

# Claims Issues in Consumer Cases

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## Claims

### Filing Claims

To receive payment from the bankruptcy estate in most consumer bankruptcy cases, a creditor must file a proof of claim in the bankruptcy case of the debtor. Creditors paid directly by a debtor pursuant to a confirmed Chapter 13 plan also should file proofs of claim. 11 USC 101(5) defines a *claim* as a

(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or

(B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

“A proof of claim is a written statement setting forth a creditor’s claim.” Bankruptcy Rule 3001(a).

A proof of claim is deemed allowed for purposes of payment unless a party in interest objects to the allowance of the proof of claim. 11 USC 502(a). In other words, filing a proof of claim is *prima facie* evidence of the validity of the claim.

Bankruptcy Rule 3002(c) provides that a creditor must file a proof of claim within 90 days of the first date set for the meeting of creditors. A governmental unit is allowed 180 days and may file a motion to extend the time period. An untimely claim is subject to disallowance upon objection of a party of interest. 11 USC §502(b)(9). The proof of claim (form 4.1), Official Bankruptcy Form B10, is available online at:

[http://www.uscourts.gov/rules/BK\\_Forms\\_1207/B\\_010\\_1207f.pdf](http://www.uscourts.gov/rules/BK_Forms_1207/B_010_1207f.pdf).

and is also attached as an appendix to these materials.

The claim is calculated as of the petition date for the purposes of filing a proof of claim. In other words, if your client has a priority or secured claim, make sure that you complete those sections of the form. Include as much information as you can – account numbers, creditor addresses, collateral information (for secured claims). Also attach as much supporting documentation as you are able to gather. Even though the claim is deemed allowed, the more information that is included with it lessens the likelihood of a claim objection.

In general, unsecured claims may not include post-petition interest. 11 U.S.C. §502(b)(2). Bankruptcy Rule 3001(c) states when a claim is based on a written document, a copy of that document must be attached to the proof of claim. For the most common types of secured claims, a copy of the contract underlying the debt and evidence of perfection of the security interest should comprise the attachment. *See* Bankruptcy Rule 3001(d). For unsecured claims, a copy of a judgment, billing statements, a contract, or, at the very least, an account summary should be attached to the proof of claim. **A claim that complies with the Bankruptcy**

**Rules concerning claims is prima facie evidence of the validity and amount of the claim.** Bankruptcy Rule 3001(f).

The bottom of the claim form contains space for the person filing the proof of claim to sign and date the claim. A person signing a proof of claim should ensure that the information in the claim is accurate and has been filed for a proper purpose. As noted in the disclaimer below the signature line, significant penalties can arise from filing a fraudulent proof of claim. Moreover, an attorney who improperly signs a proof of claim is subject to sanctions under Bankruptcy Rule 9011.

### **Simple and Obvious Claim Tips**

- **Read all sections of the form, and complete all that are applicable to your client's claim.**
- Include the name and correct address of the claimant, as well as your address
- Make sure to include an amount
- Do not state that your claim is secured or priority if it is not – this will only draw an objection and does not gain your client any advantage
- Enclose as much supporting documentation as possible. The more documentation, the less likely an objection to the claim will be filed.
- Do not sign the claim form yourself – make sure your client signs it.
- **File the claim as soon as possible – there is no advantage to delay**

### **Claims – Chapter 7 vs. Chapter 13**

The overwhelming majority of Chapter 7 cases are “no-asset” cases, meaning there are no nonexempt assets for the trustee to administer for the benefit of creditors. Traditionally, creditors in a Chapter 7 case are directed not to file a proof of claim until the court provides a notice advising creditors to do so. Such a notice indicates that the trustee has recovered assets, and creditors are directed to file a proof of claim by the deadline contained in the notice. Unless a creditor files a proof of claim, that creditor does not have an “allowed claim.”

When the trustee locates nonexempt assets to administer for the benefit of creditors, the court will provide notice to creditors directing them to file a proof of claim. The notice indicates that the trustee has recovered assets and that creditors should file a proof of claim with the court, and any other entity in the notice, within the deadline contained in the notice, in order to receive a distribution. It is imperative, when you receive such a notice, that you promptly prepare and file a proof of claim, otherwise you (or your client) will not share in any distribution. If your district requires claims be filed in accordance with the timing requirements of Bankruptcy Rule 3002(c), then an unsecured creditor must file the claim not later than 90 days after the first date set for the section 341 meeting of creditors.

When preparing the proof of claim, remember that a writing on which a claim is based must accompany the proof of claim. Bankruptcy Rule 3001(c). Courts have held that, except for a claim for a security interest in the debtor's property, a claim and its writings fulfill informational, not evidentiary, purposes only. Although it is possible that submitting a summary

of your claim will be sufficient, courts are becoming less and less likely to accept such summaries. Best practice, therefore, suggests that a creditor should submit as much evidence of the debt owed and the underlying agreement as possible.

The filing of the proof of claim is governed by Bankruptcy Rule 5005, which states that the claim must be filed with the clerk in the district where the case is pending and served on the U.S. Trustee. Additionally, as many courts now require, an unsecured creditor will more likely than not file the claim electronically via ECF. You should refer to the district's local rules for additional filing, timing, and service requirements.

A correctly and timely filed proof of claim is crucial to ensure payment from the trustee in every Chapter 13 case. Often, confirmed plans will provide that a creditor's claim will be paid in accordance with that creditor's filed proof of claim. Accordingly, any error contained within the proof of claim could significantly alter or delay distributions to the creditor.

The proof of claim is a powerful tool in a Chapter 13 bankruptcy. It not only provides a statement of the total debt through filing of the case but also provides an arrearage snapshot and information on future payments. A claim in a Chapter 13 case must detail all charges to the account, including past-due payments, late charges, inspection fees, tax and insurance advances, and attorney fees from foreclosure or prior bankruptcy actions. Additionally, the claim should include the creditor's preconfirmation attorney fees for the current case, if permitted by the loan documents. Where allowed, fees for the preparation and filing of the claim, objections to confirmation, appearance, and attendance at hearings should be added to the total debt and arrears claim as an individual line item. The listing of fees in both the total debt and arrears claims is not double-dipping. This is because the trustee only pays the arrears portion of the claim in full, plus the ongoing or postpetition monthly payment under the contract. The trustee does not generally, within a three-to-five year plan, pay the mortgage in full.

### **Claims Objections and Burdens of Proof**

A filed claim is deemed allowed unless objected to. Generally, objections to claims will be filed if the amount is incorrect, if it includes interest or other penalty charges that are improper, if the claim indicates that it is a priority or secured claim when it is not, if supporting documentation is not attached, or if the claim was filed for harassment purposes, to continue pre-bankruptcy dispute, or as a result of pre-bankruptcy litigation.

Once a claim object is filed, the burden of proof shifts to the objecting party to present facts and evidence sufficient to substantiate the objection and disprove the presumption of the claim's validity. Such evidence must be of a probative force equal to that of the allegations of the creditor's proof of claim. If the objecting party succeeds in overcoming the prima facie effect of the proof of claim, the ultimate burden of persuasion then rests on the claimant. *Matter of Texlon*, 28 B.R. 525 (Bankr. S.D.N.Y. 1983). However, if a proof of claim is not filed in accordance with the rules, the creditor does not benefit from any evidentiary presumption of validity or amount.

Although an “insufficient documentation” objection used to be viewed as a “weak” objection, several recent cases, especially in the context of credit card claims, have upheld debtor’s and trustee’s objections to claims on the basis that a creditor did not attach sufficient documentation of either the claim amount or of the ownership of the claim. Increasingly, in the face of insufficient documentation challenges, creditors are preemptively filing notices of assignments, affidavits of assignment of claims, more detailed account summaries and additional supporting documentation.

Some jurisdictions have specific rules regarding the prosecution of claims objections. For example, in the Eastern District of Michigan, LBR 3007-1 (EDM) provides the framework within which objections to claim must be filed and litigated. The debtor’s attorney initiates the process by obtaining a hearing date and serving the creditor and its counsel with the objection and the hearing date at the same time. The objection should be specific enough for the creditor to thoroughly understand exactly what is being objected to so that the creditor can conduct appropriate research. The hearing date chosen by the debtor must also be at least 30 days from the service date. Then, if within 10 days of the hearing date the creditor has not filed a written response, the hearing may be cancelled and the objection sustained. If a response is filed then the hearing will take place as scheduled.

**TAX CLAIMS IN CONSUMER CASES**

1. 11 U.S.C. §1308. This section is entirely a creation of BAPCPA. Section 1308(a) states requirements for filing of all tax returns required to be filed **by the debtor** under applicable nonbankruptcy law for all *taxable periods ending during the four year period ending on the date of the filing of the petition*. Note first that this provision requires the filing of returns the debtor was required to file, not returns necessary to determine the debtor's full tax liabilities. For example, if the debtor was a responsible person in a corporation which has unpaid Form 941 employment tax liabilities, the debtor will be liable for the Trust Fund Recovery tax for unpaid employee's FICA and withheld taxes, a liability which is both a priority claim under 11 U.S.C. §507(a)(8)© and a debt excepted from discharge by 11 U.S.C. §1328(a)(2), and thus a debt which must be determined. If that corporation hasn't filed the necessary Form 941 returns, §1308(a) does not require the debtor to do so, because the corporate entity, and not the debtor, is required to file those returns. Note next that the trigger is the close of a tax period, not when the tax return is due or when payment of the tax is due. For example, for most individuals, the tax period for a federal income tax return is a calendar year, so a tax period begins just after midnight on January 1, 2007 and ends at midnight on December 31, 2007, even though the return isn't due until April 15/16 or later if an extension is filed, and the tax is due to be paid in full by that same date. Thus, if an individual files a Chapter 13 petition on March 31, 2008, the four year period extends back to March 31, 2004. The 2003 return isn't within the scope of §1308(a); the returns for 2004, 2005, 2006 and 2007 are. Note also that there is no exception for any type of tax return, be it federal, state, local, or for the planet Zoofarb. Note also the obvious— this provision is limited to debtors in Chapter 13 cases. Interestingly, for those debtors who didn't file returns who were caught by the IRS (or other taxing authority), and for whom "substitutes for returns" were prepared by the IRS [26 U.S.C. §6020(b)] or other taxing authority, or who entered into a written stipulation to a judgment or order of a nonbankruptcy court – the tax return filing requirement of §1308(a) is satisfied for the tax periods to which the substituted return or stipulation relates, without the debtor having to in addition file a return for that period; 11 U.S.C. §1308(c).

