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Consumer Practice Extravaganza

Proof-of-Claim Considerations

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Proof of Claim Considerations

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Proof of Claim Forms

Preparing Form 410

- The information about the claim should be completed as of the date the case was filed
- Attach supporting documents to the form
 - Attach redacted copies of any documents that show the debt exists, a lien secures the debt, or both
 - Also attach copies of document that show perfection of any security interest, or any assignment or transfer of the debt
- The form and any attachments must show only the last 4 digits of any SSN, Tax ID, or financial account number, and only the year of any person's date of birth



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Proof of Claim Forms

Form 410 – Important Terms

- Claim: a creditor's right to receive payment for a debt that the debtor owed on the date the debtor filed for bankruptcy
 - A claim may be secured or unsecured
- Evidence of perfection: may include a mortgage; lien; certificate of title; financing statement; in some instances, the original security agreement, or other document showing that a security interest has been filed or recorded



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Proof of Claim Forms

Form 410 – Important Terms

- Proof of Claim: A form that shows the amount of debt the debtor owed to the creditor on the date of the bankruptcy filing
 - The form must be filed with the clerk of the same bankruptcy court in which the bankruptcy case was filed
- Redaction of information: Masking, editing out, or deleting certain information to protect privacy
 - Filers must redact or leave out information entitled to privacy on Form 410 and any attachments

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Proof of Claim Forms

Form 410 – Important Terms

- Secured claim: A claim backed by a lien on particular property of the debtor
 - A claim is secured to the extent that a creditor has the right to be paid from the property before other creditors are paid
 - The amount of a secured claim usually cannot be more than the value of the particular property on which the creditor has a lien
 - Any amount owed to a creditor in excess of the value of the proper normally may be an unsecured claim

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Proof of Claim Forms

Form 410 – Important Terms

- Uniform claim identifier: An optional 24 character identifier that certain large creditors use to facilitate electronic payment
- Unsecured claim: A claim that does not meet the requirements of a secured claim
 - A claim may be unsecured in part if the amount of the claim is more than the value of the property on which the creditor has a lien
 - Examples of unsecured debt include credit cards, medical bills, utility bills



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Proof of Claim Forms

Form 410 – Case Information

Fill in this information to identify the case:

Debtor 1 _____

Debtor 2 _____

(Spouse, if filing)

United States Bankruptcy Court for the _____ District of _____

Case number _____

Official Form 410
Proof of Claim 1224

Read the instructions before filling out this form. This form is for creating a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an actual-dollar expense. Make such a request according to 11 U.S.C. § 502.

There must have been an actual-dollar liability created in favor of the creditor on any credit document. Attach valid copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, financial statements of trading accounts, contracts, judgments, judgments and security agreements. They must be original documents (or true and correct copies). File documents on the website, upload in an affidavit.

A guarantee that a fraudulent claim must be filed up to \$100,000, imprisonment for up to 5 years, or both, 18 U.S.C. §§ 152, 157, and 3071.

File in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 330) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?
Name of creditor (or the personal or business name if allowed)
Or name to be used for the claim _____

2. Has this claim been paid in full?
 No
 Yes. From whom? _____

3. Where should notices and payments to the creditor be sent?
Where should payments to the creditor be sent? (If different)

Name		Name	
Number	Street	Number	Street
City	State ZIP Code	City	State ZIP Code
Contact phone	Contact email	Contact phone	Contact email
Or fax to the office (if any, see end)		Or fax to the office (if any, see end)	

4. Does this claim contain any priority?
 No
 Yes. Claim number or court claims registry of entry: _____ FIRM OR SEC ID# _____

5. Do you know anyone who has filed a proof of claim for this claim?
 No
 Yes. Who made the earlier filing? _____

Official Form 410 Proof of Claim page 1



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Proof of Claim Forms

Form 410 – Case Information

Fill in this information to identify the case:

Debtor 1 _____

Debtor 2 _____
(Spouse, if filing)

United States Bankruptcy Court for the _____ District of _____

Case number _____



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Proof of Claim Forms

Form 410 – Part 1 – Identifying the Claim

Fill in this information to identify the claim:

Claimant:
 Debtor:
 Name: _____
 Street Street Number and Court No. for: _____ District of _____
 State: _____

Official Form 410 1224
Proof of Claim

Read the instructions before filling out this form. This form is for asking a claimant for payment to a bankruptcy court. Do not use this form to make a request for the payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.
 Please read these and attached instructions. Attach evidence to prove an old, new or re-organized claimant. Attach evidence of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of billing amounts, contracts, judgments, mortgages, and county judgments. If the court is not satisfied with the information, the court may require the claimant to explain in an affidavit.
 A late-filed claim is a fraudulent claim and may be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 743, 745, and 747.
 FBI is all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 105) that you received.

