



February 5, 2018
 The Westin Galleria
 13340 Dallas Pkwy
 Dallas, TX 75240

CONTENTS OVERVIEW

SCHEDULE	Event Schedule & Sponsors	Pages 2-3
OPENING SUPER SESSION	Welcome Breakfast & Opening Super Session: Consumer "Quickfire" Hot Topics in Chapters 7 and 13	Pages 4-45
BREAKOUT SESSION 1 & 5	Tackling a Chapter 11 Case from Petition to Discharge Requirements	Pages 17-45
BREAKOUT SESSION 2 & 6	New Code & Rule Changes and Servicing Loans Post Cramdown & Lien Strips	Pages 46-82
BREAKOUT SESSION 3	The Life of a Chapter 11 Bankruptcy	Pages 83-108
BREAKOUT SESSION 4	Chapter 13 Cramdowns, Surrendering & Serial Filers	Pages 109-130
CLOSING SUPER SESSION	Daily Debrief: Takeaways and Closing Q&A	Pages 131-163
SPEAKER BIO'S	Speaker Biographies & Contact Info.	Pages 164-176



SCHEDULE:

7:30 AM-4:00 PM – Registration – Ft. Worth Ballroom Foyer

8:00-9:15 AM – Welcome Breakfast & Opening Super Session – Ft. Worth Ballroom 1

- Consumer "Quickfire" Hot Topics in Chapters 7 and 13

9:15-9:30 AM – Refreshment Break

9:30-10:30 AM – Breakout Sessions

- **Breakout Session 1 – Chapter 11 Track** - Ft. Worth Ballroom 1
 - Tackling a Chapter 11 Case from Petition to Discharge Requirements
- **Breakout Session 2 – Chapter 13 Track** - Ft. Worth Ballroom 2
 - New Code & Rule Changes and Servicing Loans Post Cramdown & Lien Strips

10:30-10:45 AM - Refreshment Break

10:45-11:45 AM – Breakout Sessions

- **Breakout Session 3 – Chapter 11 Track** - Ft. Worth Ballroom 1
 - The Life of a Chapter 11 Bankruptcy
- **Breakout Session 4 – Chapter 13 Track** - Ft. Worth Ballroom 2
 - Chapter 13 Cramdowns, Surrendering & Serial Filers

11:45-12:00 PM - Refreshment Break

12:00-1:00 PM – Breakout Sessions (Repeat of Morning Breakout Sessions 1 & 2)

- **Breakout Session 5 – Chapter 11 Track (Repeat of Session 1)** - Ft. Worth Ballroom 1
 - Tackling a Chapter 11 Case from Petition to Discharge Requirements
- **Breakout Session 6 – Chapter 13 Track (Repeat of Session 2)** - Ft. Worth Ballroom 2
 - New Code & Rule Changes and Servicing Loans Post Cramdown & Lien Strips

1:00-2:00 PM – Networking Lunch – Ft. Worth Ballroom 1

2:00-3:00 PM - Closing Super Session – Daily Debrief: Takeaways and Closing Q&A - Ft. Worth Ballroom 1

- We will recap some of the high points from each of our sessions in an interactive format. Participants will gain a greater understanding of the current issues in bankruptcy, and have an opportunity to learn something from the sessions you may have missed during the day, as well as having an opportunity to ask questions.

3:00-4:00 PM - Closing Networking Reception – The Westin Galleria – Ft. Worth Ballroom Foyer

- Reception for All Attendees

We Thank our Sponsors

Please take a moment to visit with our sponsors during the breaks in our session schedule at 9:15-9:30am, 10:30-10:45am & 11:45am-12:00pm or during the Networking Reception 3:00-4:00pm.



QUINTAIROS, PRIETO, WOOD & BOYER, P.A.



Opening Super Session: Consumer "Quickfire" Hot Topics in Chapters 7 and 13

Ft. Worth Ballroom 1

8:00 a.m. – 9:15 a.m.

Panelists will provide a Consumer "Quickfire" discussing multiple hot topics for consumer Chapter 7 and 13 cases, including post-confirmation/discharge pitfalls, valuation and discovery issues, in rem stay relief, and many more topics.

Speakers:

- Nicole Mariani Noel, Esq., Attorney, Kass Shuler, PA - **Moderator**
- Faiq Mihar, Esq., Co-Managing Members, Heavner, Beyers & Mihar, LLC
- LeAnn Covey, Vice President/Bankruptcy and Loss Mitigation, Clunk Hoose, Co. LPA
- Cara Hardy, Vice President, Loss Mitigation and Bankruptcy Operations, Statebridge Company, LLC
- Christopher L. Carman, Esq., Litigation & Compliance Counsel, BSI Financial
- Mike Bates, Esq., VP & Assistant General Counsel, JPMorgan Chase Bank, N.A.

i n t e r s e c t

OPENING SUPER SESSION

Ft. Worth 1

8:00 - 9:15AM

Consumer Quickfire

Panelists will provide a Consumer “Quickfire” discussing multiple hot topics for consumer Chapter 7 and 13 cases, including post-confirmation/discharge pitfalls, valuation and discovery issues, in rem stay relief, and many more topics.

INTERSECT | PRESENTERS

Moderator



Nicole Mariani Noel
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Speaker



Michael T. Bates
*Vice President & Assistant
General Counsel*
JPMorgan Chase Bank, N.A.

Speaker



Christopher L. Carman
Litigation & Compliance Counsel
BSI Financial Services

Speaker



Cara Hardy
Director of Legal Services
Statebridge Company



INTERSECT | PRESENTERS

Speaker



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Speaker



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***IN REM* RELIEF FROM STAY**

- Often discussed in context of Section 362(d)(4)
- What does *In Rem* mean?
- When to use Section 362(d)(4)
- How long does it last?
- Requires intensive review of facts
- Practical impact of obtaining an Order
- Recording Order to ensure effectiveness
- Communication is key!
- Other situations affording in rem relief - New FRBP 3015.1



POST CONFIRMATION/DISCHARGE

- Servicer Perspective and pitfalls re: transfer of servicing and boarding
- Communication between Counsel and Servicer
- 9th Circuit BAP case – *In re Marino*

VALUATION/DISCOVERY

- When is it appropriate to rely on a BPO v. Full Interior Appraisal
- Best Practices in Obtaining an Appraisal
 - Completed by a certified /state licensed Appraiser
 - Familiar with the geographical area
 - Done in accordance with USPAP
 - For Real Property, distance from subject property is key
 - Effective Date for Appraisal
 - Consistent with Purpose of Valuation

**Confidential Work Product?



CLAIMS IN CHAPTER 7

- Past practice for filing proofs of claim in Chapter 7 cases
- Are there districts which require proofs of claim to be filed in Chapter 7 cases
- Did the amendment to FRBP 3002 change current practices
- Ramifications if a proof of claim is not filed in a Chapter 7 case





FRBP 3002.1 ISSUES

- *What Might We Expect from the NACTT and the ABI Consumer Bankruptcy Commission*
- Treatment of Notices of Payment Change for Home Equity accounts
- Issues with the current process for responding to Notices of Final Cure
- Should reverse mortgages be subject to parts of FRBP 3002.1?
- What is the meaning of the word “incurred” and how does it impact a Notice of Post-Petition Fees, Expenses and Charges?

