



# **Mortgage Issues in Chapter 13 Bankruptcy**



## Recent Mortgage Servicing Regulations

### Consumer Financial Protection Bureau (CFPB)

#### *Periodic statements for residential mortgage loans*

12 C.F.R. §1026.41 - effective July 18, 2015

**Section 41(d)(3)** Requires disclosure of any partial payments that were sent to a suspense or unapplied funds account.

**Section 41(d)(4)** Requires all transaction activity including payments received and applied, payments received and held in suspense account, imposition of any fees or charges be disclosed in the statement.

## Recent Mortgage Servicing Regulations

### *Periodic statements for residential mortgage loans*

**Section 41(e)(5)** Requirement to send periodic statement does not apply to consumers in bankruptcy.

With respect to any portion of the mortgage debt that is not discharged, the servicer must resume sending periodic statements at the earliest of the case is dismissed, case is closed or consumer receives a discharge.

**This portion is subject to further rulemaking, which will likely make periodic statements required in bankruptcy.**

## Recent Mortgage Servicing Regulations

### Requirements under Real Estate Settlement Procedures Act

**12 CFR 1026.36(c)(1)** Servicer to credit the payment to the borrower's account as of the date the servicer receives it

**12 CFR 1024.34(a)** Servicer required to pay taxes, insurance premiums and other charges by the due date.

## Recent Mortgage Servicing Regulations

### Requirements under Real Estate Settlement Procedures Act

**12 CFR 1024.36**      **The mortgage servicer must:**

- **Acknowledge receipt within 5 business days.**
- **Respond in writing to the information request within 30 business days.**

## Recent Mortgage Servicing Regulations

### Requirements under Real Estate Settlement Procedures Act

**12 CFR 1024.36** A Request for Information (“RFI”) formerly called a Qualified Written Request (“QWR”), must include:

- The borrower's name,
- Information that allows the servicer to identify the borrower's account and the requested information relates to the borrower's mortgage loan.

The RFI may be made by borrower or their agent.



# **Revised Proof of Claim Forms 410 and 410A**

**Effective December 1, 2015**





# **Form 410**







# **Form 410**

## **Part 1**

### **Identifying the Claim**



**Part 1: Identify the Claim**

1. Who is the current creditor?

Name of the current creditor (the person or entity to be paid for this claim) \_\_\_\_\_

Other names the creditor used with the debtor \_\_\_\_\_

2. Has this claim been acquired from someone else?

No

Yes. From whom? \_\_\_\_\_

3. Where should notices and payments to the creditor be sent?

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?

Name \_\_\_\_\_

Number \_\_\_\_\_ Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_

Contact phone \_\_\_\_\_

Contact email \_\_\_\_\_

Where should payments to the creditor be sent? (if different)

Name \_\_\_\_\_

Number \_\_\_\_\_ Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_

Contact phone \_\_\_\_\_

Contact email \_\_\_\_\_

Uniform claim identifier for electronic payments in chapter 13 (if you use one):  
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4. Does this claim amend one already filed?

No

Yes. Claim number on court claims registry (if known) \_\_\_\_\_

Filed on \_\_\_\_\_  
MM / DD / YYYY

5. Do you know if anyone else has filed a proof of claim for this claim?

No

Yes. Who made the earlier filing? \_\_\_\_\_

# Form 410 – Part 1 – Identifying the Claim

**Account number is not asked for until the second page**

**As with Form B10, there are boxes to identify:**

- **Who is the current creditor?**
- **Where should notices be sent?**
- **Where should payments be sent?**
- **Is this an amended claim?**
- **Is there a competing claim filed by someone else?**
- **Uniform Claim Identifier (no longer in its own box)**

# Form 410 – Part 1 – Identifying the Claim

1. Who is the current creditor?	_____
	_____

**Box 1 is for identifying the creditor**

**Other names**

- *Not for transfers*
- **But could include a name change**

# Form 410 – Part 1 – Identifying the Claim

2. Has this claim been  
acquired from  
someone else?

No

Yes. From whom? \_\_\_\_\_

**Box 2 is for indicating whether the claim has been transferred or acquired, and identifying the transferor**

**This is new**

# Form 410 – Part 1 – Identifying the Claim

3. Where should notices and payments to the creditor be sent?  Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	<b>Where should notices to the creditor be sent?</b>	<b>Where should payments to the creditor be sent? (if different)</b>
	Name _____	Name _____
	Number _____ Street _____	Number _____ Street _____
	City _____ State _____ ZIP Code _____	City _____ State _____ ZIP Code _____
	Contact phone _____	Contact phone _____
	Contact email _____	Contact email _____
	Uniform claim identifier for electronic payments in chapter 13 (if you use one): -----	

