

FEW THINGS ARE CERTAIN IN LIFE, EVEN LESS ARE CERTAIN IN DEATH AND BANKRUPTCY

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The United States Courts' website provides numerous laudatory reasons for why a consumer debtor would decide to pursue debt adjustment through a Chapter 13 Bankruptcy filing.¹ Mainly:

Chapter 13 offers individuals a number of advantages over liquidation under chapter 7. Perhaps most significantly, chapter 13 offers individuals an opportunity to save their homes from foreclosure. By filing under this chapter, individuals can stop foreclosure proceedings and may cure delinquent mortgage payments over time. Nevertheless, they must still make all mortgage payments that come due during the chapter 13 plan on time. Another advantage of chapter 13 is that it allows individuals to reschedule secured debts (other than a mortgage for their primary residence) and extend them over the life of the chapter 13 plan. Doing this may lower the payments. Chapter 13 also has a special provision that protects third parties who are liable with the debtor on "consumer debts." This provision may protect co-signors. Finally, chapter 13 acts like a consolidation loan under which the individual makes the plan payments to a chapter 13 trustee who then distributes payments to creditors.

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¹ *Chapter 13 – Bankruptcy Basics*, U.S. CTS., <http://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-13-bankruptcy-basics> (last visited Jan. 23, 2016).

Individuals will have no direct contact
with creditors while under chapter 13
protection.²

As a result of many of these reasons, hundreds of thousands of United States citizens aspire to complete a chapter 13 bankruptcy plan each year.³ In fact, of the 936,795 bankruptcy filings in 2014, roughly one-third were chapter 13 filings.⁴ Despite this large number, a staggering percentage of chapter 13 filers do not complete their plan payments or receive the discharge of debts – or the “fresh start,” as many bankruptcy proponents deem it – that the debtors sought through the mechanisms of the United States bankruptcy system.⁵ Based on recent data provided by the Bankruptcy Abuse Prevention and Consumer Protection Act Report, of the roughly 300,000 cases filed, courts dismissed over 90,000 for failure to make plan payments.⁶ In fact, various sources report that of all the chapter 13 bankruptcies filed, a staggering seventy-five percent (75%) never reach their end goal.⁷ However, failure to make plan payments is not the only reason that bankruptcy courts dismiss debtors’ chapter 13 plans.⁸ Death of a

² *Id.*

³ Table F-2. *U.S. Bankruptcy Courts—Business and Nonbusiness Cases Commenced By the Bankruptcy Code, During the 12-Month Period Ending December 31, 2014*, U.S. CTS., <http://www.uscourts.gov/statistics/table/f-2/bankruptcy-filings/2014/12/31> (last visited Jan. 23, 2016).

⁴ *Id.* Even further, of the 310,061 chapter 13 bankruptcies filed in 2014, only 2,278 of those chapter 13 plans were undertaken by businesses. The remaining 307,783 chapter 13 cases filed and plans initiated were by individual or joint consumer debtors. *Id.*

⁵ *Chapter 13 Repayment Plans*, NAT’L BANKR. REV. COMMISSION, <http://govinfo.library.unt.edu/nbrc/report/08consum.html> (last visited Jan. 24, 2016) (stating that Chapter 13 could be improved, and, in particular, that “[t]he high non-completion rate of Chapter 13 plans is cause for substantial concern”).

⁶ *BAPCPA Table 6. U.S. Bankruptcy Courts—Chapter 13 Individual Debtor Cases With Predominately Nonbusiness Debts Closed by Dismissal or Plan Completion During The 12-Month Period ending December 31, 2013, as Required by 28 U.S.C 159(c)*, U.S. CTS., <http://www.uscourts.gov/statistics/table/bapcpa-6/bankruptcy-abuse-prevention-and-consumer-protection-act-bapcpa/2013/12/31> (last visited Jan. 24, 2016).

⁷ Scott F. Norberg, *Consumer Bankruptcy’s New Clothes: An Empirical Study of Discharge and Debt Collection in Chapter 13*, 7 AM. BANKR. INST. L. REV. 415, 440-41 (1999) (stating that in an empirical study of 71 chapter 13 filers, “[a]pproximately 32% (23 of 71) of the chapter 13 debtors in the study sample successfully completed a plan and received a discharge.”); NAT’L BANKR. REV. COMMISSION, *supra* note 5; John Skiba, *When Bankruptcy Goes Bad: Why Chapter 13’s Fail*, SKIBA L. GROUP, PLC (Aug. 3, 2012), <http://skibalaw.com/when-bankruptcy-goes-bad-why-chapter-13s-fail/>.

