

Escrow Problems on the Proof of Claim and with Post-Petition Payments

Robin R. De Leo

The De Leo Law Firm, LLC; Mandeville, La.

Raymond L. Landreneau, Jr.

R. L. Landreneau, Jr. Attorney at Law; Houma, La.

Heather A. LaSalle

McGlinchey Stafford PLLC; New Orleans

Hon. Elizabeth W. Magner

U.S. Bankruptcy Court (E.D. La.); New Orleans



DISCOVER



AMERICAN BANKRUPTCY INSTITUTE
JOURNAL
journal.abi.org

ABI's Flagship Publication






***Delivering Expert Analysis
to Members***

With *ABI Journal* Online:

- Read the current issue before it mails
- Research more than 10 years of insolvency articles
- Search by year, issue, keyword, author or column
- Access when and where you want – even on your mobile device
- Receive it **FREE** as an ABI member

Find the Answers You Need
journal.abi.org

66 Canal Center Plaza • Suite 600 • Alexandria, VA 22314-1583 • phone: 703.739.0800 • abi.org

Join our networks to expand yours:   

© 2015 American Bankruptcy Institute All Rights Reserved.

ESCROW AND CHAPTER 13 BANKRUPTCIES

**Heather A. LaSalle
McGlinchey Stafford PLLC
New Orleans, Louisiana**

© McGlinchey Stafford, PLLC 2014

I. ESCROW REQUIREMENTS UNDER THE REAL ESTATE SETTLEMENT PROCEDURES ACT (“RESPA”), 12 U.S.C. §§ 2601, *et seq.*:

• **12 U.S.C. § 2605 (Servicing of Mortgage Loans and Administration of Escrow Accounts):**

(g) Administration of escrow accounts. If the terms of any federally related mortgage loan require the borrower to make payments to the servicer of the loan for deposit into an escrow account for the purpose of assuring payment of taxes, insurance premiums, and other charges with respect to the property, the servicer shall make payments from the escrow account for such taxes, insurance premiums, and other charges in a timely manner as such payments become due. Any balance in any such account that is within the servicer’s control at the time the loan is paid off shall be promptly returned to the borrower within 20 business days or credited to a similar account for a new mortgage loan to the borrower with the same lender.

• **12 U.S.C. § 2609 (Limitation on Requirement of Advance Deposits in Escrow Accounts):**

(a) In general. A lender, in connection with a federally related mortgage loan, may not require the borrower or prospective borrower—

(1) to deposit in any escrow account which may be established in connection with such loan for the purpose of assuring payment of taxes, insurance premiums, or other charges with respect to the property, in connection with the settlement, an aggregate sum (for such purpose) in excess of a sum that will be sufficient to pay such taxes, insurance premiums and other charges attributable to the period beginning on the last date on which each such charge would have been paid under the normal lending practice of the lender and local custom, provided that the selection of each such date constitutes prudent lending practice, and ending on the due date of its first full installment payment under the mortgage, plus one-sixth of the estimated total amount of such taxes, insurance premiums and other charges to be paid on dates, as provided above, during the ensuing twelve-month period;
or

(2) to deposit in any such escrow account in any month beginning with the first full installment payment under the mortgage a sum (for the purpose of assuring payment of taxes, insurance premiums and other charges with respect to the property) in excess of the sum of

(A) one-twelfth of the total amount of the estimated taxes, insurance premiums and other charges which are reasonably anticipated to be paid on dates during the ensuing twelve months which dates are in accordance with the normal lending practice of the lender and local custom, provided that the selection of each such date constitutes prudent lending practice, plus

(B) such amount as is necessary to maintain an additional balance in such escrow account not to exceed one-sixth of the estimated total amount of such taxes, insurance premiums and other charges to be paid on dates, as provided above, during the

ensuing twelve-month period: Provided, however, That in the event the lender determines there will be or is a deficiency he shall not be prohibited from requiring additional monthly deposits in such escrow account to avoid or eliminate such deficiency.

(b) Notification of shortage in escrow account. If the terms of any federally related mortgage loan require the borrower to make payments to the servicer (as the term is defined in section 2605(i) of this title) of the loan for deposit into an escrow account for the purpose of assuring payment of taxes, insurance premiums, and other charges with respect to the property, the servicer shall notify the borrower not less than annually of any shortage of funds in the escrow account.

(c) Escrow account statements.

(1) Initial statement.

(A) In general. Any servicer that has established an escrow account in connection with a federally related mortgage loan shall submit to the borrower for which the escrow account has been established a statement clearly itemizing the estimated taxes, insurance premiums, and other charges that are reasonably anticipated to be paid from the escrow account during the first 12 months after the establishment of the account and the anticipated dates of such payments.

(B) Time of submission. The statement required under subparagraph (A) shall be submitted to the borrower at closing with respect to the property for which the mortgage loan is made or not later than the expiration of the 45-day period beginning on the date of the establishment of the escrow account.

(C) Initial statement at closing. Any servicer may submit the statement required under subparagraph (A) to the borrower at closing and may incorporate such statement in the uniform settlement statement required under section 2603 of this title. The Bureau shall issue regulations prescribing any changes necessary to the uniform settlement statement under section 2603 of this title that specify how the statement required under subparagraph (A) of this section shall be incorporated in the uniform settlement statement.

(2) Annual statement.

(A) In general. Any servicer that has established or continued an escrow account in connection with a federally related mortgage loan shall submit to the borrower for which the escrow account has been established or continued a statement clearly itemizing, for each period described in subparagraph (B) (during which the servicer services the escrow account), the amount of the borrower's current monthly payment, the portion of the monthly payment being placed in the escrow account, the total amount paid into the escrow account during the period, the total amount paid out of the escrow account during the period for taxes, insurance premiums, and other

charges (as separately identified), and the balance in the escrow account at the conclusion of the period.

(B) Time of submission. The statement required under subparagraph (A) shall be submitted to the borrower not less than once for each 12-month period, the first such period beginning on the first January 1st that occurs after November 28, 1990, and shall be submitted not more than 30 days after the conclusion of each such 1-year period.

(d) Penalties.

(1) In general. In the case of each failure to submit a statement to a borrower as required under subsection (c) of this section, the Secretary shall assess to the lender or escrow servicer failing to submit the statement a civil penalty of \$50 for each such failure, but the total amount imposed on such lender or escrow servicer for all such failures during any 12-month period referred to in subsection (b) ^[1] of this section may not exceed \$100,000.

(2) Intentional violations. If any failure to which paragraph (1) applies is due to intentional disregard of the requirement to submit the statement, then, with respect to such failure—

(A) the penalty imposed under paragraph (1) shall be \$100; and

(B) in the case of any penalty determined under subparagraph (A), the \$100,000 limitation under paragraph (1) shall not apply.