MISSED BAR DATE – WHAT NOW?

- Filing Motions to Extend Deadline early and often
- Best Practices



- Will the Court allow late filed Claims in Chapter 13 cases?

SURCHARGE ISSUES

- Importance of preserving right to object to surcharge
- Objections to Motion/Application to Employ Real Estate Agent or other professionals
- Recent case law





CFPB Quickfire

- Treatment of Gap Payments in Proofs of Claim under CFPB Billing Statement Rules
 - What is a gap payment?
 - Why do gap payments exist?
 - Are there differences in how chapter 13 trustees administer gap payments?
 - Should gap payments be included in a Proof of Claim to comply with CFPB billing statement rules?

CONCLUSION – Q&A



Breakout Session 1 & 5: Tackling a Chapter 11 Case from Petition to Discharge Requirements

Ft. Worth Ballroom 1

Breakout Session 1: 9:30 a.m. – 10:30 a.m.

Breakout Session 5: 12:00 p.m. – 1:00 p.m.

This session will focus on the mechanics of a Chapter 11 case and the key steps to insure the creditor's rights are protected throughout the case. This section will also highlight key servicer responsibilities in a Chapter 11 case.

Speakers:

- Deanna Lee Westfall, Esq., Director/Managing Attorney, Weinstein & Riley PS – **Moderator**
- Travis Menk, Esq., Partner, Brock & Scott
- Lisa Milas, Esq., Attorney, Schiller Knapp Lefkowitz & Hertz
- James Lewin, Esq., Managing Attorney, The Mortgage Law Firm

CHAPTER 11 OVERVIEW

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BREAKOUT SESSION 1 & 5
Chapter 11 Track

Ft. Worth 1

9:30 – 10:30AM
And
12:00 – 1:00PM

- In this Breakout Session, we will go over:
- An overview of Chapter 11 Bankruptcy
- The important aspects of Chapter 11 Bankruptcy and how it differs from other forms of Bankruptcy
- Typical Motions and Events seen in Chapter 11 Bankruptcies
- The important concerns that are critical to the proper servicing of a loan that has been part of a Chapter 11 Bankruptcy
- Why retaining Local Counsel that is familiar with the handling of Chapter 11 bankruptcies in each jurisdiction is critical

INTERSECT | PRESENTERS

Moderator



Deanna Westfall
Managing Attorney
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Speaker



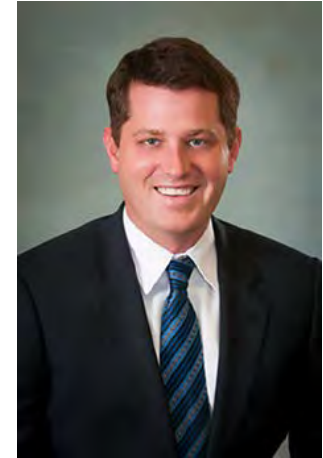
James Lewin
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Speaker



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Speaker



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CHAPTER 11 OVERVIEW

- Chapter 11 bankruptcy is a type of bankruptcy reorganization available to individuals, corporations and partnerships.
- A Chapter 11 filing is a reorganization chapter, similar to a Chapter 13, but with more extensive requirements.
 - There are no secured or unsecured debt limits in Chapter 11.
- Chapter 11 cases vary greatly by district and by judge.
 - For example, California has 47 bankruptcy Judges and each handles their procedures differently for a Chapter 11 case.
- It is very important to retain counsel early and have them file a notice of appearance.
 - A Chapter 11 case is handled by the Court in a manner similar to a litigation case. Many case events and deadlines result from periodic case status conferences held before the Judge assigned to the case. Creditor attorney attendance at the status conferences is recommended.

PRIMARY CONCERNS FOR SERVICERS

- No set timing for plan or POC
 - Disclosure Statement and Plan confirmation dates are usually set by the Judge during a case status conference attended by attorneys for the parties and the United States Trustee.
 - The POC Bar date is set by a motion filed by the Debtor's counsel.
- Trustee is less active and does not file objections to protect creditors
 - The United States Trustee monitors the status of the case to see if the Debtor is timely filing income and expense reports with the Court and paying any required fees. The Judge may ask the Trustee for comments on the proposed Debtor's Disclosure Statement and Plan.

PRIMARY CONCERNS FOR SERVICERS

- A plan objection must be filed to ensure that the plan clearly states the new loan terms so the plan can be booked as a loan modification in the servicer system
- Booking the plan incorrectly is a major source of objections and complaints
- Plan Treatment needs to be reviewed closely and understood or problems can arise
 - Post-petition escrow
 - Post-petition / pre-confirmation delinquency
 - Default provisions (e.g., 30-day written notice)
 - Date for commencement of payments
 - Change of payment due date

CHAPTER 11 vs. CHAPTER 13



Advantages to filing Chapter 11 rather than a Chapter 13:

- Chapter 11 has no limits on the amount of debt and timeline for repayment (unlike a Chapter 13).
- Debtor becomes the “Debtor in possession” and has all of the rights and duties of a trustee.
- Debtors are able to modify the mortgages on their rental properties without the five year limitation of Chapter 13 but cannot modify their primary residence.

AUTOMATIC STAY

Just like in Chapters 13 and 7:

- Filing Chapter 11 invokes the Automatic Stay preventing creditors from collecting debts.
- Creditors must stop all collection actions, including pending foreclosure sales, against any property of the Debtor.
- Generally, absent a contrary provision in a confirmed Chapter 11 plan, confirmation terminates the automatic stay by operation of law, since confirmation either grants or denies a discharge and vests property of the estate in the Debtor. **However, since each Chapter 11 is unique, the question of termination of the automatic stay in Chapter 11 should be reviewed by your attorney before you proceed.**

RELIEF FROM AUTOMATIC STAY AND REQUEST FOR ADEQUATE PROTECTION

Just like in Chapters 13 and 7:

- A creditor has the option to move the Court for relief from the Automatic Stay.
- The courts want the debtor to have an opportunity to reorganize, so relief from stay motions are disfavored in the first 3-6 months.
- Motions for adequate protection are more likely to be granted.
- Requires the debtor to make regular payments to the creditor until the plan is confirmed. The amount is negotiable

SECURITY INTERESTS IN RENTS/PROFITS

- If the mortgage or deed of trust provides a security interest in rents or profits from the property, those funds must be used to pay the mortgage unless the Debtor files a cash collateral motion with the Court.
- Your attorney should monitor the case for cash collateral motions.

PROOF OF CLAIM

- In Chapter 11, there is no set bar date for filing a POC.
- The Court sets the deadline in a separate order.
- The simplest way for creditors to begin protecting their rights in bankruptcy cases is by promptly filing a POC.
- The Debtor will use the amounts set forth in the POC to set the numbers in the plan.

