the deceased debtor are represented.[12] Bankruptcy courts must abide by a state court's determination that the individual appointed as personal representative is the proper party to represent the deceased debtor's estate.[13] Additionally, when a probate estate is opened, there may be issues surrounding whether a bankruptcy court has jurisdiction over the assets within the probate estate.[14] However, there will not be a personal representative in every case because probate is discretionary rather than mandatory in Washington State (and the decedent might not have any assets subject to probate).[15]

b. Surviving Spouse

If there is a surviving spouse, the spouse can be the appropriate party to represent the interests of the deceased debtor in many circumstances since the spouse is familiar with the deceased debtor's financial affairs. Also, the spouse is most likely to be appointed personal representative in the event a probate proceeding is opened. Even if a spouse is not acting as a personal representative, courts have often considered the surviving spouse's interests for the purposes of deciding whether to grant a discharge or dismiss.[16]

In community property states such as Washington, a married individual brings in both themselves and the marital community when they file bankruptcy. Both the

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[12] *See, e.g., In re Wells,* 660 B.R. 311 (Bankr. E.D. Wash. 2024) (allowing deceased debtor's counsel to collaborate with the personal representative of the debtor's estate to execute a plan that debtor prepared shortly before death); *In re Inyard,* 532 B.R. 364 (Bankr. D. Kan. 2015) (granting motion for hardship discharge filed by creditor that had been named administrator of the deceased debtor's estate); *In re Lewis,* No. 10-05185-8-JRL, 2011 Bankr. LEXIS 1765 (Bankr. E.D.N.C. 2011) (allowing executor of debtor's estate to propose a 100% payment plan and appear at the 11 U.S.C. § 341 meeting on the debtor's behalf).

[13] *See generally*, *Butner v. United States*, 440 U.S. 48, 55 (1979).

[14] Counsel should keep in mind the "probate exception," a judicially created doctrine that allows a federal court to retain jurisdiction "so long as 'it does not interfere with the probate proceedings' or 'assume general jurisdiction' over the probate or property in state court custody." *Williams v. Gold* (*In re Williams*), 657 B.R. 93, 96 (E.D. Mich. 2024) (quoting *Marshall v. Marshall*, 547 U.S. 293, 311 (2006)). "'Interfere' means that 'when one court is exercising *in rem* jurisdiction over a *res*, a second court will not assume *in rem* jurisdiction over the same *res*.'" *Id. See also*, *Federal Questions and the Probate Exception*, 137 Harv. L. Rev. 1226 (2024), https://harvardlawreview.org/print/ vol-137/federal-questions-and-the-probate-exception/.

[15] 26B Wash. Prac., Probate Law and Practice § 1:6 (2d ed. 2025).

[16] *See, e.g.*, *In re Shorter*, 544 B.R. 654 (Bankr. E.D. Ark. 2015) (surviving spouse entitled to have her interests considered); *In re Hoover*, No. 09-71464, 2015 WL 1407241 (Bankr. N.D. Cal. Mar. 24, 2015) (hardship discharge allowed where only one plan payment remained because a "discharge will provide repose to an estranged but non-divorced spouse"). *But see*, *In re Sales*, 2006 WL 2668465, at *3 (Bankr. N.D. Ohio Sept. 15, 2006) (estranged spouse is not a party); *In re Miller*, 526 B.R. 857, 859-60 (D. Colo. 2014) (only benefit of discharge would be to wife, who is not a party).

individual and the marital community can receive the benefit of a discharge.[17] If two married individuals file bankruptcy together, then the death of one joint debtor does not necessarily prevent the case from proceeding to a discharge of community debts. If counsel is representing a married couple in bankruptcy and one spouse dies, counsel should be cognizant of the existence of any separate property or debts and consider whether a discharge as to the surviving spouse may be sufficient to protect the assets against creditors' claims.

