

## **Summary of Proof of Claim Requirements Effective December 1, 2011**

### Proof of Claims to be filed in all types of Bankruptcy Cases: Chapter 7, 11, 12 and 13

1. Attach the original or a duplicate of the writing evidencing the claim to the BK form.
2. If the writing has been lost or destroyed, attach a statement of the circumstances of the loss or destruction.
3. When the debtor is an individual, attach an itemized statement of the interest, fees, expenses or charges.
4. If the debtor is an individual and the security interest is in any of the debtor's property, attach a statement of the amount necessary to cure any default as of the date of the petition.
5. If the debtor is an individual and the security interest is in the debtor's principal residence, attach official form Attachment A.
6. If the debtor is an individual and an escrow account has been established, attach an escrow account statement as of the date of the petition in a form consistent with applicable non-bankruptcy law.
7. The failure to provide the required supporting information may lead to the following sanctions:
  - a) Preclude creditor from presenting the omitted information at any hearing unless the court determines that the failure was substantially justified or is harmless, or
  - b) Award appropriate relief including reasonable expenses and attorney's fees caused by the failure.

## Additional requirements for mortgage lenders in Chapter 13 cases

### 1. Notice of payment changes

- A. Serve notice of any change in payment amount, including changes caused by interest rate or escrow account adjustment no later than 21 days before a payment in the new amount is due
- B. Serve the notice on the debtor, debtor's counsel and the Chapter 13 trustee
- C. File the notice using official form Supplement 1 as a supplement to the proof of claim.

### 2. Notice of post-petition fees, expenses and charges

- A. Serve notice itemizing all fees, expenses or charges incurred after the bankruptcy case was filed.
- B. Serve the notice on the debtor, debtor's counsel and Chapter 13 trustee.
- C. Serve the notice within 180 days after the date on which the fees, expenses or charges are incurred.
- D. File the notice using official form Supplement 2 as a supplement to the proof of claim.
- E. The debtor or trustee will have one year after service of the notice to file an objection for the post-petition claim.

### 3. Final cure payment

- A. Within 30 days after the debtor completes all payments under the plan, the trustee shall file notice that the debtor has paid the cure payments in full.
- B. The notice shall be served on the holder of the secured claim, the debtor and debtor's counsel.
- C. The notice can be filed by the debtor if he/she believes all payments have been made in disagreement with the Chapter 13 trustee.
- D. The secured creditor is required to file a response to the notice within 21 days after service of the notice by service on the debtor, debtor's counsel and the trustee.
- E. The creditor's response must state whether the secured creditor agrees with the trustee's notice and whether the debtor is otherwise current on all other payments on the secured loan

- F. The creditor's response shall itemize the required cure or post-petition amounts that remain unpaid as of the date of the statement.
- G. The creditor's response shall be filed as a supplement to the proof of claim.
- H. The debtor or the trustee must file an objection, if any, to the creditor's response 21 days after the service of the statement.
- I. The secured creditor may be sanctioned for its failure to provide any information as to payment changes, post-petition fees, expenses or charges or disputes regarding the final cure payment by any of the following actions:
  - i. Preclude the creditor from presenting any omitted information as evidence in any contested matter or adversary proceeding, unless the court determines 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 to provide the information.