DISCLOSURE STATEMENT

- A disclosure statement must include adequate information for creditors and shareholders to make an informed judgment about a plan of reorganization.
- A disclosure statement provides the story of why the Debtor is in bankruptcy and how the Debtor intends to pay its creditors.
- It is often not necessary to object to the disclosure statement. Generally objections are not necessary unless the treatment of claim is unclear or there are other significant problems.
- The disclosure statement is an informational document that supports the plan. The plan is the document that is binding.

CHAPTER 11 PLAN: IMPAIRED v. UNIMPAIRED

- A Chapter 11 Plan provides the Debtor's ongoing proposal to repay creditors.
- The Chapter 11 Plan will divide creditors into classes and classify them as impaired or unimpaired.
 - An Unimpaired class is paid in accordance with the original loan documents.
 - An Impaired class is not paid according to its loan terms. Claims in an impaired class can be paid claim at a reduced value, interest rate, or extended period of time.
 - The Debtor can propose to pay nothing on an impaired claim, make no payments until a sale of the property, or delay payments on the claim for an extended period of time.
 - Chapter 11 does not restrict the options a Debtor can propose. If the creditor does not object, a plan may be confirmed with very unfavorable terms.

CHAPTER 11 PLAN: IMPAIRED v. UNIMPAIRED

- Variety of Impaired Treatments are possible
 - Cram-Down
 - Interest rate modification
 - Repayment schedule extension
 - Deletion of arrears
 - Market and sale of property
 - Removal (or addition) of escrow impound
 - Surrender / Forced Transfer of title

CONFIRMATION REQUIREMENTS

- A debtor must meet specific criteria in order to confirm the plan as outlined in 11 U.S.C. §1129.
- The most relevant criteria to our discussion are:
 - The Plan must be proposed in good faith.
 - Each creditor must be treated fairly.
 - Each creditor must receive at least what they would receive in a Chapter 7 liquidation.
 - The plan must be feasible – the Debtor must be able to make the payments promised in the plan.

VOTING TO ACCEPT/REJECT PLAN

- In addition to objecting to the Plan, an impaired creditor has the right to vote on the Plan.
- Debtor's counsel needs to have impaired creditors vote for the Plan.
- Creditors can negotiate for better terms in the Plan in exchange for their vote.
- Creditors are not required to vote, but your attorney will likely recommend voting to accept or reject the Plan.

TERMS THAT SERVICERS NEED IN CONFIRMED PLANS

- A creditor should object to a Plan unless they can determine the following information regarding payments through the Plan:
 - Principal balance (based on the value of the property unless it is the Debtor's principal residence)
 - Interest Rate
 - Treatment of Escrow
 - Starting Date for Payments
 - New Loan Term
 - Percentage paid to unsecured portion of claim, if any
 - Procedure for Relief from Stay if Debtor Defaults

PRINCIPAL RESIDENCE

- A Chapter 11 Plan may not alter the terms of lien secured by the Debtor's principal residence.
 - Debtor's may attempt to modify a loan secured by a principal residence by:
 - Claiming the residence is also used as a commercial business
 - Claiming it was not the Debtor's Principal Residence at the time of the filing or at the time of confirmation
 - If they claim it is not the principal residence, they only have to pay the value of the property, not the full amount of the loan

PROPERTY, NOT PRINCIPAL RESIDENCE

- With a Chapter 11 filing, a debtor has the ability to cramdown rental or vacation property to the property's market value.
 - A Motion to value the property may be filed by the Debtor.
 - The Debtor will provide the Court with a determination of fair market value of the property.
 - Creditors will have an opportunity to provide a conflicting valuation of the property.
 - If the Creditors do not object, the Court may enter the order regardless of the fact that the valuation is too low, permanently altering the Creditor's right to be paid.
 - If the parties cannot agree, the Court will set an evidentiary hearing to determine value.
 - The parties will be required to present appraisals to the Court. The appraisers will be required to testify.

PROPERTY, NOT PRINCIPAL RESIDENCE

- A Broker's Price Opinion is not allowed as evidence.
- The Debtor is allowed to testify as to his/her opinion as to value
- The Court may also hear evidence as to the appropriate interest rate and term of repayment.

AMENDED PLANS/AMENDED DISCLOSURE STATEMENTS

- It is common in Chapter 11 cases for the Disclosure Statement and Plan to be Amended numerous times to respond to objections of the parties, similar to the Chapter 13 process.
- Each Plan must be reviewed and a separate objection filed if the Plan does not resolve the prior objection

PLAN CONFIRMATION

- If the Court determines that the Debtor has met all of the legal requirements for plan confirmation and has received sufficient votes for the Plan, the Court will enter a confirmation order. Some Orders include all of the necessary terms, while most will reference the final plan.
- The terms in the confirmed plan are binding
- The loan needs to be immediately re-booked with the new terms to avoid later sanctions
- The Plan will set forth an effective date, usually a certain amount of days after entry of the Confirmation Order, after which the Debtor has to start making the payments set forth in the Plan
- Most courts will 'ADMINISTRATIVELY CLOSE" the case upon plan confirmation.

MOTION TO SELL FREE & CLEAR

- The debtor needs permission from the bankruptcy court to sell any property of the bankruptcy estate free and clear of liens and encumbrances.
- The sale motion should state how much will be paid to each Creditor at the time of the sale.
- If the Motion to sell proposes to pay less than 100% of the Creditor's claim, the Creditor may object.
- Objections often lead to valuation disputes, requiring appraisals.

LIQUIDATION PLAN

- A liquidation plan is one in which the Debtor intends to liquidate his or her assets to repay creditors in full.

DISCHARGE

- In a Chapter 11 case, the Debtor typically does not receive a discharge until they have made all of the Plan payments.
- There is no set maximum number of years for a Debtor to make payments in a Chapter 11 case.
- The Court may enter the discharge earlier, if the Debtor meets certain requirements.
- At the time of discharge it is very important to review the loan to determine if all the plan terms have been entered into the system.

FINAL DECREE

- The final decree is filed by the Debtor to inform the Court that it has complied with the Plan, and to request a discharge.
- The Debtor will receive a discharge of all debt listed on the Schedules and paid in accordance with plan treatment.

END OF CASE CONCERNS

- Some districts require reopening closed cases to file MFRs upon plan default.
- Most plans contain default language that must be strictly followed.
- Dismissal DOES NOT cancel plan.

END OF CASE CONCERNS

- Failure to enter confirmed terms properly
 - Motion for contempt
 - Sanctions
 - Onerous account adjustments
 - Damages/Settlement
 - Risk to downstream servicers
- If you are service transferred an account post Chapter 11 Bankruptcy:
 - Reach out to local counsel to review the account to make sure account terms have been implemented appropriately and are accurate and you understand what is necessary if the account is delinquent

CONCLUSION – Q&A

- Chapter 11 Bankruptcies can significantly affect loans that are being serviced.
- Accounts need to be properly updated with the new and proper account terms that often arise as a result of the Chapter 11 Bankruptcy
- Retention of local counsel that is knowledgeable with respect to the local nuances of Chapter 11 bankruptcy in the local jurisdiction is critical

Breakout Session 2 & 6: New Code & Rule Changes and Servicing Loans Post Cramdown & Lien Strips

Ft. Worth Ballroom 2

Breakout Session 2: 9:30 a.m. – 10:30 a.m.