• **12 U.S.C. § 2610 (Prohibition of fees for Preparation of Truth-in-Lending, Uniform Settlement, and Escrow Account Statements):**

No fee shall be imposed or charge made upon any other person (as a part of settlement costs or otherwise) by a lender in connection with a federally related mortgage loan made by it (or a loan for the purchase of a mobile home), or by a servicer (as the term is defined under section 2605(i) of this title), for or on account of the preparation and submission by such lender or servicer of the statement or statements required (in connection with such loan) by sections 2603 and 2609(c) of this title or by the Truth in Lending Act (15 U.S.C. §§ 1601, et seq.).

II. **ESCROW REQUIREMENTS UNDER REGULATION X (“REG X”)¹, 12 C.F.R. §§ 1024, et seq.:**

• **12 C.F.R. § 1024.17 (Escrow Accounts):**

(a) General. This section sets out the requirements for an escrow account that a lender establishes in connection with a federally related mortgage loan. It sets limits for escrow accounts using calculations based on monthly payments and disbursements within a calendar year. If an escrow account involves biweekly or any other payment period, the requirements

¹ Reg X was issued by the Bureau of Consumer Financial Protection to implement the provisions of RESPA.

in this section shall be modified accordingly. A Public Guidance Document entitled “Biweekly Payments—Example” provides examples of biweekly accounting and a Public Guidance Document entitled “Annual Escrow Account Disclosure Statement—Example” provides examples of a 3-year accounting cycle that may be used in accordance with paragraph (c)(9) of this section. A Public Guidance Document entitled “Consumer Disclosure for Voluntary Escrow Account Payments” provides a model disclosure format that originators and servicers are encouraged, but not required, to provide to consumers when the originator or servicer anticipates a substantial increase in disbursements from the escrow account after the first year of the loan. The disclosures in that model format may be combined with or included in the Initial Escrow Account Statement required in § 1024.17(g).

(b) Definitions. As used in this section:

Aggregate (or) composite analysis, hereafter called aggregate analysis, means an accounting method a servicer uses in conducting an escrow account analysis by computing the sufficiency of escrow account funds by analyzing the account as a whole. Appendix E to this part sets forth examples of aggregate escrow account analyses.

Annual escrow account statement means a statement containing all of the information set forth in § 1024.17(i). As noted in § 1024.17(i), a servicer shall submit an annual escrow account statement to the borrower within 30 calendar days of the end of the escrow account computation year, after conducting an escrow account analysis.

Cushion or reserve (hereafter cushion) means funds that a servicer may require a borrower to pay into an escrow account to cover unanticipated disbursements or disbursements made before the borrower's payments are available in the account, as limited by § 1024.17(c).

Deficiency is the amount of a negative balance in an escrow account. As noted in § 1024.17(f), if a servicer advances funds for a borrower, then the servicer must perform an escrow account analysis before seeking repayment of the deficiency.

Delivery means the placing of a document in the United States mail, first-class postage paid, addressed to the last known address of the recipient. Hand delivery also constitutes delivery. Disbursement date means the date on which the servicer actually pays an escrow item from the escrow account.

Escrow account means any account that a servicer establishes or controls on behalf of a borrower to pay taxes, insurance premiums (including flood insurance), or other charges with respect to a federally related mortgage loan, including charges that the borrower and servicer have voluntarily agreed that the servicer should collect and pay. The definition encompasses any account established for this purpose, including a “trust account”, “reserve account”, “impound account”, or other term in different localities. An “escrow account” includes any arrangement where the servicer adds a portion of the borrower's payments to principal and subsequently deducts from principal the disbursements for escrow account items. For purposes of this section, the term “escrow account” excludes any account that is under the borrower's total control.

Escrow account analysis means the accounting that a servicer conducts in the form of a trial running balance for an escrow account to:

- (1) Determine the appropriate target balances;
- (2) Compute the borrower's monthly payments for the next escrow account computation year and any deposits needed to establish or maintain the account; and
- (3) Determine whether shortages, surpluses or deficiencies exist.

Escrow account computation year is a 12-month period that a servicer establishes for the escrow account beginning with the borrower's initial payment date. The term includes each 12-month period thereafter, unless a servicer chooses to issue a short year statement under the conditions stated in § 1024.17(i)(4).

Escrow account item or separate item means any separate expenditure category, such as “taxes” or “insurance”, for which funds are collected in the escrow account for disbursement. An escrow account item with installment payments, such as local property taxes, remains one escrow account item regardless of multiple disbursement dates to the tax authority.

Initial escrow account statement means the first disclosure statement that the servicer delivers to the borrower concerning the borrower's escrow account. The initial escrow account statement shall meet the requirements of § 1024.17(g) and be in substantially the format set forth in § 1024.17(h).

Installment payment means one of two or more payments payable on an escrow account item during an escrow account computation year. An example of an installment payment is where a jurisdiction bills quarterly for taxes.

Payment due date means the date each month when the borrower's monthly payment to an escrow account is due to the servicer. The initial payment date is the borrower's first payment due date to an escrow account.

Penalty means a late charge imposed by the payee for paying after the disbursement is due. It does not include any additional charge or fee imposed by the payee associated with choosing installment payments as opposed to annual payments or for choosing one installment plan over another.

Pre-accrual is a practice some servicers use to require borrowers to deposit funds, needed for disbursement and maintenance of a cushion, in the escrow account some period before the disbursement date. Pre-accrual is subject to the limitations of § 1024.17(c).

Shortage means an amount by which a current escrow account balance falls short of the target balance at the time of escrow analysis.

Single-item analysis means an accounting method servicers use in conducting an escrow account analysis by computing the sufficiency of escrow account funds by considering each escrow item separately. Appendix E to this part sets forth examples of single-item analysis.

AMERICAN BANKRUPTCY INSTITUTE

Submission (of an escrow account statement) means the delivery of the statement.

Surplus means an amount by which the current escrow account balance exceeds the target balance for the account.

System of recordkeeping means the servicer's method of keeping information that reflects the facts relating to that servicer's handling of the borrower's escrow account, including, but not limited to, the payment of amounts from the escrow account and the submission of initial and annual escrow account statements to borrowers.

Target balance means the estimated month end balance in an escrow account that is just sufficient to cover the remaining disbursements from the escrow account in the escrow account computation year, taking into account the remaining scheduled periodic payments, and a cushion, if any.

Trial running balance means the accounting process that derives the target balances over the course of an escrow account computation year. Section 1024.17(d) provides a description of the steps involved in performing a trial running balance.

(c) Limits on payments to escrow accounts.