V. POSSIBLE OUTCOMES AND FACTORS THAT COURTS CONSIDER

As mentioned before, the death of a chapter 7 debtor after filing the petition and schedules and appearing at the 11 U.S.C. § 341 meeting does not usually present an obstacle to the normal conclusion of the case. On the other hand, there are five distinct outcomes for a chapter 13 bankruptcy after the debtor dies: (1) dismissal; (2) grant of a hardship discharge; (3) grant of a regular discharge; (4) plan modification; or (5) conversion. Each of these outcomes is explored in further depth in the attached article.

Most courts consider whether and how a chapter 13 case may proceed to be a fact-specific inquiry. Factors that courts consider include how far along the case is (i.e., whether a plan has been confirmed, whether the 11 U.S.C. § 341 meeting has taken place, how many payments have been made, etc.), whether there is a surviving joint debtor or surviving spouse, and who stands to benefit from further administration.

VI. CONCLUSION

A debtor's death may alter the course of the bankruptcy proceeding and result in an unanticipated outcome. Informing the court of the debtor's death is of utmost importance, and counsel must ensure that they are acting under the authority of someone who is an appropriate representative of the deceased debtor before taking any action on the debtor's behalf. Counsel should consult the caselaw on this subject before taking any action in a bankruptcy proceeding in which the debtor(s) have passed away.

[17] 20 Wash. Prac., Fam. And Community Prop. L. § 42:5.

SURVEY OF THE POSSIBLE OUTCOMES FOLLOWING THE DEATH OF A CHAPTER 13 DEBTOR

There are five distinct outcomes for a chapter 13 bankruptcy after the debtor dies: (1) dismissal; (2) grant of a hardship discharge; (3) grant of a regular discharge; (4) plan modification; or (5) conversion.

1. Dismissal

The 1983 Advisory Committee's Note cautions that "[i]n a [c]hapter . . . 13 individual's debt adjustment case, the likelihood is that the case will be dismissed."[1] While disagreement exists among courts as to when a case may proceed when a debtor dies during a *later* stage of bankruptcy proceedings, there are certain situations where the debtor's death most often leads to dismissal. These include death before the filing of a petition, plan confirmation, and the 11 U.S.C. § 341 meeting of creditors.[2]

Bankruptcy and district courts have come to various conclusions as to why dismissal, rather than hardship discharge, is warranted. For example, in *In re Miller,* the district court affirmed the holding of the bankruptcy court that dismissal was appropriate because a hardship discharge did not appear to be an outcome contemplated by the drafters of Rule 1016.[3] Among courts that allow a hardship discharge after a debtor's death, dismissal is often caused by a debtor's failure to prove one or more elements of 11 U.S.C. § 1328(b), for which the debtor has the burden of proof.[4] Courts are most divided on whether dismissal is appropriate when a plan has been confirmed, but not all plan payments have been made.[5] Many courts have taken the position outlined in *In re Spiser*, where the court reasoned that only a "person" as defined by 11 U.S.C. § 101(41) may be a debtor according to 11 U.S.C. § 109(a), and that 11 U.S.C. § 109(e) dictates that only a person with regular income may be a debtor under chapter 13, thereby prohibiting a decedent's estate from continuing under chapter 13.[6]

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[1] *See* Fed. R. Bankr. P. 1016 Advisory Committee's Note to 1983 amendment.
[2] *See*, e.g., *In re Estate of Roberts*, No. 05-26653 ESD, 2005 WL 3108224 (Bankr. D. Md. Aug. 15, 2005) (dismissing case *sua sponte* where executor of decedent's estate filed chapter 13 petition); *In re Martinez*, No. 13-50438-CAG, 2013 WL 6051203 (Bankr. W.D. Tex. Nov. 15, 2013) (denying confirmation of amended plan and dismissing case where debtor died after filing of plan but before plan confirmation); *In re Russell*, No. 23-32450(1)(13), 2024 WL 150629 (Bankr. W.D. Ky. Jan. 12, 2024) (dismissing case and denying motion to waive appearance of debtor at 11 U.S.C. § 341 meeting where no plan had been confirmed).
[3] *In re Miller,* 526 B.R. 857, 861 (D. Colo. 2014).
[4] *In re Inyard*, 532 B.R. 364, 366 (Bankr. D. Kan. 2015).
[5] *See*, *In re Miller*, 526 B.R. 857 (D. Colo. 2014) (affirming bankruptcy court's dismissal of case *sua sponte*, where debtor died 3 years into the plan; "further administration" not possible nor in best interest of the parties).
[6] *In re Spiser*, 232 B.R. 669 (Bankr. N.D. Tex. 1999) (where joint chapter 13 debtors died post-plan confirmation); *contrast with In re Thomas*, where the court allowed the debtor's daughter to confirm

