

PRESENTED AT

14th Annual Consumer Bankruptcy Practice

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Houston, TX

**Reviewing Mortgage Claims and 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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PROOF OF CLAIM REVIEW CHECKLIST

□ POC FORM (410)

- Bar date
 - [In the SDTX plan controls, however there is 5th Cir. precedent re objection to conf = informal claim]
 - In re Nikoloutsos, 199 F.3d 233, 236 (5th Cir. 2000).
 - Cite to an unpublished opinion: <http://www.ca5.uscourts.gov/opinions%5Cunpub%5C06/06-10691.0.wpd.pdf>
- Confirm creditor [look for pre-petition transfers]
- Notice addresses [update your creditor list with addresses from POC and related Notice of Appearance]
- Original or amended? Transferred? [compare the different versions to see what was changed]
- Who signed? [was it an agent from the mortgage company, their attorney, etc.]

□ MORTGAGE ATTACHMENT (410A)

- Compare to 410 and supporting docs re payment, maturity, interest, escrow, unpaid principal balance
[make sure it matches the supporting documents attached]
- Check the numbers in the Ongoing Mortgage Payment
 - P&I Match the Deed or Modification
 - Escrow payment matches attached analysis
 - Does not include shortage or starting balance
 - Only includes a RESPA cushion, if it is not in the projected escrow shortage
- 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 arrears calculation
- Fees [are there supporting docs or even an explanation? often a problem with transferred loans]
- Escrow [what is being escrowed? what do the documents require to be escrowed]
 - RESPA cushion is only charged once [RESPA Section 1024.17 Governs Escrow Accounts]
 - Cushion cannot be greater than 1/6 of the estimated total annual disbursements.
 - 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”

- Suspense [look to see why the funds are in suspense, and if the amount was calculated properly]
- Loan history
 - Check the beginning date [Must begin at 1st date of default]
 - Non-recoverable fees are cancelled out
 - Funds on hand, or unapplied funds are credited properly
 - Escrow payments are appropriate, no overcharges of taxes, insurance or pmi
 - Starting balances are explained
 - Starting Principal balance matches loan mod capitalized amount
 - Includes payments made by Debtor, or trustee in prior case
- Compare to pre-petition correspondence / RFIs [pre-petition statement amounts vs. POC]
- Ask for documentation regarding charges, if necessary, don't just accept numbers as listed

□ **SUPPORTING DOCUMENTS**

- Are they all there? (note, DOT, riders [e.g., PUD which may indicate there is an HOA the debtor "forgot" about], allonges [may indicate transfers], escrow [make sure a current analysis is attached], mods [may explain discrepancies between POC and docs], invoices and receipts [for fees and charges, dates incurred])
- Compare to 410 and 410A [does everything match?]

□ **RELATED CLAIMS**

- Taxes [Is a taxing authority filing a claim for taxes that were escrowed, or should there be a taxing authority claim for non-escrowed taxes?]

□ **INITIAL CONSULTATION NOTES & RESEARCH**

- Check the file notes, to see if the debtor thinks they are escrowed, or are paying their own taxes/insurance directly, and what amount they believe they are behind
- Pull the county records to determine
 - The date the home was purchased
 - This will help determine if the claim should be a new mortgage, home equity loan, total debt claim, or if you should be looking for a loan modification
 - What exemptions were in place on the date of filing and prior to filing
 - To help determine if the proper amount of taxes are being escrowed
 - Market value on the date of filing
 - To help establish what amount of insurance Debtor should be paying
- Run a FEMA search to help determine if flood insurance is required
 - <https://msc.fema.gov/portal/search>

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Title search: Reviewing Mortgage Claims and Notices in Chapter 13 Cases

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