

IMPORTANT NOTICE REGARDING CHANGES IN BANKRUPTCY PROOF OF CLAIM REQUIREMENTS

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As part of our ongoing service of notifying clients of changes in the law which may affect them, this is to advise that, effective December 1, 2011, a new Proof of Claim form will be required in all bankruptcy cases. It adds a number of significant additional requirements, particularly for mortgage holders, who will now may have to do more work in not only filing the Proofs of Claim themselves, but also in filing up to three additional attachments which may now be required for certain creditors. We have the various required forms available for anyone who wants them and would be happy to assist in walking through the process.

A summary of the changes follows:

1. A new section - 3b - is added to the form to allow the reporting of a "uniform claim identifier." This identifier, consisting of 24 characters, is used by some creditors to facilitate automated receipt, distribution, and posting of payments made by means of electronic funds transfers by chapter 13 trustees. Creditors are not required to use the uniform claim identifier.
2. In section 4, language has been added to clarify that the annual interest rate that must be reported for a secured claim at the rate applicable at the time the bankruptcy case was filed. Checkboxes for indicating whether the interest rate is fixed or variable are also added.
3. Section 7 of the form is revised to clarify that, consistent with Rule 3001(c), writings supporting a claim or evidencing perfection of a security interest (appropriately redacted) must be attached to the proof of claim. If the documents are not available, the filer must provide an explanation for their absence. The instructions for this section of the form explain that summaries of supporting documents may be attached only in addition to the documents themselves. While the language of this Section is not substantially different from the language in the present form, the comments make clear that the supporting documents must be attached.
4. Section 8 - the date and signature box - has revised to include a declaration that is intended to impress upon the filer the duty of care that must be exercised in filing a proof of claim. The individual who completes the form must sign it. By doing so, he or she is now declaring under penalty of perjury that the information provided "is true and correct to the best of my knowledge, information and reasonable belief." The prior form contained no such declaration. That individual must also provide identifying information - name; title; company; and, if not already provided, mailing address, telephone number, and email address - and indicate by checking the appropriate box the basis on which he or she is filing the proof of claim (for example, as creditor or authorized agent for the creditor).

When a servicing agent files a proof of claim on behalf of a creditor, the individual completing the form must sign it and must provide his or her own name, as well as the name of the company that is the servicing agent. If the claim is being filed by an "authorized agent", it will be required that a power of attorney be attached "if any". In the event that an attorney files a Proof of Claim on behalf of a client that turns out to contain false information, a court will presumably analyze the degree of investigation undertaken by the attorney. Recent case law has addressed this very issue, especially in the case of "foreclosure mills" which have filed Proofs of Claim on behalf of clients which have involved virtually no interaction between the client and attorney. See for example, *In re Taylor*, 655 F.3d 274 (3rd Cir., 2011).

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5. For mortgage holders, there is now required a "Mortgage Proof of Claim Attachment", which contains 3 sections. The first is a statement of principal and interest due as of the petition date. This includes, for variable rate loans, a breakdown of each interest rate, the period of time during which each such rate was in effect and the amount due for each rate. The second section is a statement of prepetition fees, expenses and charges, which includes a breakdown of 14 separate enumerated categories. The third section is a statement of the amount necessary to cure the default as of the petition date, which also must be broken down in specific detail. To the extent that the installment payment includes an escrow deposit, there must be attached to the proof of claim form an escrow account statement prepared as of the petition date.
6. Two new additional requirements deal with creditors holding a mortgage on the debtor's principal residence. For these creditors, there may be two additional forms required. The first is whenever there is going to be a change in the amount of the monthly payment, in which case creditors are now required to file a "Notice of Mortgage Payment Change". This must be filed at least 21 days before any new payment is due. It consists of three sections, namely an analysis of any escrow account payment adjustments, an analysis of any mortgage payment adjustments and an analysis of any other payment adjustments.
7. The second additional form which may be required to be filed by creditors holding a mortgage on the debtor's principal residence is a "Notice of Postpetition Fees, Expenses and Charges." This must also be filed as a supplement to a Proof of Claim. This form must be filed within 180 days after the relevant postpetition charges are incurred. Both of these forms must be served on the debtor, the debtor's counsel and the Trustee.

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