Part 1 Identify the Claim

1. Who is the current creditor?
Name of creditor (include the individual name if applicable)
 Other name if the creditor used it in the past

2. Has this claim been amended since filed?
 No
 Yes. From whom?

3. Where should notices to the creditor be sent? When should payments to the creditor be sent? (if different)

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
Name: _____ Address: _____ City: _____ State: _____ ZIP Code: _____ Contact phone: _____ E-mail: _____	Name: _____ Address: _____ City: _____ State: _____ ZIP Code: _____ Contact phone: _____ E-mail: _____

4. Does this claim compete with any other claims?
 No
 Yes. Check number of court claims registry of records: _____

5. Do you know of anyone else who has filed a claim for this claim?
 No
 Yes. Who made the earlier filing? _____

Official Form 410 Proof of Claim page 1



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Proof of Claim Forms

Form 410 – Part 1 – Identifying the Claim

- The account number does not appear until the second page
- There are boxes to identify in Part 1:
 - Who is the current creditor?
 - Where should notices be sent?
 - Where should payments be sent?
 - Is this an amended claim?
 - Is there a competing claim filed by someone else?
 - Uniform Claim Identifier (no longer in its own box)



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Proof of Claim Forms

Form 410 – Part 1

Part 1: Identify the Claim

1. Who is the current creditor? _____
Name of the current creditor (the person or entity to be paid for this claim)
Other names the creditor used with the debtor _____

2. Has this claim been acquired from someone else? No
 Yes. From whom? _____

- Box 1 is for identifying the creditor
- Other Names – not for transfers, but could include a name change



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Proof of Claim Forms

Form 410 – Part 1

Part 1: Identify the Claim

1. Who is the current creditor? _____
Name of the current creditor (the person or entity to be paid for this claim)
Other names the creditor used with the debtor _____

2. Has this claim been acquired from someone else? No
 Yes. From whom? _____

- Box 2 is for indicating whether the claim has been transferred or acquired, and identifying the transferor



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Proof of Claim Forms

Form 410 – Part 1

<p>3. Where should notices and payments to the creditor be sent?</p> <p>Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)</p>	<p>Where should notices to the creditor be sent?</p>	<p>Where should payments to the creditor be sent? (if different)</p>
	Name _____	Name _____
	Number _____ Street _____	Number _____ Street _____
	City _____ State _____ ZIP Code _____	City _____ State _____ ZIP Code _____
	Contact phone _____	Contact phone _____
	Contact email _____	Contact email _____
	<p>Uniform claim identifier (if you use one):</p> <p>-----</p>	

- Box 3 is for indicating addresses where notices and payments should be sent
- Notice that UCI is no longer in a separate box



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Proof of Claim Forms

Form 410 – Part 1

<p>4. Does this claim amend one already filed?</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____</p> <p>Filed on _____</p> <p style="text-align: right; font-size: small;">MM / DD / YYYY</p>
<p>5. Do you know if anyone else has filed a proof of claim for this claim?</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes. Who made the earlier filing? _____</p>

- Box 4 is for indicating whether the claimant is filing an amended claim
- Box 5 is for indicating whether the claimant knows if anybody else has filed a PoC for this claim (e.g., the debtor)



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Proof of Claim Forms

Form 410 – Part 2: Information About the Claim as of the Date the Case was Filed

Part 2: Give Information About the Claims as of the Date the Case Was Filed

6. Do you have any arrears on the debt? No
 Yes, last 4 digits of the debtor's account or any number you use to identify the debt: _____

7. How much is the claim? \$ _____
 Does this amount include interest or other charges? No
 Yes, Attach statement (and any interest, fees, or charges) on other charges required by Rule 601, Sub 2(b)(2)(C).

8. What is the basis of the claim?
 Describe: (Check all that apply: money loaned, loan, advance, services performed, secured loan or mortgage, bank, or credit card.)
 Attach related copies of any documents supporting the claim regarding bankruptcy (Rule 301(a)).
 Attach supporting information that is needed to perfect, such as a well cover information.

9. Is all or part of the claim secured? No
 Yes, The claim is secured by a lien on property.
 Nature of property: _____
 Real estate. If the claim is secured by this debtor's primary residence, file a Mortgage Prioritization Affidavit (Official Form 410-A) with this Proof of Claim.
 Motor vehicle.
 Other: _____

Basis for perfection: _____
 Attach related copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, car, certificate of title, financing statement, or other document that shows the lien has been filed or recorded).

Value of property: \$ _____
 Amount of the claim that is secured: \$ _____
 Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts shall equal the amount listed in 7.)

Amount necessary to cover any deficit as of the date of the position: \$ _____

Annual interest rate (before fees and costs): _____ %
 Fixed
 Variable

10. Is the claim based on a lease? No
 Yes, Amount necessary to cover any deficit as of the date of the position: \$ _____

11. Is the claim based on a right of offset? No
 Yes, Identify the property: _____

Official Form 410 Proof of Claim page 2



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Proof of Claim Forms

Form 410 – Part 2: Information About the Claim as of the Date the Case was Filed

- There are boxes to identify in Part 2:
 - The account number (last four digits only)
 - The basis of the claim (e.g., money loaned)
 - The nature of the collateral (if secured)
 - Instructions to attach evidence of perfection appears on the form instead of the instructions
 - The extent a claim is secured
 - The amount of any arrears
 - Interest rate

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Proof of Claim Forms
Form 410 – Part 2

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? \$ _____ Does this amount include interest or other charges? No Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information.

- Box 6 is for providing the account number or other client identifier

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Proof of Claim Forms
Form 410 – Part 2

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? \$ _____ Does this amount include interest or other charges? No Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information.

- Box 6 is for providing the account number or other client identifier
- Box 7 is for providing the amount of the claim

AMERICAN BANKRUPTCY INSTITUTE **Proof of Claim Forms**
Form 410 – Part 2

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? \$_____ Does this amount include interest or other charges?
 No Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
 Limit disclosing information that is entitled to privacy, such as health care information.