**Box 3 is for indicating addresses where notices and payments should be sent**

**Notice that UCI is no longer in a separate box**

# Form 410 – Part 1 – Identifying the Claim

4. Does this claim amend one already filed?  No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_

Filed on \_\_\_\_\_  
MM / DD / YYYY

**Box 4 is for indicating whether claimant is filing an amended claim**

# Form 410 – Part 1 – Identifying the Claim

5. Do you know if anyone else has filed a proof of claim for this claim?  No  
 Yes. Who made the earlier filing? \_\_\_\_\_

**Box 5 is for indicating whether claimant knows if anybody else has filed a POC for this claim (e.g., the debtor)**



# **Form 410**

## **Part 2**

### **Information About the Claim**

#### **As of the Date the Case Was Filed**



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_\_\_

7. How much is the claim? \$ \_\_\_\_\_ Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
Limit disclosing information that is entitled to privacy, such as health care information.

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature of property:**  
 Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_

**Basis for perfection:** \_\_\_\_\_  
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amounts should match the amount in line 7.)

**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_

**Annual interest rate** (when case was filed) \_\_\_\_\_%  
 Fixed  
 Variable

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition: \$ \_\_\_\_\_

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_

## **Form 410 – Part 2 – Claim Information**

**As with Form B10, there are boxes to identify in Part 2:**

- **Account number (last four digits only)**
- **Basis of the claim (e.g., money loaned)**
- **Nature of the collateral (if secured)**
- **Instructions to attach evidence of perfection appears on the form instead of the instructions**
- **Extent a claim is secured**
- **Amount of any arrears**
- **Interest rate (no longer in its own box)**

# Form 410 – Part 2 – Claim Information

7. How much is the claim? \$ \_\_\_\_\_ Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

**Box 7 is for providing the amount of the claim**

**Question about whether amount includes interest and fees and instruction to provide itemized statement**

# Form 410 – Part 2 – Claim Information

8. What is the basis of the claim?

Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.

Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).

Limit disclosing information that is entitled to privacy, such as health care information.

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**Box 8 is for providing the basis of the claim (e.g., money loaned)**

**Instruction: “Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).”**

## **Form 410 – Part 2 – Claim Information**

**Box 9 is for providing information about secured claims:**

- **Nature of the property securing the claim (e.g., a motor vehicle or real estate)**
- **Basis for perfection (and attach documents)**
- **Value of the property securing the claim**
- **Amount of the arrears (i.e., amount to cure any default as of the date of petition)**
- **Annual Interest Rate (fixed or variable)**

# Form 410 – Part 2 – Claim Information

9. Is all or part of the claim secured?

- No  
 Yes. The claim is secured by a lien on property.

**Nature of property:**

- Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_

**Basis for perfection:** \_\_\_\_\_

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

**Value of property:** \$ \_\_\_\_\_

**Amount of the claim that is secured:** \$ \_\_\_\_\_

**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amounts should match the amount in line 7.)

**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_


**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %

- Fixed  
 Variable

# Form 410 – Part 2 – Claim Information

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_


**Box 10 is for providing information in the event the claim is based on a lease**



**Form 410**

**Part 3**

**Declaration Page**



**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date \_\_\_\_\_  
MM / DD / YYYY

\_\_\_\_\_  
Signature

Print the name of the person who is completing and signing this claim:

Name \_\_\_\_\_  
First name Middle name Last name

Title \_\_\_\_\_

Company \_\_\_\_\_  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_  
Number Street

City State ZIP Code

Contact phone \_\_\_\_\_ Email \_\_\_\_\_

## **Form 410 – Part 3 – Declaration Page**

**Part 3 replaces Section 8 of Form B10, and includes significant changes**


**Part 3 now includes a box for attorneys**

**Section 8 of former B10 includes a declaration under penalty of perjury, that the information provided in the claim is true and correct to the best of the filer's knowledge, information and reasonable belief**


## Form 410 – Part 3 – Declaration Page

The new declaration is broken into 3 parts:

- Signature serves as an acknowledgment that debtor has received credit for payments received
- I have examined information in POC and have a reasonable belief information is true and correct
- I declare under penalty of perjury that the foregoing is true and correct (i.e., not that the information is true and correct, but that the debtor has received proper credit, the information has been examined, and there is a reasonable belief about the accuracy of the info)



**Form 410A**  
**Mortgage Proof of Claim**  
**Attachment**





# Form 410A – Mortgage POC Attachment

- **Replaces POC Attachment**
- **Only required if loan is secured by principal residence**
- **Detailed payment history that can be automated should be shown on form**
- **Disclosure requirements should be uniform nationwide; local variations should be prohibited**
- **Amount of regular monthly mortgage payment as of the petition date should be included**
- **Calculation of the total claim should be shown**

