

The Nuts & Bolts of Chapter 13

Melissa A. Caouette, Moderator

Office of Carl F. Bekofske, Chapter 13 Trustee; Flint, Mich.

Kimberly A. Bedigian

Stevenson & Bullock, P.L.C.; Southfield, Mich.

Adam J. Reatherford

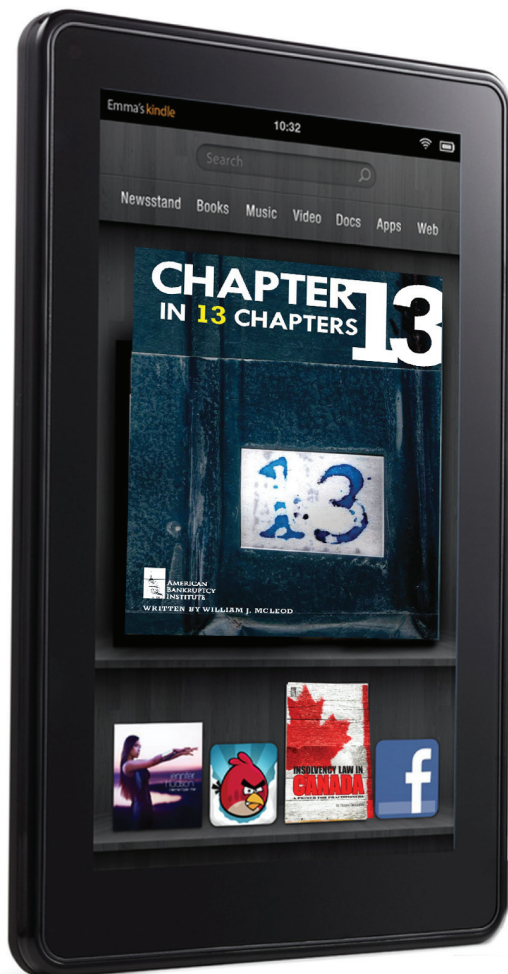
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NEW ATTORNEYS' TRACK
THE NUTS & BOLTS OF CHAPTER 13

Melissa A. Caouette
Office of Carl L. Bekofske, Chapter 13 Trustee
Flint, Michigan

Adam Jonathan Reatherford
Trott & Trott, P.C.
Farmington Hills, Michigan

Kimberly Bedigian
Stevenson & Bullock, P.L.C.
Southfield, Michigan

I. CONFIRMATION OF THE PLAN

A. ELIGIBILITY

11 U.S.C. § 109(e) provides:

Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$383,175.00 and noncontingent, liquidated, secured debts of less than \$1,149,525.00, or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than \$383,175.00 and noncontingent, liquidated, secured debts of less than \$1,149,525.00 may a debtor under Chapter 13 of this title.

In re Pearson, 773 F.2d 751 (6th Cir. 1985) Chapter 13 eligibility should normally be determined by the debtor's schedules checking only to see if the schedules were made in good faith and proof beyond the schedules is considered only if there is evidence of bad faith by the debtor.

In re Kwiatkowski, 486 B.R. 409 (Bankr. E.D. Mich. 2013) Debtor scheduled an unsecured deficiency obligation stemming from a pre-petition foreclosure as unknown when the debtor knew the deficiency was at least \$250,000.00. The Court determined that scheduling the debt in that manner was done in an effort to conceal eligibility which constituted in bad faith.

In re Nowakowski, 404 B.R. 789 (Bank. M.D. Pa. 2009) Court can look beyond the scheduled debt in order to determine debtor's eligibility when there is evidence of a lack of good faith in the preparation of the schedules.

In re Frederick, 2011 WL 5908957 (Bankr. E.D. Mich. 2011) Applying *In re Pearson*, 772 F.2d 751 (6th Cir. 1985) the bankruptcy court held that eligibility is determined by looking to schedules, if filed in good faith at the time of filing.

In re Hargrove, 465 B.R. 507 (Bankr. E.D. Ark. 2011) Without evidence of bad faith, eligibility was determined by schedules. Here debtors remained eligible even though the debt was scheduled in the principal amount without considering the interest that had accrued.