- Box 8 is for providing the basis of the claim (e.g., money loaned)

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9. Is all or part of the claim secured? No Yes. The claim is secured by a lien on property.
Nature of property:
 Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
 Motor vehicle
 Other. Describe: _____
Basis for perfection: _____
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)
Amount necessary to cure any default as of the date of the petition: \$ _____
Annual Interest Rate (when case was filed) _____%
 Fixed Variable



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Proof of Claim Forms

Form 410 – Part 2: Information About the Claim as of the Date the Case was Filed

- Box 9 is for providing information about secured claims:
 - Nature of the property securing the claim (e.g., a motor vehicle or real estate)
 - Basis for perfection
 - Value of the property securing the claim
 - Amount of arrears (i.e., the amount to cure any default as of the date of the petition)
 - Annual Interest Rate (fixed or variable)



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Proof of Claim Forms

Form 410 – Part 2: Information About the Claim as of the Date the Case was Filed

10. Is this claim based on a lease? No

Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

- Box 10 is for providing information in the event the claim is based on a lease



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Proof of Claim Forms

Form 410 – Part 2: Information About the Claim as of the Date the Case was Filed

11. Does this claim involve a right to setoff? No
 Yes. Explain: _____

- Box 11 is for indicating whether the claim involves a right to setoff (e.g., a bank account as security for a bank or credit union loan)
- The consensus among attorneys is that this field does not apply to funds in suspense



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Proof of Claim Forms


12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)? No
 Yes. Check one:

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,350* 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"/> Wages, salaries, or commissions (up to \$15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies.	\$ _____

* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

- Box 12 is for providing information about claims entitled to priority status (e.g., taxes, alimony)
- It would be unusual for a mortgage to have priority status




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Proof of Claim Forms

Form 410A – Mortgage PoC Attachment

- Only required if loan is secured by principal residence
- A detailed payment history that can be automated should be attached to the PoC
- The disclosure requirements are uniform nationwide; local variations should be prohibited
- The amount of regular monthly mortgage payment as of the petition date should be included
- Calculation of the total claim should be shown



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Proof of Claim Forms

Form 410A – Mortgage PoC Attachment

Mortgage Proof of Claim Attachment (12/23)

If you file a claim secured by a security interest in the debtor's principal residence, you must use this form as an attachment to your proof of claim. See separate instructions.

Part 1: Mortgage and Case Information			Part 2: Total Debt Calculation			Part 3: Arrearage as of Date of the Petition			Part 4: Monthly Mortgage Payment			
Case number:	_____		Principal balance:	_____		Principal due:	_____		Principal & interest:	_____		
Debtor 1:	_____		Interest due:	_____		Interest due:	_____		Monthly escrow:	_____		
Debtor 2:	_____		Fees, costs due:	_____		Prepetition fees due:	_____		Private mortgage insurance:	_____		
Last 4 digits to identify:	_____		Escrow deficiency for funds advanced:	_____		Escrow deficiency for funds advanced:	_____		Total monthly payment:	_____		
Creditor:	_____		Less total funds on hand:	-		Projected escrow shortage:	_____					
Servicer:	_____		Total debt:	_____		Less funds on hand:	-					
Fixed accrual/daily simple interest/other:	_____					Total prepetition arrearage:	_____					

Part 5 : Loan Payment History from First Date of Default

Account Activity					How Funds Were Applied/Amount Incurred							Balance After Amount Received or Incurred				
A.	B.	C.	D.	E.	F.	G.	H.	I.	J.	K.	L.	M.	N.	O.	P.	Q.
Date	Contractual payment amount	Funds received	Amount incurred	Description	Contractual due date	Prin, int & esc past due balance	Amount to principal	Amount to interest	Amount to escrow	Amount to fees or charges	Unapplied funds	Principal balance	Accrued interest balance	Escrow balance	Fees / Charges balance	Unapplied funds balance



Form 410A – Loan History

- The loan history shows:
 - When payments are due
 - When the debtor made payments
 - How payments were applied
 - When fees and charges were incurred
 - What the balances were for various components of the loan after amounts were received or fees and charges were incurred



Form 410A – Loan History

- The form requires a home mortgage claimant to provide a loan history starting with the first date of default
- This is the first date on which the borrower failed to make a payment in accordance with the terms of the note and mortgage
 - unless the note was subsequently brought current with no principal, interest, fees, escrow payment, or other charges “immediately payable”
 - Query: what if a borrower reinstates by paying all the delinquent payments and late charges, but the fee for an inspection performed while the loan was delinquent is later assessed? Or what if the debtor does not pay the late charge and it remains the only fee outstanding for several years?



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Proof of Claim Forms

Form 410A – Part 2

Total Debt Calculation

- the principal balance on the debt
- the interest due and owing
- any fees or costs owed under the note or mortgage and outstanding as of the date of the bankruptcy filing
- Any escrow deficiency for funds advanced
 - the amount of any prepetition payments for taxes and insurance that the servicer or mortgagee made out of its own funds and for which it has not been reimbursed

Part 2: Total Debt Calculation

Principal balance:	_____
Interest due:	_____
Fees, costs due:	_____
Escrow deficiency for funds advanced:	_____
Less total funds on hand: -	_____
Total debt:	_____



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Proof of Claim Forms

Form 410A – Part 2

Total Debt Calculation

- the principal balance on the debt
- the interest due and owing
- any fees or costs owed under the note or mortgage and outstanding as of the date of the bankruptcy filing
- Any escrow deficiency for funds advanced
 - the amount of any prepetition payments for taxes and insurance that the servicer or mortgagee made out of its own funds and for which it has not been reimbursed