2. Hardship Discharge

As mentioned above, another way to resolve a bankruptcy case after the debtor's death is to ask the court to grant a hardship discharge under 11 U.S.C. § 1328(b). Hardship discharge requires the satisfaction of three elements:

> (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 had 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.[7]

A hardship discharge is subject to the exceptions enumerated in 11 U.S.C. § 1322(b)(5) and § 523(a). The procedure to move for a hardship discharge is set out in Fed. R. Bankr. P. 4007(d). The party seeking hardship discharge must provide notice to all creditors listed in the master mailing list.[8] Creditors are allowed at least 30 days to file a complaint under 11 U.S.C. § 523(a)(6) to contest dischargeability.[9] As mentioned previously, the party moving for a hardship discharge bears the burden of proof on all three required elements.[10] However, even if all elements are met, the grant or denial of a hardship discharge is still within the discretion of the bankruptcy court.[11]

a. Courts that permit hardship discharge

The majority view holds that courts may grant hardship discharges to deceased debtors because it is contemplated by Fed. R. Bankr. P. 1016.[12] Although a debtor's death will usually lead to dismissal of the case,[13] in instances where the debtor dies

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the plan and make payments under chapter 13. The court reasoned that 11 U.S.C. § 109(e) only defines who may initiate a bankruptcy and does not affect post-petition events. Furthermore, requiring a debtor to have regular income would make Rule 1016(b) "unworkable". *In re Thomas*, No. 24-22030, 2025WL 2442891, at *11–16 (Bankr. W.D. Tenn. Aug. 22, 2025).

[7] 11 U.S.C. § 1328(b).

[8] Fed. R. Bankr. P. 4007(d).

[9] *Id.*

[10] *In re Inyard*, 532 B.R. 364, 366 (Bankr. D. Kan. 2015).

[11] 11 U.S.C. § 1328(b).

[12] *See, e.g.*, *In re Inyard*, 532 B.R. 364, 369 (Bankr. D. Kan. 2015) ("[n]othing in § 1328(b) limits the hardship discharge to a living debtor"; "Court finds no suggestion in the Rules or the Code that the 'further administration' envisioned by Rule 1016 cannot include administration via a hardship discharge").

[13] *See* Fed. R. Bankr. P. 1016 Advisory Committee's Notes to 1983 amendment.

after confirmation of a plan, "the court may enter a hardship discharge under 11 U.S.C. § 1328(b), which would preserve the benefits of discharge for the debtor's probate estate."[14] At least one court has gone further to say that hardship discharge is the only reasonable alternative to dismissal in the event of the debtor's death.[15] The court in *In re Bond* reasoned that if a hardship discharge was not granted to a deceased chapter 13 debtor who had made most of her plan payments, the debtor would be effectively penalized.[16]

