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# When a Client Dies During... Bankruptcy

Although a dead person cannot file a bankruptcy petition,<sup>1</sup> under certain circumstances, unsecured obligations may be discharged if an action was commenced before death. Death usually has little effect on the discharge of a Chapter 7 case, but it generally results in the dismissal of Chapter 11, 12, or 13 cases without a discharge.<sup>2</sup> For some, resolving debts through bankruptcy can leave debtors' heirs with more inheritance than if the debts were resolved through probate.

## Protected Property Depends on the Exemption Scheme

Some property is exempt from the reach of creditors in both probate and bankruptcy, but each proceeding protects different assets. In probate, property exempt from creditors is governed by Minn. Stat. § 524.2-401 through 524.2-405. For a surviving spouse and children, the probate exemptions are generous. Depending on the circumstances and with some limitations, the exemptions may protect the equity in a homestead, the equity in one vehicle, and up to \$10,000 of other personal property. A surviving spouse and minor children may also be able to receive an allowance, if needed, of up to \$1,500 per month for 12 to 18 months before other claims are paid from the probate estate.

In bankruptcy, the property exempt from creditors is governed by Minn. Stat. § 550.37 or 11 U.S.C. § 522(d). For deceased debtors with a surviving spouse or children, whether probate exemptions or bankruptcy exemptions will protect more property depends on the specific mix of assets. For deceased debtors without a surviving spouse or children, more property will be protected if the unsecured obligations are resolved through bankruptcy.

## In Chapter 7, Death May Affect Litigation, But Not Administration or Discharge

A Chapter 7 bankruptcy case may involve both litigation about what property is included in the bankruptcy estate, and administration of the estate. A debtor's death will not affect

the administration of the case.<sup>3</sup> The trustee will continue to administer the case, liquidate assets, and distribute proceeds to creditors. In the absence of some other cause to deny the debtor a discharge the debtor's death will not affect whether there is a discharge of the claims of general unsecured creditors. Litigation against third parties is unaffected (except to the extent that the debtor was a necessary witness) because the trustee has standing to litigate pre-petition causes of action.<sup>4</sup> Less clear is whether the debtor's representative could continue litigation against the trustee or amend schedules. A handful of courts have allowed a deceased debtor's personal representative to testify at a meeting of creditors regarding the debtor's financial affairs.<sup>5</sup> However, it is unlikely that a court would allow a deceased debtor's representative to amend exemptions or pursue other actions to contest the property of the estate or the disposition of the estate.

## In Chapter 11, 12, or 13, Death Usually Results in Dismissal of the Case without Discharge

Individual Chapter 11, 12, or 13 bankruptcy cases usually involve administration of a plan of debt adjustment. If a plan cannot be administered, the case must be dismissed.<sup>6</sup> The administration of the plan may not be possible without a

living debtor to make payments or fulfill other obligations required by the Bankruptcy Code. After making all required payments, a debtor must certify that he or she is current on domestic support obligations and has not claimed a homestead exemption in excess of \$155,675 that

**“ ... the debtor's death will not affect whether there is a discharge of the claims of general unsecured creditors.”**

was acquired during the 1,215 days immediately preceding the filing of the bankruptcy petition.<sup>7</sup> Even if the debtor's relatives make required payments, a deceased debtor could not file the certifications required to administer a plan to discharge. A court could theoretically waive the filing of the certifications; however, it is unclear who would have standing to make a motion for such a waiver.

<sup>1</sup> See, for example, *In re Brown's Estate*, 16 B.R. 128 (Bankr. D. D.C. 1981) (holding that a probate estate is not eligible to file bankruptcy); *In re Hiller's Estate*, 240 F. Supp. 504 (N.D. Cal. 1965) (“[T]he estate of a deceased person may not file a voluntary petition in bankruptcy.”).

<sup>2</sup> This applies only to the Chapter 11 case of an individual, and not a corporate entity.

<sup>3</sup> Federal Rule of Bankruptcy Procedure 1016.

<sup>4</sup> 11 U.S.C. § 323(b).

<sup>5</sup> See e.g., *In re Seitz*, 430 B.R. 761 (Bankr. N.D. Tex. 2010).

<sup>6</sup> Federal Rule of Bankruptcy Procedure 1016 and Advisory Committee Notes.

<sup>7</sup> See Local Rule 4004-I and 11 U.S.C. §§ 522(q) and 1328(a).



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