Part 2: Total Debt Calculation

Principal balance:	_____
Interest due:	_____
Fees, costs due:	_____
Escrow deficiency for funds advanced:	_____
Less total funds on hand: -	_____
Total debt:	_____



Proof of Claim Forms

Form 410A – Part 2

Total Debt Calculation

- the principal balance on the debt
- the interest due and owing
- any fees or costs owed under the note or mortgage and outstanding as of the date of the bankruptcy filing
- Any escrow deficiency for funds advanced
 - the amount of any prepetition payments for taxes and insurance that the servicer or mortgagee made out of its own funds and for which it has not been reimbursed

Part 2: Total Debt Calculation

Principal balance:	_____
Interest due:	_____
Fees, costs due:	_____
Escrow deficiency for funds advanced:	_____
Less total funds on hand: -	_____
Total debt:	<input type="text"/>



Proof of Claim Forms

Form 410A – Part 2

Total Debt Calculation

- the principal balance on the debt
- the interest due and owing
- any fees or costs owed under the note or mortgage and outstanding as of the date of the bankruptcy filing
- Any escrow deficiency for funds advanced
 - the amount of any prepetition payments for taxes and insurance that the servicer or mortgagee made out of its own funds and for which it has not been reimbursed

Part 2: Total Debt Calculation

Principal balance:	_____
Interest due:	_____
Fees, costs due:	_____
Escrow deficiency for funds advanced:	_____
Less total funds on hand: -	_____
Total debt:	<input type="text"/>



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Proof of Claim Forms

Form 410A – Part 2

Total Debt Calculation

Also disclose the *Total amount of funds on hand*.

- This amount is the total of the following, if applicable:
- a positive escrow balance,
- unapplied funds, and
- amounts held in suspense accounts.

Part 2: Total Debt Calculation

Principal balance:	_____
Interest due:	_____
Fees, costs due:	_____
Escrow deficiency for funds advanced:	_____
Less total funds on hand:	_____
Total debt:	<input type="text"/>



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Proof of Claim Forms

Form 410A – Part 2

Total Debt Calculation

To determine the total debt due:

Total the amounts owed

Then subtract the total funds on hand

Insert this amount under *Total debt*.

Part 2: Total Debt Calculation

Principal balance:	_____
Interest due:	_____
Fees, costs due:	_____
Escrow deficiency for funds advanced:	_____
Less total funds on hand:	_____
Total debt:	<input type="text"/>



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Proof of Claim Forms

Form 410A – Part 3

Arrearage as of the Date of the Petition:

- Insert the amount of fees and costs outstanding as of the petition date
 - This amount should equal the *Fees/Charges balance* as shown in the last entry in Part 5, Column P

Part 3: Arrearage as of Date of the Petition	
Principal due:	_____
Interest due:	_____
Prepetition fees due:	_____
Escrow deficiency for funds advanced:	_____
Projected escrow shortage:	_____
Less funds on hand:	- _____
Total prepetition arrearage:	_____



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Proof of Claim Forms

Form 410A – Part 3

Arrearage as of the Date of the Petition:

- Insert any escrow deficiency for funds advanced
 - This amount should be the same as the amount of escrow deficiency stated in Part 2

Part 3: Arrearage as of Date of the Petition	
Principal due:	_____
Interest due:	_____
Prepetition fees due:	_____
Escrow deficiency for funds advanced:	_____
Projected escrow shortage:	_____
Less funds on hand:	- _____
Total prepetition arrearage:	_____



Form 410A – Part 3

Arrearage as of the Date of the Petition:

IMPORTANT

- The escrow deficiency amount (i.e., the negative balance in the escrow account on the day the case was filed) is ordinarily the starting balance for the escrow analysis
- Although not spelled out in the instructions, it has been determined that because the escrow deficiency is being listed on a separate line in Part 3, the escrow account needs to be brought up to zero prior to running the escrow analysis
- This may require a programming change for the first escrow analysis run after the filing of a bankruptcy case

Part 3: Arrearage as of Date of the Petition

Principal due:	_____
Interest due:	_____
Prepetition fees due:	_____
Escrow deficiency for funds advanced:	_____
Projected escrow shortage:	_____
Less funds on hand:	- _____
Total prepetition arrearage:	<input type="text"/>



Form 410A – Part 3

Arrearage as of the Date of the Petition:

- Insert the projected escrow shortage as of the date the bankruptcy petition was filed (should be based on and consistent with escrow analysis performed as of the date of the petition under Rule 3001)
- The calculation should include 1/6 of the anticipated annual charges against the escrow account or 2 months of the monthly pro rata installments due by the borrower as calculated under RESPA guidelines

Part 3: Arrearage as of Date of the Petition

Principal due:	_____
Interest due:	_____
Prepetition fees due:	_____
Escrow deficiency for funds advanced:	_____
Projected escrow shortage:	_____
Less funds on hand:	- _____
Total prepetition arrearage:	<input type="text"/>



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Proof of Claim Forms

Form 410A – Part 3

Arrearage as of the Date of the Petition:

- The shortage is the difference between the actual amount in the escrow account and the required amount
- The amount actually held should equal the amount of a positive escrow account balance as shown in the last entry in Part 5, Column O
- The amount actually held should also equal the ending balance for the previous escrow computation period on the escrow analysis