⁸ While this paper will only deal explicitly with one reason for chapter 13 plan failures, there are a multitude of reasons why a chapter 13 plan may not reach completion, such as conversion to chapter 7 liquidation. See Alane A. Becket & William A. McNeal,

chapter 13 debtor can lead to a number of dispositions by the court – at the urging of the Trustee – and the resulting impact on co-debtors, the debtors’ estate, and creditors, can likewise vary widely.

The vast disparity in court dispositions – despite cases with similar facts – owes itself in part to statutory drafting.⁹ Titled “Death or Incompetency of Debtor,” Federal Rule of Bankruptcy Procedure Rule 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.¹⁰

Use of the term “may” as a directive for the courts throughout the statute creates just enough discretionary leeway for courts to exploit.¹¹ Often times, courts do not determine that “further administration” is either possible or in the best interest of the parties.¹² This decision by the courts can provide a stark glimpse into the pro-debtor or pro-creditor leanings of the courts themselves. One court even went so far as to characterize the problem by stating that “[i]n the absence of clear and direct guidance, case law addressing deceased

Contrary Conversion Conclusions: Circuits Split on Who Gets Funds on Hand, 33 AM. BANKR. INST. J. 16 (2014).

⁹ See FED. R. BANKR. P. 1016 (1991).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

chapter 13 debtors developed irregularly.”¹³ Such a wide swathe of holdings on the part of the bankruptcy courts, ranging from dismissal of the case all the way to complete discharge of the debts, should be regulated in a more structured manner. This paper examines the discordant adjudications laid down by bankruptcy courts in the event that a chapter 13 debtor dies during the pendency of his plan and proposes that further questions be examined to determine a possible solution.

I. Dismissal

While somewhat draconian, the statute certainly provides dismissal as an option for courts following the death of a chapter 13 debtor.¹⁴ For instance, courts repeatedly dismiss cases involving the deaths of solitary chapter 13 debtors.¹⁵ The court in, *In re Hennessy*, determined that dismissal was the appropriate disposition because “a Chapter 13 debtor who dies does not need a fresh start,” and thereby the probate proceeds of the former debtor’s estate should serve to repay creditors.¹⁶ Perceived inequity on the part of the court’s ruling does not dissuade some courts from dismissing chapter 13 cases as well. For example, *In re Fogel*, where the Bankruptcy Court for the District of Colorado determined whether a widow should be granted a discharge of her husband’s debts, after he had died, and she had completed plan payments while serving as the personal representative of the debtor’s estate.¹⁷ The court denied the debtor’s widow the right to discharge from the debts, stating instead that “if one of two debtors in a joint Chapter 13 case dies, it is *conceivable* that the surviving debtor could continue making the payments under the confirmed plan and achieve the benefits of the bankruptcy case that debtor filed, thus avoiding dismissal of the case,”¹⁸ However, “[t]he nondebtor spouse cannot simply make the payments under the plan and achieve the benefits of the stay and the discharge without filing a case.”¹⁹

¹³ *In re Levy*, No. 11-60130, 2014 Bankr. LEXIS 1229, at *1, *9 (Bankr. N.D. Ohio Mar. 31, 2014).

¹⁴ *Id.* at *10.

¹⁵ See *In re Fogel*, 507 B.R. 734, 735 (Bankr. D. Colo. 2014); *In re Hennessy*, No. 11-13793, 2013 Bankr. LEXIS 3034, at *1, *4 (Bankr. N.D. Cal. July 29, 2013).

¹⁶ *In re Hennessy*, 2013 Bankr. LEXIS 3034 at *4.

¹⁷ *In re Fogel*, 507 B.R. 734-35.

¹⁸ *Id.* at 735.

