

**HOW TO COMPLETE A PROOF OF CLAIM:
A PRIMER FOR NON-BANKRUPTCY PRACTITIONERS**

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Come to the ABA Business Law Section Meeting and learn how to properly file a proof of claim. On Friday, March 16, 2007 from 2:30-4:00 p.m., the Panel will explore the 5 W's (and one H) of proofs of claim: What is a proof of claim? Who may file a proof of claim? When must a proof of claim be filed? Where do I file my proof of claim? Why does a proof of claim need to be filed? How do you properly file a proof of claim and its accompanying exhibits? Bankruptcy practitioners will also share their knowledge on common errors made in filing proofs of claim and successful methods to remedy those errors. The program will be directed to both non-bankruptcy practitioners and bankruptcy practitioners alike.

Questions Frequently Asked by Non-Bankruptcy Practitioners

What Is a Proof of Claim?

A proof of claim is a written statement, usually filed by a creditor, describing the reason for and amount of the debt allegedly owed by the debtor to the creditor. Official Form B10, which is used in completing a proof of claim, is available at the websites of most bankruptcy courts. 11 U.S.C. §§ 501 and 502 and the Federal Rules of Bankruptcy Procedure (“FRBP” or “Bankruptcy Rules”) 3001, 3002, 3003, 3005, 3006, 3007 and 3008 govern the manner in which creditors and equity security holders present their claims or interests to the bankruptcy court. There are varying rules depending on the respective chapter in which the debtor seeks protection. The different rules for filing, allowance and disallowance will be highlighted in our program to reflect the different bankruptcy chapters: Chapter 7 (liquidation); Chapter 9 (municipality debt

adjustment); Chapter 11 (reorganization); Chapter 12 (family farmer/family fisherman debt adjustment); and Chapter 13 (individual debt adjustment).

Who May File a Proof of Claim?

11 U.S.C. § 501 and FRBP 3001 generally governs who may file a proof of claim. Usually, creditors file proofs of claim against the debtor. However, § 501 of the Bankruptcy Code, does allow for the trustee, the debtor or any entity liable to the creditor for the debt owed by the debtor to file a proof of claim if the creditor fails to do so.

In a Chapter 7 or 13 case, an unsecured creditor must file a proof of claim in order to participate in the claims adjudication process. In a Chapter 9 or 11 case, any creditor or equity security holder whose claim or interest is not scheduled by the debtor or is scheduled as disputed, contingent, or unliquidated, must file a proof of claim within the time set by the court. FRBP 3003.

When Must a Proof of Claim Be Filed?

In cases under Chapter 7, 12, and 13, a proof of claim must be filed within ninety days after the first date set for the meeting of creditors required by § 341(a) of the Bankruptcy Code. FRBP 3002(c). There are certain specifically defined exceptions to FRBP 3002(c), including exceptions for claims of governmental units and for claims resulting from the rejection of executory contracts and unexpired leases.

In a case under Chapters 9 and 11, a proof of claim must be filed by the time set by the court. FRBP 3003(c)(3). The court sets the time upon a debtor's motion or the motion of another party in interest. Once that motion is granted and a bar date is set, the debtor sends a Notice of Bar Date, which is a notice to all creditors and parties in interest of the last day to timely file a proof of claim.

Where Do I File My Proof of Claim?

One should generally review the Notice of Bar Date. A Notice of Bar Date may instruct a creditor to send the proof of claim to a bankruptcy claims agent or may simply require that the proof of claim be filed electronically via ECF filing with the respective bankruptcy courts. Additionally, a Notice of Bar Date will specify the address to which the proof of claim must be sent if one is using regular mail or an overnight courier. Generally, filing proofs of claim by fax is not permitted.

Why Should I File a Proof of Claim?

A proof of claim should be filed in order to assert and preserve a creditor's right to share in a distribution of the assets of the bankruptcy estate. Note, however, that, by filing a proof of claim, a creditor submits itself to the bankruptcy court's jurisdiction and waives its right to a jury trial. *In re Ha-Lo Industries*, 326 B.R. 116 (Bankr. N.D. Ill. 2005) (the filing of any claim against the estate makes any litigation against the claimant part of the claims allowance process, thereby subjecting the creditor to the bankruptcy court's equitable powers and waiving its right to a jury trial). If that entity is a governmental unit, it has waived its right to assert a sovereign immunity defense as an objection to the claim. 11 U.S.C. § 106(b).