Part 3: Arrearage as of Date of the Petition

Principal due:	_____
Interest due:	_____
Prepetition fees due:	_____
Escrow deficiency for funds advanced:	_____
Projected escrow shortage:	_____
Less funds on hand:	- _____
Total prepetition arrearage:	<input type="text"/>



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Proof of Claim Forms

Form 410A – Part 3

Arrearage as of the Date of the Petition:

IMPORTANT

- The escrow portion of missed prepetition mortgage payments will not be recovered

Part 3: Arrearage as of Date of the Petition

Principal due:	_____
Interest due:	_____
Prepetition fees due:	_____
Escrow deficiency for funds advanced:	_____
Projected escrow shortage:	_____
Less funds on hand:	- _____
Total prepetition arrearage:	<input type="text"/>



Form 410A – Part 3

Arrearage as of the Date of the Petition:

- Insert the amount of funds on hand as of the petition date
- Subtract this number from the total amounts due listed in Part 3 to arrive at the Total Prepetition Arrearage

Part 3: Arrearage as of Date of the Petition	
Principal due:	_____
Interest due:	_____
Prepetition fees due:	_____
Escrow deficiency for funds advanced:	_____
Projected escrow shortage:	_____
Less funds on hand:	- _____
Total prepetition arrearage:	_____



Quick Trick to Calculating the Shortage for the PoC

- The Projected Escrow Shortage (PES) is the difference between the required balance (including cushions) and the actual balance in the escrow account
- Where the escrow balance on the day the case is filed is positive:
 - $PES = \text{Required balance} - \text{Actual Balance}$
- Where the escrow balance on the day the case is filed is negative:
 - $PES = \text{Required balance} - \0 (because the negative balance was placed on the Escrow Deficiency Line in Part 3)



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Proof of Claim Forms

In re Deguisseppi (Chase case)

- RESPA allows a claim for a projected escrow shortage at the time it is calculated, not only when a shortage occurs, indicating in this context it can be a prepetition claim
- The Instructions for Mortgage Proof of Claim Attachment (Official Form 410A) support this interpretation; they state the total prepetition arrearage should include the projected escrow shortage



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Proof of Claim Forms

In re Chew (Shellpoint), 627 B.R. 112 (E.D. Pa 2021)

- Official Form 410A drills down and requires a claimant to itemize the delinquency in terms of delinquent unpaid principal and interest, delinquent escrow (both deficiency and shortage) and other unpaid charges for which the debtor is responsible
- The *Rodriguez* opinion provides two (2) clear, binding guideposts on how to analyze the treatment of a debtor's contractual, escrow obligation in determining the amount of a mortgagee's allowed secured claim for prepetition arrears:
 1. Escrow shortages that exist as of the commencement of a chapter 13 case are allowable prepetition claims that may be treated in a chapter 13 plan under Section 1322(b)(5); and
 2. In an escrow analysis effective on the date of the bankruptcy filing, the lender must take into account (and give the debtor credit) for the escrow component of the unpaid monthly instalments that fell due prepetition because those are prepetition debts that will be repaid as part of the lender's claim for prepetition mortgage arrears.



Form 410A – Part 4

Monthly Mortgage Payment

Mortgage Proof of Claim Attachment (12/23)

If you file a claim secured by a security interest in the debtor's principal residence, you must use this form as an attachment to your proof of claim. See separate instructions.

Part 1: Mortgage and Case Information	Part 2: Total Debt Calculation	Part 3: Arrearage as of Date of the Petition	Part 4: Monthly Mortgage Payment
Case number: _____	Principal balance: _____	Principal due: _____	Principal & interest: _____
Debtor 1: _____	Interest due: _____	Interest due: _____	Monthly escrow: _____
Debtor 2: _____	Fees, costs due: _____	Prepetition fees due: _____	Private mortgage insurance: _____
Last 4 digits to identify: _____	Escrow deficiency for funds advanced: _____	Escrow deficiency for funds advanced: _____	Total monthly payment: <input type="text"/>
Creditor: _____	Less total funds on hand: _____	Projected escrow shortage: _____	
Service: _____	Total debt: <input type="text"/>	Less funds on hand: _____	
Fixed accrual/daily simple interest/other: _____		Total prepetition arrearage: <input type="text"/>	

Part 5: Loan Payment History from First Date of Default

Account Activity					How Funds Were Applied/Amount Incurred							Balance After Amount Received or Incurred				
A.	B.	C.	D.	E.	F.	G.	H.	I.	J.	K.	L.	M.	N.	O.	P.	Q.
Date	Contractual payment amount	Funds received	Amount incurred	Description	Contractual due date	Prin. int & esc past due balance	Amount to principal	Amount to interest	Amount to escrow	Amount to fees or charges	Unapplied funds	Principal balance	Accrued interest balance	Escrow balance	Fees / Charges balance	Unapplied funds balance



Form 410A – Part 4

Monthly Mortgage Payment:

- Insert the principal and interest payment amount of the monthly payment as of the petition date

Part 4: Monthly Mortgage Payment

Principal & interest: _____

Monthly escrow: _____

Private mortgage insurance: _____

Total monthly payment:



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Proof of Claim Forms

Form 410A – Part 4

Monthly Mortgage Payment:

- Insert the monthly escrow portion of the monthly payment
- This amount should take into account the receipt of any amounts claimed in Part 3 as escrow deficiency and projected escrow shortage
 - Therefore, the PoC should assume that the escrow deficiency and shortage will be paid through the plan and provide for a credit of the same amount when calculating postpetition escrow installment payments.