(1) A lender or servicer (hereafter servicer) shall not require a borrower to deposit into any escrow account, created in connection with a federally related mortgage loan, more than the following amounts:

- (i) Charges at settlement or upon creation of an escrow account. At the time a servicer creates an escrow account for a borrower, the servicer may charge the borrower an amount sufficient to pay the charges respecting the mortgaged property, such as taxes and insurance, which are attributable to the period from the date such payment(s) were last paid until the initial payment date. The “amount sufficient to pay” is computed so that the lowest month end target balance projected for the escrow account computation year is zero (-0-) (see Step 2 in appendix E to this part). In addition, the servicer may charge the borrower a cushion that shall be no greater than one-sixth (1/6) of the estimated total annual payments from the escrow account.
- (ii) Charges during the life of the escrow account. Throughout the life of an escrow account, the servicer may charge the borrower a monthly sum equal to one-twelfth (1/12) of the total annual escrow payments which the servicer reasonably anticipates paying from the account. In addition, the servicer may add an amount to maintain a cushion no greater than one-sixth (1/6) of the estimated total annual payments from the account. However, if a servicer determines through an escrow account analysis that there is a shortage or deficiency, the servicer may require the borrower to pay additional deposits to make up the shortage or eliminate the deficiency, subject to the limitations set forth in § 1024.17(f).

- (2) Escrow analysis at creation of escrow account. Before establishing an escrow account, the servicer must conduct an escrow account analysis to determine the amount the borrower must deposit into the escrow account (subject to the limitations of paragraph (c)(1)(i) of this section), and the amount of the borrower's periodic payments into the escrow account (subject to the limitations of paragraph (c)(1)(ii) of this section). In conducting the escrow account analysis, the servicer must estimate the disbursement amounts according to paragraph (c)(7) of this section. Pursuant to paragraph (k) of this section, the servicer must use a date on or before the deadline to avoid a penalty as the disbursement date for the escrow item and comply with any other requirements of paragraph (k) of this section. Upon completing the initial escrow account analysis, the servicer must prepare and deliver an initial escrow account statement to the borrower, as set forth in paragraph (g) of this section. The servicer must use the escrow account analysis to determine whether a surplus, shortage, or deficiency exists and must make any adjustments to the account pursuant to paragraph (f) of this section.
- (3) Subsequent escrow account analyses. For each escrow account, the servicer must conduct an escrow account analysis at the completion of the escrow account computation year to determine the borrower's monthly escrow account payments for the next computation year, subject to the limitations of paragraph (c)(1)(ii) of this section. In conducting the escrow account analysis, the servicer must estimate the disbursement amounts according to paragraph (c)(7) of this section. Pursuant to paragraph (k) of this section, the servicer must use a date on or before the deadline to avoid a penalty as the disbursement date for the escrow item and comply with any other requirements of paragraph (k) of this section. The servicer must use the escrow account analysis to determine whether a surplus, shortage, or deficiency exists, and must make any adjustments to the account pursuant to paragraph (f) of this section. Upon completing an escrow account analysis, the servicer must prepare and submit an annual escrow account statement to the borrower, as set forth in paragraph (i) of this section.
- (4) Aggregate accounting required. All servicers must use the aggregate accounting method in conducting escrow account analyses.
- (5) Cushion. The cushion must be no greater than one-sixth (1/6) of the estimated total annual disbursements from the escrow account.
- (6) Restrictions on pre-accrual. A servicer must not practice pre-accrual.
- (7) Servicer estimates of disbursement amounts. To conduct an escrow account analysis, the servicer shall estimate the amount of escrow account items to be disbursed. If the servicer knows the charge for an escrow item in the next computation year, then the servicer shall use that amount in estimating disbursement amounts. If the charge is unknown to the servicer, the servicer may base the estimate on the preceding year's charge, or the preceding year's charge as modified by an amount not exceeding the most recent year's change in the national Consumer Price Index for all urban consumers (CPI, all items). In cases of unassessed new construction, the servicer may base an estimate on the assessment of comparable residential property in the market area.

(8) Provisions in mortgage documents. The servicer must examine the mortgage loan documents to determine the applicable cushion for each escrow account. If the mortgage loan documents provide for lower cushion limits, then the terms of the loan documents apply. Where the terms of any mortgage loan document allow greater payments to an escrow account than allowed by this section, then this section controls the applicable limits. Where the mortgage loan documents do not specifically establish an escrow account, whether a servicer may establish an escrow account for the loan is a matter for determination by other Federal or state law. If the mortgage loan document is silent on the escrow account limits and a servicer establishes an escrow account under other Federal or state law, then the limitations of this section apply unless applicable Federal or state law provides for a lower amount. If the loan documents provide for escrow accounts up to the RESPA limits, then the servicer may require the maximum amounts consistent with this section, unless an applicable Federal or state law sets a lesser amount.

(9) Assessments for periods longer than one year. Some escrow account items may be billed for periods longer than one year. For example, servicers may need to collect flood insurance or water purification escrow funds for payment every three years. In such cases, the servicer shall estimate the borrower's payments for a full cycle of disbursements. For a flood insurance premium payable every 3 years, the servicer shall collect the payments reflecting 36 equal monthly amounts. For two out of the three years, however, the account balance may not reach its low monthly balance because the low point will be on a three-year cycle, as compared to an annual one. The annual escrow account statement shall explain this situation (see example in the Public Guidance Document entitled “Annual Escrow Account Disclosure Statement—Example”, available in accordance with § 1024.3).

(d) Methods of escrow account analysis.

(1) The following sets forth the steps servicers must use to determine whether their use of aggregate analysis conforms with the limitations in § 1024.17(c)(1). The steps set forth in this section result in maximum limits. Servicers may use accounting procedures that result in lower target balances. In particular, servicers may use a cushion less than the permissible cushion or no cushion at all. This section does not require the use of a cushion.

(2) Aggregate analysis.

(i) In conducting the escrow account analysis using aggregate analysis, the target balances may not exceed the balances computed according to the following arithmetic operations:

(A) The servicer first projects a trial balance for the account as a whole over the next computation year (a trial running balance). In doing so the servicer assumes that it will make estimated disbursements on or before the earlier of the deadline to take advantage of discounts, if available, or the deadline to avoid a penalty. The servicer does not use pre-accrual on these disbursement dates. The servicer also

assumes that the borrower will make monthly payments equal to one-twelfth of the estimated total annual escrow account disbursements.

(B) The servicer then examines the monthly trial balances and adds to the first monthly balance an amount just sufficient to bring the lowest monthly trial balance to zero, and adjusts all other monthly balances accordingly.

(C) The servicer then adds to the monthly balances the permissible cushion. The cushion is two months of the borrower's escrow payments to the servicer or a lesser amount specified by state law or the mortgage document (net of any increases or decreases because of prior year shortages or surpluses, respectively).

