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### A Decedent's Estate is Barred from Filing Bankruptcy

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## A Decedent's Estate is Barred from Filing Bankruptcy

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### Introduction

A “person” that “resides or has a domicile, a place of business, or property in the United States, or a municipality” is generally eligible to be a debtor in a bankruptcy case under title 11 of the United States Code (the “Bankruptcy Code”).<sup>1</sup> The definition of a “person” under the Bankruptcy Code includes “individual, partnership, and corporation.”<sup>2</sup> Courts, however, have interpreted the definition of “person” broadly to include groups not explicitly mentioned in the statute.<sup>3</sup> Consequently, a decedent’s estate, which is not expressly identified as a person under the Bankruptcy Code, may nevertheless argue that it is eligible to be a debtor.<sup>4</sup>

This article explores why courts have concluded that a decedent’s estate is ineligible to be a debtor. Part I analyzes the arguments made in support of a decedent’s estate being eligible to be a debtor and summarizes bankruptcy courts’ rationales for rejecting these arguments. Part II reviews the congressional reports and secondary sources and policy reasons that courts look to when concluding that a decedent’s estate is not a “person.” Part III explains the limited

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<sup>1</sup> 11 U.S.C. § 109 (2018).

<sup>2</sup> *Id.* at § 101(41).

<sup>3</sup> See *In re Lane Cnty. Sheriff's Officers Ass'n*, 16 B.R. 190, 191 (Bankr. D. Or. 1981) (holding a labor organization, though not explicitly mentioned under 11 U.S.C. § 101, met the general criteria of “corporation,” and was therefore allowed to file for bankruptcy as a debtor).

<sup>4</sup> See *In re Est. of Taplin, Ernest Von*, 641 B.R. 236, 240 (Bankr. E.D. Cal. 2022).

circumstances in which a court has previously held a decedent's estate eligible for relief under the Bankruptcy Code. Finally, Part IV of this article examines the risk incurred by counsel who files for bankruptcy on behalf of a decedent's estate.

## Discussion

### I. Courts Roundly Reject Attempts by Decedent's Estates to File for Bankruptcy

#### a. Arguments for a Decedent's Estate Qualifying for Bankruptcy Eligibility

Section 109 of the Bankruptcy Code is silent on whether a decedent's estate is a "person" that is eligible to file for bankruptcy.<sup>5</sup> Counsel for decedent estates, however, have argued that estates are a "person" eligible to be a debtor under the Bankruptcy Code for two principal reasons. First, a decedent's estate is purportedly akin to a liquidating trust, which is a form of business trust that falls within the scope of a corporation as defined under the Bankruptcy Code. "The term 'person' includes individual, partnership, and corporation . . ."<sup>6</sup> "The term 'corporation' includes . . . business trust."<sup>7</sup> However, the Bankruptcy Code does not define the term business trust.<sup>8</sup> Courts have held that a business trust is a trust "engaged in business even if its sole activity is liquidation."<sup>9</sup> Decedent estates have argued that they fall under this definition of business trust.<sup>10</sup> As discussed below, the courts have rejected that argument.

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<sup>5</sup> See 11 U.S.C. § 109.

<sup>6</sup> 11 U.S.C. § 101(41).

<sup>7</sup> 11 U.S.C. § 101(9)(A)(v).

<sup>8</sup> *In re Tru Block Concrete Prod.*, 27 B.R. 486, 488 (Bankr. S.D. Cal. 1983) ("[n]either the Code nor the legislative history define the term business trust.").

<sup>9</sup> See *id.* at 490 (holding furthermore that "a trust is a business trust if the trustee lacks sufficient control.").

<sup>10</sup> See *In re Est. of Whiteside*, 64 B.R. 99, 101 (Bankr. E.D. Cal. 1986) ("Debtor mistakenly relies on [*In re Tru Block*] to support its contention that a probate estate can be a debtor."); see also *id.* at 101 ("debtor argues that because it is also "doing business", it too qualifies as a business trust").

Other decedent estates have asserted that they are eligible to be debtors under the Bankruptcy Code because state probate courts have authorized their respective administrators to file for bankruptcy.<sup>11</sup> As also discussed below, the courts have rejected that argument as well.