How Do I Complete the Proof of Claim Form?

First, review the official form for a proof of claim. The definitions and instructions may also be found on the relevant court's website. Review the following suggestions regarding completing such forms. The numbers correspond to the numbers on the attached sample official claim form.

Complete the name of the court where the case is pending, the name of the debtor (box (1)) and the case number (box (2)). Please note, however, that it is extremely important to review the Notice of Bar Date. The Notice of Bar Date will instruct whether a proof of claim

must be filed against every debtor in a jointly-administered, multi-debtor proceeding and will provide the case number for each debtor. Usually, when a debtor files for bankruptcy, its respective related entities also file bankruptcy petitions. The cases are usually consolidated for administrative purposes; however, in most instances, proofs of claims are still required to be filed in each of the debtor's respective cases. Some practitioners err on the side of caution and file a proof of claim against every debtor unless it is known that a particular debtor is absolutely not liable to the creditor.

Next, fill in the name of the creditor (box (3)) and the address to which notices should be sent (box (4)). If an account number is available, include it in box (5); however, that box may be left blank, if ample identifying information is included in the exhibit to the proof of claim. It is important to note, however, that, if you first file an unliquidated claim that is later superseded by an amended claim, you must check box (6) on the amended claim.

The instructions attached to the official proof of claim form provide excellent guidance on the completion of box (7). Check the appropriate box and if you select "other", it is recommended that you also include the phrase "see attachment" or "see exhibit." This will allow you to provide further information on what "other" means in the exhibit attached to the proof of claim. Boxes (8) and (9) can also be completed with "see attachment" or "see exhibit." Just be sure to include in your exhibit the date or dates that the debt was incurred.

The Instructions attached to the official proof of claim form contain definitions of the terms "Unsecured Nonpriority Claims", "Unsecured Priority Claims" and "Secured Claims". Briefly, an unsecured nonpriority claim (box (10)) is a claim that is neither entitled to priority nor secured. A claim is secured (box (11)) if the relevant creditor holds collateral (*e.g.*, a lien on or security interest in property of the debtor) that gives that creditor the right to be paid from that

property before creditors who do not have collateral. The most common types of unsecured claims that are entitled to priority are listed in box (12). Box (13) represents the sum of the amounts listed in boxes (10), (11) and (12), respectively.

How Do I Complete the Exhibit to the Proof of Claim?

Identify on your exhibit the name of the entity filing the proof of claim and the name of the debtor.

Identify the relationship between the creditor and the debtor by specifically identifying the contract or agreement from which the debt arose.

Be sure to include the date the debt was incurred. If the debt arises from an entered judgment, provide a brief description of the underlying case and the date on which judgment was entered. Also, include the court's order as an additional attachment.

Expressly reserve the right to amend and supplement the proof of claim. Expressly reserve your right to setoff, to protect the creditor if the debtor later asserts a claim against the creditor.

Include in the exhibit to your proof of claim any other information that relates to or is important in identifying and establishing the creditor's claim against the debtor. If the documents are voluminous, say so in the exhibit and state that the documents are available upon request. In fact, some courts do not allow you to attach more than five pages worth of supporting documentation when submitting a proof of claim. *See, e.g.,* Local Rule 3001(c) of the United States Bankruptcy Court for the Southern District of Florida.

Remember, the more information provided to support your proof of claim, the more information the debtors will have in deciding whether to allow, disallow, or object to your proof of claim. It is important to review the local rules for the court in which the debtor's case is

pending, the Notice of Bar Date, if applicable, and the definitions attached to Official Form B10 when completing a proof of claim.

Come to the ABA Business Law Section 2007 Spring Meeting and learn how to properly file a proof of claim and what to do when a claim is not properly filed. Additional topics to be discussed at the Spring Meeting include: What if the debtor objects to the proof of claim? What if a proof of claim is not timely? How do I amend a proof of claim? What if my claim is not allowed? What is an informal proof of claim? How do I know if I have a secured claim? What is a § 502(h) claim? What claims are not enforceable in bankruptcy?

See you in March.