In re Holland, 293 B.R. 425, 429 (Bankr. N.D. Ohio 2002) "if directly confronted with the issue, the Sixth Circuit would not, in determining a debtors

Chapter 13 eligibility divide an undersecured debt into its respective secured and unsecured parts.”

B. GOOD FAITH

In order for a Chapter 13 Plan to be confirmed, the plan must comply with all of the provisions of Chapter 13.

11 U.S.C. § 1325(a) provides in part:

- (1) the plan complies with the provision of the chapter and with the other applicable provision of this title; ...
- (3) the plan has been proposed in good faith and not by any means forbidden by law; ...
- (7) the action of the debtor in filing the petition was in good faith....

In re Alt, 305 F.3d 413 (6th Cir. 2002) Good faith determinations are based on the totality of the circumstances. To determine whether a plan was proposed in good faith, courts have developed a list of factors to examine, including the debtor’s income; (2) the debtor’s living expenses; (3) the debtor’s attorney’s fees; (4) the expected duration of the Chapter 13 plan; (5) the sincerity with which the debtor has petitioned for relief under Chapter 13; (6) the debtor’s potential for future earning; (7) any special circumstances, such as unusually high medical expenses; (8) the frequency with which the debtor has sought relief before in bankruptcy; (9) the circumstances under which the debt was incurred; (10) the amount of payment offered by debtor as indicative of the debtor’s sincerity to repay the debt; (11) the burden which administration would place on the trustee; (12) the statutorily-mandated policy that bankruptcy provisions be construed liberally in favor of the debtor.

See also:

In re Barrett, 964 F.2d 588 (6th Cir. 1992) Good faith is determined by looking at the totality of the circumstances.

In re Okoreeh-Baah, 836 F.2d 1030 (6th Cir. 1998) There is no single test for good faith.

In re Caldwell, 895 F.2d 1123 (6th Cir. 1998) the Sixth Circuit has determined a twelve-part test to determine whether a debtor's Chapter 13 plan is proposed in good faith.

In re Girdaukas, 92 B.R. 373, 377 (Bankr. E.D. Wis. 1988) The party who seeks a discharge under Chapter 13 bears the burden of proving good faith.

C. FEASIBILITY

11 U.S.C. §1325(a)(6) provides that a debtor must be able to make all payments under the plan and comply with the plan.

In re Nosker, 267 B.R. 555 (Bankr. S.D. Ohio 2001) [The feasibility] confirmation criteria requires debtors to establish and courts to find, considering all the circumstances, that there is a reasonable likelihood of success of plan completion, and that debtors will be able to comply with all plan terms. [The feasibility] test requires the court to find that the debtor will be able to make all payments under the plan and to comply with the plan. (internal cites omitted).

In re Nesbit, 2008 WL 8664762 at *5 (1st Cir. B.A.P. 2008) (unpublished) “[T]he debtors ability to fund the plan payments comes solely from family contributions in the amount of \$2,300.00 per month. Many bankruptcy courts have held that unsubstantiated expectations of financial contributions from third parties are insufficient to meet the feasibility requirement of 11 U.S.C. §1325.”

In re Norwood, 178 B.R. 683 (Bankr. E.D. Pa. 1995) Contributions provided to the debtor “as needed” were not sufficiently stable or regular. It is incumbent on the debtor to satisfactorily establish that the contributions are sufficiently stable and regular to enable the debtor to make payments under the plan.

In re Gallagher, 2012 WL 2900477 (Bankr. C.D. Cal. 2012) Proposed plan was not feasible as debtor had insufficient available disposable income required to cure mortgage arrearage.

In re Stanley, 441 B.R. 37 (Bankr. M.D. N.C. 2010) Proposed plan was not feasible due to the known fact that the non-filing spouse's unemployment benefits would cease in two months, as such debtor would be unable to fund the plan.

In re Lynch, 2009 WL 1955748 (Bankr. E.D. N.Y. 2009) Debtor's plan was dependent upon the sale of real property. Debtor failed to provide specifics on prospects of sale and value. The court determined that the proposed plan was not feasible.