# Form 410A – Loan History

**The loan history shows:**

- **When payments were due**
- **When the debtor made payments**
- **How payments were applied or placed in suspense**
- **When fees and charges were incurred**
- **What the balances were for various components of the loan after amounts were received or fees and charges were incurred**

## **Form 410A – Loan History**

**New form requires home mortgage claimant to provide loan history starting with the first date of default**

- **This is the first date on which the borrower failed to make a payment in accordance with the terms of the note and mortgage unless the note was subsequently brought current with no principal, interest, fees, escrow payment, or other charges “immediately payable”**

## Form 410A – Loan History

**Query:** What if a borrower reinstates by paying all the delinquent payments and late charges, but the fee for an inspection performed while the loan was delinquent is later assessed? Or what if the debtor does not pay the late charge and it remains the only fee outstanding for several years?

## **Form 410A – Loan History**

- **Loan history will enable debtor to (better) see basis for mortgage and arrearage amounts**
- **Goal is to facilitate resolution of disputes about mortgage amounts (and provide basis for objections to claim in others)**
- **New form has advantage of being in format that can be automated**
  - **Current B10A must be completed manually**
  - **Larger servicers believe they can automate the form**
  - **Credit unions are apparently on the same platform**

## **Form 410A – Loan History**

- **Pending amendments of Rule 9009 would require uniform implementation of the new form in all districts, thereby allowing creditors to develop universally applicable software form completion**
- **Black Knight, Corelogic and AACER are working on software solutions**

# Form 410A – Loan History

- New form requires disclosure of all information on the current Attachment A, but in a format that is more transparent and capable of being more easily and accurately completed
- New form adds information old form does not include:
  - Statement of current mortgage payment
  - Calculation of total amount of the debt (though that was required on former Form B10)

# Form 410A – Part 1: Mortgage and Case Info

- **Case Number**
- **Names of Debtor 1 and Debtor 2**
- **Last 4 digits of number used to identify the mortgage**
- **Creditor's name**
- **Servicer's name, if applicable**
- **Method used to calculate interest on the debt (i.e., fixed accrual, daily simple interest, or other method)**

Part 1: Mortgage and Case Information	
Case number:	_____
Debtor 1:	_____
Debtor 2:	_____
Last 4 digits to identify:	____ _
Creditor:	_____
Servicer:	_____
Fixed accrual/daily simple interest/other:	_____

# Form 410A – Part 2: Total Debt Calculation

- **Principal balance on the debt** →
- **Interest due and owing** →
- **Any fees or costs owed under the note or mortgage and outstanding as of the date of the bankruptcy filing** →
- **Any escrow deficiency for funds advanced** →
  - Amount of any prepetition payments for taxes and insurance servicer or mortgagee made out of its own funds and for which it has not been reimbursed

Part 2: Total Debt Calculation	
Principal balance:	_____
Interest due:	_____
Fees, costs due:	_____
Escrow deficiency for funds advanced:	_____
Less total funds on hand:	- _____
Total debt:	<input type="text"/>

# Form 410A – Part 2: Total Debt Calculation

- **Also disclose the total amount of funds on hand**
- **This amount is the total of the following, if applicable:**
  - **Positive escrow balance**
  - **Unapplied funds**
  - **Amounts held in suspense accounts**



Part 2: Total Debt Calculation	
Principal balance:	_____
Interest due:	_____
Fees, costs due:	_____
Escrow deficiency for funds advanced:	_____
Less total funds on hand: -	_____
Total debt:	<input type="text"/>

# Form 410A – Part 2: Total Debt Calculation

**To determine the total debt due:**

- **Total the amounts owed**
- **Then subtract the total funds on hand**
- **Insert this amount under *Total debt***

## Part 2: Total Debt Calculation

Principal balance:	_____
Interest due:	_____ <b>+</b> _____
Fees, costs due:	_____ <b>+</b> _____
Escrow deficiency for funds advanced:	_____ <b>+</b> _____
Less total funds on hand:	- _____ <b>-</b> _____
Total debt:	_____ <b>=</b> _____

# Form 410A – Part 3: Arrearage

- **Insert the amount of principal and interest portion of all prepetition monthly installments that remain outstanding as of the petition date**



Part 3: Arrearage as of Date of the Petition	
Principal & interest due:	_____
Prepetition fees due:	_____
Escrow deficiency for funds advanced:	_____
Projected escrow shortage:	_____
Less funds on hand:	- _____
Total prepetition arrearage:	<input type="text"/>

- **The escrow portion of prepetition monthly installment payments should NOT be included in this figure**

# Form 410A – Part 3: Arrearage

- **Insert amount of fees and costs outstanding as of the petition date**
- **This amount should equal the *Fees/Charges balance* as shown in the last entry in Part 5, Column P**