2. 11 U.S.C. §1328(a)(2). This BAPCPA amendment significantly broadened the exception from discharge for tax liabilities in Chapter 13 cases, adding the types of tax liabilities designated in sections 507(a)(8)© ["trust fund" taxes], 523(a)(1)(B) and 523(a)(1)© [fraudulent return or willful attempt in any manner to evade or defeat tax liability]. Probably the most significant change is that made by adding §§523(a)(1)(B)(I) with respect to returns which were due but were unfiled as of the date of the petition, and §523(a)(1)(B)(ii) with respect to certain late filed returns. These amendments closed loopholes in Chapter 13 which allowed noncompliant taxpayers to many times avoid any tax liability for taxes which would not have been discharged in a Chapter 7. Note that the consequence of a nondischargeable tax liability is that interest, computed under the nonbankruptcy law applicable to the particular tax liability, continues to accrue on the liability despite the filing of bankruptcy. Moreover, under 11 U.S.C. 1322(b)(10), interest accruing after the petition date on nondischargeable debts may be paid under a Chapter 13 plan "only to the extent that the debtor has disposable income available to pay such interest after making provision for full payment of all allowed claims", which probably means in the jumbled BAPCPA vernacular that interest can only be paid after all other allowed

claims have been paid in full. In terms of claims, the “UNASSESSED- NO RETURN” in an IRS claim translates into a nondischargeable tax liability WITHOUT REGARD TO the tax period’s priority under 11 U.S.C. §507(a)(8).

3. 11 U.S.C. §511. If interest or a present value discount factor is required to be paid on a tax claim (e.g., an allowed secured claim of a taxing authority by virtue of a tax lien) or on an administrative expense tax, the rate of interest is determined under applicable nonbankruptcy law. This means that the rate of interest charged generally to delinquent taxpayers is the rate of interest in a bankruptcy case. With respect to a confirmed plan, the rate is determined as of the calendar month in which the plan is confirmed.

4. 11 U.S.C. §507(a)(8), last paragraph. The statutory provision for tolling of the priority periods for taxes due to the taxing authority’s inability to collect taxes for various reasons, particularly the pendency of a bankruptcy case by operation of the prepetition and post-confirmation stays. The effect may be to add significant periods of time to the computation of priority periods under certain provisions of §507(a)(8), and with respect to nondischargeable tax penalties in Chapter 7 cases under 11 U.S.C. §523(a)(7). **When a debtor has previously been involved in a bankruptcy case and has tax liabilities which will be subject to a case to be filed, make sure to refer to this section to time the filing of the petition. Query: How is the tolling period actually computed, given the ambiguity in the statutory language?**

5. 11 U.S.C. §505(a)(2)(c). This section closed a device used by debtors to redetermine real property and other ad valorem (a tax determined by application of a tax rate to the value of the subject of taxation) tax liabilities as imposed by a taxing authority, in which the tax liability had not been timely challenged by the debtor under an available nonbankruptcy procedure. The court can no longer determine the tax under §505(a) “if the applicable period for contesting or redetermining that amount under any law (other than a bankruptcy law) has expired.” Thus, if the debtor failed to timely contest the tax liability under an applicable nonbankruptcy review procedure, use of §505(a) is precluded.

6. Secured claims of taxing authorities. Tax liens that do not arise from judicial proceedings are statutory liens; 11 U.S.C. §545 applies to them; 11 U.S.C. §522(f) doesn’t. The statutory lien of the IRS, which arises by operation of law under 26 U.S.C. §6321, attaches to everything that walks, crawls, flies or swims in which a taxpayer/debtor has a property interest (determined in most instances under state law) – whether it’s breathing or not. Most state’s tax liens are as broad (Indiana’s is). The levy exemptions applicable to IRS collections by levy are not applicable in most jurisdictions to determine the IRS’ secured claim under 11 U.S.C. §506(a). Pursuant to 26 U.S.C. §6323, the IRS lien will be primed by certain other liens, such as judicial liens, real property tax liens, and mortgages and UCC Article 9 security interests – which are perfected under applicable state law against a BFP before the recording of the lien. A few fun facts to know and tell about the IRS tax lien:

- a. Ties go to the IRS with respect to liens perfected on the same date as the IRS lien is recorded; *United States v. McDermott*, 113 S.Ct. 1526 (1993).
- b. A tax lien with respect to taxes owed only by one spouse attaches to that spouse’s individual interest in property held as tenancy by the entirety, regardless of how

state law treats liens of other creditors under identical circumstances; *United States v. Craft*, 122 S.Ct. 1414 (2002) {decided with respect to Michigan law}. How one values the IRS' secured claim in this context isn't well settled.

- c. The IRS will take the position that in the context of competing lien priorities between the IRS tax lien and a state tax lien [imposed by other than a judicial determination with an effective resulting judgment lien] – e.g, in Indiana an Indiana Department of Revenue lien arising from the recording of a tax warrant, when the IRS notice of lien has been effectively recorded, the **date of assessment** of the federal tax liability (not the date of recording of the IRS notice of lien) is the material date for determining the priority of its secured claim vis-a-vis that of the state lien. Thus, assuming a properly perfected IRS lien recorded on January 1, 2010 with respect to a tax assessed on January 1, 2009 vis-a-vis a tax warrant recorded on January 2, 2009, the IRS will assert priority, essentially on the theory that there is no provision of 26 U.S.C. §6323 which allows the state non-judicial tax lien to prime the IRS' 26 U.S.C. §6321 lien.
- d. Federal tax liens (and probably state tax liens too) survive discharge of the tax subject to the lien in a Chapter 7 case, at least to the extent of the value of the property with respect to which the lien has priority on the date of the Chapter 7 petition.

7. Federal tax liens and retirement plans. In *Patterson v. Shumate*, 112 S.Ct. 2242 (1992), the United States Supreme Court determined that retirement plans protected by spendthrift provisions enforceable under applicable law are excepted from property of a bankruptcy estate by operation of § 541(c)(2). Turning to 11 U.S.C. § 506(a)(1), in order to have an allowed secured claim, a creditor must be “secured by a lien on property in which the estate has an interest . . .”. The federal tax lien provided by 26 U.S.C. § 6321 is a voracious, omnivorous creature: it attaches to everything that walks, crawls, flies or swims – whether edible or not – in which a taxpayer has a property interest as determined by state law. It is beyond question – under any jurisdiction you can choose – that courts have held or will hold that the Internal Revenue Service's tax lien attaches to a taxpayer's interest in retirement plans, whether or not they contain a spendthrift provision. The tax lien attaches to the actual interest of the taxpayer in the plan, and not just to future distributions to the taxpayer under the terms of the plan. Let's say that your debtor has stashed away money in a plan subject to the exclusion of § 541(c)(2), but that the IRS has enforceable tax liens with respect to tax liabilities of your client.<sup>1</sup>

The issue is of some significance in a circumstance in which the amount of a debtor's federal tax liabilities subject to federal tax liens exceeds the value of property of the estate, but the debtor has retirement plans or other plans which are subjected to the federal tax lien. To the

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<sup>1</sup> Whether or not state taxing authorities take the position that their liens also attach to these plans, in the same manner as does the lien of the IRS, is something you'll have to figure out for yourself. The author has yet to have the Indiana Department of Revenue express a concrete opinion on this issue, and no case which has presented this issue has been presented to him.

extent the liabilities secured by the lien on the plan are not paid during the pendency of the bankruptcy case, those liabilities will shoot out the back of the case after discharge; penalties and interest on that portion of the tax liabilities will have continued to accrue throughout the pendency of the case; and when the debtor emerges from bankruptcy he/she will still have a federal tax lien on his/her retirement plan.

The most obvious answer to the extent of the federal tax lien on property excepted under § 542(c)(2) is that the IRS has no allowed secured claim with respect to this property. That means that a debtor cannot provide for that claim under 11 U.S.C. § 1325(a)(5) in a Chapter 13 case at least, without consideration of discriminatory treatment of a creditor under 11 U.S.C. § 1322(a)(3).<sup>2</sup>

There is a split of authority on whether or not a tax liability in this circumstance constitutes an “allowed secured claim” under § 506(a), thereby making it subject to traditional treatment for allowed secured claims in a bankruptcy case. In *In re Lyons*, 148 B.R. 88 (Bankr. Dist. of Columbia 1992), the court determined that although for all other purposes and all other creditors, the debtor’s interest in property subject to § 542(c)(2) was not property of the estate and would not generate an allowed secured claim with respect to any other creditor, that was not true for the IRS in the context of a federal tax lien attaching to such property. The court determined as a result that the debtor’s Chapter 13 plan had to provide for treatment of the IRS’ claim with respect to the plan pursuant to 11 U.S.C. § 1325(a)(5). A good analysis of the contrary view appears in *In re Snyder*, 343 F.3d 1171 (9<sup>th</sup> Cir. 2003). In Internal Revenue Service Chief Counsel Advice (IRS CCN CC-2004-033, 2004 WL 3210765 (2004)), the Office of the Chief Counsel of the Internal Revenue Service stated that the Internal Revenue Service would no longer argue that the value of its allowed secured claim in a bankruptcy case included the value of property subject to § 541(c)(2). In Internal Revenue Service Chief Counsel Advice (IRS CCA-200634012, 2006 WL 2460482 (2006)), the Internal Revenue Service stated its position as to the continued accrual of tax liabilities with respect to assets not considered to be property of a bankruptcy estate which were yet subject to a federal tax lien. In Internal Revenue Service Chief Counsel Advice (IRS CCA-200926001, 2009 WL 1817825 (2009)), the Internal Revenue Service announced its position with respect to availability of levy with respect to vested interests in ERISA-qualified plans.

