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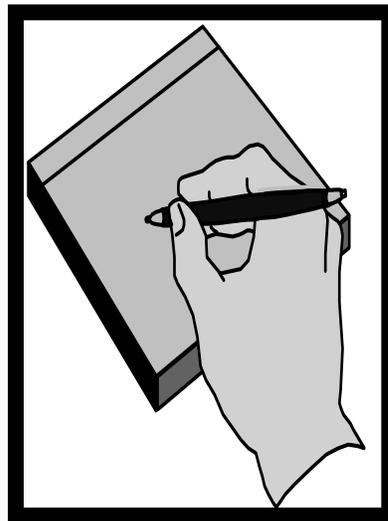
EDITOR'S COMMENTS:

IMPORTANT CREDITOR I N F O R M A T I O N REGARDING CHAPTER 13 BANKRUPTCIES IN THE DISTRICT OF N E B R A S K A

**Kathleen A. Laughlin,
Chapter 13 Trustee**

A. Purpose and Effect of a Proof of Claim

When a bankruptcy petition is filed, an estate is created.¹ A creditor has a claim against the estate, not the debtor. A **Proof of Claim** is the document used to assert that claim. It identifies the creditor and amount of the claim and provides supporting documentation as to the basis of the claim. If a creditor wants to be paid from the Chapter 13 bankruptcy estate, he or she must file a **Proof of Claim**.



When a **Proof of Claim** is properly filed in a bankruptcy case, it is deemed "allowed" unless a party in interest objects.² A **Proof of Claim** constitutes *prima facie* evidence of the validity and the amount of the claim.³ A claim that is "allowed" will be able to share in any distribution from the bankruptcy estate.

B. Form a Proof of Claim

A **Proof of Claim** must conform substantially to the Official Form. In the United States Bankruptcy Court for the District of Nebraska, the Chapter 13 Trustee provides all listed creditors with a notice that the bankruptcy has been filed. This notice includes the debtor's name, address, and bankruptcy number. Additionally, the notice gives the date for the **Meeting of Creditors** which creditors may attend but are not required to attend. The notice also gives the date by which claims must be filed with the Clerk of the Bankruptcy Court in order to be allowed in the case. The Trustee has also attached a triplicate **Proof of Claim** form which is attached to the Notice that the bankruptcy has been filed.

The ***Proof of Claim*** must name the creditor and the amount of the claim; list whether the claim is secured, unsecured or priority; and explain the basis for the claim. It may be executed by the creditor or by the creditor's authorized agent. If an agent executes the claim, the agent must disclose that he or she is an agent and disclose the name of the creditor. Otherwise, the ***proof of claim*** may be defective.⁴ If the claim is based on a writing such as a contract, the original or a duplicate must be attached. Secured claims must show evidence of perfection of the security interest.

Typically, a ***Proof of Claim*** is filed by the creditor asserting the claim. Another party in interest, such as the debtor, the trustee or a third party that is jointly liable with the debtor on the debt to the creditor, also may file a claim on behalf of the creditor.⁵ The debtor, trustee or other third party has until thirty days after the bar date in which to file a claim on behalf of the creditor.⁶

C. Necessity of a Proof of Claim

All creditors must complete and file a Proof of

Claim in Chapter 13 cases with the Bankruptcy Clerk in order for the creditor to share in distributions under the plan.

D. Claim Filing Guidelines

The trustee furnishes each creditor who has been listed on the debtor's schedules with claim forms. However, some creditors complete and file their own proofs of claim which still must comply with the Official Forms. Please make any necessary spelling and address corrections on the Proof of Claim form. If the creditor files a claim as a secured creditor, he or she must attach to the Proof of Claim documentation that any security interest claimed has been perfected, and must also place a fair market value for the collateral on your claim. The original and one (1) copy of the Proof of Claim with the attachments should be filed in the appropriate Clerk's office (i.e., Omaha or Lincoln) which is:

**Clerk of Bankruptcy Court
Zorinsky Federal Building
P.O. Box 428, D.T.S.
215 North 17th Street, 8th
Floor, Room 8419
Omaha, NE 68101-0428
telephone: (402) 221-4687**

**Clerk of Bankruptcy Court
Denney Federal Building
100 Centennial Mall North
16th & "O" Streets, 4th
Floor, Room 460
Lincoln, NE 68508
telephone: (402) 437-5100**

The extra copy will be forwarded to the Trustee by the Clerk. The claimant should also send one (1) additional copy to the debtor's attorney. His or her name, address, and phone number is listed on the ***Meeting of Creditor Notice*** which the creditor has already received and was sent out by the trustee's office. Actually, the bankruptcy ***Meeting of Creditor Notice*** contains all the addresses that are needed to properly prepare the claim. The claim must be filed within ninety (90) days after the first date set for the First Meeting of Creditors. This date is known as the ***Claims Bar Date*** and is contained on the bankruptcy notice sent **by the trustee.**