II. LOAN MODIFICATIONS

Loan modifications have become a more common part of Chapter 13 practice and can be sought before or after confirmation.

A. HOW TO APPLY

1. Because the application process can vary depending on the servicer and investor, contact the lender's local counsel to discuss the details of the application procedure.
2. If the lender has not retained local counsel, contact the lender's loss mitigation department for information on how to apply.
3. The Debtor will be required to complete any application forms required by the lender and will have to provide financial documentation generally including evidence of income, bank statements, an IRS 4506T form, utility bills, a hardship letter, and a profit and loss breakdown if self-employed.
4. When the Debtor has submitted all required documentation, the lender will review the loan for a possible modification.

B. WHAT TO DO IF APPROVED

If the Debtor is approved, it is likely that the modification will require court approval. Generally, loan modifications can be approved via a motion or, if all interested parties consent, by stipulation.

C. HELPFUL RESOURCE

www.makinghomeaffordable.gov – includes descriptions of a number of programs available as well as videos explaining how to complete some of the commonly required application forms.

III. POST-CONFIRMATION PLAN MODIFICATIONS

11 U.S.C. §1329 provides:

(a) At any time after confirmation of the plan but before the completion of payments under such plan, the plan may be modified, upon request of the debtor, the trustee, or the holder of an allowed unsecured claim, to –

(1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;

(2) extend or reduce the time for such payments;

(3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim other than under the plan; or

(4) reduce amounts to be paid under the plan by the actual amount expended by the debtor to purchase health insurance of the debtor (and for any dependent of the debtor if such dependent does not otherwise have health insurance coverage)

(b) (1) Section 1322(a), 1322(b) and 1323(c) and the requirements of section 1325(a) of this title apply to any modification under subsection (a) of this section.

(2) The plan as modified becomes the plan unless, after notice and hearing, such modification is disapproved.

(c) A plan modified under this section may not provide for payments over a period that expires after the applicable commitment period under section 1325(b)(1)(B) under the original confirmed plan was due, unless the court for cause, approves a longer period, but the court may not approve a period that expires after five years after such time.

E.D. Mich. LBR 3015-1(b)

The debtor shall attach to the plan:

- (1) An analysis of what creditors would receive if the case were a chapter 7 case; and
- (2) A completed form “Chapter 13 Worksheet,” available on the court’s website, estimating the anticipated dividend to unsecured creditors if the debtor successfully forms the plan.

E.D. Mich. LBR 3015-2(b)

Post Confirmation Plan Modification. The proponent of a post-confirmation plan modification shall serve a copy of the plan modification on all parties in interest that are adversely affected by the plan modification and file a certificate of service. If the plan modification is proposed by the debtor, the debtor shall file, prior to or contemporaneously with the modified plan, all amended schedules that are necessary for approval of the plan modification. If the plan modification adversely affects any party in interest, the proponent shall attach to the plan modification the papers required under Local Bankruptcy Rule 3015-1(b). The plan modification shall become effective when the proponent files a certification that no timely objections was filed or when the court enters an order overruling or resolving all objections.

Guideline 6 [E.D. Mich. LBR]

Chapter 13 Post Confirmation Plan Motions to Excuse Plan Payments or Tax Refunds in Chapter 13 Cases and Plan Modifications

Because post-confirmation motions to excuse plan payments or tax refunds in chapter 13 cases are actually plan modifications, for which the national and local rules establish a procedure, the Court will no longer consider such motions. Upon the filing of such a post-confirmation motion, the Court will no longer consider such motions. Upon the filing of such a post-confirmation motion, the Court will enter an order denying it without prejudice to the debtor’s right to file a proposed plan modification.

Any such proposed plan modification shall:

- (1) Be served as required by Fed. R. Bankr. P. 3015(g);
- (2) Comply with LBR 3015-2(b);

- (3) State with specificity the impact of the proposed plan modification on each class of creditors;
- (4) Be accompanied by a form “Notice of Deadline to Object to Chapter 13 Plan Modification,” available on the Court’s website; and
- (5) Be filed in ECF using the event, “Chapter 13 Post Confirmation Plan Modification.”