Fed. R. Bankr. P. 1016(b) states that "the court . . . may permit [the case] to continue if further administration is possible and is in the parties' best interests." Some courts have interpreted the language of "the parties" expansively. For instance, the court in *In re Conn* considered the interests of the deceased debtor's creditors as well as the interests of the surviving joint debtor spouse.[17] The court in *In re Bond* considered the interests of the debtor's beneficiaries, who were minor children at the time of the debtor's death.[18] The court in *In re Sanford* interpreted "the parties" to include the debtors' prepetition secured and unsecured creditors as well as their postpetition creditors, but refused to consider the interests of the deceased debtors or their heirs.[19] The *In re Sanford* court nonetheless determined that granting a hardship discharge was in the best interests of the parties.[20]

i. *Debtor not held accountable for the debtor's death*

Courts generally agree that the debtor's death is a circumstance for which the debtor should not justly be held accountable.[21] Among courts that hold that a hardship discharge is permissible under Fed. R. Bankr. P. 1016, the common reasons given are that it is something the debtor could have been granted had they not died, and it is within the actions anticipated by "further administration."[22]

ii. *Best interests of the creditors test*

Under 11 U.S.C. § 1325(a)(4), commonly known as the best interests of the creditors test, the court can only confirm a chapter 13 debtor's plan if "the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this

[14] 9 Collier on Bankruptcy P 1016.04 (16th 2025).
[15] *In re Graham*, 63 B.R. 95, 96 (Bankr. E.D. Pa. 1986).
[16] *In re Bond,* 36 B.R. 49, 51–52 (Bankr. E.D. N.C. 1984).
[17] *In re Conn*, No. 13-62278, 2015 WL 3777958, at *3 (Bankr. N.D. Ohio June 12, 2015).
[18] *In re Bond*, 36 B.R. 49, 51 (Bankr. E.D. N.C. 1984).
[19] *In re Sanford*, 619 B.R. 380, 391 (Bankr. E.D. Mich. 2020).
[20] *Id*. at 393.
[21] *See, e.g., In re Graham*, 63 B.R. 95 (Bankr. E.D. Pa. 1986); *In re Miller*, 526 B.R. 857, 860–61 (D. Colo. 2014).
[22] *See, e.g.*, *In re Bevelot*, No. 05-36051, 2007 WL 4191926, at *1 (Bankr. S.D. Ill. Nov. 21, 2007) ("Since a hardship discharge is available as a conclusion to a chapter 13 case when death has not occurred, then it is available in a case where the debtor is deceased.").

title on such date." This language is mirrored in the second requirement for hardship discharge listed in 11 U.S.C. § 1328(b)(2).

For many debtors, the liquidation value of the estate[23] is zero or a minimal amount. If the value is zero, then the 11 U.S.C. § 1328(b)(2) requirement is easily met. If a debtor's liquidation value is anything other than zero, that means that the holders of allowed unsecured claims are set to receive some payment after all priority and secured claims have been paid in full. A debtor in that scenario must have paid their allowed unsecured creditors at least as much as they would have received in a hypothetical chapter 7 liquidation to be eligible for a hardship discharge.

iii. *Practicability of modification*

11 U.S.C. § 1329(a) states that the only parties who can move to modify a confirmed plan are the debtor, the trustee, or an unsecured creditor. 11 U.S.C. § 109(a) states that "only a person that resides or has a domicile, a place of business, or property in the United States . . . may be a debtor under this title." Because a deceased person cannot have a domicile, place of business, or property in the United States, a deceased person is not a debtor under the Bankruptcy Code. Taken together, several courts have interpreted these statutes to mean that a deceased debtor cannot move to modify an existing plan;[24] therefore, the impracticability requirement of 11 U.S.C. § 1328(b)(3) is met.[25] Additionally, courts often take issue with a deceased debtor's lack of income to fund the plan, even if the heirs, spouse, or estate are willing to fund it.[26]

b. Courts that do not permit hardship discharge

The minority view is that a hardship discharge is impermissible under Fed. R. Bankr. P. 1016. A common line of reasoning for supporting this view is that if a debtor is granted a hardship discharge solely due to the debtor's death, then the court is not proceeding "as though the death or incompetency had not occurred" as required by Fed. R. Bankr. P. 1016.[27] Another line of reasoning is that the purpose of the bankruptcy proceeding is to give the debtor a fresh start, but a deceased person does

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[23] This value is represented by item IX of Local Bankruptcy Form 13-4 in the Western District of Washington.