(ii) Lowest monthly balance. Under aggregate analysis, the lowest monthly target balance for the account shall be less than or equal to one-sixth of the estimated total annual escrow account disbursements or a lesser amount specified by state law or the mortgage document. The target balances that the servicer derives using these steps yield the maximum limit for the escrow account. Appendix E to this part illustrates these steps.

(e) Transfer of servicing.

(1) If the new servicer changes either the monthly payment amount or the accounting method used by the transferor (old) servicer, then the new servicer shall provide the borrower with an initial escrow account statement within 60 days of the date of servicing transfer.

(i) Where a new servicer provides an initial escrow account statement upon the transfer of servicing, the new servicer shall use the effective date of the transfer of servicing to establish the new escrow account computation year.

(ii) Where the new servicer retains the monthly payments and accounting method used by the transferor servicer, then the new servicer may continue to use the escrow account computation year established by the transferor servicer or may choose to establish a different computation year using a short-year statement. At the completion of the escrow account computation year or any short year, the new servicer shall perform an escrow analysis and provide the borrower with an annual escrow account statement.

(2) The new servicer shall treat shortages, surpluses and deficiencies in the transferred escrow account according to the procedures set forth in § 1024.17(f).

(f) Shortages, surpluses, and deficiencies requirements.

(1) Escrow account analysis. For each escrow account, the servicer shall conduct an escrow account analysis to determine whether a surplus, shortage or deficiency exists.

- (i) As noted in § 1024.17(c)(2) and (3), the servicer shall conduct an escrow account analysis upon establishing an escrow account and at completion of the escrow account computation year.
- (ii) The servicer may conduct an escrow account analysis at other times during the escrow computation year. If a servicer advances funds in paying a disbursement, which is not the result of a borrower's payment default under the underlying mortgage document, then the servicer shall conduct an escrow account analysis to determine the extent of the deficiency before seeking repayment of the funds from the borrower under this paragraph (f).

(2) Surpluses.

- (i) If an escrow account analysis discloses a surplus, the servicer shall, within 30 days from the date of the analysis, refund the surplus to the borrower if the surplus is greater than or equal to 50 dollars (\$50). If the surplus is less than 50 dollars (\$50), the servicer may refund such amount to the borrower, or credit such amount against the next year's escrow payments.
- (ii) These provisions regarding surpluses apply if the borrower is current at the time of the escrow account analysis. A borrower is current if the servicer receives the borrower's payments within 30 days of the payment due date. If the servicer does not receive the borrower's payment within 30 days of the payment due date, then the servicer may retain the surplus in the escrow account pursuant to the terms of the mortgage loan documents.
- (iii) After an initial or annual escrow analysis has been performed, the servicer and the borrower may enter into a voluntary agreement for the forthcoming escrow accounting year for the borrower to deposit funds into the escrow account for that year greater than the limits established under paragraph (c) of this section. Such an agreement shall cover only one escrow accounting year, but a new voluntary agreement may be entered into after the next escrow analysis is performed. The voluntary agreement may not alter how surpluses are to be treated when the next escrow analysis is performed at the end of the escrow accounting year covered by the voluntary agreement.

(3) Shortages.

- (i) If an escrow account analysis discloses a shortage of less than one month's escrow account payment, then the servicer has three possible courses of action:
 - (A) The servicer may allow a shortage to exist and do nothing to change it;
 - (B) The servicer may require the borrower to repay the shortage amount within 30 days; or

NEW ORLEANS CONSUMER BANKRUPTCY CONFERENCE 2015

- (C) The servicer may require the borrower to repay the shortage amount in equal monthly payments over at least a 12-month period.
- (ii) If an escrow account analysis discloses a shortage that is greater than or equal to one month's escrow account payment, then the servicer has two possible courses of action:
 - (A) The servicer may allow a shortage to exist and do nothing to change it; or
 - (B) The servicer may require the borrower to repay the shortage in equal monthly payments over at least a 12-month period.
- (4) Deficiency. If the escrow account analysis confirms a deficiency, then the servicer may require the borrower to pay additional monthly deposits to the account to eliminate the deficiency.
 - (i) If the deficiency is less than one month's escrow account payment, then the servicer:
 - (A) May allow the deficiency to exist and do nothing to change it;
 - (B) May require the borrower to repay the deficiency within 30 days; or
 - (C) May require the borrower to repay the deficiency in 2 or more equal monthly payments.
 - (ii) If the deficiency is greater than or equal to 1 month's escrow payment, the servicer may allow the deficiency to exist and do nothing to change it or may require the borrower to repay the deficiency in two or more equal monthly payments.
 - (iii) These provisions regarding deficiencies apply if the borrower is current at the time of the escrow account analysis. A borrower is current if the servicer receives the borrower's payments within 30 days of the payment due date. If the servicer does not receive the borrower's payment within 30 days of the payment due date, then the servicer may recover the deficiency pursuant to the terms of the mortgage loan documents.
- (5) Notice of shortage or deficiency in escrow account. The servicer shall notify the borrower at least once during the escrow account computation year if there is a shortage or deficiency in the escrow account. The notice may be part of the annual escrow account statement or it may be a separate document.
- (g) Initial escrow account statement.
 - (1) Submission at settlement, or within 45 calendar days of settlement. As noted in § 1024.17(c)(2), the servicer shall conduct an escrow account analysis before establishing an escrow account to determine the amount the borrower shall deposit into the escrow

account, subject to the limitations of § 1024.17(c)(1)(i). After conducting the escrow account analysis for each escrow account, the servicer shall submit an initial escrow account statement to the borrower at settlement or within 45 calendar days of settlement for escrow accounts that are established as a condition of the loan.

(i) The initial escrow account statement shall include the amount of the borrower's monthly mortgage payment and the portion of the monthly payment going into the escrow account and shall itemize the estimated taxes, insurance premiums, and other charges that the servicer reasonably anticipates to be paid from the escrow account during the escrow account computation year and the anticipated disbursement dates of those charges. The initial escrow account statement shall indicate the amount that the servicer selects as a cushion. The statement shall include a trial running balance for the account.

(ii) Pursuant to § 1024.17(h)(2), the servicer may incorporate the initial escrow account statement into the HUD-1 or HUD-1A settlement statement. If the servicer does not incorporate the initial escrow account statement into the HUD-1 or HUD-1A settlement statement, then the servicer shall submit the initial escrow account statement to the borrower as a separate document.

(2) Time of submission of initial escrow account statement for an escrow account established after settlement. For escrow accounts established after settlement (and which are not a condition of the loan), a servicer shall submit an initial escrow account statement to a borrower within 45 calendar days of the date of establishment of the escrow account.