What to do, what to do! One can attempt to negotiate a deal with the Internal Revenue Service in which the portion of the tax liabilities secured by the retirement plan – otherwise not provided for as a secured claim – will be paid during the pendency of a bankruptcy case. One enterprising United States Attorney’s Office in conjunction with the Internal Revenue Service cut deals by allowing the payment of this portion of the tax liability to accrue interest at a rate determined to be a combination of the penalties and interest which would accrue during the

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<sup>2</sup> If the IRS truly has no allowed secured claim with respect to a portion of its tax liabilities, to the extent those tax liabilities are unsecured, the same treatment must be provided to the IRS as is provided to any other unsecured creditor. To the extent that the tax liabilities are priority claims under § 507(a)(8), then at least a portion of them can be paid as priority claims in the Chapter 13, but the residual amount of the secured claim will still shoot out the end of the case.

pendency of the bankruptcy case (then usually around 12%), and to allow that payment to be made during the pendency of the bankruptcy case, thus resulting in a situation where the pension plan emerged totally free of the tax lien at the conclusion of the bankruptcy case. The IRS presently does not appear to approve of such arrangements. Absent a deal with the IRS, and absent a determination under the *Lyons* rationale, this situation can be a disaster. The extent to which the Internal Revenue Service actually levies on a vested interest in a plan prior to disbursement of benefits under the plan to the taxpayer is unknown, but they always can and one should assume that they will.

8. Post-petition tax liabilities. As we all know, sometimes debtors incur income tax or other tax liabilities for tax periods ending after the date of the petition. Sometimes they forget to file returns for those periods, which has a consequence if the taxing authority so chooses: 11 U.S.C. §521(j), applicable to all Chapters, which allows a taxing authority to request dismissal/conversion of a case if the debtor fails to file a tax return which becomes due after the commencement of the case or to properly request an extension of time to file the return. Dismissal or conversion is mandatory if the debtor fails to file the return or obtain an extension within 90 days after the taxing authority files the request. Putting the foregoing aside, let's say that returns are filed, but the debtor has post-petition liabilities. 11 U.S.C. §1305(a)(1) provides a mechanism for the taxing authority to file a claim for such taxes (NOTE: only the taxing authority can file a 1305 claim— neither the debtor nor a trustee can file one). Taxing authorities sometimes shy away from using 1305 claims because of §1305(b) may preclude the accrual of interest and penalties on the claim if paid in full during the term of the plan. If nothing is done, the post-petition liability shoots out the back of the case as if the case had never been filed, with accruing interest and penalties in full bloom for the debtor to deal with after the case is closed. OOPS.

9. A valuable tool re ad valorem real property taxes, and an aside. In these troubled economic times, it is increasing unfortunately the case that homeowners are unable to pay real property taxes. If there's a mortgagee involved, many times the mortgagee will pay them and add the payment to the debtor's §1328(a)(1)/ §1322(b)(5) nondischargeable long term mortgage debt. But if there's no savior, the accrual of unpaid post-petition real property taxes leaves a debtor exposed to tax sales if the property of the Chapter 13 estate has vested in the debtor upon plan confirmation under 11 U.S.C. §1327(b): Section 362(a) does not preclude actions to impose or to enforce liens against *property of the debtor* with respect to **post-petition** debts – See, §§362(a)(3) and (4), which apply only to property of the estate. The tool? Provide in the plan, pursuant to §1327(b), that the property of the estate does not vest in the debtor upon confirmation. If there is then a failure to pay post-petition real property taxes, at least the taxing authority will be required to obtain relief from the stay to proceed with tax sale proceedings, a procedure which many may not undertake, and may allow for a negotiated repayment under the plan (recalling that only the taxing authority can file a 1305 claim for these taxes). The trade off is that disposition of pre-petition property during the pendency of the case will be subject to 11 U.S.C. §363 and must be done by court order. Be hereby notified that there is a Seventh Circuit case [*In re Heath*, 115 F3d 521, 524 (7<sup>th</sup> Circuit)] which opines in what is clearly *dicta* that non-revesting of property not “reasonably necessary to fulfill the plan” would be an abuse of the bankruptcy court's discretion... but it is *dicta*, and at least one court of which the author is aware includes a provision in all confirmation orders that property of the Chapter 13 estate does **not** re-vest in the debtor upon confirmation.

The aside? 11 U.S.C. §502(b)(3), which allows for disallowance of claims for “a tax assessed against property of the estate” if “such claim exceeds the value of the interest of the estate in such property”. There won’t be many properties which are underwater from the weight of a real property tax claim alone, but ..... maybe you’ll have one.

**CONSUMER CLAIMS FACT SCENARIO**

Nat and Sal file a Ch 13 case.  
It is a mortgage conduit case.  
The Trustee will make the mortgage payment.

Payment is \$1100 per month with \$5000 arrearage per Nat and Sal's estimation.

1. A. ABC Mortgage Co. fails to file a claim for the regular conduit payment.

What should Trustee do?

What should debtors do?

What should mortgage co do?

B. Trustee contacts Creditor attorney to file claim because he filed objection to confirmation which has been resolved. Attorney says mortgage client files claim and he will try to get it filed but no guarantees.

2. ABC Mortgage Co. finally files the conduit claim but it is for \$1250 to make up for an escrow shortage.

What should Trustee do?

What should debtors do?

What should mortgage co do?

3. ABC Mtg Co. files a proof of claim for the arrearage but it is \$7000 with a \$686 amount for late fees and \$300 for an appraisal. Nothing is itemized. They attach the mortgage and deed but not the note. It's unclear if the mortgage has been transferred.

What should Trustee do?

What should debtors do?

What should mortgage co do?

4. Nat and Sal apply for a Hamp mod. They are approved after six long months.

What should Trustee do?

What should debtors do?

What should mortgage co do?

4. Nat and Sal fail to make two payments to the Trustee.

What should Trustee do?

What should debtors do?

What should mortgage co do?

5. ABC Mtg Co. notifies the Trustee via mail that the monthly payment changed six months ago from \$1100 to \$1175. The plan and Local Rules (and Fed Rules in Dec. 2011) require that any change be filed.

What should Trustee do?

What should debtors do?

What should mortgage co do?

6. Nat and Sal complete their case. Trustee files motion to deem the mortgage current. Abc objects because there is escrow shortage. They attach the following chart.

EFFECTIVE	DESCRIPTION	ESCROW	DISBURSEMENT	TOTAL
7/15/2010	Escrow Balance A			
9/28/2010	Spread Payment	250.93	-2,336.76	
10/26/2010	Spread Payment	236.12		
10/27/2010	Spread Payment	250.93		
11/23/2010	Spread Payment	250.93		
11/23/2010	Spread Payment	250.93		
2/4/2011	Spread Payment	250.93		
2/4/2011	Spread Payment	250.93		
2/8/2011	Tax Escrow Disb.		-1,145.16	
3/1/2011	Spread Payment	250.93		
3/1/2011	Spread Payment	248.50		
	TOTAL	2,241.13	-3,481.92	1,240.79

What should Trustee do?

What should debtors do?

What should mortgage co do?

B 10 (Official Form 10) (04/10)

<b>UNITED STATES BANKRUPTCY COURT</b>		<b>PROOF OF CLAIM</b>
Name of Debtor: _____		Case Number: _____
NOTE: <i>This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.</i>		
Name of Creditor (the person or other entity to whom the debtor owes money or property): _____		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.  <b>Court Claim Number:</b> _____ <i>(If known)</i>  Filed on: _____
Name and address where notices should be sent: _____  Telephone number: _____		
Name and address where payment should be sent (if different from above): _____  Telephone number: _____		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.  <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
<b>1. Amount of Claim as of Date Case Filed:</b> \$ _____  If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.  If all or part of your claim is entitled to priority, complete item 5.  <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		<b>5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a).</b> <b>If any portion of your claim falls in one of the following categories, check the box and state the amount.</b>  Specify the priority of the claim.  <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).  <input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).  <input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).  <input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).  <input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).  <input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(____).  <b>Amount entitled to priority:</b>  \$ _____  <i>*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</i>
<b>2. Basis for Claim:</b> _____ (See instruction #2 on reverse side.)		
<b>3. Last four digits of any number by which creditor identifies debtor:</b> _____  <b>3a. Debtor may have scheduled account as:</b> _____ (See instruction #3a on reverse side.)		
<b>4. Secured Claim</b> (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.  <b>Nature of property or right of setoff:</b> <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <b>Describe:</b>  <b>Value of Property:</b> \$ _____ <b>Annual Interest Rate</b> _____ %  <b>Amount of arrearage and other charges as of time case filed included in secured claim,</b> <b>if any:</b> \$ _____ <b>Basis for perfection:</b> _____  <b>Amount of Secured Claim:</b> \$ _____ <b>Amount Unsecured:</b> \$ _____		
<b>6. Credits:</b> The amount of all payments on this claim has been credited for the purpose of making this proof of claim.  <b>7. Documents:</b> Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. <i>(See instruction 7 and definition of "redacted" on reverse side.)</i>  DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.  If the documents are not available, please explain: _____		
<b>Date:</b> _____	<b>Signature:</b> The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.	
		<b>FOR COURT USE ONLY</b>

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

**INSTRUCTIONS FOR PROOF OF CLAIM FORM**

*The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, there may be exceptions to these general rules.*

**Items to be completed in Proof of Claim form**

**Court, Name of Debtor, and Case Number:**

Fill in the federal judicial district where the bankruptcy case was filed (for example, Central District of California), the bankruptcy debtor's name, and the bankruptcy case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is located at the top of the notice.