Breakout Session 6: 12:00 p.m. – 1:00 p.m.

This session will focus on issuing facing Chapter 13 cases, including the servicing of crammed down loans after confirmation, title issues, mobile homes, the consequences of failing to strictly follow the requirements of Rule 3001 (i.e., the rule that governs the filing of a proof of claim). In addition, the session will discuss recent plan and rule changes (e.g., shortened deadlines to file a proof of claim and objection to confirmation) that went into effect on December 1, 2015, and issues arising from these changes.

Speakers:

- Michael J McCormick, Esq., Senior Partner - Bankruptcy Department, McCalla Raymer Leibert Pierce, LLC - **Moderator**
- Angela Boyd Mathews, Esq., Supervising Attorney- Bankruptcy, Wilson & Associates
- Eddie Jimenez, Esq., Supervising Partner - Bankruptcy, Aldridge Pite, LLP
- Michael Schroeder, Esq., Attorney, Law Office of Michael J. Schroeder

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BREAKOUT SESSIONS

2 & 6

Chapter 13 Track

Ft. Worth 2

9:30 – 10:30AM

12:00 – 1:00 PM

New Code & Rule Changes, Servicing Cramdowns & Lien Strips Post-Confirmation and Discharge, Title Issues, Mobile Homes, and Rule 3001.

This session will focus on issues facing Chapter 13 cases, including the servicing of crammed down loans after confirmation and/or discharge, title issues, mobile homes, the consequences of failing to strictly follow the requirements of Rule 3001 (i.e., the rule that governs the filing of a proof of claim). In addition, the session will discuss recent plan and rule changes (e.g., shortened deadlines to file a proof of claim and objection to confirmation) that went into effect on December 1, 2015, and issues arising from these changes.

INTERSECT | PRESENTERS

Moderator



Mike McCormick
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FORM 113 & 2017 RULE CHANGES

A national Chapter 13 form plan (herein, “Form 113”) and accompanying rule changes were approved by the Rules Committee, Congress and the Supreme Court.

Many judges, trustees and other groups voiced opposition to the idea of a national plan

A compromise was reached where each district could opt out of using Form 113 and choose a “conforming plan.”

To properly opt out, a district had to publish a proposed plan for public comment

The deadline to make a decision was December 1st, 2017. If no decision was made, the default plan is Form 113

Effective implementation of the form plan required conforming amendments to Federal Bankruptcy Rules 2002, 3002, 3007, 3012, 3015, 4003, 5009, 7001, and 9009



FORM 113 & 2017 RULE CHANGES

The Compromise resulted in a new bankruptcy rule: Rule 3015

If a district opts out from Form 113, some of the requirements for a conforming plan include:

- Each paragraph would need to be numbered;
- If the plan provides for surrender of collateral, the plan must include a request for termination of the stay;
- Non standard provisions can appear in only one place or section, otherwise the provisions would be ineffective
- The Debtor or Debtor's attorney must certify there are no non standard provisions other than those in the designated section for non standard provisions



FORM 113 & 2017 RULE CHANGES

- At last count, all but 11 (out of 94) are opting out of the national plan (Form 113)
- The districts adopting Form 113 are:
 - Alaska
 - Western Kentucky
 - Western New York
 - Western Virginia
 - Northern Illinois
 - Northern Ohio
 - Northern Indiana
 - Northern Iowa
 - Southern Iowa
 - Utah
 - Wyoming



FORM 113 & 2017 RULE CHANGES

Rule 3002

- When must the PoC be filed?
- Rule 3002 is amended to clarify that secured creditors **MUST** file a POC in order to have an allowed secured claim and receive distributions
- The current draft of Rule 3002(c)(2) provides that for the debtor's principal residence, the POC is timely filed if filed within ~~60~~ 70 days of the petition date and includes the mortgage form attachment required by Rule 3001(c)(2)(c).
 - The documentation required by Rule 3001(c)(1) and (d) (supporting documents) may be filed as a supplement no later than 120 days after the petition.
- A lien that secures a claim against the debtor is not void due only to the failure of any entity to file a proof of claim
- The court may extend the time to file a proof of claim “by not more than 60 days from the date of the order granting the motion” if the creditor had insufficient notice
Query: does this mean a court cannot extend the time for other reasons?



FORM 113 & 2017 RULE CHANGES

- What controls – the plan or the PoC?
- The current draft of Form 113 now provides that the amounts listed on a POC as to the current installment payment and the arrearage for secured claims will control over contrary amounts listed in the plan
- What if the district has opted out of Form 113?
- Some districts may still provide in their conforming plan that the PoC controls (e.g., all 3 Tennessee plans provide for this)
- Rule 3012 - the amount of a claim that is secured (i.e., value) or entitled to priority status may be determined in a proposed plan, subject to objection and resolution at the confirmation hearing
- Where modification is proposed by the plan, the plan must be served per Rule 7004.

Bankruptcy Rule 3001.

Proof of Claim

(a) FORM AND CONTENT. A proof of claim is a written statement setting forth a creditor's claim. A proof of claim shall conform substantially to the appropriate Official Form.

■ THE CURRENT FORM IS OFFICIAL FORM 410.

(b) WHO MAY EXECUTE. A proof of claim shall be executed by the creditor or the creditor's authorized agent except as provided in Rules 3004 and 3005.





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

■ FORM 410 PROVIDES FOR FOUR POSSIBLE SIGNATORS: (1) The creditor, (2) the creditor's attorney or authorized agent, (3) the Trustee or Debtor, or (4) a guarantor or surety.

■ CREDITOR IS DEFINED BY SECTION 101(10) - an entity who has a claim against the debtor.

■ CLAIM IS DEFINED BY SECTION 101(5) – the right to payment or performance

■ AUTHORIZED AGENT -

*Bankruptcy Rule 9010(a) – Parties may act personally or by an attorney, authorized agent, attorney in fact, proxy.

*There is no bankruptcy definition for authorized agent.

■ HAS YOUR SIGNATOR EXAMINED THE INFORMATION IN THE CLAIM AND DOES HE OR SHE HAVE A REASONABLE BELIEF THAT THE INFORMATION IS TRUE AND CORRECT?





■ PENALTY OF PERJURY –

*18 U.S.C. §152(4) – A person who ... knowingly and fraudulently presents a false claim

*18 U.S.C. §157(3) – A person who makes a false or fraudulent ... claim under Title 11 ... shall be fined under this title, imprisoned not more than 5 years, or both.

*United States v. Overmyer, 867 F.2d 937, 949 (6th Cir.), *cert. denied*, 493 U.S. 813 (1989).

The elements of a false claim violation are: (1) that bankruptcy proceedings had been commenced; (2) that defendant presented or caused to be presented a proof of claim in the bankruptcy; (3) that the proof of claim was false as to a material matter; and (4) that the defendant knew the proof of claim was false and acted knowingly and fraudulently.