Part 4: Monthly Mortgage Payment

Principal & interest: _____

Monthly escrow: _____

Private mortgage insurance: _____

Total monthly payment: _____



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Proof of Claim Forms

Form 410A – Part 4

Monthly Mortgage Payment:

- Add any amounts for private mortgage insurance
- Add lines for additional amounts included in the monthly payment such as credit life insurance

Part 4: Monthly Mortgage Payment

Principal & interest: _____

Monthly escrow: _____

Private mortgage insurance: _____

Total monthly payment: _____



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Proof of Claim Forms

Form 410A – Part 5

Loan Payment History from the First Date of Default
Beginning with the First Date of Default, enter:

- the date of the default in Column A

Part 5 : Loan Payment History from First Date of Default

Account Activity					How Funds Were Applied/Amount Incurred							Balance After Amount Received or Incurred				
A.	B.	C.	D.	E.	F.	G.	H.	I.	J.	K.	L.	M.	N.	O.	P.	Q.
Date	Contractual payment amount	Funds received	Amount incurred	Description	Contractual due date	Prin. int & esc past due balance	Amount to principal	Amount to interest	Amount to escrow	Amount to fees or charges	Unapplied funds	Principal balance	Accrued interest balance	Escrow balance	Fees / Charges balance	Unapplied funds balance



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Proof of Claim Forms

Form 410A – Part 5

Loan Payment History from the First Date of Default
Beginning with the First Date of Default, enter:

- the date of the default in Column A
- amount incurred in Column D

Part 5 : Loan Payment History from First Date of Default

Account Activity					How Funds Were Applied/Amount Incurred							Balance After Amount Received or Incurred				
A.	B.	C.	D.	E.	F.	G.	H.	I.	J.	K.	L.	M.	N.	O.	P.	Q.
Date	Contractual payment amount	Funds received	Amount incurred	Description	Contractual due date	Prin. int & esc past due balance	Amount to principal	Amount to interest	Amount to escrow	Amount to fees or charges	Unapplied funds	Principal balance	Accrued interest balance	Escrow balance	Fees / Charges balance	Unapplied funds balance



Form 410A – Part 5

Loan Payment History from the First Date of Default

Beginning with the First Date of Default, enter:

- the date of the default in Column A
- amount incurred in Column D
- description of the charge in Column E

Part 5 : Loan Payment History from First Date of Default

Account Activity					How Funds Were Applied/Amount Incurred							Balance After Amount Received or Incurred				
A.	B.	C.	D.	E.	F.	G.	H.	I.	J.	K.	L.	M.	N.	O.	P.	Q.
Date	Contractual payment amount	Funds received	Amount incurred	Description	Contractual due date	Prin. rt & esc past due balance	Amount to principal	Amount to interest	Amount to escrow	Amount to fees or charges	Unapplied funds	Principal balance	Accrued interest balance	Escrow balance	Fees / Charges balance	Unapplied funds balance



Form 410A – Part 5

Loan Payment History from the First Date of Default

Beginning with the First Date of Default, enter:

- the date of the default in Column A
- amount incurred in Column D
- description of the charge in Column E
- principal balance, escrow balance, and unapplied or suspense funds balance as of that date in Columns M, O, and Q, respectively

Part 5 : Loan Payment History from First Date of Default

Account Activity					How Funds Were Applied/Amount Incurred							Balance After Amount Received or Incurred				
A.	B.	C.	D.	E.	F.	G.	H.	I.	J.	K.	L.	M.	N.	O.	P.	Q.
Date	Contractual payment amount	Funds received	Amount incurred	Description	Contractual due date	Prin. rt & esc past due balance	Amount to principal	Amount to interest	Amount to escrow	Amount to fees or charges	Unapplied funds	Principal balance	Accrued interest balance	Escrow balance	Fees / Charges balance	Unapplied funds balance



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Proof of Claim Forms

Form 410A – Part 5

For:

- (1) all subsequently accruing installment payments;
- (2) any subsequent payment received;
- (3) any fee, charge, or amount incurred; and
- (4) any escrow charge satisfied since the date of first default

enter the information in date order, showing:

- the amount paid, accrued, or incurred
- description of the transaction
- contractual due date
- how the amount was applied or assessed
- the resulting principal balance, accrued interest balance, escrow balance, outstanding fees or charges balance, and the total unapplied funds held or in suspense



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Proof of Claim Forms

Form 410A – Part 5

Loan Payment History from the First Date of Default

Column N is for showing the accrued (i.e., running) interest balance for daily simple interest loans

Part 5 : Loan Payment History from First Date of Default

Account Activity					How Funds Were Applied/Amount Incurred							Balance After Amount Received or Incurred				
A.	B.	C.	D.	E.	F.	G.	H.	I.	J.	K.	L.	M.	N.	O.	P.	Q.
Date	Contractual payment amount	Funds received	Amount incurred	Description	Contractual due date	Prin. int & esc past due balance	Amount to principal	Amount to interest	Amount to escrow	Amount to fees or charges	Unapplied funds	Principal balance	Accrued interest balance	Escrow balance	Fees/Charges balance	Unapplied funds balance



Form 410A – Part 5

Loan Payment History from the First Date of Default

The principal balance, escrow balance, and unapplied funds balance on the date the bankruptcy case was filed should be the figures in the last row of the history for Columns M, O, and Q, respectively.

