

**GUIDELINES – WHAT TO DO WHEN A DEBTOR DIES
DURING A CHAPTER 13 BANKRUPTCY CASE**

1. File a Notice of Deceased Debtor on CM/ECF as soon as you learn of the death (attach a redacted copy of death certificate or published obituary).
2. **In an individual debtor case:**
 - a. The plan can only be funded by liquid assets of debtor either from his probate estate or life insurance proceeds.
 - b. Third parties or relatives cannot continue making monthly plan payments.
 - c. The case cannot be converted after the death of a debtor.
 - d. A plan cannot be confirmed after the death of a debtor, nor can an amended plan be filed and confirmed (so dismissal is the only option if debtor dies pre-confirmation).
3. To proceed in the case, file a Motion for Continued Administration of Case requesting approval to continue administration of the bankruptcy case on behalf of the deceased debtor (and if applicable request that someone be designated as the representative of deceased debtor in the bankruptcy case).
4. The Motion should state the date of death and reasons for any delay in filing the Motion (if filed more than six months since date of death).
5. **In a jointly filed case,** continued administration can proceed in one of the following ways:
 - a. File a motion to dismiss the case SOLELY as to the deceased debtor. The surviving debtor can then proceed under the case as if it had been filed individually, including modifying the plan, converting the case, requesting a moratorium, requesting a hardship discharge, etc.
 - b. File a motion to divide the case into two cases, with the deceased debtor's new case being dismissed. The surviving debtor can then proceed under the original case, including modifying the plan, converting the case, requesting a moratorium, requesting a hardship discharge, etc.
 - c. If seeking to proceed with the joint case through discharge and closing of the case, no motion is necessary. The surviving debtor can complete the payments under the confirmed plan, and certify eligibility for discharge after completion of the case.
HOWEVER:
 - the surviving debtor cannot amend the plan or seek confirmation if death occurred pre-confirmation, and
 - the surviving debtor cannot convert the joint case to Chapter 7, because the deceased debtor is not eligible to convert.

6. Sometimes a debtor's death can be the basis for a hardship discharge if requirements of 11 U.S.C. § 1328(b) are met.

Review the following SC Bankruptcy Court opinions on this topic:

- *In re Brown* 12-07082-jw (debtor died prior to confirmation; case dismissed)
- *In re Dallas* 09-08702-jw (granting exemption from financial management course for deceased debtor on request of surviving debtor)
- *In re Gardner* 11-05561-jw (denying motion to convert by deceased debtor; surviving debtor had 10 days to divide case and convert)
- *In re Gariepy* 11-00827-jw (denying motion for continued administration of case after death of single debtor)
- *In re Quint* 11-04296-jw (authorizing special administrator to act on behalf of deceased debtor but denying motion to convert to 7)
- *In re Sizemore* 17-04704-eg (allowing hardship discharge for deceased debtor and dismissing case as to deceased joint debtor)
- *In re Swarthout* 09-06263-jw (allowing continued administration of case by surviving debtor to complete confirmed plan)
- *In re Thomas* 10-03395-jw (denying surviving joint debtor's modified plan to lower payments after death of other joint debtor)
- *In re Tisdale* 09-05830-jw (allowing modified plan filed by surviving joint debtor after death of other joint debtor ONLY because plan would be fully funded by life insurance)
- *In re Vetter* 11-03988-dd (denying motion to convert to 7 and dismissing case after debtor's death)
- *In re Ward* 22-03569 (denying continued administration because case was not confirmed before debtor died – Judge Burris case but Judge Gasparini issued this opinion)