Part 3: Arrearage as of Date of the Petition	
Principal & interest due:	_____
Prepetition fees due:	_____
Escrow deficiency for funds advanced:	_____
Projected escrow shortage:	_____
Less funds on hand:	- _____
Total prepetition arrearage:	<input type="text"/>

# Form 410A – Part 3: Arrearage

- **Insert any escrow deficiency for funds advanced**
- **This amount should be the same as amount of escrow deficiency stated in Part 2**



Part 3: Arrearage as of Date of the Petition	
Principal & interest due:	_____
Prepetition fees due:	_____
Escrow deficiency for funds advanced:	_____
Projected escrow shortage:	_____
Less funds on hand:	- _____
Total prepetition arrearage:	<input type="text"/>

# Form 410A – Part 3: Arrearage

## **IMPORTANT**

- **The escrow deficiency amount (i.e., the negative balance in the escrow account on the day the case was filed) is ordinarily the starting balance for the escrow analysis**
- **Although not spelled out in the instructions, it has been determined that because the escrow deficiency is being listed on a separate line in Part 3, the escrow account needs to be brought up to zero prior to running the escrow analysis**

# Form 410A – Part 3: Arrearage

## **IMPORTANT**

- **This may require a programming change for the first escrow analysis run after the filing of a bankruptcy case**

# Form 410A – Part 3: Arrearage

- **Insert the projected escrow shortage as of the date the bankruptcy petition was filed (should be based on and consistent with escrow analysis performed as of the date of the petition under Rule 3001)**

## Part 3: Arrearage as of Date of the Petition

Principal & interest due: \_\_\_\_\_

Prepetition fees due: \_\_\_\_\_

Escrow deficiency for funds advanced: \_\_\_\_\_

Projected escrow shortage: \_\_\_\_\_

Less funds on hand: - \_\_\_\_\_

Total prepetition arrearage:

# Form 410A – Part 3: Arrearage

- **Calculation should include 1/6 of anticipated annual charges against the escrow account or 2 months of the monthly pro rata installments due by the borrower as calculated under RESPA guidelines**



Part 3: Arrearage as of Date of the Petition	
Principal & interest due:	_____
Prepetition fees due:	_____
Escrow deficiency for funds advanced:	_____
Projected escrow shortage:	_____
Less funds on hand:	- _____
Total prepetition arrearage:	<input type="text"/>

# Form 410A – Part 3: Arrearage

- **The shortage is the difference between the actual amount in the escrow account and the required amount**
- **Amount actually held should equal the amount of a positive escrow account balance as shown in the last entry in Part 5, Column O**

## Part 3: Arrearage as of Date of the Petition

Principal & interest due: \_\_\_\_\_

Prepetition fees due: \_\_\_\_\_

Escrow deficiency for funds advanced: \_\_\_\_\_

Projected escrow shortage: \_\_\_\_\_

Less funds on hand: - \_\_\_\_\_

Total prepetition arrearage:

# Form 410A – Part 3: Arrearage

- **The amount actually held should also equal ending balance for previous escrow computation period on escrow analysis**



Part 3: Arrearage as of Date of the Petition	
Principal & interest due:	_____
Prepetition fees due:	_____
Escrow deficiency for funds advanced:	_____
Projected escrow shortage:	_____
Less funds on hand:	- _____
Total prepetition arrearage:	<input type="text"/>

## IMPORTANT

**Escrow portion of missed prepetition mortgage payments will not be recovered as a separate line item**

# Form 410A – Part 3: Arrearage

- **Insert the amount of funds on hand as of the petition date**
- **Subtract this number from the total amounts due listed in Part 3 to arrive at the *Total Prepetition Arrearage***

## Part 3: Arrearage as of Date of the Petition

Principal & interest due:	_____
Prepetition fees due:	_____ <b>+</b> _____
Escrow deficiency for funds advanced:	_____ <b>+</b> _____
Projected escrow shortage:	_____ <b>+</b> _____
Less funds on hand:	_____ <b>-</b> _____
Total prepetition arrearage:	_____ <b>=</b> _____

# Form 410A – Part 4: Monthly Mtg Payment

- **Insert principal and interest payment amount of monthly payment as of petition date**



Part 4: Monthly Mortgage Payment		
Principal & interest:	_____	
Monthly escrow:	_____	
Private mortgage insurance:	_____	
Total monthly payment:	<table border="1"><tr><td>_____</td></tr></table>	_____
_____		

# Form 410A – Part 4: Monthly Mtg Payment


- **Insert monthly escrow portion of monthly payment**
- **Amount should take into account receipt of any amounts claimed in Part 3 as escrow deficiency and projected escrow shortage**