If a timely objection is filed, the Court will set the matter for hearing and give notice of the hearing to the debtor, the proponent of the plan modification, the trustee and any objecting parties.

Federal Rule of Bankruptcy Procedure 3015(g) provides that

A request to modify a plan pursuant to §1329 of the Code shall identify the proponent and shall be filed together with the proposed modification. The debtor, the trustee, and all creditors shall receive not less than 21 days’ notice by mail of the time fixed for filing objections and, if an objection is filed, the hearing to consider the proposed modification . . . A copy of the Notice shall be transmitted to the United States Trustee. A copy of the proposed modification, or summary thereof, shall be included with the notice. . . . Any objection to the proposed modification shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States Trustee. An objection to a proposed modification is governed by Rule 9014.

In re Brown, 219 B.R. 191 (6th Cir. B.A.P.) The Sixth Circuit Bankruptcy Appellate Panel held that §1329 does not contain a requirement for unanticipated or substantial change in circumstance as a prerequisite to modification; although courts may properly consider a change in circumstances in the exercise of their discretion.

In re Nolan, 232 F.3d 528 (6th Cir. 2000) In Nolan debtors proposed a post-confirmation plan modification to surrender secured creditor’s vehicle and reclassify as unsecured. The Sixth Circuit Court of Appeals determined that the reclassification was not permitted under §1329 and would contravene the res judicata effect of the confirmed plan – can’t change the classification of the claim when collateral is voluntarily surrendered.

In re Adkins, 425 F.3d 296 (6th Cir. 2005) The Sixth Circuit Court of Appeals determined that even when debtors actions, such as a default, provide cause for lifting the automatic stay the debtor was not permitted to reclassify the deficiency balance resulting from the sale of the underlying repossessed collateral - can’t change the classification of the claim even when collateral is subject to an involuntary lift of stay.

In re Parmenter, 527 F.3d 606 (6th Cir. 2008) The Sixth Circuit Court of Appeals determined that §1329 permits modifications related to the amount and timing of payments, but it does not allow the creation of a new obligation that would trump other claimants. In *Parmenter*, the terms of the confirmed plan assumed a vehicle lease to be paid directly by the debtors. After confirmation debtors' defaulted on the lease and creditor obtained lift of stay. Creditor filed an administrative expense claim seeking to be paid via the Trustee. The court held that if creditor wants to obtain any additional relief against the debtors it must do so outside the plan.

In re Storey, 392 B.R. 266 (6th Cir. B.A.P. 2008) The Sixth Circuit Bankruptcy Appellate Panel explained that since its decision in *Brown*, the Sixth Circuit Court of Appeals has addressed plan modifications on three separate occasions and in each instance has reiterated the necessity of only permitting modifications that strictly fall within the parameters of §1329 due in part to the binding effect of confirmation under §1327. Although there is no changed circumstances precondition to modification, §1327 precludes modification of a confirmed plan under §1329 to address issues that were or could have been decided at the time the plan was originally confirmed. The practical impact of this conclusion is that modification under §1329(a) will be limited to matters that arise post-confirmation.

In re Welch, 1998 WL773999 (6th Cir. Oct. 11, 1998) (unpublished) “Section 1327(a) has been consistently interpreted as barring the re-litigation of any issue which was decided or which could have been decided at confirmation. A leading bankruptcy authority has said that “the order confirming a chapter 13 plan represents a binding determination of the rights and liability of the parties as ordained by the plan,” that it is quite clear that the binding effect extends to any issue actually litigated by the parties and any issue necessarily determined by the confirmation order and that the binding effect of the plan also bars [a party] from raising, at the time of a motion for modification of the plan, issues that could have been raised at the time of the plan was originally confirmed.”

In re Barbosa, 235 F.3d 31 (1st Cir. 2000) The court determined that §1329 imposes no threshold requirement for a change in circumstance but takes into account the finality of confirmation orders under §1327 and §1330. Parties requesting modification of Chapter 13 plans must advance a legitimate reason for doing so, and they must strictly conform with the three limited circumstances set forth in §1329.