Part 5 : Loan Payment History from First Date of Default

Account Activity					How Funds Were Applied/Amount Incurred							Balance After Amount Received or Incurred				
A.	B.	C.	D.	E.	F.	G.	H.	I.	J.	K.	L.	M.	N.	O.	P.	Q.
Date	Contractual payment amount	Funds received	Amount incurred	Description	Contractual due date	Prin, int & esc past due balance	Amount to principal	Amount to interest	Amount to escrow	Amount to fees or charges	Unapplied funds	Principal balance	Accrued interest balance	Escrow balance	Fees / Charges balance	Unapplied funds balance



Form 410A – Part 5

Loan Payment History from the First Date of Default

The principal balance, escrow balance, and unapplied funds balance on the date the bankruptcy case was filed should be the figures in the last row of the history for Columns M, O, and Q, respectively. If the amount at the bottom of Column O is negative, this is the amount of the escrow deficiency to be entered in Parts 2 and 3 of Form 410A.

Part 5 : Loan Payment History from First Date of Default

Account Activity					How Funds Were Applied/Amount Incurred							Balance After Amount Received or Incurred				
A.	B.	C.	D.	E.	F.	G.	H.	I.	J.	K.	L.	M.	N.	O.	P.	Q.
Date	Contractual payment amount	Funds received	Amount incurred	Description	Contractual due date	Prin, int & esc past due balance	Amount to principal	Amount to interest	Amount to escrow	Amount to fees or charges	Unapplied funds	Principal balance	Accrued interest balance	Escrow balance	Fees / Charges balance	Unapplied funds balance



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Proof of Claim Forms

Form 410A – Servicer Challenges

- The requirement to produce a history back to the “first date of default” could mean the servicer must go back several years
 - If the loan has been transferred, the transferee will need detailed information about any fees or costs incurred prior to the transfer of the loan
 - Otherwise, fees and costs assessed before the transfer need to be waived
 - Similarly, if the loan is contractually delinquent as of the transfer date, the transferee will need a detailed history going back to the first date of default
 - Otherwise, the loan will need to be brought current at least through the transfer date
- The requirement to bring the escrow account up to zero before running the first post-petition escrow analysis will require programming that is unique for borrowers in bankruptcy



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Proofs of Claim

NACTT Guidelines

- The field in Part 3 of Form 410A entitled “Less Funds on Hand” should be populated with the amount of funds in suspense at the time of the bankruptcy filing
 - Unlike Part 2 of Form 410A, this field should not include a positive balance in the escrow account
- Number 2 of Part 1 of Form 410 should only be checked **Yes** if the claim was acquired by the entity filing the PoC after the filing of the bankruptcy case
- Reverse Mortgages: Part 4 of Form 410A should be left blank and Part 3 should only reflect a balance if there are advances to be recovered

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Proofs of Claim

NACTT Guidelines – Part 5

- Loans that are in a Trial Modification are not considered current for purposes of determining the first date of default for Part 5
- A loan that has been permanently modified and which capitalizes all the delinquency, including fees and costs, is considered current as of the effective date of the loan modification for purposes of determining the first date of default for Part 5
- There is no reason the history cannot start the month before the first date of default
- Column N of Part 5 only needs to be completed for daily simple interest loans

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Proofs of Claim

NACTT Guidelines – Loan Mods

- Post-Petition Loan Modification: Loan is considered current if all the delinquency is capitalized in loan modification
- Reviewing for APOC filing: Form 410A Parts 1-4
- Form 410A Part 5 does not need to be completed



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Proofs of Claim

Loss Mitigation / Amended PoCs

APOCs for Loan Modifications:

- Deferred Principal Balance
- Attach Loan Modification to APOC filing but the Security Instrument and the Note are not required to be attached to APOC filing

Service Transfers:

- Need to be aware of any loan modifications or trial modifications offered to debtor by prior servicers



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Proofs of Claim

Loss Mitigation / Amended PoCs

Trustee Disbursements on Claim:

- Additional Language is Included on Claim to Advise Trustee whether any funds will be refunded to Trustee's Office
- Amount necessary to cure any default: \$o* The amount prepetition arrearage paid by the Trustee up the loan modification interest start date ____. No further arrearages to be paid by the Trustee. A refund in the amount of ____ will be sent to the Trustee
- Effective Date of Loan Modification
- UST Inquiries: Servicer delay in refunding funds to Trustee's office which were capitalized in loan modification

Objections to Claim for Post-Petition Loan Modifications:

- Advise that Response be filed advising on the status of Loan Modification and APOC will be filed once loan modification finalized



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Bankruptcy Rules for POCs

Need to File

- Rule 3002 was amended in 2017 to clarify that every creditor **MUST** file a POC in order to have an allowed claim and receive distributions
- *Matter of Flores*, 649 B.R. 534 (Bankr. N.D. Ind. 2023)
 - Creditors are obligated to take active role in protecting their claims
 - Creditor who elects not to file a claim in Chapter 13 case also elects not to be paid under plan
 - After confirmation of Chapter 13 plan, creditors are limited to asserting the interests provided for in plan, and cause for relief from automatic stay may only be predicated upon matters accruing after confirmation (e.g., default under the plan, failure to insure the collateral)



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Bankruptcy Rules for POCs

Time to File

- Rule 3002(c) provides that in a voluntary Chapter 7 case or in a Chapter 12 or 13 case, the proof of claim is timely if filed within 70 days after the order for relief or entry of an order converting the case to Chapter 12 or 13
- Rule 3002(c)(6) provides that for the debtor's principal residence, the POC is timely filed if filed within 70 days of the petition date and includes the mortgage form attachment required by Rule 3001(c)(2)(c).
 - The documentation required by Rule 3001(c)(1) and (d) (supporting documents) may be filed as a supplement no later than 120 days after the petition.



