The Estate of a Deceased Debtor May Obtain a Chapter 13 Discharge

“But the comfort is, you shall be called to no more payments, fear no more tavern bills.”

Chapter 13 debtors are subject to life’s vicissitudes like anyone else. A chapter 13 case lasts three to five years, and much can change during that period. During the life of his/her plan, a debtor might get married, get divorced, lose employment, give birth or see a child off to college. Section 1329 of the Bankruptcy Code provides statutory authority to modify the debtor’s plan after its confirmation to accommodate changes in the debtor’s circumstances.

However, what happens if the debtor dies during the life of the plan? This can be a perplexing dilemma for the attorney who suddenly learns that his/her client is now deceased and questions what his/her obligations are to the client. Does the case get dismissed entirely? What are the rights of creditors? Does the deceased debtor’s attorney have authority to do anything at all? If so, what are the next steps?

The answers to these questions will largely depend on the facts of the case. 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. While the debtor clearly no longer has an interest in continuing to make plan payments and completing his/her plan, there could be consequences for the survivors. Similar to the provisions for dealing with many contingencies during the life of a case, the rules provide guidance for cases where the debtor dies during the life of a chapter 13 plan. Bankruptcy Rule 1016 provides the relevant authority pertaining to the chapter 13 estate of a deceased debtor:

Death or incompetency of the debtor shall not abate a liquidation case under chapter 7.... 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.

A threshold issue faced by the counsel of a deceased debtor is whether counsel has authority to act on the decedent’s behalf. Upon a debtor’s death, an attorney’s authority is terminated to act on behalf of the debtor’s estate, and bankruptcy counsel lacks standing to immediately pursue any further course of action. A personal representative who is empowered to make decisions on behalf of the estate of the deceased must be appointed pursuant to state law. The duly appointed personal representative of the deceased debtor might then retain bankruptcy counsel, thereby providing bankruptcy counsel with the requisite authority to file further pleadings on behalf of the deceased debtor’s estate in the bankruptcy proceeding.

Dismissal of the case is the most typical outcome when a chapter 13 debtor dies. This is especially true if the debtor died after filing a petition but prior to plan confirmation. Rule 1016 does not delineate between death that occurs pre- or post-confirmation, but the estate of a deceased debtor would have difficulty crossing the logical hurdle of § 1325(a)(6), which requires that the debtor shall make payments under the plan.

If the debtor passes away post-confirmation but without assets subject to probate, then it is likely a best practice for the attorney to do nothing and allow dismissal of the case. It is well established that upon death, the debts of the deceased do not directly pass on to their heirs unless it was a joint debt initially. Death extinguishes the obligations of the debtor as effectively as a § 1328 discharge.

If there are assets subject to probate, the analysis is more complicated. If the debtor dies before chapter 13 discharge, his/her heirs will likely be concerned about the status of his/her bankruptcy estate and how that relates to any state court probate proceedings. In a probate proceeding, creditors might look to the deceased debtor’s probate estate property to satisfy the debtor’s outstanding obligations. This can affect how much property the survivors and heirs of the deceased will receive.

In a state probate proceeding, creditors could file claims and seek full collection from assets that

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1 William Shakespeare, Cymbeline, Scene 5 Act 4 (1624). In this passage, a jailer is attempting to soothe the deceased Leonatus by pointing out that death has a silver lining: He no longer must pay his bar tab nor any other obligations.


3 Id.

might have been exempt from collection in bankruptcy or even assets acquired post-petition. Therefore, if the deceased debtor’s estate involves assets subject to probate, then there will likely be an incentive for the debtor’s heirs to successfully complete the chapter 13 case.

If the heirs want to continue the case and take over the duties of the debtor (including making the chapter 13 plan payments), then the court might allow the case to continue. Whether it makes sense for the heirs to continue with the chapter 13 case depends on any number of factors, including the status of the secured property in the bankruptcy estate; whether the heirs can manage to keep the secured property outside of bankruptcy; how much debt the debtor has; how much longer the case will last; and when the discharge takes place. The following should be considered.