*United States v. Connery, 867 F.2d 929, 934 (reh'g denied)(6th Cir. 1989), appeal after remand 911 F.2d 734 (1990).

A proof of claim is not false merely because it may be inaccurate or erroneous in any or all respects. The claim may be asserted by a creditor in good faith even though the moneys being sought are thereafter successfully disputed by the debtor or disallowed by the Bankruptcy Court. Instead, a proof of claim is false if the statements contained therein are intentionally inaccurate and submitted without any good faith basis for the claim and are not the result of some mistake or clerical error or inadvertent omission.

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.

(c) SUPPORTING INFORMATION.

(1) Claim Based on a Writing. Except for a claim governed by paragraph (3) of this subdivision, when a claim, or an interest in property of the debtor securing the claim, is based on a writing, a copy of the writing **shall be filed** with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction **shall be filed** with the claim.

(2) Additional Requirements in an Individual Debtor Case; Sanctions for Failure to Comply. In a case in which the debtor is an individual:

(A) If, in addition to its principal amount, a claim includes interest, fees, expenses, or other charges incurred before the petition was filed, an itemized statement of the interest, fees, expenses, or charges **shall be filed** with the proof of claim.

(B) If a security interest is claimed in the debtor's property, a statement of the amount necessary to cure any default as of the date of the petition **shall be filed** with the proof of claim.



(C) If a security interest is claimed in property that is the debtor's principal residence, the attachment prescribed by the appropriate Official Form **shall be filed** with the proof of claim. If an escrow account has been established in connection with the claim, an escrow account statement prepared as of the date the petition was filed and in a form consistent with applicable nonbankruptcy law **shall be filed** with the attachment to the proof of claim.

(D) If the holder of a claim fails to provide any information required by this subdivision (c), the court may, after notice and hearing, take either or both of the following actions:

- (i) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or
- (ii) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

**In re: Gilbreath*, 395 BR 356 (Bankr. S. Dist. Tex. 2008). (Judge Bohm)

- (1) Previously ... this Court cautioned that it would continue to monitor the shoddy practices of creditors and their attorneys
- (2) It is this Court's duty to see that the **rules** are complied with ...
- (3) ECAST Proofs of Claims failed to include copies of the debt documents
- (4) In Texas, a creditor must produce evidence of the contract upon which the debtor is liable.
- (5) Creditors have the initial burden to come forward with documentation to support their claims.
- (6) Debtor's objection to ECAST Proofs of Claims was granted - the Proofs of Claims lost their presumption of validity ... the burden to prove the Proofs of Claims shifts to the creditor. The creditor failed to meet its burden and the claim objection was sustained. The claims were disallowed.



*In re: Brunson, 486 BR 759 (Bankr. N. Dist Tex. 2013). (Judge Houser)

(1) Here the Debtors filed Chapter 13 ... they filed objections to 15 unsecured Proofs of Claims ... they sought claim disallowance due to lack of written documentation.

(2) Claim allowance is governed by 11 U.S.C. §502 – a filed proof of claim is allowed unless a party in interest object to the Proof of Claim. Noncompliance with Bankruptcy Rule 3001 does not result in disallowance of a Proof of Claim.

(3) Failure to attach required documentation to a Proof of Claim is not a reason for disallowance under 11 U.S.C. §502.

(4) The 2011 rules amendments included remedies for creditor noncompliance with Bankruptcy Rule 3001. Per the Advisory Committee: Failure to provide the required information does not itself constitute a ground for disallowance of a claim.

(5) The claims resolution process is designed to achieve a fair and in expensive resolution of claims objections through a summary procedure that mirrors ... the formalities of conventional civil litigation. ... Courts must be practical and flexible in the application of the Bankruptcy Rules and must strike a balance between the interest of the debtor or trustee in sufficient information and the interest of the creditor to present its claim without undue burden or expense.



(d) EVIDENCE OF PERFECTION OF SECURITY INTEREST. If a security interest in property of the debtor is claimed, the proof of claim shall be accompanied by evidence that the security interest has been perfected.

(f) EVIDENTIARY EFFECT. A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.

■ PRIMA FACIE MAY BE USED AS AN ADJECTIVE MEANING SUFFICIENT TO ESTABLISH A FACT OR RAISE A PRESUMPTION UNLESS DISPROVED OR REBUTTED.

■ IMPORTANCE: IF A PROOF OF CLAIM IS FILED IN ACCORDANCE WITH THE RULES, THE PROOF OF CLAIM IS AFFORDED PRIMA FACIA VALIDITY IN ANY BANKRUPTCY LITIGATION.

*Claim Objection Litigation

*Plan Objection Litigation

*Stay Litigation



COMMENTARY: Form 410 attempts to tighten the “oath” that the proof of claim is true and correct. The prior form required a declaration under penalty of perjury that the claim was “true and correct to the best of my knowledge, information and belief.” Form 410 now requires a simple declaration that the person signing the form declares “under penalty of perjury that the foregoing is true and correct.” It makes it more important for the person signing the claim form to confirm that the information is accurate. The change means that outside attorneys probably should not sign the claim form for their clients. First, it is doubtful whether attorneys have the requisite personal knowledge to make this declaration under penalty of perjury. Second, a couple of courts have warned counsel to think twice before signing proofs of claim for their clients or risk possible disqualification by being a “fact witness.” In one 2013 case, the court found that the attorney who signed the proof of claim made himself a fact witness, waived work-product and attorney-client privileges, and put himself in a position as a deponent in a contested matter. See *In re Rodriguez*, 2013 WL 2450925 (Bankr. S.D. Tex. 2013). Consequently, the better practice is for the attorney to assist in the preparation of the claim, just as is done in the drafting of affidavits and declarations, but have the proof of claim signed by a client’s representative with knowledge of the facts or account.



Mobile Home Issues



Mobile Home Issues

Real Property vs. Personal Property



Mobile Home Issues

Affixation





Mobile Home Issues

Step 1: Is the mobile home physically affixed?

- Attached to a permanent foundation
- Removal of wheels, axels, and hitch
- Additional items that may vary by state



Mobile Home Issues

Step 2: Was the title surrendered/cancelled?

- Process varies by state
- Usually includes execution of an Affidavit of Affixation
- If a Certificate of Title is issued, it may have to be physically submitted to the state for cancellation.

Mobile Home Issues

What if the title wasn't cancelled properly?

Determine the current status of title

- Who is the listed owner
- Is a lienholder listed?

Check for a title policy with an endorsement

Bifurcated Claim

- Unsecured interest in the mobile home
- Secured interest in the land





Mobile Home Issues

Last Resort:

Bifurcated Claim

- Unsecured claim for the mobile home
- Secured claim for the land

Valuation of land may be made by appraisal



SERVICING LOANS POST-LIEN STRIP/CRAMDOWNDISCHARGE

SECURITY INTEREST IN DEBTOR'S PRINCIPAL RESIDENCE

A Chapter 13 plan may not modify the rights of a creditor secured only by a lien on the debtor's principal residence. *Nobelman v. American Savings Bank*, 508 U.S. 324, 113 S.Ct. 2106 (1993). As a result, Chapter 13 plans usually provide that pre-petition arrears, owing on a debt secured by the debtor's principal residence, will be paid within the plan or the creditor's entire loan will be paid within the life of the plan through payments to the Chapter 13 trustee. All payments that become due and owing subsequent to the filing of the debtor's bankruptcy petition are usually paid timely and directly to the lender. If the debtor fails to timely make post-petition payments on debt secured by his principal residence, the lender may file a motion for relief from automatic stay for cause.

