

Deceased Debtors

Procedures for Cases with Chief Judge Dale Somers
Prepared August 30, 2019

General Requirements:

- Step One: File a “Notice of Suggestion of Death” stating the name of the deceased debtor and the date of death.
- Federal Rule of Bankruptcy Procedure 1016 states:

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.

Chapter 7:

- Case will proceed to discharge and closing as though death had not occurred.
- Example: debtor dies after filing but before § 341 meeting.
 - A personal representative of the decedent's estate is authorized to appear on behalf of the debtor.¹
 - If the Chapter 7 Trustee or a creditor challenges who has authority to appear on behalf of the debtor, counsel may need to file a motion asking for determination by the Court.
- Example: debtor dies before completing the Financial Management Course (FMC).
 - To receive a discharge, a debtor need not complete an FMC if “the court determines, after notice and hearing, [that the debtor] is unable to complete those requirements because of incapacity, disability or active military duty in a military combat zone.”²
 - Applying this waiver section, courts have waived the FMC requirement for deceased debtors.³
 - If the FMC has not been filed prior to the debtor's death, then counsel should ask for waiver of the FMC requirement by filing a motion because of “incapacity.” If no objections, then Court will likely enter an Order waiving the FMC without a hearing.

¹ See, e.g., *In re Lucio*, 251 B.R. 705, 709 (W.D. Tex. 2000).

² 11 U.S.C. § 109(h)(3), § 1328(g)(1)-(2).

³ See, e.g., *In re Bouton*, No. 10-40989-EJC, 2013 WL 5536212, at *2 (Bankr. S.D. Ga. Oct. 7, 2013); *In re Inyard*, 532 B.R. 364, 373 (Bankr. D. Kan. 2015); *In re Robles*, No. 07-30747-C, 2007 WL 4410395, at *1 (Bankr. W.D. Tex. Dec. 13, 2007).

- Generally stated, the deceased debtor’s pre-bankruptcy debts are discharged in the bankruptcy, and the deceased debtor’s exempt assets and after-acquired assets are passed to the debtor’s probate estate.⁴

Chapter 13 (Joint Cases):

- For a Chapter 13 debtor to receive a discharge, the debtor must (1) complete “an instruction course concerning personal financial management;”⁵ (2) certify that all amounts payable under a domestic support obligation “due on or before the date of the certification . . . have been paid;”⁶ and (3) “after a hearing held not more than 10 days before the date of the entry of the order granting the discharge,” the court must find that “there is no reasonable cause to believe that 522(q)(1) may be applicable to the debtor” or that “there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).”⁷
- Regarding the Financial Management Certificate (FMC):
 - Again, to receive a discharge, a debtor need not complete an FMC if “the court determines, after notice and hearing, [that the debtor] is unable to complete those requirements because of incapacity, disability or active military duty in a military combat zone.”⁸
 - Applying this waiver section, courts have waived the FMC requirement for deceased debtors.⁹
 - If the FMC has not been filed prior to the debtor’s death, then when counsel files the Motion for Entry of Discharge at the end of the case, counsel should ask for waiver of the FMC requirement for the decedent due to “incapacity” of the deceased debtor. If no objections, then Court will likely enter an Order waiving the FMC requirement for the deceased debtor, with no need for a hearing.
- Regarding the Certificate of Compliance and Motion for Entry of Discharge,
 - Some Districts have a Local Rule or practice requiring a personal representative of the decedent to make the certifications on behalf of the deceased debtor by affidavit, but no such requirement exists in the District of Kansas. In this District, counsel can state in the Motion for Entry of Discharge that the debtor is deceased and that the certifications are appropriate on his or her behalf. The living co-debtor can then sign the certifications on the deceased debtor’s behalf.
- Note: Rule 1016 states that a Chapter 13 case can proceed as long as “further administration is possible and in the best interest of the parties.” At minimum, counsel should analyze these requirements in the Motion for Entry of Discharge. (i.e., state in the Motion for Entry of

⁴ *Id.* at 709-10.

⁵ 11 U.S.C. § 1328(g).

⁶ *Id.* § 1328(a).

⁷ *Id.* § 1328(h). Section 522(q)(1) refers to circumstances involving felony abuses of the Bankruptcy Code, violations of securities laws, certain civil penalties under the Racketeer Influenced and Corrupt Organizations Act, and criminal or reckless acts causing serious physical injury or death.

⁸ § 109(h)(3), § 1328(g)(1)-(2).

⁹ See note 3, *supra*.

Discharge that the further administration is possible and in the best interest of the parties.) If no objection, Court may proceed without a hearing, but hearing is certainly possible.¹⁰

- The Committee Notes to Rule 1016 state that in Chapter 11 and Chapter 13 cases, “the likelihood is that the case will be dismissed.”
- It truly depends on the facts of the case and the timing of death. A Chapter 13 case is much more likely to be dismissed if death occurs early in the case and/or it is an individual debtor (see below).
- If a living debtor wants to convert a joint Chapter 13 case wherein the co-debtor is deceased, then the living debtor must first deconsolidate the case.¹¹
 - The living debtor will be assigned a new Chapter 13 case and can then convert to Chapter 7.
 - The deceased debtor’s case will then either be dismissed per Rule 1016 or counsel would need to file a motion for hardship discharge (see below).

Chapter 13 (Individual Cases):

- If plan payments are not yet complete when death occurs, the majority of bankruptcy courts¹² have held that a deceased debtor remains eligible for a hardship discharge if death is the only factor rendering the debtor unable to complete a plan.
 - Counsel should state in the Motion for Hardship Discharge that (1) deceased debtor’s personal representative authorizes the motion, (2) the motion is in the best interest of the parties, and (3) if the FMC has not yet been filed, a request that the FMC be waived due to the debtor’s “incapacity.”
 - Again, assuming no objections, the Court will likely enter an Order waiving the FMC without a hearing.
- If the plan has been completed, Judge Somers has permitted counsel to file the Certificate of Compliance/Motion for Entry of Discharge on behalf of the deceased debtor, see Case No. 15-40287 *Slimmer*. Again, counsel must be sure to satisfy Rule 1016’s “best interest of the parties” test. In the *Slimmer* case, the deceased debtor had already completed the FMC, but if she hadn’t, then counsel would have also needed to follow the steps above for having the FMC waived.

¹⁰ To make a “best interest” determination, courts look at the facts and circumstances of each case individually. See, e.g., *In re Levy*, No. 11-60130, 2014 WL 1323165, at *4 (Bankr. N.D. Ohio Mar. 31, 2014).

¹¹ See, e.g., *In re Spiser*, 232 B.R. 669 (Bankr. N.D. Tex. 1999).

¹² See, e.g., *In re Inyard*, 532 B.R. 364 (Bankr. D. Kan. 2015) (Karlin, J.).