(h) Format for initial escrow account statement.

(1) The format and a completed example for an initial escrow account statement are set out in Public Guidance Documents entitled “Initial Escrow Account Disclosure Statement—Format” and “Initial Escrow Account Disclosure Statement—Example”, available in accordance with § 1024.3.

(2) Incorporation of initial escrow account statement into HUD-1 or HUD-1A settlement statement. Pursuant to § 1024.9(a)(11), a servicer may add the initial escrow account statement to the HUD-1 or HUD-1A settlement statement. The servicer may include the initial escrow account statement in the basic text or may attach the initial escrow account statement as an additional page to the HUD-1 or HUD-1A settlement statement.

(3) Identification of payees. The initial escrow account statement need not identify a specific payee by name if it provides sufficient information to identify the use of the funds. For example, appropriate entries include: county taxes, hazard insurance, condominium dues, etc. If a particular payee, such as a taxing body, receives more than one payment during the escrow account computation year, the statement shall indicate each payment and disbursement date. If there are several taxing authorities or insurers, the statement shall identify each taxing body or insurer (e.g., “City Taxes”, “School Taxes”, “Hazard Insurance”, or “Flood Insurance,” etc.).

- (i) Annual escrow account statements. For each escrow account, a servicer shall submit an annual escrow account statement to the borrower within 30 days of the completion of the escrow account computation year. The servicer shall also submit to the borrower the previous year's projection or initial escrow account statement. The servicer shall conduct an escrow account analysis before submitting an annual escrow account statement to the borrower.
- (1) Contents of annual escrow account statement. The annual escrow account statement shall provide an account history, reflecting the activity in the escrow account during the escrow account computation year, and a projection of the activity in the account for the next year. In preparing the statement, the servicer may assume scheduled payments and disbursements will be made for the final 2 months of the escrow account computation year. The annual escrow account statement must include, at a minimum, the following (the items in paragraphs (i)(1)(i) through (i)(1)(iv) must be clearly itemized):
- (i) The amount of the borrower's current monthly mortgage payment and the portion of the monthly payment going into the escrow account;
 - (ii) The amount of the past year's monthly mortgage payment and the portion of the monthly payment that went into the escrow account;
 - (iii) The total amount paid into the escrow account during the past computation year;
 - (iv) The total amount paid out of the escrow account during the same period for taxes, insurance premiums, and other charges (as separately identified);
 - (v) The balance in the escrow account at the end of the period;
 - (vi) An explanation of how any surplus is being handled by the servicer;
 - (vii) An explanation of how any shortage or deficiency is to be paid by the borrower; and
 - (viii) If applicable, the reason(s) why the estimated low monthly balance was not reached, as indicated by noting differences between the most recent account history and last year's projection. Public Guidance Documents entitled "Annual Escrow Account Disclosure Statement—Format" and "Annual Escrow Account Disclosure Statement—Example" set forth an acceptable format and methodology for conveying this information.
- (2) No annual statements in the case of default, foreclosure, or bankruptcy. This paragraph (i)(2) contains an exemption from the provisions of § 1024.17(i)(1). If at the time the servicer conducts the escrow account analysis the borrower is more than 30 days overdue, then the servicer is exempt from the requirements of submitting an annual escrow account statement to the borrower under § 1024.17(i). This exemption also applies in situations where the servicer has brought an action for foreclosure under the underlying mortgage loan, or where the borrower is in bankruptcy proceedings. If the servicer does not issue an annual statement pursuant to this exemption and the loan subsequently is

AMERICAN BANKRUPTCY INSTITUTE

reinstated or otherwise becomes current, the servicer shall provide a history of the account since the last annual statement (which may be longer than 1 year) within 90 days of the date the account became current.

- (3) Delivery with other material. The servicer may deliver the annual escrow account statement to the borrower with other statements or materials, including the Substitute 1098, which is provided for Federal income tax purposes.
- (4) Short year statements. A servicer may issue a short year annual escrow account statement (“short year statement”) to change one escrow account computation year to another. By using a short year statement a servicer may adjust its production schedule or alter the escrow account computation year for the escrow account.
 - (i) Effect of short year statement. The short year statement shall end the “escrow account computation year” for the escrow account and establish the beginning date of the new escrow account computation year. The servicer shall deliver the short year statement to the borrower within 60 days from the end of the short year.
 - (ii) Short year statement upon servicing transfer. Upon the transfer of servicing, the transferor (old) servicer shall submit a short year statement to the borrower within 60 days of the effective date of transfer.
 - (iii) Short year statement upon loan payoff. If a borrower pays off a mortgage loan during the escrow account computation year, the servicer shall submit a short year statement to the borrower within 60 days after receiving the pay-off funds.
- (j) Formats for annual escrow account statement. The formats and completed examples for annual escrow account statements using single-item analysis (pre-rule accounts) and aggregate analysis are set out in Public Guidance Documents entitled “Annual Escrow Account Disclosure Statement—Format” and “Annual Escrow Account Disclosure Statement—Example.”
- (k) Timely payments.
 - (1) If the terms of any federally related mortgage loan require the borrower to make payments to an escrow account, the servicer must pay the disbursements in a timely manner, that is, on or before the deadline to avoid a penalty, as long as the borrower's payment is not more than 30 days overdue.
 - (2) The servicer must advance funds to make disbursements in a timely manner as long as the borrower's payment is not more than 30 days overdue. Upon advancing funds to pay a disbursement, the servicer may seek repayment from the borrower for the deficiency pursuant to paragraph (f) of this section.
 - (3) For the payment of property taxes from the escrow account, if a taxing jurisdiction offers a servicer a choice between annual and installment disbursements, the servicer must also comply with this paragraph (k)(3). If the taxing jurisdiction neither offers a discount for

disbursements on a lump sum annual basis nor imposes any additional charge or fee for installment disbursements, the servicer must make disbursements on an installment basis. If, however, the taxing jurisdiction offers a discount for disbursements on a lump sum annual basis or imposes any additional charge or fee for installment disbursements, the servicer may, at the servicer's discretion (but is not required by RESPA to), make lump sum annual disbursements in order to take advantage of the discount for the borrower or avoid the additional charge or fee for installments, as long as such method of disbursement complies with paragraphs (k)(1) and (k)(2) of this section. The Bureau encourages, but does not require, the servicer to follow the preference of the borrower, if such preference is known to the servicer.

- (4) Notwithstanding paragraph (k)(3) of this section, a servicer and borrower may mutually agree, on an individual case basis, to a different disbursement basis (installment or annual) or disbursement date for property taxes from that required under paragraph (k)(3) of this section, so long as the agreement meets the requirements of paragraphs (k)(1) and (k)(2) of this section. The borrower must voluntarily agree; neither loan approval nor any term of the loan may be conditioned on the borrower's agreeing to a different disbursement basis or disbursement date.

