

# The Claim Has Two Faces: Beyond the Basics

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# **The Claim Has Two Faces: Beyond the Basics of Claim Resolution**

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**The Claim Has Two Faces:  
Basic Claims Issues, Scenarios and Problems for All Practitioners**

**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/FormsAndFees/Forms/BankruptcyForms.aspx>  
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 that 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.

With respect to service on the claimant, the issue becomes whether the objection becomes a contested matter. The rule states that the objection should be served on the claimant – what does that mean? Does it mean to use the F.R.P.C. 7003 service rules? Make sure you know what the service rules are in the jurisdiction in which you practice. Also make sure that you know what you’re expected to do at the first scheduled hearing on the claim objection (i.e., is it an initial scheduling conference? Will there be oral argument?).

**CLAIMS SCENERIOS FOR DISCUSSION**

1. Debtor files an objection to a secured proof of claim. Secured creditor does not respond.
2. Claim is filed with very little supporting documentation, and what was attached was poor. Trustee objects on the basis of lack of documentation. Creditor responds, claiming that lack of supporting documents is not an appropriate basis for objecting, because the Bankruptcy Code contains no requirement regarding supporting documents – it's only found in the form/rule.
3. Debtor files claims on behalf of insiders.
4. Trustee files claims on behalf of people; debtor objects. Not a surplus case – does debtor have standing to become involved in objection process?
5. When you file an objection to a proof of claim, how do you serve it? If it's an insured-depository institution, don't you have to serve by certified mail on president? Use adversary proceeding rules or address on proof of claim?

**A common Chapter 13 scenario/problem**

1. You are the debtor's counsel in a Chapter 13 case. To avoid diversion from the issue, the debtor is unmarried, and solely owns all real property of the estate in fee simple.
2. The only real property in the debtor's estate is her residence. Your client wants to keep her home.
3. There are two mortgages on the residence. The debtor does not dispute that the residence is subject to both mortgages. The mortgagees will be identified as THING 1 and THING 2.
4. Appraisal of the residence on the date of the petition establishes that THING 1's mortgage is fully secured, and that THING 2's mortgage is partially secured. Both debts are long term non-dischargeable debts under 11 U.S.C. § 1328(a)(1). In your jurisdiction, you can't affect either mortgage under 11 U.S.C. §1322(b)(2) other than to provide for them under 11 U.S.C. §1322(b)(5) by curing the default and providing for current payments.
5. THING 1 files a proof of claim which states a total debt, an arrearage, and a current monthly mortgage payment. Your client doesn't agree with the asserted arrearage, and doesn't agree with the asserted current mortgage payment stated in the proof of claim.
6. THING 2 doesn't file a proof of claim by the claim filing deadline. Your client has no clue as to the amount of the debt subject to THING 2's mortgage, or of the arrearage on that debt, or of the monthly mortgage payment as of the date of the petition.
7. You are in a jurisdiction which requires payments on mortgage claims to be made through the Chapter 13 Trustee "conduit", and which does not allow payments to be so made unless a creditor has an allowed proof of claim.

The Question/Problem: How do you deal with the forgoing scenario in a manner which allows for confirmation of a plan under 11 U.S.C. §1325(a)(1) by complying with 11 U.S.C. 1322(b)(2)/ 11 U.S.C. §1322(b)(5), in light of the issues regarding the secured claims of THING 1 and THING 2? Specifically:

- A. What procedural device(s) do you use to determine the arrearage for THING 1, and the current monthly payment stated by THING 1's proof of claim?
- B. What procedural devices do you use to determine the claim to be provided for by the plan with respect to THING 2 and to effectuate payment by the Trustee to THING 2? CONSIDER: What happens if you do nothing?
- C. What would The Cat in the Hat© do?

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B10 (Official Form 10) (04/13)

<b>UNITED STATES BANKRUPTCY COURT</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):		
Name and address where notices should be sent:		<b>COURT USE ONLY</b>
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):		<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.
Telephone number:	email:	
<b>1. Amount of Claim as of Date Case Filed:</b> \$ _____  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.		
<b>2. Basis for Claim:</b> _____ (See instruction #2)		
<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)	<b>3b. Uniform Claim Identifier (optional):</b> _____ (See instruction #3b)
<b>4. Secured Claim</b> (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.		
<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>Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any:</b> \$ _____
<b>Value of Property:</b> \$ _____		<b>Basis for perfection:</b> _____
<b>Annual Interest Rate</b> _____ % <input type="checkbox"/> Fixed   or <input type="checkbox"/> Variable (when case was filed)		<b>Amount of Secured Claim:</b> \$ _____  <b>Amount Unsecured:</b> \$ _____
<b>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.</b>		
<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 \$12,475*) 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).
<input type="checkbox"/> Up to \$2,775* 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> \$ _____
*Amounts are subject to adjustment on 4/01/16 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.		
<b>6. Credits.</b> The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)		

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B10 (Official Form 10) (04/13)

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**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, security agreements, or, in the case of a claim based on an open-end or revolving consumer credit agreement, a statement providing the information required by FRBP 3001(c)(3)(A). 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. If the claim is secured by the debtor's principal residence, the Mortgage Proof of Claim Attachment is being filed with this claim. (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, or their authorized agent.   
  I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)  
 (See Bankruptcy Rule 3004.)

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 and documents required by FRBP 3001(c) for claims based on an open-end or revolving consumer credit agreement or secured by a security interest in the debtor's principal residence. 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, 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.

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DEFINITIONS	INFORMATION
<p><b>Debtor</b> A debtor is the person, corporation, or other entity that has filed a bankruptcy case.</p> <p><b>Creditor</b> A creditor is a person, corporation, or other entity to whom debtor owes a debt that was incurred before the date of the bankruptcy filing. See 11 U.S.C. §101 (10).</p> <p><b>Claim</b> 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.</p> <p><b>Proof of Claim</b> 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.</p> <p><b>Secured Claim Under 11 U.S.C. § 506 (a)</b> 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.</p>	<p>A claim also may be secured if the creditor owes the debtor money (has a right to setoff).</p> <p><b>Unsecured Claim</b> 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.</p> <p><b>Claim Entitled to Priority Under 11 U.S.C. § 507 (a)</b> 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.</p> <p><b>Redacted</b> 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.</p> <p><b>Evidence of Perfection</b> 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.</p> <p><b>Acknowledgment of Filing of Claim</b> 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 (<a href="http://www.pacer.psc.uscourts.gov">www.pacer.psc.uscourts.gov</a>) for a small fee to view your filed proof of claim.</p> <p><b>Offers to Purchase a Claim</b> 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 <i>et seq.</i>), and any applicable orders of the bankruptcy court.</p>