In re Arnold, 869 F.2d 240 (4th Cir. 1989) Although an unanticipated and substantial change in circumstance is required for creditor's post confirmation plan modification, *res judicata* presents no bar to an upward adjustment of debtor's monthly payments to take into account the substantial improvement in debtor's financial condition.

In re Witkowski, 16 F.3d 739 (7th Cir. 1994) The mechanism to change the binding effect of §1327 is §1329 which allows for modifications. The Court explained that “if the drafters of the code intended for a confirmation hearing to have res judicata effect, there would be little or no reason for §1329.” No change in circumstance required.

IV. WHAT’S NEXT WHEN THE DEBTOR PASSES AWAY

It may seem strange for a Chapter 13 case to continue without the debtor, but the debtor’s death does not require the case to be dismissed. Federal Rule of Bankruptcy Procedure 1016 specifically addresses the death of a debtor.

Death ... 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 [an] individual’s debt adjustment case is pending under ... 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.

FED. R. BANKR. P. 1016.

A. DISMISSAL

If the debtor passes away and continuing the case is not in the best interest of the parties, the case may be dismissed. Contact the Chapter 13 trustee for the case to find out whether the trustee will file a motion to dismiss.

Dismissal seems to be the obvious result for a case where the debtor has passed away, but if further administration is in the best interest of the parties, the Chapter 13 case can continue to discharge.

B. FURTHER ADMINISTRATION

If further administration is in the best interest of the parties, there are three options: someone (or the debtor’s estate) can continue to make the required chapter 13 plan payments, modify the plan, or seek a hardship discharge. A potential fourth option is conversion.

1. Continue Making Payments

The Court received notice of Mrs. Fuller’s passing in *In re Fuller*, 2010 Bankr. LEXIS 1092 (Bankr. D. Colo. March 11, 2010). Mr. Fuller, the

joint debtor, continued to make all of the required plan payments (the plan was confirmed before Mrs. Fuller passed away). After the plan payments were completed, the Court determined that “Mrs. Fuller’s liability should be discharged in this chapter 13 proceeding to the same extent as if she had remained living throughout the pendency of the case”. *Id.* at *3.

If the plan has not been confirmed, “it may be difficult or impossible to prove the conditions for confirmation—for example, that the debtor will be able to make the payments” required by the plan to meet the feasibility requirement of 11 U.S.C. §1325(a)(6). KEITH M. LUNDIN & WILLIAM H. BROWN, CHAPTER 13 BANKRUPTCY, 4TH EDITION, §269.1, ¶ 2, Sec. Rev. June 9, 2004, www.ch13online.com. (See section I.C., above, for a discussion of feasibility.)

2. Plan Modification

A little more than two years after the Chapter 13 Plan was confirmed in *In re Perkins*, 381 B.R. 530 (Bankr. S.D. Ill. 2007), the debtor passed away. A few months later, an amended plan was filed, continuing payments at the same rate, but reducing the length of the plan from 60 to 54 months. The trustee raised the possibility that creditors may be better off pursuing state court remedies, but did not present any evidence to support the contention. The trustee’s strongest argument was that “the Court cannot grant a discharge when the Debtor is deceased because there is no debtor to whom the discharge would be granted”. *Id.* at 532. The *Perkins* Court did a thorough analysis and found no conflict between 11 U.S.C. §1328(a) (which provides that “as soon as practicable after completion by the debtor of all payments under the plan...the court shall grant the debtor a discharge...”) and Rule 1016 (which allows a case to proceed following the death of a debtor).

3. Hardship Discharge

11 U.S.C. §1328(b) provides that any time after confirmation and after Notice and Hearing, the Court may grant a discharge to a debtor that has not completed Plan payments only if:

- (1) the debtor's failure to complete such payments is due to circumstances 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...; and
- (3) modification of the plan under section 1329 of this title is not practicable.

11 U.S.C. §1328(b).

The death of a debtor would certainly satisfy the first and third elements; whether the second element is satisfied is case-specific. The Court in *In re Sales*, 2006 Bankr. LEXIS 2373 (Bankr. N.D. Ohio Sept. 15, 2006) determined that a hardship discharge was included in "further administration" as contemplated in Rule 1016, but denied the motion on the facts of this case because further administration of the Chapter 13 case was not in the best interest of the parties.