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LATE CLAIMS:

Grounds for extension of time are *very limited*.

Completely within the discretion of the court and the burden of proof is on the creditor to show insufficient notice.

What about “excusable neglect,” “for cause” or other reasons.

What if the debtor wants the claim paid?

What if no one objects?



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Is a Motion to Allow a Late Claim Needed?

In re Burtenog (Southern Alabama)

- Chapter 13 plan provided for mortgages arrears
- Mortgage servicer files its proof of claim after the deadline to file a proof of claim and after entry of the order confirming the plan
- The servicer filed a motion to allow the late claim (per local custom)
- The judge on the bench denied the motion because it is not necessary
- Section 501: Once a proof of claim is filed, it is deemed allowed until a party in interest objects



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Is a Motion to Allow a Late Claim Needed?

In re Benner (Northern Indiana)

- Chapter 13 plan provided for mortgages arrears
- Mortgage servicer filed its proof of claim one day after the deadline to file a proof of claim
- Neither the debtor nor the trustee objected to the claim
- The bankruptcy court said it could not “gloss” over the fact the claim was filed late
- Following precedent from the Seventh Circuit Court of Appeals, the bankruptcy court determined the mortgage servicer should never have received a distribution on its late-filed claim



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What were the real issues?

In re Benner

- The Trustee filed a “Motion for Determination and Show Cause ... for Failing to Comply with Confirmed Plan”
- The Chapter 13 trustee asked the Court to determine the balance of the post-petition escrow account
- The PoC was incorrect since no escrow analysis was performed or attached to the proof of claim as required by Fed. R. Bankr. P. 3001 (a requirement since 2011)
- There were issues with the post-petition handling of the escrow account (e.g., 3 payment change notices filed, each with a different month for the effective date of the analysis)



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Late Filed Claims

Bankruptcy Rule 3004

Proof of Claim Filed by the Debtor or Trustee for a Creditor

(a) Filing by the Debtor or Trustee. If a creditor does not file a proof of claim within the time prescribed by Rule 3002(c) or Rule 3003(c), the debtor or trustee may do so within 30 days after the creditor's time to file expires.

- One option is for a creditor to get the debtor's attorney to file a proof of claim on behalf of the creditor in the thirty (30) day period after the bar date
- If the debtor or trustee files a proof of claim pursuant to Rule 3004 that is incorrect or does not contain all the documents required by Rule 3001, the creditor can amend the proof of claim filed by the debtor or trustee. See *In re Belser*, 534 B.R. 228 (1st Cir. B.A.P. 2015)

Faculty

Michael J. McCormick is a senior partner in the bankruptcy department at McCalla Raymer Leibert Pierce, LLC in Roswell, Ga., where he assists in the bankruptcy representation for dozens of mortgage lenders and servicers nationwide. He has been with the firm since 2004. Mr. McCormick is admitted to practice in Alabama, Arkansas, Georgia, Kansas, Mississippi, Missouri and Tennessee. He is a frequent speaker and author on various topics related to bankruptcy, including the handling of escrow accounts during a bankruptcy proceeding, and form changes impacting mortgage-servicers. He also has also appeared as an expert witness in several bankruptcy cases on behalf of mortgage-servicers. Mr. McCormick is a member of numerous local and national bankruptcy organizations, including ABI and the National Association of Chapter 13 Trustees (associate member). In addition, he is co-chair of the Escrow Subcommittee of the NACTT Mortgage Committee and chair of the ALFN Bankruptcy Committee, and he served on the Committee on Case Administration and the Estate of the ABI Commission on Consumer Bankruptcy Law. Mr. McCormick is Board Certified in Consumer Bankruptcy Law by the American Board of Certification as a Consumer Bankruptcy Specialist. In July, 2023, he was presented with an industry achievement award at the ALFN's annual conference in Colorado. Mr. McCormick received his undergraduate degree from the University of Western Ontario and his J.D. from Wake Forest University School of Law in 1994.

Keith L. Rucinski, CPA is the standing chapter 13 bankruptcy trustee for Akron, Ohio. He also is an attorney and certified public accountant. Mr. Rucinski has taught more than 30 graduate and undergraduate courses in taxes, financial statement analysis, accounting and business law. He has served as adjunct faculty for The University of Akron, Kent State University, Myers University and Stark State University. Mr. Rucinski has published several articles on financial analysis and bankruptcy law issues. He has served as a seminar and workshop speaker for ABI and the National Association of Chapter 13 Trustees, U.S. Trustee Program, U.S. Bankruptcy Court, National Association of Attorneys General, Akron Bar Association, Akron Tax Club, Northern Ohio Creditors' Association, Ohio State Bar Association, The Ohio Child Support Enforcement Agency, The Enrolled Tax Agents of Greater Cleveland, The University of Akron School of Law and Case Western Reserve University School of Law. Mr. Rucinski has served as expert witness regarding bankruptcy and financial issues in civil and criminal cases in both federal court and state court. He also is a contributing editor for BFine.org (a public service financial education website). Mr. Rucinski received his B.S. in business administration with a concentration in finance from the University of Akron and his J.D. from the University of Akron School of Law.

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