¹⁹ *Id.*

Dismissal in the case of joint chapter 13 debtors, while presenting a more complicated situation for the courts, sometimes yields a similar result when both debtors pass away. For example, in *In re Spiser*, following the death of both debtors post-petition, the United States Bankruptcy Court for the Northern District of Texas first vacated a proposal from the United States Trustee to convert the case from a chapter 13 bankruptcy to a chapter 7 bankruptcy and then granted the Trustee's motion for a dismissal because the debtors were no longer able to complete their chapter 13 plan payments.²⁰ The reasoning applied to allow this dismissal remains sound. Because both debtors had passed away, there was no "person," as defined in United State Code Annotated title 11, § 109, who could even serve as the debtor in a chapter 7 case.²¹ Accordingly, the court stated that "[t]he term 'person' is defined in § 101(41) to include 'individual, partnership, and corporation,' while the term 'entity' is defined in § 101(15) to include 'person, estate, trust, governmental unit, and United States trustee.'"²² Therefore, because the probate estate would have been serving as the "debtor" for purposes of the chapter 7 conversion, the court did not allow conversion.²³

Similarly, in *In re Langley*, the United States Bankruptcy Court for the Southern District of Georgia faced a situation where both joint chapter 13 debtors passed away prior to their discharge.²⁴ However, unlike *Spiser*, the *Langley* debtors' daughter sought to either convert the case to a chapter 7 or, in the alternative, to see the chapter 13 plan through to completion.²⁵ Articulating the reasoning behind the court's decision to opt for dismissal, as opposed to the proposed alternatives, the court stated:

Here, further administration of the case is not "in the best interest of the parties." The Debtors are deceased and thus cannot benefit; and unsecured creditors would not benefit under either of the scenarios Ms. Thursby [the daughter] proposes. On the one hand, conversion

²⁰ *In re Spiser*, 232 B.R. 669, 670 (Bankr. N.D. Tex. 1999).

²¹ *Id.* at 672 (citing 11 U.S.C. § 109 (2010)).

²² *Id.* (quoting 11 U.S.C. § 101(41), (15) (2010)).

²³ *Id.*

²⁴ *In re Langley*, No. 05-61279, 2009 Bankr. LEXIS 4219, at *1 (Bankr. S.D. Ga. Sept. 28, 2009).

²⁵ *Id.* at *1-2.

of the case followed by a discharge would end payments to unsecured creditors altogether. On the other hand, if payments were to continue under the chapter 13 plan, unsecured creditors would receive a dividend of only 10% or a pro rata share of \$3,125.16. (Chapter 13 Plan and Motion – Amended, 3/3/2006, Dkt. #17.) I decline to speculate whether creditors’ claim may be better satisfied from the assets of the Debtors’ decedent estates, but I note that Georgia probate law provides for payment of such claims. *See* O.C.G.A. §§ 53-4-63, 53-7-40.

While allowing the case to proceed may be in the best interest of the Debtors’ daughter, she is not a party in this case. Moreover, because the purpose of a bankruptcy proceeding is to give debtors a fresh start, and because there can be no fresh start for the Debtors here, no purpose would be served by allowing the case to proceed.²⁶

Why the *Langley* court declined to “speculate” whether the probate procedure would pay any of the unsecured creditors a higher dividend than they would receive through completion of the chapter 13 plan payments leaves the reader of this opinion with somewhat of a quandary.²⁷ Would it not be in the best interest of all parties involved to continue the plan payments if there was no actual equity in the family homestead, or the probate estate, for unsecured creditors to claim? In that hypothetical, the unsecured creditors would receive their minor “dividend” of the claims owed through the chapter 13 plan, but that sum could still amount to more than what those creditors would receive under probate law.²⁸ This rigid adherence to procedure, without adequate consideration given to the practical implications or alternatives to that procedure, illustrates a serious problem in the administration of some chapter 13 plans.

²⁶ *Id.* at *2-3.

²⁷ *Id.*

²⁸ *Id.*

II. Further Administration

If the court decides not to dismiss a chapter 13 case, the statute instructs that “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.”²⁹ As stated in *In re Perkins*, “the legislative history and Bankruptcy Rule 1016 make it very clear that a deceased Chapter 7 debtor is entitled to receive a discharge.”³⁰ *Perkins* further holds that the dismissal of the chapter 13 case on account of death “would appear to punish a debtor for filing a Chapter 13 case and trying to repay creditors instead of filing a Chapter 7 liquidation case.”³¹ However, this precedent alone provides courts with little direction on how to proceed in the event that they do not wish to dismiss. As such, multiple courts have grappled with the exact meaning behind legislators’ use of the term “further administration” and how and when to determine that “further administration” is permissible.³²

The United States Bankruptcy Court for the Northern District of Ohio tackled the issue of “further administration” in depth in *In re Levy*.³³ The debtors in *Levy*, Mr. and Mrs. Levy, filed a joint chapter 13 case on January 18, 2011, and their plan continued to completion on February 25, 2014.³⁴ On May 3, 2011, the debtors filed their certificates of completion of the post-petition debtor education course; however in October of 2012 Mr. Levy died.³⁵ After Mr. Levy’s death, Mrs. Levy completed the plan and filed the joint domestic support obligations (“DSO”) and § 1328(h) certificates on March 14, 2014.³⁶ It was not until this filing that the court learned that only one of the debtors, Mrs. Levy, had signed both certifications.³⁷ This situation, understandably, left the

²⁹ FED. R. BANKR. P. 1016 (1991) (emphasis added).