Part 4: Monthly Mortgage Payment		
Principal & interest:	_____	
Monthly escrow:	_____	
Private mortgage insurance:	_____	
Total monthly payment:	<table border="1"><tr><td>_____</td></tr></table>	_____
_____		

# Form 410A – Part 4: Monthly Mtg Payment

- **Therefore, the POC should assume that the escrow deficiency and shortage will be paid through the plan and provide for a credit of the same amount when calculating post-petition escrow installment payments**



Part 4: Monthly Mortgage Payment		
Principal & interest:	_____	
Monthly escrow:	_____	
Private mortgage insurance:	_____	
Total monthly payment:	<table border="1"><tr><td>_____</td></tr></table>	_____
_____		

# Form 410A – Part 4: Monthly Mtg Payment

- **Add any amounts for private mortgage insurance**
- **Add lines for additional amounts included in monthly payment such as credit life insurance**



Part 4: Monthly Mortgage Payment		
Principal & interest:	_____	
Monthly escrow:	_____	
Private mortgage insurance:	_____	
Total monthly payment:	<table border="1"><tr><td>_____</td></tr></table>	_____
_____		

# Form 410A – Part 4: Monthly Mtg Payment

- **The *Total Monthly Payment* is the sum of the principal and interest, monthly escrow, PMI, and other amounts (e.g., credit life insurance)**



Part 4: Monthly Mortgage Payment	
Principal & interest:	_____
Monthly escrow:	_____ + _____
Private mortgage insurance:	_____ + _____
Total monthly payment:	_____ = _____



# Form 410A – Part 5: Loan Payment History

Part 5 : Loan Payment History from First Date of Default																
Account Activity					How Funds Were Applied/Amount Incurred							Balance After Amount Received or Incurred				
A.	B.	C.	D.	E.	F.	G.	H.	I.	J.	K.	L.	M.	N.	O.	P.	Q.
Date	Contractual payment amount	Funds received	Amount incurred	Description	Contractual due date	Prin, int & esc past due balance	Amount to principal	Amount to interest	Amount to escrow	Amount to fees or charges	Unapplied funds	Principal balance	Accrued interest balance	Escrow balance	Fees / Charges balance	Unapplied funds balance
↑			↑	↑								↑		↑		↑

## Loan Payment History from First Date of Default

Beginning with the First Date of Default, enter:

- The date of the default in Column A
- Amount incurred in Column D
- Description of the charge in Column E
- Principal balance, escrow balance, and unapplied or suspense fund balance as of that date in Columns M, O, and Q respectively

# Form 410A – Part 5: Loan Payment History

**For:**

- 1) All subsequently accruing installment payments**
- 2) Any subsequent payment received**
- 3) Any fee, charge, or amount incurred**
- 4) Any escrow charge satisfied since the date of first default**

# Form 410A – Part 5: Loan Payment History

**Enter the information in date of order, showing:**

- **Description of the transaction**
- **Contractual due date**
- **How the amount was applied or assessed**
- **The resulting principal balance, accrued interest balance, escrow balance, outstanding fees or charges balances, and the total unapplied funds held or in suspense**

# Form 410A – Part 5: Loan Payment History

Part 5 : Loan Payment History from First Date of Default																
Account Activity					How Funds Were Applied/Amount Incurred							Balance After Amount Received or Incurred				
A.	B.	C.	D.	E.	F.	G.	H.	I.	J.	K.	L.	M.	N.	O.	P.	Q.
Date	Contractual payment amount	Funds received	Amount incurred	Description	Contractual due date	Prin, int & esc past due balance	Amount to principal	Amount to interest	Amount to escrow	Amount to fees or charges	Unapplied funds	Principal balance	Accrued interest balance	Escrow balance	Fees / Charges balance	Unapplied funds balance
													↑			

- **Column N is for showing the accrued (i.e., running) interest balance for daily simple interest loans**

# Form 410A – Part 5: Loan Payment History

**Part 5 : Loan Payment History from First Date of Default**

Account Activity					How Funds Were Applied/Amount Incurred							Balance After Amount Received or Incurred				
A.	B.	C.	D.	E.	F.	G.	H.	I.	J.	K.	L.	M.	N.	O.	P.	Q.
Date	Contractual payment amount	Funds received	Amount incurred	Description	Contractual due date	Prin, int & esc past due balance	Amount to principal	Amount to interest	Amount to escrow	Amount to fees or charges	Unapplied funds	Principal balance	Accrued interest balance	Escrow balance	Fees / Charges balance	Unapplied funds balance
												↓		↓		↓

- **Principal balance, escrow balance, and unapplied or suspense fund balance on the date the bankruptcy case was filed should be the figures in the last row of the history for Columns M, O, and Q respectively**