SERVICING LOANS POST-LIEN STRIP/CRAMDOWNDISCHARGE

FULLY UNSECURED CLAIMS ON A DEBTOR'S PRINCIPAL RESIDENCE ARE SUBJECT TO MODIFICATION

A creditor who holds a junior lien on property which is the debtor's principal residence may have its claim "stripped off." If the property is fully encumbered with prior liens and there is no equity in the property after accounting for these senior encumbrances, then the junior lien may be "stripped off" and classified as an unsecured claim. Thus, if there is not at least one dollar of equity in the property to secure the creditor's lien, it may be subject to modification and the creditor may lose its lien on the debtor's principal residence. A creditor whose lien was "stripped off" under the plan may be required to record a release and/or reconveyance of its lien upon completion of the debtor's Chapter 13 plan and/or receipt of a Chapter 13 discharge.

SERVICING LOANS POST-LIEN STRIP/CRAMDOWNDISCHARGE

LIEN STRIPPING SCENARIOS AND STRATEGIES

Assume for these scenarios that you are the junior lienholder.

Junior Lien not subject to avoidance

Fair Market Value: \$200,000.00

Senior Lien Amount: \$199,000.00

Your Lien Amount: \$25,000.00

Junior Lien subject to avoidance

Fair Market Value: \$200,000.00

Senior Lien Amount: \$200,001.00

Your Lien Amount: \$25,000.00

- (1) Always obtain an updated valuation (Appraisal, BPO).
- (2) Always verify amount owing on senior lien.
- (3) If close call on valuation request evidentiary hearing and ability for internal inspection of property for full appraisal.
- (4) Attack Chapter 13 petition on other grounds.
- (5) Strip off only effective upon discharge in Chapter 13 and/or plan completion, not confirmation.



SERVICING LOANS POST-LIEN STRIP/CRAMDOWN/DISCHARGE

CHAPTER 13 CRAMDOWNS

A debtor may “cram down” (i.e., split) an undersecured creditor's claim that is not secured solely by a security interest in the debtor's principal residence into two parts: (1) a secured claim based upon the "replacement" of value of the collateral and (2) an unsecured claim for the balance of the loan. Thus, if a creditor's claim is "crammed down", it will receive full payment on the secured portion of its claim and a pro rata distribution on the unsecured portion of its claim. However, in order to "cram down" a creditor's claim in a Chapter 13 case, the debtor must pay the claim within the term of the plan, which is usually three to five years. *In re Enewally*, 368 F.3d 1165 (9th Cir. 2004). During the Chapter 13 case, the creditor is limited to those rights that are afforded by the debtor's Chapter 13 plan and may not take actions to collect debts that are inconsistent with the method of payment provided for in the plan. Moreover, liens may not be enforced to the extent that such liens are avoided, paid, or eliminated by a completed Chapter 13 plan. In other words, the creditor must release and/or reconvey its lien on its collateral where its claim has been "crammed down," the debtor's Chapter 13 plan has been completed, and the debtor has received a discharge. In the event that a creditor fails to release or reconvey its lien after its claim has been "crammed down" and the debtor's plan has been completed, it may be in violation of the discharge injunction and be liable for compensatory and/or punitive damages under the bankruptcy court's contempt powers. However, if the debtor does not receive a Chapter 13 discharge and/or complete their Chapter 13 Plan and the Chapter 13 bankruptcy case is dismissed or converted to a Chapter 7 proceeding, the property rights of the creditor are generally restored to the position they occupied prior to the filing of the case.

SERVICING LOANS POST-LIEN STRIP/CRAMDOWN/DISCHARGE

CHAPTER 11 CRAMDOWNS

A debtor may "cram down" a creditor's claim that is not secured solely by the debtor's principal residence in the same manner as a Chapter 13 proceeding. Generally in the Ninth Circuit, the property is determined to be a debtor's principal residence if the debtor is residing in the property at the time of the, bankruptcy filing. *BAC Home Loans Servicing, LP v. Abdelgadir (In re Abdelgadir)*, 455 B.R. 896, 903 (B.A.P. 9th Cir. 2011). The most common "cram down" against a secured creditor in a Chapter 11 case is one that provides for payment of the creditor's secured claim in full, with interest at the current market rate from the effective date of the plan and payments amortized over a substantial period of time. In a Chapter 11 case, the debtor's strategy in using a "cram down" is usually to compel the creditor to accept an extended repayment schedule or interest at a market rate that is below the contract rate.

Unlike a Chapter 13 case, the "cram down" provisions of Chapter 11 contain no explicit limitation on the time period that the debtor can make repayment. However, the Code requires the plan to be "fair and equitable." Thus, a secured debt should be repaid in the time which is conventional for that type of loan involved. For example, if the loan is secured by real property, it might be repaid over 25 or 40 years, but if it is secured by a motor vehicle, it typically must be repaid in three to five years.

SERVICING LOANS POST-LIEN STRIP/CRAMDOW/DISCHARGE

CHAPTER 11 CONFIRMATION

- § 1141(a)-provisions of confirmed plan bind the debtor...any creditor...whether or not the creditor is impaired or accepted the plan
 - The plan is a binding contract between the debtors and their creditors (*See In re Vandy, Inc.*, 189 B.R. 342 (Bankr. E.D. Pa. 1995))
- Estate property reverts in the debtor
- Update internal systems as soon as the confirmation order is entered to prevent sanctions and/or contempt of court proceedings
- Loan is generally deemed reinstated (per the terms of the plan)
 - State laws may require rescission of Notice of Sale
 - Cannot institute foreclosure proceedings based on preconfirmation default
- Produce accurate 1098 Tax Statements



SERVICING LOANS POST-LIEN STRIP/CRAMDOWNS/DISCHARGE

DISCHARGE

When a debt is discharged, it is no longer legally enforceable against the debtor, although any lien which secures the debt, may survive the bankruptcy case. Except as provided in the plan or confirmation order, confirmation of a plan generally discharges the debtor from all debts that arose before confirmation. However, it does not discharge an individual from any debt made nondischargeable by section 523 of the Bankruptcy Code. In addition, individual debtors are generally only eligible for a Chapter 11 discharge upon substantial consummation and/or completion of the Chapter 11 plan and not upon confirmation. Except in limited circumstances, a discharge is not available to an individual debtor unless and until all payments have been made under the plan. Moreover, an individual is not discharged from debts that were not scheduled, if the creditor did not otherwise have knowledge or notice of the case that would enable it to file a timely dischargeability complaint or proof of claim. Confirmation of a liquidation plan will result in a discharge only after plan payments are made, unless grounds would exist for denying the debtor a discharge if the case were proceeding under Chapter 7 instead of Chapter 11.

