

REVIEWING MORTGAGE CLAIMS & NOTICES IN CHAPTER 13 CASES

REVIEW EXAMPLES OF COMMON ERRORS AND ISSUES IN PROOFS OF CLAIMS AND RULE 3002.1 NOTICES

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OVERVIEW

- Assumptions: concepts and terminology (e.g. escrow shortage / deficiency, RESPA, Rule 3002.1)
- Common issues to consider
- Checklist
- Examples

COMMON ISSUES TO CONSIDER

- When does the loan mature? (inside or outside the terms of the plan)
- Mortgage type and terms? (1st lien, 2nd lien, home equity, ARM, balloon, homestead / investment, HUD)
- Was there any pre-petition loss mitigation? (deferrals, forbearances, modifications)
- Escrowed? (taxes, insurance, MIP, advances)
- Refiled case? (previous payments and applications, objections, orders)
- Who filed the claim?

CHECKLIST

- All column totals match the corresponding lines in Parts 1 – 4 of the 410-A
 - Exception for escrowed loans: Column G should NOT match the missed P&I in Part 3 of the arrear calculation
- Projected escrow shortage should match beginning post-petition required balance
 - Exception: If escrow balance is positive at time of filing then the projected shortage is the difference between the actual balance and the required balance
- Check for Escrow in incorrect places
 - Double dipping by including in the “Missed P&I Section”
 - Including missed escrow as the “projected shortage”

CHECKLIST CONTINUED

- Supporting Docs should match information in 410-A
 - P&I should match note (or loan mod as applicable)
 - Escrow statement payment should match Part 4
- Check the charges in the payment history, Part 5 and escrow analysis
 - Non-recoverable fees are cancelled out
 - Funds on hand, or unapplied funds are applied properly
 - Escrow payments are appropriate, no overcharges of taxes, insurance or PMI
 - Starting balances are explained
 - Starting Principal balance matches loan mod capitalized amount

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PROOF OF CLAIM I - JOEY DEBTOR (PAGES 3-10)

- Case Filed 12/2016
- Motion to Extend Case
 - No payments were made to mortgage company in Debtor's last case (expected arrears around \$20,000)
- Prior to filing Debtor was escrowed for taxes and insurance
- County records indicated:
 - Home was purchased in 2005
 - Had a homestead exemption in place on date of filing
 - Market value on date of filing was approximately \$150,000
- FEMA search shows flood insurance is not required
 - <https://msc.fema.gov/portal/search>

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