**Creditor's Name and Address:**

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

**1. Amount of Claim as of Date Case Filed:**

State the total amount owed to the creditor on the date of the Bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

**2. Basis for Claim:**

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if the trustee or another party in interest files an objection to your claim.

**3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:**

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

**3a. Debtor May Have Scheduled Account As:**

Use this space to report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

**4. Secured Claim:**

Check the appropriate box and provide the requested information if the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See DEFINITIONS, below.) State the type and the value of property that secures the claim, attach copies of lien documentation, and state annual interest rate and the amount past due on the claim as of the date of the bankruptcy filing.

**5. Amount of Claim Entitled to Priority Under 11 U.S.C. §507(a).**

If any portion of your claim falls in one or more of the listed categories, check the appropriate box(es) and state the amount entitled to priority. (See DEFINITIONS, below.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

**6. Credits:**

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

**7. Documents:**

Attach to this proof of claim form redacted copies documenting the existence of the debt and of any lien securing the debt. You may also attach a summary. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary. FRBP 3001(c) and (d). If the claim is based on the delivery of health care goods or services, see instruction 2. Do not send original documents, as attachments may be destroyed after scanning.

**Date and Signature:**

The person filing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2), authorizes courts to establish local rules specifying what constitutes a signature. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. Attach a complete copy of any power of attorney. Criminal penalties apply for making a false statement on a proof of claim.

**DEFINITIONS**

**Debtor**

A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

**Creditor**

A creditor is a person, corporation, or other entity owed a debt by the debtor that arose on or before the date of the bankruptcy filing. See 11 U.S.C. §101 (10)

**Claim**

A claim is the creditor's right to receive payment on a debt owed by the debtor that arose on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

**Proof of Claim**

A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

**Secured Claim Under 11 U.S.C. §506(a)**

A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car.

A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien. A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

**Unsecured Claim**

An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

**Claim Entitled to Priority Under 11 U.S.C. §507(a)**

Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

**Redacted**

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor should redact and use only the last four digits of any social-security, individual's tax-identification, or financial-account number, all but the initials of a minor's name and only the year of any person's date of birth.

**Evidence of Perfection**

Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

**INFORMATION**

**Acknowledgment of Filing of Claim**

To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system ([www.pacer.psc.uscourts.gov](http://www.pacer.psc.uscourts.gov)) for a small fee to view your filed proof of claim.

**Offers to Purchase a Claim**

Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*), and any applicable orders of the bankruptcy court.

**PROPOSED AMENDMENTS TO THE FEDERAL  
RULES OF BANKRUPTCY PROCEDURE\***

**Rule 3001. Proof of Claim\*\***

1

\* \* \* \* \*

2

(c) SUPPORTING INFORMATION.

3

(1) *Claim Based on a Writing.* Except for a claim

4

governed by paragraph (3) of this subdivision, ~~When a~~

5

claim, or an interest in property of the debtor securing the

6

claim, is based on a writing, the original or a duplicate shall

7

be filed with the proof of claim. If the writing has been lost

8

or destroyed, a statement of the circumstances of the loss or

9

destruction shall be filed with the claim.

10

\* \* \* \* \*

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\*New material is underlined; matter to be omitted is lined through.

\*\*Incorporates amendments that are due to take effect on December 1, 2011, if approved by the Judicial Conference and the Supreme Court, and if Congress takes no action otherwise.

2 FEDERAL RULES OF BANKRUPTCY PROCEDURE

11                   (3) Claim Based on an Open-End or Revolving  
12                   Consumer Credit Agreement.

13                   (A) When a claim is based on an open-end or  
14                   revolving consumer credit agreement, a statement shall be  
15                   filed with the proof of claim including, as applicable, the  
16                   following information:

17                   (i) the name of the entity from whom the  
18                   creditor purchased the account;

19                   (ii) the name of the entity to whom the debt  
20                   was owed at the time of the last transaction on the account by  
21                   an account holder;

22                   (iii) the date of the last transaction on the  
23                   account by an account holder;

24                   (iv) the date of the last payment on the  
25                   account;

26                   (v) the date on which the account was  
27                   charged to profit and loss.



4 FEDERAL RULES OF BANKRUPTCY PROCEDURE

**Rule 7054. Judgments; Costs**

1

\* \* \* \* \*

2

(b) COSTS. The court may allow costs to the prevailing

3

party except when a statute of the United States or these rules

4

otherwise provides. Costs against the United States, its

5

officers and agencies shall be imposed only to the extent

6

permitted by law. Costs may be taxed by the clerk on ~~one~~

7

~~day's~~ 14 days' notice; on motion served within ~~five~~ seven

8

days thereafter, the action of the clerk may be reviewed by the

9

court.

**COMMITTEE NOTE**

**Subdivision (b).** Subdivision (b) is amended to provide more time for a party to respond to the prevailing party's bill of costs. The former rule's provision of one day's notice was unrealistically short. The change to 14 days conforms to the change made to Civil Rule 54(d). Extension from five to seven days of the time for serving a motion for court review of the clerk's action implements changes in connection with the December 1, 2009, amendment to Rule 9006(a) and the manner by which time is computed under the rules. Throughout the rules, deadlines have been amended in the following manner:

## FEDERAL RULES OF BANKRUPTCY PROCEDURE 5

- 5-day periods became 7-day periods
- 10-day periods became 14-day periods
- 15-day periods became 14-day periods
- 20-day periods became 21-day periods
- 25-day periods became 28-day periods

**Rule 7056. Summary Judgment**

1 Rule 56 F. R. Civ. P. applies in adversary proceedings,  
2 except that any motion for summary judgment must be made  
3 at least 30 days before the initial date set for an evidentiary  
4 hearing on any issue for which summary judgment is sought,  
5 unless a different time is set by local rule or the court orders  
6 otherwise.

**COMMITTEE NOTE**

The only exception to complete adoption of Rule 56 F.R. Civ. P. involves the default deadline for filing a summary judgment motion. Rule 56(c)(1)(A) makes the default deadline 30 days after the close of all discovery. Because in bankruptcy cases hearings can occur shortly after the close of discovery, a default deadline based on the scheduled hearing date, rather than the close of discovery, is adopted. As with Rule 56(c)(1), the deadline can be altered either by local rule or court order.

# CENTRAL STATES BANKRUPTCY WORKSHOP

B 10 (Official Form 10) (12/11) (08/10 publication draft)

<b>UNITED STATES BANKRUPTCY COURT</b> _____ <b>DISTRICT OF</b> _____		<b>PROOF OF CLAIM</b>
Name of Debtor: _____		Case Number: _____
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): _____		<b>COURT USE ONLY</b>
Name and address where notices should be sent: _____  Telephone number: _____ email: _____		<input type="checkbox"/> Check this box if this claim amends a previously filed claim.  <b>Court Claim Number:</b> _____ (If known)  Filed on: _____
Name and address where payment should be sent (if different from above): _____  Telephone number: _____ email: _____		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.  <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
1. Amount of Claim as of Date Case Filed: \$ _____ If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.		
2. Basis for Claim: _____ (See instruction #2)		
3. Last four digits of any number by which creditor identifies debtor: _____	3a. Debtor may have scheduled account as: _____ (See instruction #3a)	3b. Uniform Claim Identifier (optional): _____ (See instruction #3b)
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.		Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ _____
Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: _____		Basis for perfection: _____
Value of Property: \$ _____		Amount of Secured Claim: \$ _____
Annual Interest Rate _____% <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed)		Amount Unsecured: \$ _____
5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.		
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. §507 (a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).  Amount entitled to priority: \$ _____
<input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507(a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).	<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(____).  \$ _____
*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.		
6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)		

**7. Documents:** Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. (See instruction #7, and the definition of "redacted.")

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

**8. Signature:** (See instruction #8)

Check the appropriate box.

- I am the creditor.     I am the creditor's authorized agent.     I am the trustee, or the debtor.     I am a guarantor, surety, indorser, or other codebtor.  
 (Attach copy of power of attorney, if any.)    (See Bankruptcy Rule 3004.)    (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Address and telephone number (if different from notice address above): \_\_\_\_\_

(Signature)

(Date)

Telephone number: \_\_\_\_\_ email: \_\_\_\_\_

*Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.*

**INSTRUCTIONS FOR PROOF OF CLAIM FORM**

*The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.*

**Items to be completed in Proof of Claim form**

**Court, Name of Debtor, and Case Number:**

Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

**Creditor's Name and Address:**

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

**1. Amount of Claim as of Date Case Filed:**

State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

**2. Basis for Claim:**

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

**3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:**

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

**3a. Debtor May Have Scheduled Account As:**

Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

**3b. Uniform Claim Identifier:**

If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

**4. Secured Claim:**

Check whether the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

**5. Amount of Claim Entitled to Priority Under 11 U.S.C. §507(a).**

If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

**6. Credits:**

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

**7. Documents:**

Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

**8. Date and Signature:**

The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, attach a complete copy of any power of attorney, and provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

**DEFINITIONS**

**INFORMATION**

**Debtor**

A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

**Creditor**

A creditor is a person, corporation, or other entity to whom the debtor owes a debt that was incurred before the date of the bankruptcy filing. See 11 U.S.C. §101 (10).

**Claim**

A claim is the creditor's right to receive payment for a debt owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

**Proof of Claim**

A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

**Secured Claim Under 11 U.S.C. §506(a)**

A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien.