(l) System of recordkeeping.

- (1) Each servicer shall keep records, which may involve electronic storage, microfiche storage, or any method of computerized storage, so long as the information is easily retrievable, reflecting the servicer's handling of each borrower's escrow account. The servicer's records shall include, but not be limited to, the payment of amounts into and from the escrow account and the submission of initial and annual escrow account statements to the borrower.
- (2) The servicer responsible for servicing the borrower's escrow account shall maintain the records for that account for a period of at least five years after the servicer last serviced the escrow account.
- (3) A servicer shall provide the Bureau with information contained in the servicer's records for a specific escrow account, or for a number or class of escrow accounts, within 30 days of the Bureau's written request for the information. At the Bureau's request, the servicer shall convert any information contained in electronic storage, microfiche or computerized storage to paper copies for review by the Bureau.
- (4) Borrowers may seek information contained in the servicer's records by complying with the provisions set forth in 12 U.S.C. 2605(e) and § 1024.21(e).
- (5) After receiving a request from the Bureau for information relating to whether a servicer submitted an escrow account statement to the borrower, the servicer shall respond within 30 days. If the servicer is unable to provide the Bureau with such information, the Bureau shall deem that lack of information to be evidence of the servicer's failure to submit the statement to the borrower.

- (m) Discretionary payments. Any borrower's discretionary payment (such as credit life or disability insurance) made as part of a monthly mortgage payment is to be noted on the initial and annual statements. If a discretionary payment is established or terminated during the escrow account computation year, this change should be noted on the next annual statement. A discretionary payment is not part of the escrow account unless the payment is required by the lender, in accordance with the definition of "settlement service" in § 1024.2, or the servicer chooses to place the discretionary payment in the escrow account. If a servicer has not established an escrow account for a federally related mortgage loan and only receives payments for discretionary items, this section is not applicable.

III. ESCROW REQUIREMENTS UNDER BANKRUPTCY RULES:

- **Bankruptcy Rule 3001 (Proof of Claim):**

(c) Supporting Information.

(2) Additional Requirements in an Individual Debtor Case; Sanctions for Failure to Comply.
In a case in which the debtor is an individual:

- (A) If, in addition to its principal amount, a claim includes interest, fees, expenses, or other charges incurred before the petition was filed, an itemized statement of the interest, fees, expenses, or charges shall be filed with the proof of claim.
- (B) If a security interest is claimed in the debtor's property, a statement of the amount necessary to cure any default as of the date of the petition shall be filed with the proof of claim.
- (C) If a security interest is claimed in property that is the debtor's principal residence, the attachment prescribed by the appropriate Official Form shall be filed with the proof of claim. If an escrow account has been established in connection with the claim, an escrow account statement prepared as of the date the petition was filed and in a form consistent with applicable non-bankruptcy law shall be filed with the attachment to the proof of claim.
- (D) If the holder of a claim fails to provide any information required by this subdivision (c), the court may, after notice and hearing, take either or both of the following actions:
- (i) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or
 - (ii) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

- **Bankruptcy Rule 3002.1 (Notice Relating to Claims Secured by Security Interest in the Debtor):**

- (a) In General. This rule applies in a chapter 13 case to claims that are (1) secured by a security interest in the debtor's principal residence, and (2) provided for under § 1322(b)(5) of the Code in the debtor's plan.
- (b) Notice of Payment Changes. The holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a notice of any change in the payment amount, including any change that results from an interest rate or escrow account adjustment, no later than 21 days before a payment in the new amount is due.
- (c) Notice of Fees, Expenses, and Charges. The holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a notice itemizing all fees, expenses, or charges (1) that were incurred in connection with the claim after the bankruptcy case was filed, and (2) that the holder asserts are recoverable against the debtor or against the debtor's principal residence. The notice shall be served within 180 days after the date on which the fees, expenses, or charges are incurred.
- (d) Form and Content. A notice filed and served under subdivision (b) or (c) of this rule shall be prepared as prescribed by the appropriate Official Form, and filed as a supplement to the holder's proof of claim. The notice is not subject to Rule 3001(f).
- (e) Determination of Fees, Expenses, or Charges. On motion of the debtor or trustee filed within one year after service of a notice under subdivision (c) of this rule, the court shall, after notice and hearing, determine whether payment of any claimed fee, expense, or charge is required by the underlying agreement and applicable non-bankruptcy law to cure a default or maintain payments in accordance with § 1322(b)(5) of the Code.

...

- (i) Failure to Notify. If the holder of a claim fails to provide any information as required by subdivision (b), (c), or (g) of this rule, the court may, after notice and hearing, take either or both of the following actions:
 - (1) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or
 - (2) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

IV. LOCAL RULES REGARDING ESCROW IN THE FIFTH CIRCUIT:

Eastern District of Louisiana – Local Rule 3001-1 provides for how escrow should be calculated as of the petition date (see attached Exhibit 1).

Middle District of Louisiana – none.

Western District of Louisiana – Local Rule 3002-1(A) expands the time that that notices of payment change required under Bankruptcy Rule 3002.1(b) must be filed from 21 days to no

later than 35 days before a payment in the new amount is due. Local Rule 3002-1(D) requires that, in addition to the information required by Bankruptcy Rule 3001, a proof of claim must include (1) all missed pre-petition payments, including the dates of the missed payments, along with a total dollar amount resulting therefrom; and (2) an escrow account balance, including any funds advanced by the creditor on behalf of the debtor as of the date the petition was filed, unless already included in (1).

Northern and Southern Districts of Louisiana – none.

Southern District of Texas – Local Rule 3001-1 requires that creditors filing proofs of claim on home mortgages in chapter 13 cases must use a Loan History form, which requires various escrow related information and escrow calculations (see attached copy of Loan History Form at Exhibit 2).

Eastern District of Texas – none.

Northern District of Texas – Local Rule 3001-1 incorporates the provisions of Bankruptcy Rule 3001 regarding escrow information to be included with proofs of claim filed.

Western District of Texas – none.

V. CASE LAW INTERPRETING ESCROW:

- *Campbell v. Countrywide Home Loans, Inc.*, 545 F.3d 348 (5th Cir. 2008).