See also *In re Perkins*, 381 B.R. 530, 532 (Bankr. S.D. Ill. 2007).

4. Conversion

Rule 1016 is clear that the death of a debtor does not prevent a Chapter 7 case from continuing. There is no requirement that further administration of the Chapter 7 case must be in the best interest of the parties.

The Court in *In re Hancock*, 2009 Bankr. LEXIS 2174 (Bankr. N.D. Okla. Aug. 10, 2009) "assumed without deciding" that conversion from Chapter 13 to Chapter 7 is authorized by Rule 1016, but found that the debtor's attorney "failed to establish that it was in the best interests of the parties to proceed...by converting the case to Chapter 7." *Id.* at *8. However, the *Hancock* Court also noted that

Courts that have considered [whether Rule 1016 authorizes the conversion of a Chapter 13 case to Chapter 7 as "further administration"] have held that the administrator of a decedent's estate may not convert a Chapter 13 case to a

case under Chapter 7 because only a "debtor" may convert a case (11 U.S.C. § 1306(a)); a case may not be converted to Chapter 7 unless the debtor may be a "debtor" under the new chapter (11 U.S.C. § 1307(g)); only a "person" may be a "debtor" (11 U.S.C. § 109(a)); and a decedent's estate is not a "person" (see 11 U.S.C. §101(41)). See, e.g., *In re Spiser*, 232 B.R. 669, 673 (Bankr. N.D. Tex. 1999); *In re Jarrett*, 19 B.R. 413, 414 (Bankr. M.D. N.C. 1982). See also *Goerg v. Parungao (In re Goerg)*, 844 F.2d 1562, 1566 (11th Cir. 1988) (probate estate is not a "person" eligible to file bankruptcy case); *In re Roberts*, 2005 Bankr. LEXIS 2280, 2005 [WL] 3108224 (Bankr. D. Md. 2005); *In re Whiteside*, 64 B.R. 99, 100-01 (Bankr. E.D. Cal. 1986) (same); *In re Patterson*, 64 B.R. 807 (Bankr. W.D. Tex. 1986) (same).

Hancock at *8-9. Also see *In re Sales*, 2006 Bankr. LEXIS 2373 (Bankr. N.D. Ohio Sept. 15, 2006) at *6.

5. Personal Financial Management Course (Debtor Education) and the Domestic Support Obligation (DSO) Certification

If further administration of the Chapter 13 case is in the best interest of the parties, and the case can continue without a plan modification, there are still 2 more hurdles to discharge: debtor education and the DSO certification. (See section V., below, for a discussion of the debtor's duties related to discharge.)

The requirement to complete the personal financial management course "shall not apply with respect to a debtor who is a person described in section 109(h)(4)...." 11 U.S.C. §1328(g)(2).

Section 109(h)(4) describes such a person as

[A] debtor whom the court determines, after notice and hearing, is unable to complete [the personal financial management course] because of incapacity, disability, or active military duty in a military combat zone. For the purposes of this paragraph, incapacity means that the debtor is impaired by reason of mental illness or mental deficiency so that he is incapable of realizing and making rational decisions with respect to his financial responsibilities; and "disability" means that the debtor is so

physically impaired as to be unable, after reasonable effort,
to participate in an in person, telephone, or Internet briefing

....

11 U.S.C. §109(h)(4).

In *White v Glennville Bank (In re White)*, 2011 Bankr. LEXIS 3034 (Bankr. S.D. Ga. May 16, 2011), the debtor passed away during the Chapter 13 case. The trustee and Glennville Bank were aware of the debtor's passing. After all plan payments were completed, the debtor's counsel filed a suggestion of death of the debtor. The case was promptly dismissed. The Court denied the motion to reinstate the case because the debtor did not complete the debtor education course and therefore had not met the requirements for discharge. The *White* Court found that "although [11 U.S.C. §1328(g)] provides by reference to 11 U.S.C. § 109(h) certain very limited exceptions under which a debtor may be excused from this requirement, death is not among those exceptions." *Id.* at *5.