³⁰ *In re Perkins*, 381 B.R. 530, 536 (Bankr. S.D. Ill. 2007).

³¹ *Id.*

³² See *In re Levy*, No. 11-60130, 2014 WL 1323165, at *1 (Bankr. N.D. Ohio Mar. 31, 2014); *In re Bouton*, No. 10-40989-EJC, 2013 WL 5536212, at *1 (Bankr. S.D. Ga. Oct. 7, 2013); *In re Quint*, No. 11-04296-jw, 2012 WL 2370095, at *1 (Bankr. N.D. Ohio June 22, 2012); *In re White*, No. 06-60363, 2011 WL 3426166, at *1 (Bankr. S.D. Ga. May 16, 2011).

³³ *In re Levy*, 2014 WL 1323165, at *1.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

court in a predicament. The court illustrated its difficulty by stating that Rule 1016 of the Federal Bankruptcy Code “contemplates completion and discharge when possible[,] but courts often struggle to determine what is intended by the rule.”³⁸ “The issue for the court is how to harmonize the goal of concluding a case involving a deceased debtor, and thereby allowing ‘further administration,’ while also satisfying a debtor’s pre-discharge requirements.”³⁹

The *Levy* court realized a new problem that death during a chapter 13 bankruptcy creates: how does a court ensure that all of the pre-discharge requirements are met?⁴⁰ After a meticulous analysis of previous and disparate rulings from other courts, the court determined that “the end of the case requirements are not an automatic bar to allowing ‘further administration’ in a case involving a deceased debtor.”⁴¹ Then, the court stated that those who may act on behalf of a deceased debtor must be decided on a case-by-case basis.⁴² Defining the parameters of “further administration,” the court ultimately held that “the facts and circumstances of each case will drive the determination of who [may act on behalf of a deceased debtor], whether further administration is possible, and whether it is in the best interest of the parties.”⁴³ While the court concluded that there must still be an analysis into whether the best interests of the parties are being served by any further administration of the case without the deceased debtor,⁴⁴ it also further increased the possibility of confusion for debtors in the future.⁴⁵

Based on this ruling, why could the debtors’ daughter in *Langley* or the deceased debtor’s wife in *Fogel* not have been a proper party for “further administration”?⁴⁶ Both instances involved individuals who could, or in the case of *Fogel* did, make all plan payments, but they were not allowed to benefit from the fruits of those labors.⁴⁷ Surely a case

³⁸ *Id.* (quoting FED. R. BANKR. P. 1016 (1991)).

³⁹ *Id.*

⁴⁰ *In re Levy*, 2014 WL 1323165, at *1.

⁴¹ *Id.* (quoting FED. R. BANKR. P. 1016 (1991)).

⁴² *Id.*

⁴³ *Id.* at *4; *see also In re Perkins*, 381 B.R. 530, 537.

⁴⁴ *Id.* at *4.

⁴⁵ *Id.*

⁴⁶ *See In re Langley*, No. 05-61279, 2009 WL 5227665, at *1 (Bankr. S.D. Ga. Sept. 28, 2009); *In re Fogel*, 507 B.R. 734, 735 (Bankr. D. Colo. 2014).

⁴⁷ *In re Langley*, 2009 WL 5227665, at *1; *In re Fogel*, 507 B.R. at 735.

could be made that the best interests of the parties were being served by such allowances.