## **Form 410A – Servicer Challenges**

- **The requirement to produce a history back to the “first date of default” could mean servicer must go back several years**
  - **If loan has been transferred, the transferee will need detailed information about any fees or costs incurred prior to the transfer of loan**
  - **Otherwise, fees and costs assessed before transfer need to be waived**

## **Form 410A – Servicer Challenges**

- **Similarly, if loan is contractually delinquent as of transfer date, transferee will need a detailed history going back to the first date of default**
- **Otherwise, loan will need to be brought current at least through transfer date**
- **The requirement to bring escrow account up to zero before running first post-petition escrow analysis will require programming that is unique for borrowers in bankruptcy**

## **New Director's Forms**

- **Notice of Final Cure Payment - Form 4100N**
- **Response to Notice of Final Cure Payment - Form 4100R**
- **Director's Forms are issued under Bankruptcy Rule 9009 by the Administrative Office of the U. S. Courts. The use of Director's Forms is optional but may be required by local rules or general orders.**

# State Law Example

## The Snares of N.C.G.S §45-91

Since 2008, N.C.G.Ss §45-91 has laid a double snare for consumer home loan lenders.

Failure to either assess expenses against consumer borrowers within 45 days after they are incurred or to bill the borrowers 30 days after assessment and §45-93(3) means a lender *waives them forever*.

## State Law Example

### **The Snares of N.C.G.S §45-91**

The law applies even if a consumer borrower is in bankruptcy. *In re Saeed*, No. 10-10303, 2010 Bankr. LEXIS 3267 (U.S. Bankr. M.D.N.C. Sep. 17, 2010).

The automatic stay does not preclude sending this notice, as it is not an attempt to collect, but sent for informational purposes. *In re Hillmon*, No. 11-80303, 2011 Bankr. LEXIS 5536 (U.S. Bankr. M.D.N.C. Oct. 26, 2011)

# State Law Example

## The Snares of N.C.G.S §45-91

Failure to waive untimely assessed or noticed fees within 30 days of a request for correction, can result in imposition of actual damages and attorney's fees.

# Thanks to:

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## **Recent and Pending Mortgage Servicing Legislation, Rules and Regulations**

### **CHANGES IN OFFICIAL BANKRUPTCY FORMS- Effective December 1, 2015**

#### **Proof of Claim- Official Form 410**

If the claim is for a residential mortgage- creditor must attach:

- Proof of perfection;
- Documents on which the claim is based; and
- A copy of an escrow account (RESPA) analysis as of the date of the petition.

#### **Mortgage Proof of Claim Attachment – Official Form 410A**

- Requires additional itemized information about the principal, interest and fees
- Requires a loan history that reveals payments, how they were applied, when fees and charges were incurred and escrow amounts paid from the First date of default that remains unpaid as of the date of filing of the petition.

#### **Notice of Mortgage Payment Change- Official Form 410S1**

- Filed as a supplement to the Proof of Claim pursuant to FRBP §3002.1 at least 21 days prior to the new

#### **Notice of Post-petition Mortgage Fees, Expenses and Charges- Official Form 410S2**

- Filed as a supplement to the proof of claim to give notice of any fees, expenses and charges incurred after the bankruptcy filing that are asserted as recoverable against the Debtor or the Debtor's principal

### **CHANGES IN REGULATIONS- Consumer Financial Protection Bureau (CFPB)**

#### *Periodic statements for residential mortgage loans*

12 C.F.R. §1026.41 - effective July 18, 2015

Section 41(d)(3) Requires disclosure of any partial payments that were sent to a suspense or unapplied funds account.

Section 41(d)(4) Requires all transaction activity including payments received and applied, payments received and held in suspense account, imposition of any fees or charges be disclosed in the statement.

Section 41(e)(5) Requirement to send periodic statement does not apply to consumers in bankruptcy. With respect to any portion of the mortgage debt that is not

discharged, the servicer must resume sending periodic statements at the earliest of the case is dismissed, case is closed or consumer receives a discharge.

### **Requirements under Real Estate Settlement Procedures Act**

12 CFR 1026.36(c)(1) Servicer to credit the payment to the borrower’s account as of the date the servicer receives it

12 CFR 1024.34(a) Servicer required to pay taxes, insurance premiums and other charges by the due date.

12 CFR 1024.36 Request for Information (formerly QWR)- must include:

- the borrower’s name,
- information that allows the servicer to identify the borrower’s account and the requested information relates to the borrower’s mortgage loan.
- Request may be made by borrower or their agent.
- Servicer must acknowledge receipt within 5 business days.
- Servicer must respond in writing to the information request within 30 business days.