But see *In re Robles*, 2007 Bankr. LEXIS 4239 (Bankr. W.D. Tex. Dec. 13, 2007), waiving the debtor education course requirement in a Chapter 7 case: "The debtor in this case clearly suffers from the ultimate disability in terms of his ability to participate in an in person, telephone, or Internet briefing (or instructional course on financial management) -- the debtor is dead." *Id.* at *5. Also, *In re Henderson*, 2008 Bankr. LEXIS 1490 (Bankr. W.D. Tex. April 9, 2008), waiving the debtor education course requirement in a chapter 7 case; "If the debtor is 'disabled' within the meaning of section 109(h)(4), then the debtor is excused from the requirement. As this court noted in *Robles*, death would appear to qualify as a disability within the meaning of the statute's language ('... so physically impaired as to be unable, after reasonable effort, to participate in an in person, telephone, or Internet briefing ...'). It is odd to think of death as a 'mere disability', but the statutory language (added in 2005) seems not to have anticipated the possibility that debtor might die after filing but before completing the mandated instructional course. Still, the intent of Congress seems obvious at least from its context, if not from its express wording." *Id.* at *2.

The debtors in *In re Runfola*, 2011 Bankr. LEXIS 5072 (Bankr. E.D. Va. Dec. 22, 2011) completed their debtor education course and their Chapter 13 plan before they passed away. The only requirement remaining was the certification required by 11 U.S.C. §1328. The Court found that when

all of the requirements for discharge had been met and all that remained was for the debtors to certify the same, waiving the local rule requiring the certification served the best interest of all parties.

V. THE FINISH LINE (DISCHARGE)

The Chapter 13 discharge statute is found at 11 U.S.C. §1328.

(a) ...[A]s soon as practicable after completion by the debtor of all payments under the plan, and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid, ... the court shall grant the debtor a discharge of all debts provide for by the plan....

...

(g)(1) The court shall not grant a discharge under this section to a debtor unless after filing a petition the debtor has completed an instructional course concerning personal financial management described in section 111.

11 U.S.C. §1328.

Rule 4004-1 Domestic Support Certification in a Chapter 13 Case

In a chapter 13 case filed on or after October 17, 2005, within 28 days after the trustee files a notice of the completion of all payments under the plan under Local Rule 2015-5(a), the debtor shall file a completed form “Certification Regarding Domestic Support Obligations,” available on the court’s website. This certification shall state whether the debtor has been the subject of any domestic support obligation and if so, whether the debtor is current in that obligation as required by § 1328(a) to obtain a discharge. The debtor shall serve the certification on any domestic support obligation creditor and file a certificate of service. If the debtor fails to file this certification, the case may be closed without a discharge, without

prejudice to the debtor's right to file a motion to reopen under Local Rule 5010-1 to file the certification in order to obtain a discharge.

E.D. Mich. LBR 4004-1.

DEBTOR'S DUTIES

A. PERSONAL FINANCIAL MANAGEMENT COURSE (DEBTOR EDUCATION)

In order to receive a discharge, the debtor must "file a statement of completion of a course concerning personal financial management...." FED. R. BANKR. P. 1007(b)(7). See also 11 U.S.C. §1328(g) and Official Form 23. Rule 1007(c) establishes the deadline: "no later than the date when the last payment was made by the debtor as required by the plan or the filing of a motion for a discharge under...§1328(b) of the Code."

B. DSO (DOMESTIC SUPPORT OBLIGATION) CERTIFICATION

Section 1328(a) requires the debtor to file a certification that his or her domestic support obligation payments are current in order to receive a discharge. The debtor is required to file the DSO certification regardless of whether he or she had a DSO; in other words, a debtor without a DSO will certify that he or she did not have a DSO when the case was filed and has not been obligated to make domestic support payments since the case was filed. In a joint case, each debtor must file a separate certification. In the Eastern District of Michigan, the local DSO certification form must be filed "within 28 days after a trustee files a notice of the completion of all payments under the plan under Local Rule 2015-5(a)." E.D. Mich, LBR 4004-1. See Official Form B283 and in the Eastern District of Michigan, E.D. Mich. LBR 4004-1.