SERVICING LOANS POST-LIEN STRIP/CRAMDOWNS/DISCHARGE

DEBTOR'S DISCHARGE IN CHAPTER 11

- Entitled to discharge after completion of plan payments (*See 11 U.S.C. § 1141(d)(5)*)
 - Can be 30-40 years in Chapter 11
- Debtor can obtain early discharge upon a showing of “cause”
 - Generally established by proving debtor “substantially consummated” plan
 - Commenced distribution under the plan; and
 - Paid all administrative claims in full
 - Commenced distribution to secured and unsecured creditors
 - Established debtor has the financial ability to continue distributions under the plan
 - Typically six months to 2 years after plan confirmation

SERVICING LOANS POST-LIEN STRIP/CRAMDOWNDISCHARGE

COLLECTION OF SECURED DEBTORS AFTER DISCHARGE

Bankruptcy Discharge Prohibits All Actions Which Attempt to Collect an Obligation From the Debtor

Bankruptcy Code section 524(a)(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, including telephone calls, letters, and personal contacts to collect, recover, or offset any discharged debt as a personal liability of the debtor. The discharge injunction is the equivalent of a court order. Therefore, any violation of the injunction can be sanctioned as contempt of court.

A discharge prohibits the enforcement of the personal liability of a debtor, it does not prevent enforcement of a valid lien on the debtor's property that existed at the time the debtor filed for bankruptcy. Indeed, absent a valid reaffirmation agreement, the creditor's primary post-discharge remedy for secured loans is the enforcement of its security interest in the property. This is true even if there is little or no equity available in the property to satisfy the obligation owing to the creditor.

Numerous courts have sanctioned creditors that have attempted to collect discharged debts. Not only are post-discharge lawsuits and telephone calls clearly prohibited, but more creative attempts to collect discharged debts, such as conditioning future services, loans or business relationships on repayment of discharged debts, are also a violation of the discharge injunction and will expose a creditor to potential liability. The discharge injunction is so broad that courts have found the threat to enforce a surviving lien may violate the discharge injunction, if there is evidence the threat is really an effort to coerce payment of the underlying discharged debt. (See, for example, *Houghton v. Foremost Financial Services*, 724 F.2d 112 (10th Cir. 1983). An example of this situation is where a creditor threatens to foreclose even though it does not intend to actually complete the action. However, the discharge does not operate as an injunction against an act by a creditor that is the holder of a secured claim if: (1) the creditor retains a security interest in real property that is the debtor's personal residence; (2) the act is in the ordinary course of business between the creditor and the debtor; and (3) the act is limited to seeking or obtaining periodic payments associated with a valid security interest in lieu of pursuit of in rem relief to enforce the lien. In sum, the secured creditor must ensure the only actions it takes post-discharge are against its security and that its conduct is not a veiled attempt to enforce the debtor's personally liability.



SERVICING LOANS POST-LIEN STRIP/CRAMDOWNDISCHARGE

COLLECTION OF SECURED DEBTORS AFTER DISCHARGE (Continued)

Discharge Does Not Prohibit Collection From Co-Borrowers and/or Guarantors

Creditors should note that only the bankruptcy debtor receives a discharge, and that co-borrowers and/or guarantors may remain personally liable for the debt. The personal liability of co-borrowers and/or guarantors, however, may be subject to state law limitations such as California's One Action and Anti-Deficiency Rules. **Finally, in certain community property states, such as California, a spouses receipt of a discharge may prohibit collection against a non-filing spouse's interest in community property and limit collection action to the non-filing spouse's separate property.**

Secured Creditors Can Continue to Service a Loan After Discharge, But Must Make Clear That The Debtor is Not Personally Liable

Secured creditors may continue to service the loan after discharge, as long as they clearly do not seek to enforce any personal liability as to the debtor and that their remedies for non- payment lie solely against the property and possibly co-debtors or guarantors. To this end, secured creditors should consider utilizing concise language in collection documents similar to the following:

If you received a bankruptcy discharge that included this debt, this notice is not intended and does not constitute an attempt to collect against you personally. Instead, our rights are being exercised against the collateral for the above-referenced loan, not as a personal liability.

CONCLUSION – Q&A



Breakout Session 3: The Life of a Chapter 11 Bankruptcy

Ft. Worth Ballroom 1

10:45 a.m. – 11:45 a.m.

We will take a fun fact pattern and walk it through the life of a Chapter 11 bankruptcy.

Speakers:

- Kris Zilberstein, Esq., Managing Bankruptcy Attorney, The Law Offices of Michelle Ghidotti - **Moderator**
- Christopher DeNardo, Esq., Managing Partner, Shapiro & DeNardo
- Dennis Jose, Esq., Senior Attorney, Gross Polowy LLC
- Shirley Palumbo, Esq., Bankruptcy Senior Counsel, Greenspoon Marder

i n t e r s e c t

BREAKOUT SESSION 3

Chapter 11 Track

Ft. Worth 1

10:45 – 11:45AM

The Life and Times of a Chapter 11

This session will walk you through what could happen in a Chapter 11. Superman and Wonder Woman have gotten married and have had to file a Chapter 11 case in the Bankruptcy Court. Our panel will review common scenarios and how they impact you as Superman and Wonder Woman work their way through a Chapter 11.

INTERSECT | PRESENTERS



Moderator



Kris Zilberstein

Managing Bankruptcy Attorney
The Law Offices of Michelle Ghidotti
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Speaker



Dennis Jose

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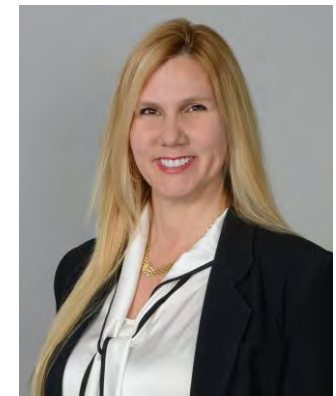
Speaker



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Speaker



Shirley Palumbo

Bankruptcy Senior Counsel
Greenspoon Marder
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Motion for Use of Cash Collateral

- The Debtor is seeking the permission of the Court to use proceeds and assets that other entities or lenders may have an interest in.
- Permission is typically sought by motion made under section 363(c)(2)(B) of the Bankruptcy Code, which requires that the Court approve use of cash collateral unless the secured lender consents.
- Secured lenders should ensure that they are adequately protected under 363(e) from any reduction in value to their lien.
- The Debtor can provide adequate protection in any form that the Court orders but it is generally made in the form of periodic lump sum payments to the lender or by replacement liens.



CRAMDOWN

What is it?

