

# PUBLICATION

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## New Bankruptcy Rules Impact Proofs of Claim

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**February 16, 2012**

On December 1, 2011, critical changes to the Federal Rules of Bankruptcy Procedure took effect. Among the changes, which impact all creditors, are amendments altering the information required on a proof of claim filed in a bankruptcy court. Bankruptcy Rule 3001 was substantially changed to require, among other information: (i) an itemized statement of the amount of interest, fees, expenses or other charges incurred before the bankruptcy petition was filed, if a claim includes the aforementioned fees and expenses; (ii) a statement of the amount necessary to cure any default as of the petition date, if a security interest is claimed in property of the debtor; and (iii) an escrow account statement prepared as of the petition date, if a security interest is claimed in property of the debtor's principal residence and an escrow account has been established in connection with the claim.

When a claim is secured by a security interest in the debtor's principal residence and it is provided for under the debtor's Chapter 13 plan pursuant to 11 U.S.C. § 1322(b)(5), Bankruptcy Rule 3002.1 is a new rule that requires the claimant to file and serve on the debtor, debtor's counsel and the trustee: (i) notice of any change in payment amount, including any change that results from an interest rate or escrow account adjustment; and (ii) notice that itemizes fees, expenses or charges incurred in connection with the claim after the bankruptcy was filed.

The rule changes also incorporate strong consequences in the event the above requirements are not met. The rules now allow for the claimant to be precluded from presenting the omitted information, in any form, as evidence in any hearing or submission in any contested matter or adversary proceeding, unless the bankruptcy court finds that the failure was substantially justified or harmless. The court also has the power to, after notice and hearing, award other appropriate relief, including reasonable expenses and attorneys' fees caused by the omitted information.

In connection with the Federal Rules of Bankruptcy amendments, the Bankruptcy Official Forms have been amended as well. Official Form 10 (the Proof of Claim Form) now requires claimants to: (i) specify the bankruptcy court in which the claim is being filed; (ii) the interest rate as of the petition date; and (iii) attach writings supporting a claim or evidencing perfection of a security interest. Most notably the date and signature block was significantly changed to include a declaration that is intended to heighten the awareness of the duty of care that must be exercised when filing a proof of claim. The claimant must sign the proof of claim under penalty of perjury and provide identifying information - name, title, company, address, phone number and email address. Lastly, there are now three supplemental forms to Official Form 10 that relate to a proof of claim secured by a security interest in a debtor's principal residence.