[24] *See, e.g., In re Martinez,* No. 13-50438-CAG, 2013 WL 6051203 (Bankr. W.D. Tex. Nov. 15, 2013); *In re Franklin*, 459 B.R. 463, 465 (Bankr. D. Nev. 2011); *In re Spiser*, 232 B.R. 669, 673 (Bankr. N.D. Tex. 1999).

[25] *But see*, *In re Wells*, 660 B.R. 311, (Bankr. E.D. Wash. 2024) (allowing post-death plan modification to allow sale of residential properties to fund plan); *In re Lewis*, 2011 LEXIS Bankr. 1765, at *1 (E.D. N.C. May 12, 2011) (confirming executor's proposed plan where family's leasing of residence held by executor would pay creditors in full).

[26] *In re Spiser*, 232 B.R. 669, 674 (Bankr. N.D. Tex. 1999). *But see*, *In re Terry*, 543 B.R. 173, 182 (E.D. Penn. 2015) (affirming bankruptcy court's confirmation of plan where decedent debtor's sister was making monthly plan payments).

[27] *See, e.g.*, *In re Hennessy,* No. 11-13793, 2013 WL 3939886, at *1 (Bankr. N.D. Cal. July 29, 2013).

not need a fresh start.[28] Chapter 13 trustees often oppose granting a hardship discharge to a deceased debtor, arguing that a deceased debtor cannot benefit from a fresh start.[29]

Some courts have opted to take a narrower view of who counts as a "party." For instance, the district court in *In re Miller* declined to grant a hardship discharge on the basis that the interests of a non-filing surviving spouse are not to be considered in a Rule 1016 analysis.[30] The court in *In re Sales* similarly declined to grant a hardship discharge because the only person standing to benefit would have been the debtor's estranged non-filing spouse.[31] Even though a court may consider the interests of a given party, it does not mean that the court will grant the relief that party is seeking.[32]

3. Completion of Plan Payments Followed by Regular Discharge

Another possible resolution to a chapter 13 bankruptcy after a debtor's death is for a party to complete the plan payments on the deceased debtor's behalf, resulting in a regular discharge under 11 U.S.C. § 1328(a). A key issue in this scenario, as discussed above, is whether the party purporting to act on behalf of the debtor has the necessary authority to do so. Continuation of payments by a non-debtor requires more involvement than in a simple hardship discharge. Factors the courts consider can include the number of remaining payments to complete the plan, the source of the funding to make the plan payments, and the fairness to the parties.

Collier states, "if a debtor has proposed a confirmable plan and that plan is still feasible after the death of the debtor, the court may allow the case to continue for the benefit of the debtor's estate," and "a court may permit the debtor's estate to propose a plan that would allow the case to proceed."[33] The Bankruptcy Code requires a

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[28] *In re Langley*, No. 05-61279, 2009 WL 5227665, at *1 (Bankr. S.D. Ga. Sept. 28, 2009). Note, however, that at least one court has considered the "fresh start" argument as a reason to grant a discharge to a deceased debtor who made significant progress in their plan. *See In re Inyard*, 532 B.R. 364, 372 (Bankr. D. Kan. 2015) ("Penalizing [the debtor] . . . because he died when he had completed over two-thirds of the payments under the plan does not comport with the Bankruptcy Code's goal of giving deserving debtors a fresh start.")

[29] *See, e.g., In re Kosinski,* No. 10 bk 28949, 2015 WL 1177691 (Bankr. N.D. Ill. Mar. 5, 2015); *In re Perkins,* 381 B.R. 530 (Bankr. S.D. Ill. 2007); *In re Bevelot,* No. 05-36051, 2007 WL 4191926 (Bankr. S.D. Ill. Nov. 21, 2007).