According to the *Levy* court, the ruling in *In re Bouton* represented a tacit understanding that “further administration” could encompass the granting of discharge.⁴⁸ The court stated that “[t]he result was a de facto acceptance that ‘further administration’ can mean entry of a discharge even if the debtor does not comply with end-of-the-case requirements.”⁴⁹ In *In re Bouton*, a singular chapter 13 debtor died after completing the plan payments, but prior to filing the domestic support obligation certification.⁵⁰ After the debtor died, her “counsel filed a motion to exempt the debtor from the financial management course and court’s DSO certification requirement. . . . After reviewing the record, finding no evidence of a DSO obligation, and concluding a dead debtor [met] the definition of disability in 11 U.S.C. § 109(h)(4), the court granted the motion.”⁵¹ Nevertheless, a bankruptcy judge in the same district of Georgia determined in *In re White*, that virtually the same circumstances should result in a dismissal once the family, who had paid all the plan payments, filed a notification of the debtor’s death.⁵² Such inconsistent opinions—displayed not only by multiple states’ bankruptcy courts, but also by bankruptcy judges within the same jurisdiction—should not negatively impact debtors who have suffered the unfortunate circumstance of losing their co-debtor during a chapter 13 plan.

III. Hardship Discharge

A third option available to courts when a chapter 13 debtor dies is to grant a hardship discharge.⁵³ Under bankruptcy law, the hardship discharge is governed by statute, which states:

(b) Subject to subsection (d), at any time after the confirmation of the plan and after notice and a hearing, the court may

⁴⁸ *In re Levy*, 2014 WL 1323165, at *2 (quoting FED. R. BANKR. P. 1016 (1991)).

⁴⁹ *Id.*

⁵⁰ *In re Bouton*, No. 10-40989, 2013 WL 5536212, at *1 (Bankr. S.D. Ga. Oct. 7, 2013).

⁵¹ *In re Levy*, 2014 WL 1323165, at *2 (citing *In re Bouton*, No. 10-40989, 2013 WL 5536212, at *1 (Bankr. S.D. Ga. Oct. 7, 2013)) (internal citations omitted).

⁵² *In re White*, No. 06-60363, 2011 WL 3426166, at *1 (Bankr. S.D. Ga. May 16, 2011).

⁵³ See *In re Hoover*, No. 09-71464, 2015 WL 1407241 (Bankr. N.D. Cal. Mar. 24, 2015); *In re Dickerson*, No. 10-60680, 2012 WL 734160, at *1 (Bankr. N.D. Ohio Mar. 6, 2012); *In re Redwine*, No. 09-84032-JB, 2011 WL 1116783, at *1 (Bankr. N.D. Ga. Mar. 8, 2011).

grant a discharge to a debtor that has not completed payments under the plan only if –

- (1) the debtor's failure to complete such payments is due to circumstance for which the debtor should not justly be held accountable;
- (2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and
- (3) modification of the plan under section 1329 of this title is not practicable.⁵⁴

While the language in this section provides more of a roadmap for courts to follow, varying decisions still plague debtors and creditors alike. For example, a bankruptcy court deemed the death of a debtor sufficient for the grant of a hardship discharge in *In re Graham*, where the court stated:

[I]t is clear that the debtor cannot be held accountable for his failure to complete the payments required under the chapter 13 plan and modification of the plan at this 'late' date is equally infeasible. Finally, the payments which were made to creditors totaled more than the creditors would have received in a chapter 7 liquidation.⁵⁵

⁵⁴ 11 U.S.C.A. § 1328(b) (1994).

⁵⁵ *In re Graham*, 63 B.R. 95, 96 (Bankr. E.D. Penn. 1986).

Some courts have reached similar conclusions when faced with the death of a singular debtor,⁵⁶ while other courts disagree with this course of action for various reasons.

In *In re McNealy*, the United States Bankruptcy Court for the Southern District of Ohio confronted a hardship discharge issue.⁵⁷ By the court's estimation, after the death of the debtor/husband, the only way to determine whether the remaining debtor/wife was entitled to a hardship discharge was through "a variation of the best interests test."⁵⁸

The court is constrained to apply a variation of the best interests test in granting a hardship discharge which requires a finding that the value of property, as of the effective date of the plan, of property actually distributed under the plan to each allowed unsecured claim at least is equal to the amount which could have been paid on the effective date of the plan on each such claim had the estate been liquidated under Chapter 7.⁵⁹

Though the court did not make a formal ruling on the issue of whether or not a hardship discharge should be granted, it did provide a more distinct structure for navigating this determination.⁶⁰ While detailed explanations of rulings in cases like *McNealy* help some debtors, a total lack of uniformity in the manner in which courts administer these types of cases ultimately harms debtors.

