

**Death of Debtor Requires the Filing of Motion for Continued Administration
Following Death of Debtor to advise the Court and all Parties of the death
and of the Desire to continue the Case under Bankruptcy Rule 1016**

14-60759 Robertson: Facts: The Debtor passed away on 4/3/16. The attorney for the Debtor filed her Motion to Waive Compliance with Local Bankruptcy Rule 4004(c) in that it was impossible for the Debtor to complete the statement and certification required of debtors in order to receive their discharge. In reviewing the Docket, the Court noted that nothing was ever filed with the Court advising the Court of the Debtor's death and the desire of the heirs to continue the bankruptcy case. After the Debtor's death, two Motions to Modify were filed and approved as well as a Motion for Approval of Mortgage Loan Modification. The only reference to the Debtor's death was a notation on the budget filed in support of the Motions to Modify. The Court, after a degree of hesitance, granted the Motion.

Issues: (1) Should the Debtor's death been brought to the Court's attention? Yes. Upon the death or incompetency of a debtor in a 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 as far as possible as though the death or incompetency had not occurred." Bankruptcy Rule 1016 (emphasis added). The Court must make the determination whether further administration is possible and if such is in the best interest of the parties. The Trustee and creditors are also entitled to notice that the debtor has died. **In such cases, a Motion for Continued Case Administration Following Death of Debtor should be filed with the Court. This Motion will be filed under 14 days' negative notice and served on the matrix. The notice of the Debtor's death as well as request for authority to proceed with case administration under Rule 1016 will be contained in this Motion. A new event code for filing this Motion has been created and included under the Motions/Applications for e-filing.**

(2) Did the Debtor's attorney have any authority to file the Motions to Modify and the Motion for Approval of Mortgage Loan Modification? No. The attorney's client passed away. While the Debtor's widow authorized the filing of the subsequent Motions, the widow was a non-filing spouse and was not otherwise a party to this bankruptcy.

Trustee's Comments: If the debtor passes away during the pendency of the case and the co-debtor/heirs want to continue the case under Bankruptcy Rule 1016, the debtor's attorney should file with the Court a **Motion for Continued Case Administration Following Death of Debtor** putting the Court, Trustee, and the Creditors on notice of the bankruptcy. Generally, the Trustee will not oppose such a Motion in a jointly filed case where the prosecution of the case appears to be feasible while proceeding with the surviving Co-Debtor. Generally, the Trustee will oppose such a Motion with a single debtor where the death occurred prior to confirmation of the proposed Plan. Finally, the Trustee will make a case by case determination with a single debtor where the death occurred after the confirmation of the proposed Plan. The Trustee, in appropriate cases, will file a Motion to Dismiss the bankruptcy after the death of the debtor.