A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

**Unsecured Claim**

An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

**Claim Entitled to Priority Under 11 U.S.C. §507(a)**

Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

**Redacted**

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of any person's date of birth. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information.

**Evidence of Perfection**

Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

**Acknowledgment of Filing of Claim**

To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system ([www.pacer.psc.uscourts.gov](http://www.pacer.psc.uscourts.gov)) for a small fee to view your filed proof of claim.

**Offers to Purchase a Claim**

Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*), and any applicable orders of the bankruptcy court.

## COMMITTEE NOTE

The form is amended in several respects. A new section – 3b – is added 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 a uniform claim identifier.

Language is added to section 4 to clarify that the annual interest rate that must be reported for a secured claim is the rate applicable at the time the bankruptcy case was filed. Check boxes for indicating whether the interest rate is fixed or variable are also added.

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 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.

Section 8 – the date and signature box – is 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 declares under penalty of perjury that the information provided “is true and correct to the best of my knowledge, information and reasonable belief.” That individual must also provide identifying information – name, title, company, address, and telephone number (if not already provided) – 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.

Amendments are made to the instructions that reflect the changes made to the form, and stylistic and formatting changes are made to the form and instructions.

**Mortgage Proof of Claim Attachment**

If you file a claim secured by a security interest in the debtor's principal residence, you must use this form as an attachment to your proof of claim. See Bankruptcy Rule 3001(c)(2).

Name of debtor: \_\_\_\_\_ Case number: \_\_\_\_\_

Name of creditor: \_\_\_\_\_ Last four digits of any number you use to identify the debtor's account: \_\_\_\_\_

**Part 1: Statement of Principal and Interest Due as of the Petition Date**

Itemize the principal and interest due on the claim as of the petition date (included in the Amount of Claim listed in Item 1 on your Proof of Claim form).

1. Principal due \$ \_\_\_\_\_

2. Interest due	Interest rate	From mm/dd/yyyy	To mm/dd/yyyy	Amount
	_____ %	___/___/___	___/___/___	\$ _____
	_____ %	___/___/___	___/___/___	\$ _____
	_____ %	___/___/___	___/___/___	+ \$ _____
<b>Total interest due as of the petition date</b>				\$ _____ Copy total here ▶ + \$ _____

3. Total principal and interest due \$ \_\_\_\_\_

**Part 2: Statement of Prepetition Fees, Expenses, and Charges**

Itemize the fees, expenses, and charges incurred in connection with the claim as of the petition date (included in the Amount of Claim listed in Item 1 on the Proof of Claim form).

Description	Dates incurred	Amount
Late charges	_____	\$ _____
Non-sufficient funds (NSF) fees	_____	\$ _____
Attorney's fees	_____	\$ _____
Filing fees and court costs	_____	\$ _____
Advertisement costs	_____	\$ _____
Sheriff/auctioneer fees	_____	\$ _____
Title costs	_____	\$ _____
Recording fees	_____	\$ _____
Appraisal/broker's price opinion fees	_____	\$ _____
Property inspection fees	_____	\$ _____
Tax advances (non-escrow)	_____	\$ _____
Insurance advances (non-escrow)	_____	\$ _____
Escrow shortage or deficiency (not included in payments due)	_____	\$ _____
Property preservation expenses. Specify: _____	_____	\$ _____
Other. Specify: _____	_____	\$ _____
Other. Specify: _____	_____	\$ _____
Other. Specify: _____	_____	+ \$ _____
<b>Total prepetition fees, expenses, and charges. Add all of the amounts listed above.</b>		\$ _____

**Part 3. Statement of Amount Necessary to Cure Default as of the Petition Date**

Does the installment payment amount include an escrow deposit?

- No
- Yes. Attach to the Proof of Claim form an escrow account statement prepared as of the petition date in a form consistent with applicable nonbankruptcy law.

1. Installment payments due	Date last payment received by creditor	___/___/___
	Number of installment payments due	_____
2. Amount of installment payments due	_____installments @	\$ _____
	_____installments @	\$ _____
	_____installments @	+ \$ _____

**Total installment payments due as of the petition date** \$ \_\_\_\_\_

Copy total here ► \$ \_\_\_\_\_

**Add total prepetition fees, expenses, and charges**

Copy total from Part 2 here ► + \$ \_\_\_\_\_

**Subtract total of unapplied funds** (funds received but not credited to account)

- \$ \_\_\_\_\_

**Total amount necessary to cure default as of the petition date**

\$ \_\_\_\_\_

Copy total onto Item 4 of Proof of Claim form

**COMMITTEE NOTE**

This form is new. It must be completed and attached to a proof of claim secured by a security interest in a debtor's principal residence. The form, which implements Rule 3001(c)(2), requires an itemization of prepetition interest, fees, expenses, and charges included in the claim amount, as well as a statement of the amount necessary to cure any default as of the petition date. If the mortgage installment payments include an escrow deposit, an escrow account statement must also be attached to the proof of claim, as required by Rule 3001(c)(2)(C).

B 10 (Supplement 1) (12/11) (08/10 publication draft)

UNITED STATES BANKRUPTCY COURT

\_\_\_\_\_ District of \_\_\_\_\_

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_

Chapter 13

**Notice of Mortgage Payment Change**

If you file a claim secured by a security interest in the debtor's principal residence provided for under the debtor's plan pursuant to § 1322(b)(5), you must use this form to give notice of any changes in the installment payment amount. File this form as a supplement to your proof of claim at least 21 days before the new payment amount is due. See Bankruptcy Rule 3002.1.

Name of creditor: \_\_\_\_\_ Court claim no. (if known): \_\_\_\_\_

Last four digits of any number you use to identify the debtor's account: \_\_\_\_\_

Date of payment change: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Must be at least 21 days after date of this notice

New total payment: \$ \_\_\_\_\_  
Principal, interest, and escrow, if any

**Part 1: Escrow Account Payment Adjustment**

Will there be a change in the debtor's escrow account payment?  
 No  
 Yes. Attach a copy of the escrow account statement, prepared according to applicable nonbankruptcy law. Describe the basis for the change. If a statement is not attached, explain why: \_\_\_\_\_

Current escrow payment: \$ \_\_\_\_\_ New escrow payment: \$ \_\_\_\_\_

**Part 2: Mortgage Payment Adjustment**

Will the debtor's principal and interest payment change based on an adjustment to the interest rate in the debtor's variable-rate note?  
 No  
 Yes. Attach a copy of the rate change notice, prepared according to applicable nonbankruptcy law. Describe the basis for the change. If a notice is not attached, explain why: \_\_\_\_\_

Current interest rate: \_\_\_\_\_% New interest rate: \_\_\_\_\_%  
 Current principal and interest payment: \$ \_\_\_\_\_ New principal and interest payment: \$ \_\_\_\_\_

**Part 3: Other Payment Change**

Will there be a change in the debtor's mortgage payment for a reason not listed above?  
 No  
 Yes. Attach a copy of any documents describing the basis for the change, such as a repayment plan or loan modification agreement. (Court approval may be required before the payment change can take effect.)

Reason for change: \_\_\_\_\_  
 Current mortgage payment: \$ \_\_\_\_\_ New mortgage payment: \$ \_\_\_\_\_

**Part 4: Sign Here**

The person completing this Notice must sign it. Sign and print your name and your title, if any, and state your address and telephone number if different from the notice address listed on the proof of claim to which this Supplement applies.

Check the appropriate box.

- I am the creditor.
- I am the creditor's authorized agent.  
(Attach copy of power of attorney, if any.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

**X** \_\_\_\_\_ Date \_\_\_\_/\_\_\_\_/\_\_\_\_  
 Signature

**Print:** \_\_\_\_\_ Title \_\_\_\_\_  
 First Name Middle Name Last Name

Company \_\_\_\_\_

Address \_\_\_\_\_  
 Number Street  
 City State ZIP Code

Contact phone (\_\_\_\_) \_\_\_\_\_-\_\_\_\_ Email \_\_\_\_\_

**COMMITTEE NOTE**

This form is new and applies in chapter 13 cases. It implements Rule 3002.1, which requires the holder of a claim secured by a security interest in the debtor's principal residence – or the holder's agent – to provide notice at least 21 days prior to a change in the amount of the ongoing mortgage installment payments. The form requires the holder of the claim to indicate the basis for the changed payment amount and when it will take effect. The notice must be filed as a supplement to the claim holder's proof of claim, and it must be served on the debtor, debtor's counsel, and the trustee.

The individual completing the form must sign and date it. By doing so, he or she declares under penalty of perjury that the information provided is true and correct to the best of that individual's knowledge, information, and reasonable belief. The signature is also a certification that the standards of FRBP 9011(b) are satisfied.

B 10 (Supplement 2) (12/11) (08/10 publication draft)

UNITED STATES BANKRUPTCY COURT

\_\_\_\_\_ District of \_\_\_\_\_

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_

Chapter 13

**Notice of Postpetition Mortgage Fees, Expenses, and Charges**

If you hold a claim secured by a security interest in the debtor's principal residence, you must use this form to give notice of any postpetition fees, expenses, and charges that you assert are recoverable against the debtor or against the debtor's principal residence. File this form as a supplement to your proof of claim. See Bankruptcy Rule 3002.1.

Name of creditor: \_\_\_\_\_

Court claim no. (if known): \_\_\_\_\_

Last four digits of any number you use to identify the debtor's account: \_\_\_\_\_

Does this notice supplement a prior notice of postpetition fees, expenses, and charges?

- No
- Yes. Date of the last notice: \_\_\_\_/\_\_\_\_/\_\_\_\_

**Part 1: Itemize Postpetition Fees, Expenses, and Charges**

Itemize the fees, expenses, and charges incurred on the debtor's mortgage account after the petition was filed. Do not include any escrow account disbursements or any amounts previously itemized in a notice filed in this case or ruled on by the bankruptcy court.