The bizarre circumstances of *In re Brown* do not significantly supplement an analysis of whether or not a hardship discharge should be granted to a remaining co-debtor upon the death of his debtor/spouse, but they do create precedent that can damage a debtor's claim if counsel

⁵⁶ See *In re Sales*, No. 03-60861, 2006 WL 2668465, at *1 (Bankr. N.D. Ohio Sept. 15, 2006) (determining that since a hardship discharge is available as a conclusion to a chapter 13 case when death has not occurred, then it is available in a case where the debtor is deceased).

⁵⁷ *In re McNealy*, 31 B.R. 932 (Bankr. S.D. Ohio 1983).

⁵⁸ *Id.* at 935.

⁵⁹ *Id.*

⁶⁰ *Id.*

employs crafty lawyering.⁶¹ The United States Bankruptcy Court for the Western District of Missouri, in *in re Brown* determined that the debtor satisfied the second and third prong of the hardship discharge test.⁶² Ultimately, however, the court determined that the debtor should be held accountable for the circumstances leading to her inability to complete her chapter 13 plan payments because she was the party who fatally shot her co-debtor/spouse.⁶³

In contrast, the court in *In re Marshall* illustrated unsound analysis when it denied a surviving co-debtor's motion for a hardship discharge.⁶⁴ After concluding that the joint chapter 13 case had been severed following the death of the debtor/wife, the court addressed the deceased debtor's counsel's motion for a hardship discharge.⁶⁵ The court ultimately concluded that the debtor's inability to complete her plan was due to her failure to pay income tax liabilities in a timely fashion, thereby creating plan payments that were too exorbitantly large for her to manage.⁶⁶ Unfortunately, the analysis of the North Carolina bankruptcy court failed to address the debtor's ability to convert her chapter 13 plan to a chapter 7 plan, the amount that unsecured creditors had received in comparison to their potential payout in a chapter 7, or the fact that the debtor's death prevented her from modifying the plan in such a way as to make plan payments possible.⁶⁷ Denying the motion, without following the three pronged analysis established by the statute simply created precedent that can frustrate the ability of debtors and creditors to predict the outcome of chapter 13 cases.

IV. Conclusion

Judging from the vast discrepancies presented by this sample of cases, the confusion rendered by the death of a chapter 13 debtor alone decries the need for reform, and at the very least greater uniformity. When cases boasting nearly identical circumstances repeatedly result in opposite adjudications, courts deny all parties involved in the bankruptcy process the consistency that they deserve and prevent parties from

⁶¹ *In re Brown*, No. 07-43738-13-jwv, 2009 WL 801737, at *1 (Bankr. W.D. Mo. Mar. 24, 2009).

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *In re Marshall*, No. 09-11603-8-RDD, 2012 WL 1155742, at *1 (Bankr. E.D. N.C. Apr. 5, 2012).

⁶⁵ *Id.*

⁶⁶ *Id.* at *2.

⁶⁷ *Id.*

having confidence in the potential outcome of their cases. The current issues with chapter 13 cases could be improved by eliminating the discretionary language in the Federal Rules of Bankruptcy Procedure 1016.⁶⁸ Forcing the courts to either allow further administration of the chapter 13 plan or to dismiss the plan altogether would at least provide a degree of certainty for debtors. However, this would in no way satisfy all parties concerned. Another option would be to draft more specific legislation instructing courts as to who may act on behalf of a deceased debtor in fulfilling his chapter 13 plan payments. Even if such a directive extinguished the hope of discharge in cases like *Levy*, at least the system would not appear as arbitrary and capricious as it does now. Finally, better guidelines for bankruptcy judges, and possibly more continuing legal education opportunities for bankruptcy attorneys on the hardship discharge system, could standardize this area of the law. Nevertheless, the wide breadth afforded to bankruptcy judges in adjudicating chapter 13 cases does not guarantee uniformity.

As the system currently stands, chapter 13 debtors entering into three to five year plans have absolutely no idea whether they will be able to experience the benefits of bankruptcy's discharge of debts if the most unexpected event, death, may happen to befall their co-debtor. Likewise, creditors – many of whom are unhappy with the bankruptcy to begin with – cannot rely upon a dismissal and the opportunity to seek probate assets to repay debtors' loans in the event of death. Everyone enters the chapter 13 system blind on this issue. Unfortunately, no current case law restores sufficient clarity.

⁶⁸ See FED. R. BANKR. P. 1016 (1991).