Menu
Search (/dailybusinessreview/search/)
dbr DAILY BUSINESS REVIEW (/dailybusinessreview/)
POWERED BY LAW.COM (/)
Sig
promoCode=FLM&source=https%3A%2F%2Fwww.law.com%2Fc
estates-collide-the-intersecti
SUBSCRIBE (HTTPS://STORE.LAW
PROMOCODE=FLM&SOURCE=HTTPS://WWW.LAW.COM/DAIL
ESTATES-COLLIDE-THE-INTERSECTION-BET
ESTATE/&INTCMP=SUBS
Publications (/publications/) Law Topics (/topics/) Surveys & Rankings (/rankings/)
Public Notice & Classifieds (/dailybusinessreview/static/public-notices-classifieds/) Legal Newswire (/legalnewswire/) Practice Tools
All Sections (/dailybusinessreview/sitemap/)

Commentary (/dailybusinessreview/commentary/)

When Estates Collide—the Intersection Between a Bankruptcy and Probate Estate

As of April 30, 2019, there have been 258,537 individual bankruptcy filings nationwide with Chapter 7 and Chapter 13 cases representing 98% of all cases filed. Inevitably, at least one or more debtors will die during the pendency of an individual bankruptcy proceeding.

By **Peter E. Shapiro** | June 27, 2019 at 10:02 AM

(http://www.almreprints.com)



Peter E. Shapiro is principal of Shapiro Law.

As of April 30, 2019, there have been 258,537 individual bankruptcy filings nationwide with Chapter 7 and Chapter 13 cases representing 98% of all cases filed. Inevitably, at least one or more debtors will die during the pendency of an individual bankruptcy proceeding. The outcome of the proceedings will vary depending on a number of factors which are addressed by this article.

In 2006, the U.S. Supreme Court in *Marshall v. Marshall* recognized that the probate exception to federal court jurisdiction reserves to state probate courts the probate or annulment of a will and the administration of a decedent's estate; it also precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court.

The Commission on the Bankruptcy Laws of the United States recommended as part of the Bankruptcy Reform Act of 1978 that the Bankruptcy Act not be extended to administration of decedents' estates other than to the extent necessary to wind up the administration of the estate of debtors who die after the date of the petition. Federal Rule of

Bankruptcy Procedure 1016 implements this policy by stating: "Death or incompetency of the debtor shall not abate a liquidation 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 … 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 … had not occurred."

What constitutes property of a bankruptcy estate for a Chapter 11 individual debtor after the commencement of the case has been the subject of some controversy. As defined by 11 U.S.C. Section 541 (a)(1), property of the bankruptcy estate includes "all legal or equitable interests of the debtor in property as of the commencement of the case." A bankruptcy estate does not include, however, any property, or the value of such property, to the extent it has been properly exempted by the debtor.

After the filing of a bankruptcy petition, two estates exist—the bankruptcy estate, and the estate of the debtor to the extent that any legal or equitable interest of the debtor did not become property of the bankruptcy estate, and to the extent that post-bankruptcy property is not property of the bankruptcy estate. For tax purposes and otherwise, when an individual's Chapter 7 or Chapter 11 proceeding has commenced, a separate taxable entity is created which is completely distinct from the individual's estate for income tax purposes. The comments made in the legislative history to Section 541 of the Bankruptcy Code concerning the difference between the bankruptcy estate and a decedent's estate include:

Once the estate is created, no interests in property of the estate remain in the debtor. Consequently, if the debtor dies during the case, only property exempted from property of the estate or acquired by the debtor after the commencement of the case and not included as property of the estate will be available to the representative of the debtor's probate estate. The bankruptcy proceeding will continue in rem with respect to property of the estate, and the discharge will apply in personam to relieve the debtor, and thus his probate representative, of liability for dischargeable debts.

Difficult questions regarding coordination of administration of the estates, bankruptcy and probate, could arise when a debtor dies during the pendency of a bankruptcy proceeding. It is clear that a Chapter 7 bankruptcy case can continue notwithstanding the death of the debtor as proscribed by Rule 1016. However, Rule 1016 does not mandate that a Chapter 7 case must proceed after the death of the debtor as the deceased debtor's case is still subject to dismissal under Section 707. In a Chapter 11 or 13 case, the rule does not mandate that a case be continued in the event of a debtor's death and it is contemplated that the case be dismissed, premised on the discontinuance of an ongoing income stream.

State law entrusts all property of a decedent to the personal representative and imposes on that person a duty to satisfy all claims out of that property. But federal bankruptcy law will already have swept up the decedent's pre-bankruptcy property into the bankruptcy estate, entrusting its administration to a trustee, who has a similar duty to satisfy claims.

If a person dies while their Chapter 7 bankruptcy case is pending, what passes into the probate estate is dramatically changed. The only assets that go into the probate estate are the property claimed as exempt in the debtor's bankruptcy case (presuming that no objections to those claimed exempted assets have been sustained)) and are properly acquired by the debtor after the commencement of a bankruptcy case. Conversely, the only debts for which the probate estate is liable are those incurred by the decedent after the filing of the bankruptcy petition.

The result is that the deceased debtor's prebankruptcy debts are discharged in the bankruptcy case, and the deceased debtor's exempt assets are passed to the probate estate free of that debt.

Although probate and bankruptcy proceedings may proceed simultaneously with little or no difficulty, it is important that the proceedings remain independent of each other. The bankruptcy court has exclusive jurisdiction to determine the debtor's exemptions as of the date of filing, but does not have jurisdiction to determine exemptions in the probate estate as that is a matter left for the probate court. The probate estate has no authority to supervene the bankruptcy trustee's exclusive control over property of the bankruptcy estate.

Peter E. Shapiro *is principal of Shapiro Law with offices in Plantation, Florida and has practiced for over 30 years in in the areas of business law, bankruptcy, real estate, creditors' rights, litigation, mediation and arbitration.*

SHARE SHARE

Dig Deeper

Cases and Courts (/topics/cases-and-courts/)

Financial Services and Banking (/topics/financial-services-and-banking/)

Investments and Investment Advisory (/topics/investments-and-investment-advisory/)

Legal Services (/topics/legal-services/)

State and Local Government (/topics/state-and-local-government/)

Banking and Finance Laws (/topics/banking-and-finance-laws/)

Bankruptcy (/topics/bankruptcy/) Regulations (/topics/regulations/)

Trusts and Estates (/topics/trusts-and-estates/)

Trending Stories

1 **Buffalo Law Student Dies From Suicide, Family Establishes Mental Health Fund (https://www.law.com/newyorklawjournal/2019/07/03/buf law-student-dies-from-suicide-family-establishes-mental-health-fund/)**

NEW YORK LAW JOURNAL (/NEWYORKLAWJOURNAL/)

2 **Human Court Reporters Cannot Be Replaced (https://www.law.com/njlawjournal/2019/07/05/human-court-reporters-cannot-be-replaced/)**

NEW JERSEY LAW JOURNAL (/NJLAWJOURNAL/)

3 **What Happened After This Big Law Attorney Told the World About His Depression (https://www.law.com/americanlawyer/2019/07/07/what-happened-after-this-big-law-attorney-told-the-world-about-his-depression/)**

THE AMERICAN LAWYER (/AMERICANLAWYER/)

4 **Court Rips 'Legal Artifice' in Kasowitz Firm's Megabillions Whistleblower Case (https://www.law.com/americanlawyer/2019/07/08/court-rips-legal-artifice-in-kasowitz-firms-megabillions-whistleblower-case/)**