Description	Dates incurred	Amount
Late charges	_____	\$ _____
Non-sufficient funds (NSF) fees	_____	\$ _____
Attorney fees	_____	\$ _____
Filing fees and court costs	_____	\$ _____
Bankruptcy/Proof of claim fees	_____	\$ _____
Appraisal/Broker's price opinion fees	_____	\$ _____
Property inspection fees	_____	\$ _____
Tax advances (non-escrow)	_____	\$ _____
Insurance advances (non-escrow)	_____	\$ _____
Property preservation expenses. Specify: _____	_____	\$ _____
Other. Specify: _____	_____	\$ _____
Other. Specify: _____	_____	\$ _____
Other. Specify: _____	_____	\$ _____
Other. Specify: _____	_____	\$ _____

The debtor or trustee may challenge whether the fees, expenses, and charges you listed are required to be paid. See 11 U.S.C. § 1322(b)(5) and Bankruptcy Rule 3002.1.

**Part 2: Sign Here**

The person completing this Notice must sign it. Sign and print your name and your title, if any, and state your address and telephone number if different from the notice address listed on the proof of claim to which this Supplement applies.

Check the appropriate box.

- I am the creditor.     I am the creditor's authorized agent.  
 (Attach copy of power of attorney, if any.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

**X** \_\_\_\_\_ Date \_\_\_\_/\_\_\_\_/\_\_\_\_  
 Signature

**Print:**                      \_\_\_\_\_ Title \_\_\_\_\_  
                                     First Name                      Middle Name                      Last Name

Company \_\_\_\_\_

Address \_\_\_\_\_  
                                     Number                      Street  
                                     \_\_\_\_\_  
                                     City    State                      ZIP Code

Contact phone (\_\_\_\_) \_\_\_\_\_ -- \_\_\_\_\_ Email \_\_\_\_\_

**COMMITTEE NOTE**

This form is new and applies in chapter 13 cases. It implements Rule 3002.1, which requires the holder of a claim secured by a security interest in the debtor's principal residence – or the holder's agent – to file a notice of all postpetition fees, expenses, and charges within 180 days after they are incurred. The notice must be filed as a supplement to the claim holder's proof of claim, and it must be served on the debtor, debtor's counsel, and the trustee.

The individual completing the form must sign and date it. By doing so, he or she declares under penalty of perjury that the information provided is true and correct to the best of that individual's knowledge, information, and reasonable belief. The signature is also a certification that the standards of FRBP 9011(b) are satisfied.

B25A Official Form 25A (12/11) (08/10 publication draft)

United States Bankruptcy Court

District of \_\_\_\_\_

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_

Small Business Case under Chapter 11

**[NAME OF PROPONENT]'S PLAN OF REORGANIZATION, DATED [INSERT DATE]**

\* \* \* \* \*

**ARTICLE VIII  
GENERAL PROVISIONS**

\* \* \* \* \*

1       8.02 Effective Date of Plan. The effective date of this Plan is the  
2       ~~eleventh~~ first business day following the date that is fourteen days  
3       after ~~of~~ the entry of the order of confirmation. ~~But if, however,~~ a  
4       stay of the confirmation order is in effect on that date, the effective  
5       date will be the first business day after ~~that~~ date on which ~~no~~the  
6       stay of the confirmation order expires or is otherwise terminated is  
7       ~~in effect, provided that the confirmation order has not been~~  
8       vacated.

B25A (Official Form 25A) (Committee Note)(08/10 publication draft)

**COMMITTEE NOTE**

Provision 8.02 of Article VIII of the form, which specifies the plan's effective date, is amended to reflect the change in the time periods of Rules 3020(e) and 8002(a) for a stay of the confirmation order and the filing of a notice of appeal. As of December 1, 2009, both time periods were increased from ten to fourteen days. The effective date of the plan will generally be the first business day after those time periods expire. Accordingly, the effective date of the plan is extended to the first business day following the date that is fourteen days after the entry of the order of confirmation. If, however, a stay of the confirmation order remains in effect on the specified effective date, the plan will instead go into effect on the first business day after the stay expires or is terminated, so long as the order of confirmation has not been vacated.

FORM B10 (Official Form 10/10/05)

UNITED STATES BANKRUPTCY COURT <u>NORTHERN</u> DISTRICT OF <u>INDIANA</u>		<b>PROOF OF CLAIM</b>
Name of Debtor <u>[REDACTED]</u>	Case Number <u>[REDACTED]</u>	<p><b>NOTE:</b> This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.</p> <p><input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.</p> <p><input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case.</p> <p><input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.</p> <p>THIS SPACE IS FOR COURT USE ONLY</p>
Name of Creditor (The person or other entity to whom the debtor owes money or property): Department of the Treasury - Internal Revenue Service	Name and address where notices should be sent: Internal Revenue Service P.O. Box 21126 Stop N781 Philadelphia, PA 19114 Telephone number: (317) 685-7590 Creditor #8876841	
Last four digits of account or other number by which creditor identifies debtor: see attachment	Check here <input type="checkbox"/> replaces a previously filed claim, dated: _____ if this claim <input type="checkbox"/> amends	
<b>1. Basis for Claim</b> <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input checked="" type="checkbox"/> Taxes <input type="checkbox"/> Other _____ <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Last four digits of your SS #: _____ Unpaid compensation for services performed from _____ (date) to _____ (date)		
<b>2. Date debt was incurred:</b> see attachment	<b>3. If court judgment, date obtained:</b>	
<b>4. Classification of Claim.</b> Check the appropriate box or boxes that best describe your claim and state the amount of the claim at the time case filed. See reverse side for important explanations.		
<b>Unsecured Nonpriority Claim</b> \$ <u>21.00</u> <input type="checkbox"/> Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or only part of your claim is entitled to priority.	<b>Secured Claim.</b> <input checked="" type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input checked="" type="checkbox"/> Real Estate <input checked="" type="checkbox"/> Motor Vehicle <input checked="" type="checkbox"/> Other <u>see below*</u> Value of Collateral: \$ <u>see below*</u> *All of debtor(s) right, title and interest to property - 26 U.S.C. § 6321. Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ <u>52,293.00</u>	
<b>Unsecured Priority Claim.</b> <input checked="" type="checkbox"/> Check this box if you have an unsecured claim, all or part of which is entitled to priority. Amount entitled to priority \$ <u>46,014.46</u> Specify the priority of the claim: <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,000)* earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5).	<input type="checkbox"/> Up to \$2,225* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7). <input checked="" type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). *Amounts are subject to adjustment on 4/1/07 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.	
<b>5. Total Amount of Claim at Time Case Filed:</b> \$ <u>21.00</u> <u>52,293.00</u> <u>46,014.46</u> <u>98,328.46</u> (unsecured) (secured) (priority) (Total)		
<input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
<b>6. Credits:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.		
<b>7. Supporting Documents:</b> Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.		
<b>8. Date-Stamped Copy:</b> To receive an acknowledgement of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		
Date 03/02/2007	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): _____ /s/ KARLA WEIDEKAMP, Insolvency Advisor	

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

# Proof of Claim for Internal Revenue Taxes

Department of the Treasury/Internal Revenue Service



Form 10  
Attachment

In the Matter of: [REDACTED]

Docket Number  
[REDACTED]

Type of Bankruptcy Case

Chapter 13

Date of Petition  
[REDACTED]

The United States has not identified a right of setoff or counterclaim. However, this determination is based on available data and is not intended to waive any right to setoff against this claim debts owed to this debtor by this or any other federal agency. All rights of setoff are preserved and will be asserted to the extent lawful.

Civil Pen joint liability listed only once to reflect correct balance

**Secured Claims** (Notices of Federal tax lien filed under internal revenue laws before petition date)

Taxpayer ID Number	Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Penalty to Petition Date	Interest to Petition Date	Notice of Tax Lien Filed: Date	Office Location
XXX-XX-3959	CIVIL PEN	06/30/2001	06/03/2005	\$9,194.76	\$0.00	\$1,123.73	08/25/2005	PORTER COUNTY
XXX-XX-3959	CIVIL PEN	12/31/2001	06/03/2005	\$4,605.49	\$0.00	\$746.43	08/25/2005	PORTER COUNTY
XXX-XX-3959	CIVIL PEN	03/31/2002	06/03/2005	\$7,116.97	\$0.00	\$869.80	08/25/2005	PORTER COUNTY
XXX-XX-3959	CIVIL PEN	06/30/2002	06/03/2005	\$7,793.18	\$0.00	\$952.44	08/25/2005	PORTER COUNTY
XXX-XX-3959	CIVIL PEN	09/30/2002	06/03/2005	\$6,503.92	\$0.00	\$794.87	08/25/2005	PORTER COUNTY
XXX-XX-3959	CIVIL PEN	12/31/2002	06/03/2005	\$6,717.29	\$0.00	\$820.95	08/25/2005	PORTER COUNTY
XXX-XX-3959	CIVIL PEN	03/31/2003	06/03/2005	\$5,053.17	\$0.00	\$0.00	08/25/2005	PORTER COUNTY
				<u>\$46,984.78</u>	<u>\$0.00</u>	<u>\$5,308.22</u>		

Total Amount of Secured Claims: **\$52,293.00**

**Unsecured Priority Claims** under section 507(a)(8) of the Bankruptcy Code

Taxpayer ID Number	Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Interest to Petition Date
XXX-XX-3959	CIVIL PEN	03/31/2003	06/03/2005	\$2,066.20	\$870.09
XXX-XX-3959	CIVIL PEN	06/30/2003	06/03/2005	\$7,203.53	\$880.38
XXX-XX-3959	CIVIL PEN	09/30/2003	06/03/2005	\$7,475.04	\$913.55
XXX-XX-3959	CIVIL PEN	12/31/2003	05/26/2005	\$6,402.59	\$794.13
XXX-XX-3959	CIVIL PEN	03/31/2004	05/26/2005	\$5,584.12	\$708.39
XXX-XX-3959	INCOME	12/31/2005	<sup>a</sup> PENDING EXAMINATION	\$2,940.00	\$175.45
XXX-XX-3959	INCOME	12/31/2006	<sup>1</sup> UNASSESSED-NO RETURN	<u>\$10,000.99</u>	<u>\$0.00</u>
				<u>\$41,672.47</u>	<u>\$4,341.99</u>

Total Amount of Unsecured Priority Claims: **\$46,014.46**

**Unsecured General Claims**

Penalty to date of petition on unsecured priority claims (including interest thereon) . . . . . \$21.00

Total Amount of Unsecured General Claims: **\$21.00**

<sup>1</sup> UNASSESSED TAX LIABILITIES(S) HAVE BEEN LISTED ON THIS CLAIM BECAUSE OUR RECORDS SHOW NO RETURN(S) FILED. WHEN THE DEBTOR(S) FILES THE RETURN OR PROVIDES OTHER INFORMATION AS REQUIRED BY LAW THE CLAIM WILL BE AMENDED.  
<sup>2</sup> PROPOSED TAX DEFICIENCY DETERMINED BY EXAMINATION OF DEBTOR(S) TAX RETURN.