12 CFR 1024.37 Servicer must comply with the new restrictions on obtaining and assessing charges and fees for forced placed insurance. Requires an Initial written notice to the borrower at least 45 days before assessing a charge or fee related to forced place insurance. Requires a reminder notice at least 30 days after the initial notice is mailed and 15 days before a fee or charge is assessed.

### **Amendments to Regulation X- RESPA and Regulation Z Truth in Lending Act effective October 3, 2015-**

Loan origination and Mortgage Lender Licensing (changed from August 1, 2015 by CFPB)

12 CFR 1024.17(e) Transfer of Servicing requirements

12 CFR 1024.17(f)-(i) Escrow shortage, surplus and deficiency requirements

### **Proposed Amendments to Mortgage Servicing Rules under Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)**

Comment period ended March 2015.

Proposed amendments include:

- A general definition of delinquency- a borrower and a borrower’s mortgage loan obligation are delinquent beginning on the date a payment sufficient to cover principal, interest, and, if applicable, escrow, becomes due and unpaid.

- Require servicers to meet the loss mitigation requirement more than once in a life of a loan for borrowers who become current after a delinquency
- Require servicers to send modified periodic statements to consumers who have filed for bankruptcy with content varying depending on whether the borrower is in a Chapter 7 or 13.

# **Mortgage Proof of Claim Attachment—Rule 3001(c)(2)(C) and Official Form 410A**

With permission of John Rao

Bankruptcy Rule 3001(c)(2)(C) requires the mortgage creditor to attach to its proof of claim the Mortgage Proof of Claim Attachment form.<sup>1</sup> The form instructs the creditor to disclose the components of the total amount of the debt, the prepetition mortgage arrearage, and the postpetition mortgage payment amount. Mortgage creditors initially were required to include an itemization of prepetition fees and charges by entering this information in spaces provided on the form. The form now requires, for claims filed on or after December 1, 2015, the mortgage creditor to provide this information as part of a loan payment history. The loan history must include information about payments received and how they were applied, when fees and charges were incurred, when escrow amounts were disbursed, and whether funds were held in an unapplied or suspense account. The prepetition period shown on the loan history should be from the first date of default to the petition date.<sup>2</sup> If there were prepetition loan defaults that the debtor had fully cured, the loan history should begin with the first date of the most recent loan default that has not been cured.

If the mortgage account includes an escrow account, the mortgage creditor must also attach to the proof of claim an escrow account statement prepared as of the petition date in a form consistent with applicable nonbankruptcy law.<sup>3</sup> The Real Estate Settlement Procedures Act permits the servicer to conduct such an analysis in this situation before the end of debtor's normal escrow account year.<sup>4</sup> In order to give effect to the cure plan, the servicer must treat all unpaid prepetition escrow charges as if they have been paid when conducting this analysis. These unpaid prepetition escrow charges are part of mortgage holder's arrearage claim to be paid under the plan and such charges may not be collected in postpetition escrow payments.<sup>5</sup> Thus, prepetition escrow account deficiencies, representing amounts disbursed by the servicer for taxes, insurance, and other escrow items when there were insufficient funds in the debtor's escrow account, are paid as part of the mortgage holder's arrearage claim during the longer cure

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<sup>1</sup> Fed. R. Bankr. P. 3001(c)(2)(C); Official Form 410A.

<sup>2</sup> The Instructions for Official Form 410A state: "The first date of default is the first date on which

the borrower failed to make a payment in accordance with the terms of the note and mortgage, unless the note was subsequently brought current with no principal, interest, fees, escrow payments, or other charges immediately payable."

<sup>3</sup> Fed. R. Bankr. P. 3001(c)(2)(C).

<sup>4</sup> RESPA's implementing regulation, Regulation X, provides that in certain situations the servicer need not wait until the end of the twelve-month escrow computation year to perform an escrow analysis. If the analysis is done before the end of the twelve-month computation year, the servicer is required to send the borrower a "short year statement" which will change one escrow account computation year to another, and establish the beginning date of the new computation year. *See* Reg. X, 12 C.F.R. § 1024.17(i)(4).

<sup>5</sup> *In re Rodriguez*, 629 F.3d 136 (3d Cir. 2010); *Campbell v. Countrywide Home Loans, Inc.*, 545 F.3d 348 (5th Cir. 2008); *In re Beaudet*, 455 B.R. 671 (Bankr. M.D. Tenn. 2011).

period under the plan rather than in the shorter one-year period following the case filing as part of debtor's escrow portion of the postpetition mortgage maintenance payments. In addition, Part 3 of Attachment A requires the mortgage creditor to include as part of the prepetition arrearage an amount for the "projected escrow shortage" as of the petition date.<sup>6</sup> If done correctly, this procedure will in most cases produce a lower monthly escrow payment to be included as part of the debtor's total postpetition maintenance payments.