*b. Courts Have Concluded that a Decedent's Estate is not Eligible to be a Debtor*

Courts have rejected arguments made by counsel that a decedent's estate is a business trust and eligible to be a debtor in bankruptcy.<sup>12</sup> In *Whiteside*, the court distinguished between a business trust and a decedent's estate.<sup>13</sup> The court held that to fall under the definition of a business trust, an entity must, at one point, have taken the form of a corporation, or be its successor.<sup>14</sup> A decedent's estate could never have been a corporation beforehand. Therefore, the court held that it was not a business trust, and the argument lacked merit.<sup>15</sup>

Courts have also rejected arguments that state courts can circumvent the Bankruptcy Code and allow any entity, regardless of qualifications, to be eligible for bankruptcy.<sup>16</sup> In *In re Estate of Taplin*, the bankruptcy court examined the California Probate Code § 8544, which had no explicit regulation that stated it could give an administrator the power to file for bankruptcy on behalf of a decedent's estate, but did allow probate courts to allot to administrators "other powers that are conferred by order of the court".<sup>17</sup> The court held that because there was no

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<sup>11</sup> See *In re Est. of Taplin*, 641 B.R. 236, 240 (Bankr. E.D. Cal. 2022) ("[Counsel] asserted that state probate courts have power to authorize filing a chapter 11 case regardless of the terms of the Bankruptcy Code.").

<sup>12</sup> See *In re Est. of Whiteside*, 64 B.R. at 101.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* ("[A] fundamental distinction between the debtor in *Tru Block* and the debtor in the case at bench . . . [is that] the debtor was the successor of a valid California corporation, and it was engaged in the liquidation of a corporation.").

<sup>15</sup> *Id.* ("In the case at bench, there is no prior California corporation. Rather, there is a probate estate.").

<sup>16</sup> See *In re Estate of Taplin*, 641 B.R. at 243–244.

<sup>17</sup> See *id.*; CAL. PROB. CODE § 8544(b)(3) ("the special administrator has the power to do all of the following on order of the court . . . Exercise other powers that are conferred by order of the court.").

explicit granting of a power to override the Bankruptcy Code by the California legislature to the California probate state court, this argument would not be considered.<sup>18</sup>

Moreover, the court found that “[n]o state legislature and no state court has power to change bankruptcy eligibility rules prescribed by Congress under its exclusive constitutional power.”<sup>19</sup> Thus, a state court or state law could not override the Bankruptcy Code and authorize a decedent’s estate to file for bankruptcy.

## **II. Legislative Intent and Policy Rationale Support the Courts’ Conclusion that a Decedent’s Estate is not Eligible to be a Debtor**

### *a. Courts have Cited to Congressional and Senate Reports, as well as Various Secondary Sources, in Support of why Decedent’s Estates Cannot be Debtors*

Courts are not necessarily restricted from interpreting “corporations” and “persons,” as defined in sections 101 and 109 of the Bankruptcy Code, to include a decedent’s estate, in which case such entities could be a debtor in bankruptcy. Courts have expanded the definition to include entities such as liquidating trusts, despite that Congress did not explicitly permit such entities to declare bankruptcy.<sup>20</sup> However, courts have cited to several outside sources as to why they will not expand the definition of persons or corporations as defined in the Bankruptcy Code to include a decedent’s estate.<sup>21</sup>

Congressional reports reveal that the legislative intent behind the Bankruptcy Code was to exclude a decedent’s estate from a person eligible to be a debtor under the Bankruptcy Code.<sup>22</sup>

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<sup>18</sup> *In re Est. of Taplin*, Ernest Von, 641 B.R. at 243–244.

<sup>19</sup> *Id.*; *see also* *Siegel v. Fitzgerald*, 142 S. Ct. 1770, 1779 (2022) (“the Court has interpreted the [Bankruptcy] Clause to have ‘granted plenary power to Congress over the whole subject of ‘bankruptcies’ . . . .”); U. S. CONST., art. I, § 8, cl. 4 (“The Congress shall have Power . . . to establish a uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States . . . .”).

<sup>20</sup> *See In re Tru Block Concrete Prod.*, 27 B.R. 486, 488 (Bankr. S.D. Cal. 1983).

<sup>21</sup> *See In re Est. of Taplin*, 641 B.R. at 236; *In re Est. of Whiteside*, 64 B.R. 99 (Bankr. E.D. Cal. 1986); *In re Est. of Grassman*, 91 B.R. 928, 930 (Bankr. D. Or. 1988).

