

GUIDELINES FOR CASES WITH DECEASED DEBTORS

1. Death can be the basis for a hardship discharge if requirements of 11 U.S.C. § 1328(b) are met.
2. The motion should be titled, “Motion to Continue Administration,” and should seek to continue administration of the bankruptcy case on behalf of the deceased debtor (and not seek the appointment of a special administrator or designation of individual as representative of deceased debtor.) The probate court representative is the appropriate actor under state law.
3. The Motion to Continue Administration should state the date of death and reasons for any delay in filing of the Motion (if more than six months since death).
4. In an individual debtor case, the following requirements must be met for continued administration to be approved:
 - a. The plan can only be funded by liquid assets of debtor via probate representative – usually if case is near conclusion. Lump sum may be required.
 - b. Third parties or relatives cannot fund the plan or make payments
 - c. A plan cannot be confirmed after the death of a debtor, nor can an amended plan be filed and confirmed.
 - d. The case cannot be converted.
5. A joint case can proceed in one of the following ways:
 - a. The case can be separated upon motion and the surviving debtor can proceed in her separate case, with the deceased debtor’s case being dismissed. The surviving debtor can then seek to modify plan, seek moratorium, or seek a hardship discharge in her separate case.
 - b. If seeking to proceed with the joint case through discharge and closing of the case, the surviving debtor can complete the presently confirmed plan if payments can be made via the surviving debtor’s income or assets or liquid assets of the deceased debtor. The surviving debtor cannot amend the plan affecting deceased debtor or seek confirmation if death occurred pre-confirmation. The surviving debtor cannot convert the joint case to a Chapter 7 because the deceased debtor is not eligible.