

NEW RULES FOR BANKRUPTCY PROOFS OF CLAIM ARE NOW IN EFFECT

by Joel R. Glucksman on March 23, 2012

As of December 1, 2011, important new rules have taken effect for the filing of bankruptcy court proofs of claim, particularly where the debtor is an individual, and the creditor is secured in an asset of the debtor. Extreme care must be taken to follow these rules, since sanctions can be imposed for a creditor's failure to comply.

First of all, Official Bankruptcy Form 10 has been amended in significant part. Aside from the obvious changes in the appearance of the form, note should be taken that it is no longer sufficient simply to attach a summary of the documents supporting the claim. Rather, the form now requires "redacted" copies of documents supporting the claim. The Instructions to the proof of claim define "redacted" to mean that evidence of the social security, tax ID, and account number have been deleted. Furthermore, the signature line to the proof of claim has been substantially expanded. The signatory must now explicitly declare the basis for his or her right to sign the form. Significant identifying information must also be provided.

The most important changes to the proof of claim process occur where the debtor is an individual. Here, Bankruptcy Rule 3001(c)(2) requires that the claimant itemize, in addition to its principal amount, any interest, fees, expenses, or other charges incurred before the bankruptcy petition was filed. In addition, if a security interest is claimed in debtor property, the claimant must also itemize the amounts necessary to cure defaults as of the date of the petition. Finally, if a security interest is claimed in the debtor's principal residence, the claimant is required to attach Official Form B 10A (Attachment A). [It should be noted that Attachment A provides an appropriate vehicle for satisfying the other requirements of Rule 3001, even if a lien on the principal residence is not involved.]

The failure to comply with Rule 3001 can be serious. Rule 3001(c)(2)(D) allows the court, after notice and a hearing, to preclude the claimant from presenting any omitted information should its claim be contested. The court may also award "other appropriate relief," including expenses and attorneys' fees. Creditors are therefore encouraged to take far greater care in asserting their claims in Bankruptcy Court.