[30] 526 B.R. 857, 862 (D. Colo. 2014)

[31] 2006 WL 2668465, at *3 (Bankr. N.D. Ohio Sept. 15, 2006).

[32] *See In re Martinez*, No. 13-50438-CAG, 2013 WL 6051203, at *1 (Bankr. W.D. Tex. Nov. 15, 2013) ("This Court is sympathetic to Debtor's adult son's special needs, but it must function within the confines of the law. Unfortunately, Debtor's case cannot continue under Fed. R. Bankr. P. 1016 regardless of whether it is in the parties' best interest because further administration is not possible without a confirmed plan.").

[33] 9 Collier on Bankruptcy P. 1016.04 (16th 2025).

chapter 13 debtor to be an individual with regular income because the success of the plan largely depends on the debtor making regular payments to the trustee three to five years. A deceased debtor typically does not have regular income, which often makes it impossible for them to continue in the plan, requiring either dismissal or entry of a hardship discharge.

Some courts appear willing to accept a deceased debtor's completion of bankruptcy by letting the estate make regular plan payments when the deceased debtor was close to completing the plan. The court in *In re Shepherd* opined that "if the plan's funding is not dependent upon the debtor's earned income, it might be preferable ('in the best interests of the parties') to simply let whatever it was that had been set in motion continue."[34] Similarly, the court in *In re Ward* reported it had in the past allowed chapter 13 cases with deceased debtors in a confirmed plan to continue to their normal conclusion "when all that remains to complete the case is the completion of incidental acts . . . or when there is a single voluntary payment to complete plan payments without modification of the confirmed plan, either by continuing plan payments from the income of a surviving joint debtor or by a timely lump sum payment paid by the deceased debtor's probate estate."[35]

Whereas other courts have indicated that they would allow a case to conclude in any manner that would have been possible had the debtor not died, which necessarily includes completing the plan payments followed by regular discharge.[36] For example, in *In re Wells*, a case originating from the Eastern District of Washington, the debtor had proposed a plan to pay all his creditors in full through the sale of two real properties, but he died before the plan was confirmed.[37] The court allowed the debtor's counsel to cooperate with the personal representative of the debtor's probate estate to sell the properties and complete the plan.[38] Similarly, in *In re Thomas*, the court allowed the deceased debtor's daughter to amend the debtor's proposed plan and make payments.[39] In *In re Stewart,* the court allowed the debtor's heirs to complete the remaining payments under the plan after the debtor's death, approximately two years into a three-year plan.[40]

Discharge in chapter 13 normally requires completion of: (1) the personal financial management course under 11 U.S.C. § 1328(g)(1); (2) a certification that any domestic

[34] 490 B.R. 338, 340 (Bankr. N.D. Ind. 2013).
[35] 652 B.R. 250, 258 (Bankr. D. S.C. 2023) (cleaned up).
[36] *See, e.g., In re Kosinski*, No. 10 bk 28949, 2015 WL 1177691, at *2 (Bankr. N.D. Ill. Mar. 5, 2015) ("[Rule 1016] says that the case may 'proceed and be concluded' as though the debtor had not died, with no limitation on how the representative of a debtor may 'proceed' with the case. Thus, the rule leaves open all avenues that would have been available to the debtor if he had survived.").
[37] 660 B.R. 311, 313 (Bankr. E.D. Wash. 2024).
[38] *Id.* at 321.
[39] *In re Thomas*, No. 24-22030, 2025 WL 2442891, at *15–16 (Bankr. W.D. Tenn. Aug. 22, 2025) (finding that it was in the best interest of all parties to allow the case to continue).
[40] No. 01-66434-FRA13, 2004 WL 3310532, at *1 (Bankr. D. Or. Mar. 2, 2004).

support obligation (DSO) is being paid under 11 U.S.C. § 1328(a); and (3) a finding by the court that 11 U.S.C. § 522(q) is not applicable under 11 U.S.C. § 1328(h). The first requirement is satisfied when the debtor completes a personal financial management course and the court receives the completion certificate. The second and third requirements are satisfied by filing a completed Official Form 2830.