In this narrow decision, the Fifth Circuit held that unpaid escrow payments that accumulate pre-petition in the year that a bankruptcy petition is filed, and which the creditor had a right to collect under the loan documents, constitute a “claim” under the Bankruptcy Code. Therefore, Countrywide could not attempt to collect those amounts through increased post-petition payments, but should have captured those amounts in the proof of claim. The Fifth Circuit’s decision did not address the right of a lender to recalculate the amount of escrow it can collect through post-petition payments in subsequent years. The Fifth Circuit also held that the actions of Countrywide in seeking to collect pre-petition escrow through post-petition payments did not violate the automatic stay because Countrywide did not collect the increased post-petition amount or take any action outside the bankruptcy proceeding to collect it. Thus, the court found that simply asserting in a proof of claim that the debtors owed a higher post-petition escrow payment did not violate the automatic stay.

- *In re Rodriguez*, 629 F.3d 136 (3d Cir. 2010).

The Third Circuit, finding *Campbell* instructive, held that an escrow cushion was a claim that should be collected through the bankruptcy process rather than through higher post-petition monthly escrow payments. The court remanded the matter down for a determination as to whether Countrywide violated the automatic stay by seeking to collect the escrow cushion through post-petition payments. The dissenting opinion found that Countrywide acted in accordance with RESPA and questioned the “irreconcilable

conflict” set up by the majority opinion between RESPA and the automatic stay of the Bankruptcy Code, which opinion the dissent viewed as abrogating RESPA.

- *In re Beaudot*, 455 B.R. 671 (Bankr. M.D. Tenn. 2011).

The court held that a pre-petition claim for unpaid escrow was properly paid as part of the mortgage arrearage through the chapter 13 plan. In holding so, the court rejected the mortgage servicer’s attempts to collect the unpaid escrow through an increase in post-petition monthly mortgage payments.

- *In re Harris*, 2012 WL 1410264 (Bankr. C.D. Ill. 2012).

The court held that taxes paid by the mortgage servicer prior to the bankruptcy filing constitute a pre-petition claim that must be satisfied through the debtor’s chapter 13 plan.

- *In re Garza*, United States Bankruptcy Court, Southern District of Texas, Case No. 08-60088; Memorandum Opinion dated October 1, 2012, Doc. No. 68.

The creditor did not provide debtors with annual escrow analysis statements while the loan was in bankruptcy. The court noted that the majority of courts that have considered the proper remedy for failing to comply with the annual escrow analysis requirement under RESPA have determined that such a failure constitutes a waiver of any right to recover a deficiency. *See, e.g., In re Dominique*, 368 B.R. 913 (Bankr. S.D. Fla. 2007); *In re Johnson*, 384 B.R. 763 (Bankr. E.D. Mich. 2008). Agreeing with the reasoning of those courts, the court held that the post-petition escrow shortage existing in the debtors’ escrow account from 2008, when the bankruptcy was filed, through 2011 was waived and ordered the creditor to immediately credit the debtors’ escrow account for that escrow shortage amount plus the two-month cushion allowed by RESPA.

**PART III - CLAIMS AND DISTRIBUTION TO CREDITORS AND
EQUITY INTEREST HOLDERS; PLANS**

RULE 3001-1 Proof of Claim

Every proof of claim secured by real property shall include all outstanding escrow charges owed as of the petition date and be calculated:

- A.** The actual escrow balance as of the petition date must be itemized in the proof of claim. Creditors are required to disclose the last year’s disbursement for escrowed property taxes and insurance premiums as well as the date of last payment.
- B.** To calculate the past due escrow amounts, the prior year’s disbursements should each be divided by 12 then multiplied by the number of months between the date of last payment and the petition date. The sum of these amounts, plus two months worth of escrow payments as allowed by RESPA, should then be subtracted from the actual escrow balance existing on the petition date. If the difference is a negative number, the sum should be reflected on the proof of claim as the total past due. If the difference is a positive number, it should be noted as a credit against other sums owed.
- C.** The calculations should appear on the face of the proof of claim:

Escrow charges	Amount	Date paid	Mo amt	Mos to petition date	Total due
Hazard Ins	\$A	X/X/XX	A/12=M	X/X/XX-Petition date=N	M*N
Flood Ins	\$B	X/X/XX	B/12=O	X/X/XX-petition date=P	O*P
Taxes	\$C	X/X/XX	C/12=Q	X/X/XX-Petition date=R	Q*R
Total			S		T

- 1.** The two (2) months worth of escrow payments allowed under RESPA are calculated: $[(A + B + C)/12] \times 2 = U$. $U + T =$ Past Due Escrow Payments.
- 2.** The actual escrow balance on the petition date minus the Past Due Escrow Payments $(U + T) =$ the escrow balance on proof of claim.
- 3.** The debtor’s postpetition escrow account should begin with a balance equal to the Past Due Escrow Payments $(U + T)$.
- 4.** The new monthly postpetition escrow payment (“S”) should be added to postpetition installments of principal and interest beginning on the first due date following the petition date.
- D.** The proof of claim should itemize only the interest and principal components of all prepetition past due installments. Any amounts held in debtor’s suspense, as well as all other outstanding fees, costs, and charges, should be separately itemized.

AMERICAN BANKRUPTCY INSTITUTE

Ref	Narrative	Transaction Date	Instalment Payment Due this Date (Principal, Interest and Escrow)	Total Funds Received This Date	Payment Shortage	*****Funds Applied*****				Tax, Insurance or Other Advance from Escrow	Principal Balance	Escrow Balance	Suspense Balance	Late Fees and other charges	Balance of Late Fees and Other Charges
						Principal	Interest	Escrow	Suspense						
43					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
44					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
45					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
46					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
47					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
48					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
49					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
50					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
51					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
52					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
53					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
54					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
55					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
56					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
57					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
58					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
59					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
60					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
61					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
62					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
63					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
64					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
65					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
66					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
67					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
68					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
69					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
70					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
71					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
72					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
73					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
74					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
75					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
76					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
77					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
78					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
79					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
80					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
81					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
82					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
83					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
84					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
85					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
86					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
87					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
88					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
89					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00

Ref	Narrative	Transaction Date	Instalment Payment Due this Date (Principal, Interest and Escrow)	Total Funds Received This Date	Payment Shortage	*****Funds Applied*****				Tax, Insurance or Other Advance from Escrow	Principal Balance	Escrow Balance	Suspense Balance	Late Fees and other charges	Balance of Late Fees and Other Charges
						Principal	Interest	Escrow	Suspense						
90					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
91					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
92					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
93					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
94					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
95					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
96					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
97					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
98					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
99					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
100					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
101					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
102					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
103					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
104					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
105					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
106					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
107					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
108					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
109					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
110					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
111					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
112					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
113					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
114					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
115					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
116					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
117					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
118					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
119					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
120					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
121					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
122					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
123					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
124					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
125					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
126					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
127					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
128					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
129					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
130					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
131					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
132					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
133					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
134					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
135					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
136					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00