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT CINCINNATI

IN RE:	*	CASE NO. <u>10-11829</u>
	*	(Judge Burton Perlman)
GARY D. SELBY	*	(Chapter 13)
6548 Michael Road	*	
Middletown, Ohio 45042	*	
	*	
Debtor	*	

---

KIMBERLY SELBY	*	ADV. PRO. NO. _____
5626 Trenton-Franklin Road	*	
Middletown, Ohio 45042	*	
	*	
Plaintiff,	*	
	*	
v.	*	
	*	
GARY D. SELBY	*	
6548 Michael Road	*	
Middletown, Ohio 45042	*	
	*	<b><u>COMPLAINT TO DETERMINE</u></b>
Defendant	*	<b><u>DISCHARGEABILITY OF DEBT</u></b>

COMES NOW Plaintiff Kimberly Selby, by and through counsel, and for her  
**COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBT** states as follows:

**PARTIES**

1. Plaintiff Kimberly Selby ("Plaintiff") is an Ohio resident and is the former spouse of Defendant/Debtor Gary D. Selby ("Defendant"). Plaintiff is also a creditor of the Defendant pursuant to certain obligations of the Defendant to the Plaintiff in conjunction with a Judgment Entry and Decree of Dissolution (*Exhibit "A"*) and Separation Agreement (*Exhibit "B"*) filed in the Butler County Court of Common Pleas, Domestic Relations Division on November 27, 2007.

2. Defendant is a Debtor pursuant to a voluntary petition for relief under Chapter 13, Title 11 of the United States Bankruptcy Code, Case No. 10-11829, filed on March 23, 2010, now pending with this Court.

**NATURE OF PROCEEDING**

3. This is an adversary proceeding to determine the dischargeability of debt pursuant to 11 U.S.C. §1328 and 7001(6) of the *Federal Rules of Bankruptcy Procedure*.

**JURISDICTION AND VENUE**

4. This Adversary Proceeding is being brought in connection with the Defendant's Bankruptcy Case under Chapter 13, Title 11, of the United States Bankruptcy Code, Case No. 10-11829, now pending in this Court. This Court has jurisdiction over this Adversary Proceeding pursuant to 28 U.S.C. §§157, 1334 and 11 U.S.C. §1328. Venue is based upon *LBR* 1071-1. This is a core proceeding under 28 U.S.C. §157(b)(2)(I).

**COUNT I**

5. Debtor and Plaintiff were married on December 31, 1995.

6. Two children were born as issue of this marriage: A. Selby (Son), born XX/XX/1998 and A. Selby (Daughter), born XX/XX/2001 (the "Marital Children"). The Plaintiff and Defendant entered into a Shared Parenting Plan, but Plaintiff has been the primary custodian of the Martial Children at all times pertinent hereto.

7. Pursuant to the terms of the Separation Agreement, Defendant was to pay Plaintiff defined spousal support in the amount of \$750.00 per month for twelve (12) months and \$500.00 per month for the succeeding twenty-four (24) months.

8. Pursuant to the terms of the Separation Agreement, the Defendant “shall indemnify and hold [Plaintiff] harmless from any indebtedness” on the following real properties, to wit:

- a. 2354 North Verity Parkway, Middletown, Ohio
- b. 2507 Central Avenue, Middletown, Ohio
- c. 2210 Central Avenue, Middletown, Ohio
- d. 538 Midnight, Byrdstown, Tennessee

(collectively the “Hold Harmless Obligation”).

9. 11 *U.S.C.* §1328(a)(2) excepts from discharge any debt “of the kind specified in . . . . paragraph . . . . (5) . . . . of §523(a) . . . .”

10. 11 *U.S.C.* §523(a)(5) excepts from discharge any debt for a domestic support obligation.

11. The Hold Harmless Obligation is a Domestic Support Obligation as defined in 11 *U.S.C.* §101(14A).

12. Plaintiff and Defendant intended the Hold Harmless Obligation to create support obligations so as to provide support for Plaintiff.

13. The Hold Harmless Obligation is in the nature of support of Plaintiff and has the actual effect of providing such support.

14. The amount of the support is not excessive so as to be unreasonable under traditional support concepts.

15. The Hold Harmless Obligation of the Defendant to the Plaintiff, as alleged herein and as set forth in the Separation Agreement, is the type of debt defined in 11 U.S.C. §§1328(a)(2), 523(a)(5) and 101(14A) and thus, is non-dischargeable.

WHEREFORE, Plaintiff Kimberly Selby prays that this Court determine that the Hold Harmless Obligation of Defendant Gary D. Selby to the Plaintiff as set forth herein is non-dischargeable pursuant to 11 U.S.C. §1328(a)(2), that Plaintiff be awarded her costs and attorneys fees, and all other just and proper relief.

Respectfully submitted,

/s/ Ira H. Thomsen

Ira H. Thomsen (0023965)  
Attorney for Plaintiff Kimberly Selby  
140 North Main Street, Suite A  
P.O. Box 639  
Springboro, Ohio 45066  
937-748-5001  
937-748-5003 (Fax)  
[cornell76@aol.com](mailto:cornell76@aol.com)

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 7<sup>th</sup> day of June, 2010, a copy of the foregoing Complaint to Determine Dischargeability of Debt was electronically served on the following registered ECF participants, electronically through the Court's transmission facilities at their email addresses registered with the Court:

Harold Jarnicki, Esq.  
[Jarnickihsd9@earthlink.net](mailto:Jarnickihsd9@earthlink.net)

Margaret A. Burks, Esq.  
[Cincinnati@cinn13.org](mailto:Cincinnati@cinn13.org)

Office of the U.S. Trustee  
[Ustregion09.ci.ecf@usdoj.gov](mailto:Ustregion09.ci.ecf@usdoj.gov)

/s/ Ira H. Thomsen  
Ira H. Thomsen  
Case Attorney for Kimberly Selby

This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.

IT IS SO ORDERED.



*Burton Perlman*  
Burton Perlman  
United States Bankruptcy Judge

Dated: December 15, 2010

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

In Re:	)	
	)	
Gary D. Selby	)	Case No. 10-11829
	)	
Debtor	)	Chapter 13
	)	
-----	)	
	)	Adversary No. 10-1078
Kimberly Selby	)	Judge Burton Perlman
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Gary D. Selby	)	
	)	
Defendant.	)	

**DECISION**

In this Chapter 13 case two separate proceedings have arisen which will be dealt with in this decision. Debtor, Gary D. Selby, has filed a Chapter 13 plan. His former wife Kimberly Selby (hereafter "Kimberly") has filed an objection to confirmation of the plan, contending that the plan was not filed in good faith. Kimberly has also filed an adversary proceeding in which she contends that debtor's debt to her should be declared nondischargeable. Debtor is the defendant in the adversary proceeding. The parties, Kimberly and debtor/defendant, have agreed that the evidentiary hearing in regard to both the objection to confirmation and the adversary proceeding be heard together. Such a hearing was held September 24, 2010, at the conclusion of which the court reserved decision.

#### I. Findings of Fact Relevant to Confirmation Issues.

Kimberly and debtor were married in 1995, and divorced in 2007. They had two children. While they were married, they bought real estate for rental purposes. There were three rental properties in Butler County, Ohio, and one property in Tennessee. The real estate in Tennessee was a vacation home which on occasion had been rented. Prior to the divorce, the parties owned a residence, which Kimberly continues to occupy.

Prior to the divorce, Kimberly and debtor were separated for two years, and prior to their separation, with respect to the rental properties in Ohio, debtor/defendant served as the maintenance man, while Kimberly collected the rents, and kept the books with respect to the rental property business. This arrangement was discontinued upon the divorce.

On October 10, 2007, Kimberly and debtor/defendant entered into a Separation Agreement. On November 27, 2007, the Court of Common Pleas in Butler County, Ohio

entered Judgment Entry and Decree of Dissolution (hereafter "the Decree"). In addition to awarding a dissolution, the Decree also provided that "the Separation Agreement shall be incorporated into the Final Decree." These documents provided for spousal support, child support, and a division of property.

Debtor/defendant at the time of the Decree believed that he had substantial equity in the rental properties, and could easily afford to meet the financial obligations laid on him by the decree. After the time of the Decree, the real estate market declined severely as did the general economy. The quality of the tenants who took occupancy in his buildings declined with the economy, and debtor/defendant found that income from the rental units was scarcely enough to pay the mortgages on them. He made subsequent efforts to sell the properties, but was unsuccessful at the prices which he thought reasonable. This was true even though he substantially reduced the asking price on them.