Home secured by a mortgage: Under federal law, if a person with a mortgage dies, then the lender must work with the deceased’s heirs to change the mortgage into the heirs’ names. If the deceased filed for bankruptcy to keep a house out of foreclosure, the heirs must then decide whether they want to keep the house. If they do, they could continue with the chapter 13. However, if they have the means to refinance the home, they could move to dismiss the chapter 13 case and refinance independently with the lender.

Other secured debts: If the deceased had other secured debts, such as a vehicle, the heirs could refinance the debt or purchase the secured assets. They could then dismiss the case and try to work with those lenders outside of bankruptcy. Alternatively, the heirs could continue with the case in order to take advantage of lien avoidance and lien “cramdowns,” which might allow the heirs to pay less on the debts.

Unsecured debts: Sometimes the debtor did not have secured property (e.g., a home or car), but instead accumulated a large amount of unsecured debt (e.g., credit card debt and medical bills). The heirs would not be personally liable for these unsecured debts, but the creditors could seek payment from the decedent’s estate in the same or related proceeding. If the decedent’s estate cannot pay off all creditors paid from the proceeds. The debtor is an inessential function of this liquidation. However, Rule 1016 does not expressly allow conversion, which could considerably weaken the argument that the bankruptcy court retains in rem jurisdiction rather than state probate court. Several courts have not permitted a conversion to chapter 7. For example, one court recently found that a deceased debtor could not convert her chapter 13 case to chapter 7 because, among other things, a deceased debtor does not benefit from the “fresh start” provided by the Bankruptcy Code. The court also noted that a decedent’s estate was not a person (i.e., did not have legal personality) and therefore was ineligible to be a chapter 7 debtor.

A chapter 13 debtor with a surviving joint debtor requires some additional considerations. Pursuant to Rule 1016, they must proceed “in the same manner, as far as possible, as though the death ... had not occurred,” even if the death severely impacted the surviving spouse’s ability to complete a repayment plan. When spouses file a joint chapter 13 case, both incomes are considered in determining the plan payment and term. If one spouse dies, then the income and expenses will change significantly.

First, the surviving spouse could seek to modify the plan pursuant to §1329 to allow for these changes. Second, if the couple had many debts that were not jointly owed, the surviving spouse could ask the court to sever the case from the deceased’s, such that the surviving spouse pays only his/her debts, and not those of the deceased. Third, the surviving spouse could ask the court for a hardship discharge as to both debtors, similar to the process explained above. These options are easily available when the surviving spouse is a personal representative of the deceased debtor. Finally, at least one court has taken a broad view of Rule 1016 and allowed the surviving joint-debtor spouse to attend a §341 first meeting of creditors on her own behalf and as a personal representative of the

Conversion to chapter 7 should be approached with caution. In theory, a conversion to chapter 7 would appear to yield an equitable result: The estate of the deceased debtor would be liquidated by the chapter 7 trustee and creditors paid from the proceeds. The debtor is an inessential function of this liquidation. However, Rule 1016 does not expressly allow conversion, which could considerably weaken the argument that the bankruptcy court retains in rem jurisdiction rather than state probate court. Several courts have not permitted a conversion to chapter 7.

A hardship discharge pursuant to § 1328(b) might be the best option for obtaining discharge if continuing a chapter 13 is not practicable.

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decedent’s estate, and that the case could continue to confirmation and beyond.\textsuperscript{11}

Rule 1016 provides the authority for a chapter 13 case to continue if a debtor dies during the pendency of the case. The practitioner should be prepared to conduct a meticulous review of the facts of the case and analysis to determine the course of action that provides the greatest benefit to the deceased debtor’s estate. If, after a careful analysis, the practitioner concludes that continuing the chapter 13 case is beneficial to the deceased debtor’s estate, then the attorney should proceed pursuant to the authority of a duly appointed personal representative. The attorney should be prepared to provide arguments to show that continued administration is practicable and how completion of a chapter 13 case is in the best interest of the parties. \textsuperscript{abi}

\textsuperscript{11} In re Seitz, 430 B.R. 761 (Bankr. N.D. Tex. 2010).