11 U.S.C. § 1328(g)(2) states that the personal financial management course requirement set out in 11 U.S.C. § 1328(g)(1) "shall not apply with respect to a debtor who is a person described in section 109(h)(4)." Section 109(h)(4) provides for waiver of the pre-petition credit counseling requirement for debtors who are incapacitated, disabled, or in active military duty in a combat zone. Many courts have held that death constitutes a disability for the purposes of 11 U.S.C. § 109(h)(4).[41] In situations where all the plan payments have been made but the debtor is unable to meet remaining requirements because they are deceased, the majority view is that these requirements can be waived, or a representative of the debtor can fulfil them on the debtor's behalf.[42] The minority view is that if the debtor cannot fulfill the requirements, then a discharge cannot be granted.[43] Any request for waiver of these requirements under 11 U.S.C. § 109(h)(4) or § 1328(a) should be supported by a declaration or other admissible evidence.

4. Plan Modification

When a debtor dies, the appointed personal representative may wish to modify the chapter 13 plan so the surviving spouse or heirs can complete the plan on the debtor's behalf and the estate can receive the benefits of the discharge. Courts generally disfavor plan modification based on their reading of 11 U.S.C. § 1321, which simply states that "the debtor shall file a plan," as well as 11 U.S.C. § 1329, which states that only the debtor, the trustee, or the holder of an allowed unsecured claim can request plan modification after confirmation.[44]

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[41] *See, e.g., In re Shorter,* 544 B.R. 654, 670 (Bankr. E.D. Ark. 2015); *In re Inyard,* 532 B.R. 364, 373 (Bankr. D. Kan. 2015); *In re Lizzi*, No. 09-10097, 2015 WL 1576513, at *7 (Bankr. N.D.N.Y. Apr. 3, 2015).

[42] *See, e.g., In re Ibarra*, No. 19-52413-MMP, 2022 WL 1787637, at *1 (Bankr. W.D. Tex. June 1, 2022) (waiving financial management course requirement when debtor made all plan payments before his death and it was the only thing standing in the way of discharge); *In re Levy,* No. 11-60130, 2014 WL 1323165, at *4 (Bankr. N.D. Ohio Mar. 31, 2014) (allowing the case to proceed to discharge when the surviving joint debtor completed all the plan payments and fulfilled the pre-discharge requirements on her husband's behalf).

[43] *See, e.g., White v. Bank (In re White)*, 2011 Bankr. LEXIS 3034, at *4 (Bankr. S.D. Ga. May 16, 2011) ("Debtor failed to complete the course and, because his death precludes him from ever completing the course, he must be denied a discharge.").

[44] *See, e.g.*, *In re Ferguson*, No. 11-50950-CAG, 2015 WL 4131596, at *2 (Bankr. W.D. Tex. Feb. 24, 2015) ("In the context of a deceased debtor; however, a modification is never practicable because only a debtor may propose a chapter 13 plan.") (citing *In re Martinez*, No. 13-50438-CAG, 2013 WL 6051203, at *1 (Bankr. W.D. Tex. Nov. 15, 2013)); *In re Shepherd*, 490 B.R. 338 (Bankr. N.D. Ind. 2013); *In re Gariepy*, No. 11-00827-JW, Slip Op. at *7 (Bankr. D. S.C. 2014) (prohibiting decedent's wife from

However, some courts have adopted a less rigid interpretation of these statutes. For example, in *In re Thomas*, the court emphasized the importance of considering 11 U.S.C. § 1321's "purpose and context" when evaluating the language "the debtor shall file a plan."[45] The court allowed the deceased debtor's daughter to amend the plan before confirmation, reasoning that the purpose of 11 U.S.C. § 1321 is to ensure that the plan is voluntary and the debtors' thirteenth amendment protection against compulsory service in payment of a debt is not violated.[46]