NEW ORLEANS CONSUMER BANKRUPTCY CONFERENCE 2015

Ref	Narrative	Transaction Date	Installment Payment Due this Date (Principal, Interest and Escrow)	Total Funds Received This Date	Payment Shortage	*****Funds Applied*****				Tax, Insurance or Other Advance from Escrow	Principal Balance	Escrow Balance	Suspense Balance	Late Fees and other charges	Balance of Late Fees and Other Charges
						Principal	Interest	Escrow	Suspense						
137					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
138					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
139					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
140					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
141					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
142					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
143					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
144					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
145					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
146					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
147					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
148					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
149					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
150					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
151					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
152					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
153					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
154					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
155					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
156					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
157					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
158					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
159					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
160					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
161					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
162					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
163					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
164					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
165					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
166					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
167					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
168					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
169					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
170					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
171					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
172					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
173					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
174					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
175					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
176					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
177					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
178					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00
179					\$0.00				\$0.00		\$0.00	\$0.00	\$0.00		\$0.00

UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF TEXAS		PROOF OF CLAIM
Name of Debtor: 0		Case Number: 0
NOTE: 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.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): 0		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.
Name and address where notices should be sent:		Court Claim Number: (If known)
Telephone Number:		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 your claim. Attach copy of statement giving particulars.
Telephone Number:		<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: \$0.00		5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. Specify the priority of the claim.
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.		<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B)
2. Basis for Claim: Mortgage loan on home. (See instruction #2 on reverse side)		<input type="checkbox"/> Wages, salaries or commissions (up to \$10,950*) 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).
3. Last four digits of any number which identifies debtor: 0		<input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5).
3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side)		<input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7).
4. Secured claim (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 required information. Nature of property or right of setoff: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other		<input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8).
Value of Property: _____ Annual Interest Rate: See attached.		<input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____)
Amount of acreage and other charges as of time case filed included in secured claim. If any: \$0.00 Basis for perfection: Deed of Trust on Real Estate.		Amount entitled to priority: _____
Amount of Secured Claim: _____ Amount Unsecured: _____		
6. Credits: The amount of all payments on this claim have been credited for the purpose of making this proof of claim.		
7. Documents. 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. (See instruction 7 and definition of "redacted" on reverse side.)		
*Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.		
DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.		
If the documents are not available, please explain:		
DATE:	Signature: 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.	FOR COURT USE ONLY

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.

AMERICAN BANKRUPTCY INSTITUTE

INSTRUCTIONS

1. This form must be completed without altering the formulae.
2. Page 1 of the form is a cover sheet.
The cells that must be completed have this shaded background.
All other cells on page 1 should not be altered by the user. Certain data is derived from page 2 and may not be altered.
3. Page 2 of the form is a loan history.
It is anticipated that the cells that are required to be completed can be completed automatically by extracting data from a database.
Page 2 may, at the filer's discretion, be manually rather than automatically completed.
The cells that must be completed have this shaded background.
4. Page 3 of the form is a standard proof of claim.
Information from the cover sheet and loan history will automatically appear in the proof of claim.
The balance of the proof of claim must be completed.
Areas that may be applicable have this shaded background.
5. Most of the requested information is self explanatory. The following fields may require explanation:
 - A. On the Cover Sheet, the filer must state the hypothetical escrow balance as if all required payments had been made by the Debtor. The required payments, if made, should have established an escrow balance sufficient to meet all RESPA requirements, including any RESPA reserve. However, if the filer believes that a further deposit into the escrow account would have been required as of the petition date to fully fund the escrow account, that amount should be included. If the required payments would have fully funded the escrow account (including any required RESPA reserve), the answer will be \$0.00.
 - B. The Court recognizes that certain pre-petition charges (such as for attorneys fees) may not appear on the actual loan history as of the petition date because of their recency. These unbilled charges may be included on the cover sheet under the "Claim Information" section.
 - C. Two sections on the Cover Sheet allow for the filer to assert interest charges. These are interest charges asserted by the filer under applicable non-bankruptcy law that the filer believes are not properly included on the Loan History. These amounts may (and often will be) \$0.00.
 - D. On the Loan History Page, there is a column for the Total Payment Due. This is the monthly payment that was required under applicable non-bankruptcy law for all principal, interest, and escrows.
 - E. Historic interest rate changes may be limited to the period covered by the Loan History Form.
 - F. "Late Fees and Other Charges" appear twice on the Loan History Form. The section under "Funds Applied" (column "K") reflects the amount of the Debtor's payments applied to "Late Fees and Other Charges" and the other listing (column "P") is the amount charged to the Debtor's account, without regard to whether it was actually paid out of Debtor's funds.
 - G. The amount of the Installment Payment Due this Date must include all required payments of principal, interest and escrow. If an escrow shortage existed and the debtor cured the amount of the shortage with a lump sum payment rather than a longer term adjustment to the monthly installment payments, then the lump sum amount should appear in the Installment Payment Due this Date column. It should also appear in the Total Funds Received this Date column when the payment is received.
 - H. If a payment or a charge is reversed or refunded, you must reverse both the receipt and the application of the funds.
 - I. "Funds Applied" should equal Total Funds Received This Date or the total of funds applied from Suspense Account. Amounts shown in these sections should not include funds applied from Escrow.
6. The Loan History Form should be sorted in date order, with the oldest data listed first. The spreadsheet will automatically sort your data by use of a "macro." The macro is used as follows:
 - A. The program will only work if the user's computer has security set at medium (or low) level. To set the right security level, go into Excel. Tools. Macro. Security. Select medium.
 - B. When you open the file, it will ask whether to enable the use of macros. Enable them.
 - C. After all data is placed on the Loan History Form, press ctrl-d. The form is automatically sorted.
7. The Loan History Form must be completed, with an effective date as of the Petition Date. The starting date must be at least 1 month prior to the date on which any current default commenced. By way of example, if the debtor first defaulted on June 1, 2009, the loan history must start on or before May 1, 2009.
8. Advances (such as for payment of ad valorem taxes or for forced placed insurance) made on accounts that are not escrowed for the purpose of the advance should be treated as an "other charge" in the column labeled "Late Fees and Other Charges." The description contained in the "Narrative" column should explain the purpose of the advance.
9. For convenience, both the Cover Sheet and the Loan History only allow access to data fields that must be completed. The formulae are contained in locked cells. To unlock all cells, the user may invoke "Tools, Protection, Unprotect Sheet" from the Excel Menu. This will allow users to review the formulae that are used in the spreadsheets. Users are encouraged to invoke "Tools, Protection, Protect Sheet" before completing any data fields.
10. When complete, the Cover Sheet and Loan History should be printed in PDF format and attached to the filer's Proof of Claim.