Kimberly is able to maintain her lifestyle and support her children on the support and child support payments that debtor/defendant is making to her. She is currently enrolled at Miami University where she is pursuing a certification as a registered nurse, but intends as well to pursue a bachelor's degree. She is currently working twenty-four hours a week at St. Francis Hospital. Her training as a registered nurse should be completed by May, 2011. Debtor/defendant is and has been current with his alimony and child support payments since the decree, and also has paid the interest on the line of credit real estate loan.

Subsequent to the Decree, debtor/defendant sold his gun collection, his boat and other personal assets in an attempt to meet his obligations under the decree.

Debtor/defendant consulted his present counsel, who is a bankruptcy specialist, in

October 2009. Debtor/Defendant was at that time hopeful that he would be able to sell at least one of the rental properties in order to pay his obligations to Kimberly, but he was unable to realize that hope. Consequently he filed a bankruptcy case in March 2010.

## II. Conclusion as to Confirmation.

We deal first with Kimberly's contention that the Chapter 13 Plan was not filed in good faith. The Sixth Circuit Court of Appeals in In re Okoreeh-Baah, 836 F.2d 1030, 1333 (6th Cir. 1988), cited with approval in In re Francis, 273 B.R. 87 (BAP 6th Cir. 2002), set the standard for good faith, "a sincerely intended repayment of pre-petition debt consistent with debtor's available resources." Having heard the testimony of the parties, the court concludes that the Chapter 13 case was filed, and the plan proposed, in good faith. Debtor was driven to filing his Chapter 13 case because of the deterioration of the real estate market beginning in 2007 and 2008. He tried to keep the rental properties afloat, but the quality of tenants deteriorated as did the value the real estate itself. Kimberly's objection to confirmation will be overruled by separate order.

## III. The Adversary Proceeding.

In her adversary proceeding, Kimberly (hereafter "plaintiff") asserts that the hold harmless provision in the Separation Agreement, with respect to the rental properties that debtor (hereafter "defendant") took by the Separation Agreement, are nondischargeable. The basis for the assertion is said to be that this obligation is a domestic support obligation, and therefore nondischargeable pursuant to 11 U.S.C. § 523(a)(5).

### A. Applicable Law.

To be nondischargeable under 11 U.S.C. § 523(a)(5), plaintiff must show that the hold harmless obligation satisfies all elements of the term "domestic support obligation,"

as defined in 11 U.S.C. § 101(14A). That code provision, added to the bankruptcy law by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") See 109 P. L. 8, 119 Stat. 23, is as follows:

§ 101 Definitions.

\* \* \*

(14A) The term "domestic support obligation" means a debt that accrues before, on, or after the date of the order for relief in a case under this title, including interest that accrues on that debt as provided under applicable nonbankruptcy law notwithstanding any other provision of this title, that is—

(A) owed to or recoverable by—

- (i) a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative; or
- (ii) a governmental unit;

(B) in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) of such spouse, former spouse, or child of the debtor or such child's parent, without regard to whether such debt is expressly so designated;

(C) established or subject to establishment before, on, or after the date of the order for relief in a case under this title, by reason of applicable provision of—

- (i) a separation agreement, divorce decree, or property settlement agreement;
- (ii) an order of a court of record; or
- (iii) a determination made in accordance with applicable nonbankruptcy law by a government unit; and

(D) not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or

responsible relative for the purpose of collecting the debt.

\* \* \*

A debt may be considered a domestic support obligation only if it meets all four requirements of the above definition. Plaintiff has the burden of proving the elements of her case by a preponderance of the evidence. Grogan v. Garner, 498 U.S. 279, 291, 111 S. Ct. 654, 661, 112 L. Ed. 2d 775 (1991).

Precedent decided by the Sixth Circuit Court of Appeals prior to BAPCPA must still be considered in addressing this question. In re Boller, 393 B.R. 569, 574 (Bankr. E.D. Tenn. 2008). By that authority this court is required to accord appropriate deference to the decision of a state court, i.e. here, the Decree which incorporates the Separation Agreement, in determining dischargeability of a domestic support obligation. In re Sorah, 163 Fd. 3rd 397 (6th Cir. 1998). The Decree and Separation Agreement entered in this case thus play a central role in our determination. The obligation claimed by plaintiff to be nondischargeable, is that created by the Separation Agreement between the parties. Specifically, it relates to a possible obligation for a deficiency which might arise upon the sale of the rental properties taken by defendant per the Separation Agreement. Thus, it meets the requirement of paragraph (A) above, in that it is owed to a former spouse. It meets also the requirement of (C), for it was established by a Separation Agreement between the parties. The requirement of (D) is not an issue here. That leaves for decision here the requirement of (B) whether the hold harmless obligation is "in the nature of alimony, maintenance, or support."

## B. The Separation Agreement.

The Separation Agreement provided that the parties had been living apart since April 2, 2007 and "hereby provide for division of all property." In Section 2 of the Agreement, entitled Real Estate, an allocation of the real property owned by the two parties is made. In that section, it is provided that plaintiff is to get the marital residence, and "... shall indemnify and hold Husband harmless from any indebtedness thereon. Husband shall sign a Quit Claim Deed to transfer his interest to Wife in said property." The Real Estate provision also provides that plaintiff shall refinance the residential property within three years from the date of the entry of the Decree, and if not refinanced, then the property is to be sold. The Real Estate provision also states that defendant is to be responsible for the home equity line of credit, that is, to pay the balance within 60 days of the filing of the Decree. (This obligation amounted to \$75,000.00, which defendant did pay, though not within the time period provided.)

The Real Estate provision also provided that defendant was to get the three rental properties in Butler County, Ohio which the parties had bought together. The Agreement further says that defendant "shall indemnify and hold Wife harmless from any indebtedness thereon. Wife shall sign a Quit Claim Deed to transfer her interest to Husband in said property." This quote appeared in the Real Estate section of the Separation Agreement as to each of the rental properties. In addition to the Butler County properties, defendant was given the property in Byrdstown, Tennessee, and as to this property the same quoted language applies. The Real Estate provision of the Separation Agreement also provided that defendant was to refinance the real property given him within three years after the filing

of the entry of the Decree, and, if not refinanced, then the properties were to be sold.

Section 3 of the Separation Agreement is entitled Spousal Support. It provides that defendant was to pay plaintiff spousal support in the amount of \$750.00 a month for the first twelve months, and \$500.00 a month for the next twenty-four months. The provision states that the parties have agreed on this amount "which they believe to be fair and justifies an award."

Section 4 of the Separation Agreement is entitled Allocation of Parental Rights and Responsibilities. These are dealt with in a Shared Parenting Plan which is attached to the Separation Agreement.

Section 6 of the Separation Agreement is entitled Annuity. Defendant was to pay plaintiff from his annuity a lump sum in the amount of \$40,903.36. Section 8. of the Separation Agreement is entitled Debts and Expenses. With some specificity, an allocation of debts is made between the parties to the Separation Agreement. With respect to the debts to be paid by each party, it is provided that each is to hold the other harmless with respect to the assumed debt.

Section 9 of the Separation Agreement is entitled Income Taxes. It provides that the parties will file their 2007 income taxes separately and shall share equally in any refund for that year. In Section 10, entitled Financial Accounts, it is provided that the parties will equally divide the balance in joint checking accounts at three different banks, and also divide the balance in the joint savings account. In Section 11, entitled Household Goods and Furnishings, each is to retain the personal property and household goods in his or her possession. Section 12 is entitled Motor Vehicles. Distribution of those vehicles which the

parties to the Separation Agreement own jointly is made. The provision in the Separation Agreement is that as to the vehicle or vehicles taken, each party shall be responsible for, and hold the other harmless from, all applicable expenses.

Section 13 of the Agreement is entitled Complete Settlement. There it is provided:

This Agreement shall be a full and complete settlement of all spousal support and property rights between the parties, each of whom does by the provisions hereof, release, satisfy and discharge all claims and demands against the other, including rights of dower, inheritance, descent and distribution, allowance for year's support, exemption from administration, all rights as surviving spouse, heir, legatee and next of kin in the estate of the other, and all rights to administer the estate of the other, and in all property which each now owns or may hereafter acquire, except as herein provided.

### **CONCLUSION**

The "hold harmless" obligation at issue is found under the Real Estate provision in the Separation Agreement. In that Agreement, the assignment to each of the parties of the real estate to which reference has been made above, is set forth. As to each taking, the Separation Agreement provides a hold harmless provision, which is an obligation of the other spouse. In respect to the distribution of real estate in the Separation Agreement, it is clear that an intention was that there be parity in the distribution of real estate. Further, the hold harmless requirement was part of the real estate distribution and was applicable to both parties; it was not meant to provide maintenance or support to either of them. Moreover, support and maintenance were expressly provided to plaintiff by the Separation Agreement. There is a section entitled Spousal Support, pursuant to which defendant was obligated to make regular support payments to plaintiff, which he has done. Plaintiff, in addition, obtained annuity values in the amount of \$40,903.36. Further, defendant was to

pay off the balance in the home equity security loan in the amount of \$75,000.00. This he has done. Clearly, the intention of the parties in entering into the Separation Agreement was to achieve an equitable distribution of their assets, taking care that plaintiff's support and maintenance be provided in accordance with the express provisions entitled "Spousal Support" and "Annuity."

It is the conclusion of the court, after reviewing the foregoing facts, particularly the provisions of the Separation Agreement, that the "hold harmless" provisions contained in the Real Estate section of that Agreement are not "in the nature of alimony, maintenance, or support." Those provisions are not domestic support obligations. Defendant is therefore entitled to prevail in this adversary proceeding, and the complaint will be dismissed by separate order.

Copies to:

Default List

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