Review of Attachment A and the loan payment history should reveal if the creditor is attempting to improperly collect any prepetition escrow deficiency and shortage in the postpetition mortgage payment rather than the prepetition arrearage to be paid under the plan. In calculating the postpetition mortgage payment amount that is disclosed on Form 410A, the instructions for the form state that "a claimant should assume that the escrow deficiency and shortage will be paid through a plan of reorganization and provide for a credit of a like amount when calculating postpetition escrow installment payments."<sup>7</sup>

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<sup>6</sup> The Instructions for Official Form 410A state: "The projected escrow shortage is the amount the claimant asserts should exist in the escrow account as of the petition date, less the amount actually held. The amount actually held should equal the amount of a positive escrow account balance as shown in the last entry in Part 5, Column O."

<sup>7</sup> See Instructions for Mortgage Proof of Claim Attachment.

# The Snares of N.C.G.S §45-91

With permission of Franklin Drake as supplemented by Edward Boltz

Since 2008, N.C.G.Ss §45-91 has laid a double snare for consumer home loan lenders. Fail to assess expenses against consumer borrowers soon after they are incurred, or to bill the borrowers even sooner after they are assessed, and §45-93(3) means a lender *waives them forever*. The law applies even if a consumer borrower is in bankruptcy. *In re Saeed*, No. 10-10303, 2010 Bankr. LEXIS 3267 (U.S. Bankr. M.D.N.C. Sep. 17, 2010)

## 1. WHEN DOES IT APPLY?

- a. Whenever a mortgage servicer wants an individual borrower secured by a home loan to repay any “fees” advanced to anyone for anything. This includes late fees, legal fees, insurance premiums, late taxes, HOA dues - anything.
- b. Covers all “home loans” - secured by any NC residential property owned by an *individual*,
  - i. even if *not* borrower-occupied (GS §45-90(1)), and
  - ii. even if owned as rental property (GS §45-90(2)), and
  - iii. even if the borrower is in default, is now in bankruptcy or was previously in bankruptcy (GS §45-91).
- c. Includes all junior mortgages, HELOCs, lines-of-credit, etc. It does *not* have to be purchase-money.
- d. Covers all lenders, whether servicing their own loans directly or through 3rd-party servicers. GS §45-90(2).

## 2. HOW DOES IT WORK?

- a. Once the recoverable fee is “incurred” (*e.g.*, advanced by the lender or triggered by tardiness), it must be “assessed” (*i.e.* charged) to the borrower within 45 days after incurrence. §45-91(1)(a).
  - i. Attorney fees, trustee fees & costs incurred as a result of a foreclosure action must be assessed against the borrower within 45 days after charged to you or your servicer by the lawyer or trustee. (*Id.*)
  - ii. Whether lawyers & trustees bill the mortgage services promptly, once billed the 45-day clock starts.
- b. Once the recoverable fee is assessed, then it must be billed to the borrower within 30 days after assessment.
  - i. Must be *mailed* to the last known address of borrower. No e-bills or e-statements.
  - ii. Must be “clear & conspicuous in a statement”. GS §45-91(1)(b).
- c. Exception to the billing requirement (GS §45-91(1)(b)(i) through (iii)). All THREE elements must apply:
  - i. Results from a service affirmatively requested by the borrower AND
  - ii. Service was paid for by the borrower at the time the service was *provided* (not requested) AND
  - iii. Service was not charged to the borrower’s loan account.

3. WHAT ABOUT THE BANKRUPTCY STAYS? GS §45-91(1)(b) will not excuse filing notice as it is not an attempt to collect, but for informational purposes. *In re Hillmon*, No. 11-80303, 2011 Bankr. LEXIS 5536 (U.S. Bankr. M.D.N.C. Oct. 26, 2011)
  - a. Notice of the charges must be billed directly to the borrower despite the bankruptcy stays. They must be mailed *directly to the borrower and* “in care of” the debtor’s bankruptcy lawyer. ***BUT:***
  - b. Notice should include a suitable disclaimer: “If you are or have been in bankruptcy, this communication is solely to comply with NCGS §45-91(1), and not to violate any bankruptcy stay or injunction.”
  - c. Ch. 13 Form B-10-S-2 “Notice of Post-Petition Expenses, Fees & Charges” must attach a copy of the assessment and of the billing to the member.

#### 4. PENALTIES:

- i. Pursuant to N.C.G.S. §45-91(3), “Failure...constitutes a waiver of such fee.” Translation: *Mortgage Servicer eats the fee forever.*
- ii. Pursuant to N.C.G.S. §45-94, if the mortgage servicer is provided 30-days to waive improperly noticed fees and fails to do so, the borrower can be awarded actual damages, including attorney’s fees.