<sup>22</sup> S. REP. NO. 95-989, at 25 (1978) (“The definition [of person] does not include an estate or a trust, which are included only in the definition of ‘entity’ in proposed 11 U.S.C. 101(14).”); H.R. REP. NO. 95-595, at 275 (1977) (beginning discussion of decedent estates with “Tradition has lumped bankruptcy estates together with decedents’ estates” before explicitly distinguishing between decedent estates and estates in bankruptcy).

Therefore, Courts have been reluctant to find that a decedent's estate is eligible to be a debtor in the face of these Congressional reports.<sup>23</sup> Courts have specifically cited to these reports when holding that "person" under section 101 does not encompass a decedent's estate.<sup>24</sup>

In addition, Courts often cite to secondary sources when refusing to grant eligibility to decedent estates. For example, in *In re Estate of Taplin*, the court quoted Collier on Bankruptcy when firmly rejecting counsel's argument.<sup>25</sup> Also, the Supreme Court has cited to law review articles when holding that federal courts have no jurisdiction to administer a decedent's estate, even in matters of bankruptcy.<sup>26</sup> Another Supreme Court decision cited the 18<sup>th</sup> century English Court of Chancery when holding federal courts lack jurisdiction over probate matters.<sup>27</sup>

*b. Policy Supports Excluding Decedent's Estates from Being a Debtor*

Courts have also explained their statutory and policy rationale when discussing their refusal to expand "person" to include a decedent's estate.<sup>28</sup>

The statutory rationale courts have used revolves around the classification of an estate as an "entity," which "person" also falls under.<sup>29</sup> While every "person" is an "entity," courts have

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<sup>23</sup> See generally *In re Est. of Whiteside*, 64 B.R. at 101 ("That this restriction [of decedent estates from bankruptcy eligibility] has been continued in the Code is supported by both the legislative history . . . and case law.").

<sup>24</sup> See generally *In re Tru Block Concrete*, 27 B.R. at 488 ("Congress recognized that Section 101(30), in defining person, did not include an estate or a trust which were included only in the definition of entity in Section 101(14).") (citing S.REP. NO. 95-989 (1978), H.R. REP. NO. 95-595 (1977)).

<sup>25</sup> *In re Est. of Taplin*, 641 B.R. at 242 ("It is important to note that the definition of 'person' does not include a probate estate or nonbusiness trust") (citing 2 COLLIER ON BANKRUPTCY ¶ 101.41); see also *In re Est. of Hiller*, 240 F. Supp. 504, 504 (N.D. Cal. 1965) (citing to Collier on Bankruptcy and Cowans Bankruptcy Law and Practice when holding "the estate of a deceased person may not file a voluntary petition in bankruptcy").

<sup>26</sup> *Marshall v. Marshall*, 547 U.S. 293, 308 (2006) (citing Peter Nicolas, *Fighting the Probate Mafia: A Dissection of the Probate Exception to Federal Court Jurisdiction*, 74 S. CAL. L.REV. 1479 (2001)); but see James E. Pfander & Michael J.T. Downey, *In Search of the Probate Exception*, 67 VAND L. REV. 1533 (2014) (arguing that although Article III powers could conceivably allow federal courts to hear probate matters, the Court in *Marshall* nevertheless held federal courts had "no statutory diversity jurisdiction to probate.").

<sup>27</sup> *Markham v. Allen*, 326 U.S. 490, 494 (1946) ("a federal court has no jurisdiction to probate a will or administer an estate, the reason being that the equity jurisdiction . . . which is that of the English Court of Chancery in 1789, did not extend to probate matters").

<sup>28</sup> See *In re Est. of Grassman*, 91 B.R. 928 (Bankr. D. Or. 1988); *In re Est. of Taplin*, 641 B.R. at 236.

<sup>29</sup> *In re Est. of Grassman*, 91 B.R. 928, 930 (Bankr. D. Or. 1988) ("an estate or a trust . . . are included only in the definition of 'entity'"); *In re Est. of Whiteside*, 64 B.R. 99, 100 (Bankr. E.D. Cal. 1986) ("Section 101(14) which defines 'entity' to include 'person, estate, trust, and governmental unit.'").

emphasized that not every “entity” is a “person.”<sup>30</sup> This interpretation has allowed courts to assert Congress’ intent to bar decedent estates can be gleaned from the statute itself, and not solely from congressional reports.