5. Conversion

Where modification of an existing chapter 13 plan is not feasible, there remains the possibility of conversion to chapter 7, or hardship discharge. While it is settled that a decedent's estate may not file for bankruptcy, whether a case may be converted from chapter 13 to chapter 7 is jurisdiction dependent.[47] The majority view appears to be that eligibility for conversion to chapter 7 is determined using the date of filing, so debtors who were eligible for chapter 7 on the date of their petition can convert.[48] The minority view holds that eligibility is determined at the time of conversion, so that a deceased debtor in chapter 13 cannot convert to chapter 7.[49] Courts that prohibit estates' motions to convert to chapter 7 reason that conversion is prohibited because an estate cannot receive a discharge.[50] Within the majority of courts holding

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making plan payments; ". . . Heir's proposal to serve as the sole source of funding for the Plan is insufficient to demonstrate that further administration is possible."); *In re Goldston*, 627 B.R. 841, 866 (Bankr. D. S.C. 2021) (an "estate" is not a "person" within the Bankruptcy Code, and therefore ". . . a state court appointed personal representative, heir, or probate estate for the deceased debtor does not have standing to propose a post-confirmation modification of a previously confirmed chapter 13 plan."). *But see*, *In re Goldston*, 627 B.R. 841, 865 (Bankr. D. S.C. 2021) ("continued administration" may include ". . . a single voluntary payment to complete plan payments without the modification of the confirmed plan . . ."); *In re Kosinski*, No. 10 bk 28949, 2015 WL 1177691, at *3 (Bankr. N.D. Ill. Mar. 5, 2015) (holding in *In re Shepherd* that estate's representative has no standing to ". . . bring a motion to modify a plan <u>does not apply</u> to a motion seeking a hardship discharge . . .") (emphasis added); *In re Lewis*, 2011 LEXIS Bankr. 1765, at *1 (E.D. N.C. May 12, 2011) (confirming executor's proposed plan where family's leasing of residence held by executor would pay creditors in full). *See also*, *In re Goldston*, 627 B.R. 841 (Bankr. D. S.C. 2021) (trustee's motion to modify plan in effort to account for possible inheritance from deceased debtor's father's pending probate estate denied because plan payments already completed).

[45] *In re Thomas*, No. 24-22030, 2025 WL 2442891, at *14 (Bankr. W.D. Tenn. Aug. 22, 2025).

[46] *Id*.

[47] *See, e.g.*, *In re Roberts*, 570 B.R. 532, 539-42 (Bankr. S.D. Miss. 2017) (conversion to chapter 7 is anticipated by the "further administration" language of Fed. R. Bankr. P. 1016); *In re Moore*, No. 15-62639, 2017 Bankr. LEXIS 3385, at *3 (Bankr. N.D. Ohio Oct. 3, 2017) (an estate is not a "person" under § 109(b) and is therefore not eligible for conversion under §1307(g)).

[48] *See, e.g., In re Roberts*, 570 B.R. 532 (Bankr. S.D. Miss. 2017); *In re Hancock*, No. 08-11867-R, 2009 WL 2461167 (Bankr. N.D. Okla. Aug. 10, 2009); *In re Perkins*, 381 B.R. 530, 536 (Bankr. S.D. Ill. 2007).

[49] See, e.g., *In re Moore*, No. 15-62639, 2017 WL 4417582 (Bankr. N.D. Ohio Oct. 3, 2017); *In re Spiser*, 232 B.R. 669 (Bankr. N.D. Tex. 1999); *Matter of Jarrett*, 19 B.R. 413 (Bankr. M.D.N.C. 1982).

[50] *See, e.g.*, *In re Spiser*, 232 B.R. 669, 673 (Bankr. N.D. Tex. 1999) (A probate estate is not a "debtor" eligible to convert the case to Chapter 7 under § 1307(a)).

plan modification after death is not possible, the third element of § 1328(b) is satisfied because "modification of the plan . . . is not practicable."