If the creditor files a secured claim, it is important to provide the trustee with the value of the collateral in which the creditor holds a security interest. In Nebraska, the Court will honor the ***creditor's value*** assigned to the collateral ***unless the debtor objects to***

that value and the objection is upheld by the Court. In contrast, the **plan will control** whether a secured creditor receives post-confirmation **interest and the rate of interest**. If the plan provides for interest at the contract rate, it is very important that the creditor state the contract rate on the **Proof of Claim**. Upon confirmation (Court approval of the plan), the Trustee will pay the rate of interest provided in the plan. The trustee will pay interest on secured claims only from the confirmation date unless the plan specifically provides otherwise. Within approximately 4 - 6 weeks after filing your claim, you will receive an **Acknowledgment of Claim** from the trustee. If the plan provides for interest to be paid on a secured claim, the **Acknowledgment** will also contain the interest rate which the plan proposes to pay the creditor from confirmation forward. If the creditor disagrees with the plan provision for payment of interest, the creditor must object to the plan and request that specific language be placed in the plan which would require payment of interest on the claim.

If the creditor is "over

secured," the claimant may be entitled to be paid interest after the plan is confirmed for the time period between the filing of the bankruptcy and confirmation (Court approval of the plan). Creditors are "over secured" if the value of their security exceeds the amount owed on their debt. If a claimant believes that he is an "over secured creditor, he must either (1) obtain language in the plan which specifically provides for post-petition, pre-confirmation interest; or (2) object to the trustee's **Acknowledgment of Claim** and obtain a Court Order specifically providing that the creditor will be paid post-petition, pre-confirmation interest, and the rate at which such interest shall be paid. Absent either a specific provision for pre-confirmation interest in the plan or a separate Court Order providing for post-petition, pre-confirmation interest, the Trustee will only pay interest from confirmation forward.

**E. CONFIRMATION
PROCEDURES**

The United States Bankruptcy Court for the District of Nebraska procedures for obtaining

confirmation of a Chapter 13 plan are delineated in the Court's **General Order adopted December 22, 1992**. Pursuant to the General Order, the debtor must file a **Motion to Confirm** the plan within twenty (20) days **after** the Meeting of Creditors. The **Motion to Confirm** must be mailed to all creditors, and a copy of the plan must be attached to the motion. The creditor will also receive a **Resistance/Bar Date Notice** along with the **Motion to Confirm** and the plan. This notice will specify the date by which a creditor must file an objection to the plan if desired. The trustee or a creditor may not file an objection to the plan **prior** to the filing of the **Motion to Confirm** by the debtor. However, it should be noted that for purposes of administrative expedience the trustee has reviewed the case and has mailed prior to the **Meeting of Creditors** a "proposed objection" (nicknamed a "preemptory strike" by some of the debtor's counsel) to the debtor's attorney. This puts the debtor's counsel on notice of any problems the Trustee has with the plan. The debtor's attorney can make any revisions prior to the extensive and costly

mailing of the ***Motion to Confirm***, etc. This practice also keeps the Court's motion docket clear of matters dealt with in preliminary skirmishes.

If no objections are filed or after resolution of all objection, the debtor's attorney will submit a ***Confirmation Order*** to the Judge for his signature. The trustee ***cannot*** distributed any money to creditors until the confirmation order has been issued unless payments are specifically authorized by separate Court Order. After confirmation of the plan, the trustee begins to distribute money to the creditors based upon the plan provisions and the claims allowance process. Generally, the debtor's attorney and secured creditors are paid first, priority creditors are paid second, and unsecured creditors are paid next.

C o n c l u s i o n

While the filing of proofs of claim and confirmation seem to be straightforward areas of bankruptcy law, they present many traps for the unwary. Counsel should stay informed on these issues in order to represent creditor and debtor clients effectively. This

brief synopsis is offered as a very general guide for creditors. The rules and procedures governing Chapter 13 bankruptcies in Nebraska are much more complex and subject to change. The Trustee will not provide legal advice to creditors but can provide factual information about the status of a case. You may obtain status information by calling (402) 697-0437 or toll free (800) 884-0437 or by writing to P.O. Box 337544, Omaha, NE 68137-0544. If individuals or organizations have legal questions about their specific rights as a creditor, the Trustee suggests that they contact legal counsel.

¹11 U.S.C. § 541(a)

²11 U.S.C. § 502(b)

³F.R.B.P. 3001(f)

⁴*In Re Unioil, Inc.*, 962 F.2d 988, 992 (10th Cir. 1992)

⁵11 U.S.C. § 501(b), (c); F.R.B.P. 3004, 3005.

⁶F.R.C.P. 3004, 3005.



Processing cutoff for checks in February will be the third (3rd) Friday of the month or February 16, 1996. Checks will be mailed on the fourth (4th) Friday of the month or February 23, 1996.

orders is Tuesday, February 13, 1996.

EDITOR'S COMMENT

This newsletter is being published to facilitate communication between the Chapter 13 Trustee's Office and the many people we serve. The information is not meant to constitute legal advice or recommendations to individuals. If you would like to contribute an article, conference or program information, law review article, book review, comment, or question for further feedback from others, please call me directly or mail your item to:

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