The court in *In re Whiteside* expanded on the statutory rationale, highlighting the definition of entity in section 101(14) as “*person, estate, trust, and governmental unit,*” (emphasis added).<sup>31</sup> The separation of “person” from “estate,” the court held, was enough grammatical distinction between the two categories that it evidenced an intent for estates—including a decedent’s estate—to not fall under the category of “person.”<sup>32</sup> Thus, the *Whiteside* court concluded that a decedent’s estate was not eligible to be a debtor.<sup>33</sup>

The court in *In re Estate of Taplin* relied on the policy rationale when holding a decedent’s estate should not be accommodated as a debtor. Probate codes are state codes, and a decedent’s estate naturally falls under probate codes for regulation.<sup>34</sup> There is a federal deference to states to administer over a decedent’s estate in “probate exception[s]”.<sup>35</sup> The outlining of these specific probate exceptions implies that in other matters concerning probate, federal courts may intervene. However, although the court in *In re Estate of Taplin* held state courts do not have exclusive jurisdiction—and never once ceded that states have exclusive administration over a decedent’s estate—it explicitly made a point of not overreaching.<sup>36</sup> The court stated “Bankruptcy Code honors the probate exception to federal jurisdiction by making decedent's estates ineligible

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<sup>30</sup> *In re Est. of Grassman*, 91 B.R. at 930; *see also In re Est. of Taplin*, 641 B.R. at 242 (“The limiting principle follows from the inclusion in § 101(15) of ‘estate’ as a subset ‘entity’ but not ‘person.’”).

<sup>31</sup> *In re Est. of Whiteside*, 64 B.R. at 100.

<sup>32</sup> *Id.* (“If estate had already been included in the definition of person, Congress would have seen no need to include it separately in its definition of entity.”).

<sup>33</sup> *Id.*

<sup>34</sup> *In re Est. of Taplin*, 641 B.R. 236, 244 (Bankr. E.D. Cal. 2022) (speaking to California probate code in particular, the court stated “The jurisdiction of California probate courts over property of a decedent's estate is also *in rem* [jurisdiction].”).

<sup>35</sup> *Id.* (listing the probate exceptions as “(1) probate or annulment of a will; (2) administration of a probate estate; and (3) disposition of property that is in the in rem custody of a state probate court.”) (citing *Marshall v. Marshall*, S. Ct. 1735, 1746, 164 (2006)).

<sup>36</sup> *Id.* at 245.

to be debtors under any chapter of the Bankruptcy Code.”<sup>37</sup> Therefore, the refusal to expand 11 U.S.C. § 101 to include decedent estates is necessary to preserve and honor the distinction between state and federal powers.

### **III. A Decedent’s Estate that is a Debtor Outside the US may be Entitled to Relief under the Bankruptcy Code**

Courts have rejected allowing a decedent’s estate to file for bankruptcy in nearly all circumstances. Further, courts have even sanctioned counsel and client when such a filing occurs. Nonetheless, in *In re Goerg*, the court granted relief to a decedent’s estate.<sup>38</sup> However, the facts in the *In re Goerg* filing are distinguishable from the majority of attempted filings by decedents’ estates. In *In re Goerg*, the decedent estate had been permitted by a German probate court to file for bankruptcy.<sup>39</sup> The court held that although a “person” as defined by section 101 does not normally include a decedent’s estate, the unique situation of the debtor in this case—having been granted powers by an outside foreign court—would be an exception.<sup>40</sup>

It should be noted that the decedent’s estate in this instance was not seeking to be a debtor under the Bankruptcy Code. Instead, it was seeking ancillary relief in connection with a foreign proceeding as permitted under former section 304 of the Bankruptcy Code, which has been replaced by Chapter 15.<sup>41</sup> Congressional reports issued in connection with the enactment of Chapter 15 support the principle that courts should use case law under section 304 when interpreting issues under chapter 15.<sup>42</sup> Therefore, it is possible that a court may grant relief under Chapter 15 to a decedent’s estate that is a debtor outside the US.

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<sup>37</sup> *Id.*

<sup>38</sup> *Goerg v. Parungao (In re Goerg)*, 844 F.2d 1562 (11th Cir. 1988).

<sup>39</sup> *Id.* at 1563 (highlighting that “the Higher Court of Appeals specifically held that “in addition to the domestic property, the Debtor's bankrupt estate shall further include the Debtor's property located abroad”).

<sup>40</sup> *Id.* at 1568.

<sup>41</sup> *Id.* at 1563.

<sup>42</sup> H.R. REP. NO. 109–31, at 145 (2005).



#### IV. Consequences for Improper Filing Include Dismissal and Sanctions

##### a. *Reasons that Counsel may File for Bankruptcy on Behalf of a Decedent's Estate*

Counsel have filed for bankruptcy on behalf of a decedent's estate for numerous reasons. Probate codes in many states have statutes in place for the collection and liquidation of assets, but the Bankruptcy Code offers certain powers that can be attractive.<sup>43</sup> For example, a decedent's estate could benefit from the automatic stay pursuant to section 362 of the Bankruptcy Code, which would enjoin, among other things, foreclosures.<sup>44</sup> Moreover, a debtor in bankruptcy may die, and the heirs to the estate may benefit from the bankruptcy case.<sup>45</sup> Indeed, in the situation where a decedent was the sole owner of a corporation, a bankruptcy filing on behalf of the estate may allow sufficient time to wind down and liquidate the corporation.<sup>46</sup>

##### b. *Despite the Attractive Nature of Bankruptcy, Recent Case Law Serves as a Warning to Estate Counsel*

A court will dismiss a bankruptcy case filed by a decedent's estate.<sup>47</sup> In early cases, courts would dismiss the petition without threat of sanction to either counsel or clients. However, more recently, courts have sanctioned counsel and clients.<sup>48</sup> Federal Rules of Bankruptcy Procedure allows bankruptcy courts to sanction "attorneys, law firms, or parties" if the court believes it is warranted for "effective deterrence."<sup>49</sup> The court in *In re Estate of Taplin* noted "the recent popularity of improper decedent's estate cases" which lacked merit, and which it wished to

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<sup>43</sup> See generally *In re Est. of Whiteside*, 64 B.R. 99, 102 (Bankr. E.D. Cal. 1986) ("The law of California provides statutory guidelines for the administration of probate estates and this law shall govern the collection and liquidation of assets").

<sup>44</sup> See *id.* at 240.

<sup>45</sup> See *In re Est. of Grassman*, 91 B.R. 928, 929 (Bankr. D. Or. 1988) ("the debtor urges this court to treat the debtor as a partnership since the heirs are operating the decedent's farm as a family").

<sup>46</sup> *In re Est. of Whiteside*, 64 B.R. at 100 ("The debtor asserts that the filing of the bankruptcy action was necessary to provide for sufficient time to wind down and liquidate . . .").

<sup>47</sup> See *In re Est. of Grassman*, 91 B.R. 928; *In re Est. of Hiller*, 240 F. Supp. 504 (Bankr. N.D. Cal. 1965); *In re Est. of Patterson*, 64 B.R. 807 (Bankr. W.D. Tex. 1986); *In re Brown's Est.*, 16 B.R. 128 (Bankr. D.D.C. 1981).

<sup>48</sup> See *In re Est. of Taplin*, 641 B.R. 236, 251 (Bankr. E.D. Cal. 2022).

<sup>49</sup> FED. R. BANKR. P. 9011.

deter.<sup>50</sup> Counsel in this case had participated in over 2,000 previous bankruptcy cases, which the court also noted when it sanctioned the attorney \$10,000, and the party \$2,000.<sup>51</sup> Courts are especially strict in matters where experienced bankruptcy attorneys attempt improper bankruptcy filings.<sup>52</sup> *In re Estate of Taplin* has established a precedent where sanctions will be placed against both attorney and client to enforce the consensus that a decedent's estate filing for bankruptcy is an "illegitimate bankruptcy strategy."<sup>53</sup>

### **Conclusion**

Bankruptcy courts are generally unwilling to allow a decedent estate to file for bankruptcy. Courts shy away from finding that these estates are eligible to be debtors and often mention that Congress could allow a decedent's estate to file for bankruptcy.<sup>54</sup> Until existing law is changed, counsel that files a bankruptcy petition on behalf of a decedent's estate may be subject to sanctions.

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<sup>50</sup> *In re Est. of Taplin* 641 B.R. at 252 ("The parade of seventeen decedent's estate cases in this judicial district since November 2019 reveals that there are 'others similarly situated' in need of deterrence").

<sup>51</sup> *Id.* at 253.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *See generally* Goerg v. Parungao (*In re Goerg*), 844 F.2d 1562, 1565 (11th Cir. 1988) ("we note that Congress has the power to create bankruptcy jurisdiction over the administration of decedents' estates.").