- A euphemism, a rewording, of a very important statutory provision of the Code
- Debtor's ability to reduce a secured claim to the present value of its collateral through **claim valuation** under 11 U.S.C. § 1129(b)(5) over the objection of the secured creditor



CRAMDOWNS

REQUIREMENTS:

- a. 16 pre-requisites must be met in order to confirm a plan. Otherwise the cramdown provision is triggered.
 - i. One of these requisites mandates that each impaired class has accepted the plan. When this pre-requisite is not met, the Code allows the Debtor to look at 1129(b) to confirm the plan. [the cramdown provision]. Assuming all other pre-requisites are met, the court will confirm the plan against the objection of a creditor [force acceptance] if:
- b. The plan does not discriminate unfairly (disparate treatment of members of the same class)
- c. Plan must be fair and equitable. To be fair and equitable with respect to a class of secured creditors, the plan must provide that either:



CRAMDOW

WITH RESPECT TO SECURED CREDITORS: In order for the plan to be fair and equitable, the plan must provide that either:

- i. The claimants retain their liens and receive deferred cash payments equal to the net present value of their secured claim;
 - 1. Ie. If senior lienholders exceed the value of that interest then that interest, the claim has no value as a secured claim and becomes an unsecured claim.
 - 2. The value over the life of the BK plan
- ii. If the property securing the liens is sold free and clear of liens, subject to section 363(k) of the Bankruptcy Code, the claimant's liens will attach to the proceeds of the sale and the claimant will receive either deferred cash payments or the indubitable equivalent of such claim; or
- iii. The claimants receive the "indubitable equivalent of such claims"



CRAMDOWN

VALUE:

- Procedure for valuing the secured claim and determining its secured status is found under 506(a) and rule 3022- under 506(a) value depends on the purpose of the valuation and the proposed use of the property.
- Rash - section 506 requires a replacement value standard for depreciating assets.
- Ch 11 individual



CRAMDOWN

EFFECTIVE DATE:

- The effective date of the plan is usually set by the plan proponent. It is usually after confirmation becomes final and all appeals are exhausted. However for purposes of valuation we revert to section 506 of the Code, the purpose is to determine the lender's secured status.
- The value of the secured interest should be valued vis-a vis the amount of the interest at the institution of the proceedings – the petition date.
- Majority view -appropriate date to value a secured creditor's claim for purposes of lien stripping under 11 U.S.C. 506(a) is the petition date;
- In Florida, individual ch 11 the effective date for valuation purposes has been determined to be as of the filing of the petition. In re Sroka 2014 WL 2808101 Judge Delano.



CRAMDOWN

INTEREST RATE:

- The value over the life of the BK plan requires a payment of interest over the repayment period.
- What is the appropriate interest rate?
 - i. Market efficiency for an exiting debtor– numerous lenders advertise financing for ch 11 debtors. Where there is availability of financing
 - ii. Majority view apply In re Till in ch 11 individual cases –. S.Ct. decision in a chapter 13 case and its similar provision under 1325. Formula approach= prime rate of interest and applicable risks adjustments of 1-3%. [depends on the conditions of the collateral, feasibility and duration of the plan].
 1. Formula approach only applied where an “efficient market does not exist” – which ends up being is most of the time.



CRAMDOWN

PROCESS:

- The issue is raised as part of the plan provision with a related motion to cramdown (depending on the district)
- Requires valuation hearings with expert testimony.
- Lender may object as to Due Process and challenge to the motion if the service of the motion is not provided pursuant to bankruptcy **Rule 7004** (service).
- The Lender must be prepared to present **expert testimony** by way of an appraiser in support of opinion of value.

Immediately seek an **interior appraisal** and Ensure it is appraised with comparable from the date of the filing of the petition and that the report relates back to the time of the filing of the petition.



CRAMDOWN

HOME

- Protected against the anti modification provisions under 1129(b)(5)
- In re Siva - 2010 WL 431771 SD FL Judge Cristol held there was no modification of secured interest in the homestead as no such exception existed in the Code.
- Case by case analysis
- Other courts have held that if a property is a mixed use property the anti-modification provisions of 11 U.S.C. § 1123(b)(5) are not applicable. *Lomas Mortgage v. Liou*, 82 F.3d 1 (1st Cir. 1996); *In re: Scarborough*, 461 F.3d 406 (3rd Cir. 2006); *In re: Kimbell*, 247 B.R. 35 (Bankr. W.D.N.Y. 2000).



Bad Faith In General

What is it?

- Multiple filings
 - Within 1 year of current filing
 - Case dismissed NOT discharged
- Unauthorized transfers
 - Grant deeds
 - Deeds of trust and assignment of rents
 - Other unauthorized transfers



Bad Faith

- Unauthorized transfer
 - Differentiation between a transfer for estate planning, familial, or as the result of a divorce and a transfer to avoid foreclosure
 - Differentiation between a transfer for business purposes and a transfer to avoid foreclosure
 - Is it a Ponzi scheme?
- File a MFR under 11 U.S.C. §362(d)(4)?

Disclosure Statement

- Must provide adequate information about debtor's financial affairs to allow creditors to make an informed decision to accept or reject the proposed plan
- Content – 11 U.S.C. §1125 – “adequate information”
 - History
 - Circumstances causing bankruptcy filing
 - Summary of the plan
 - Disclosure and valuation of assets
 - How claims and liabilities will be treated under the plan
 - Tax consequences of the plan
 - Feasibility of the plan
 - Comparison with a Chapter 7 liquidation

Disclosure Statement Cont.

- Typically have between 120 to 180 days to file both the Disclosure Statement and the proposed Plan.
- Disclosure Statement must be approved by the Court before the plan can be accepted.
 - Acceptance or rejection of the proposed plan cannot typically occur until the Disclosure Statement has been approved.
- Can object to the Disclosure Statement, as well as start negotiating plan treatment.

Section 363 sale of Real Property



The Dangers of 363(f)

363 Sale Process

- Typically, the Debtor or the Trustee makes a motion to sell under 363 of the Bankruptcy Code and notices said motion on all relevant parties.
- The Court hears the motion and approves the same.
- The prospective sale may be under 363(f), or 363(b) of the Bankruptcy Code.
- The prospective sale may be a planned private sale or one by auction.
- A Servicer can credit bid pursuant to section 363(k).

The Dangerous 363(f) Sale

- A 363 (f) sale can happen If any of the four following conditions are met: *applicable non-bankruptcy law permits such sale; the secured creditor consents to the sale; the sale proceeds are larger than the lien; the lien interest is in bona-fide dispute; the secured creditor could be forced under law to accept monetary satisfaction of its interest.*
- The sale is free and clear of liens and the liens shall attach to the proceeds, which essentially means: *the Secured Creditor's lien is removed from the real property and attaches to the cash resulting from the sale*



Protective Steps to Take

- Avail of Section 363(e) and seek adequate protection.
- Adequate protection may take a variety of forms but in general, it could be in the form of:
 - An opposition demanding that the court should not approve the sale unless the Secured Creditor is paid in full as per a valid payoff letter,
 - The lien re-attaches to the premises unless a payoff or agreed upon partial payment is made by a date certain,
 - A floor price be placed on any protective auction sale,
 - The approval order should direct that payment be made at the closing of the sale or by a date certain.



MOTION FOR RELIEF

Compare to Ch 13 and Ch 7 MFR's

Hybrid of both – equity analysis, not necessary for reorganization AND post-petition delinquency

- Timing of the MFR
 - Required to show that the property is not necessary for reorganization
 - Evidence that the Debtor has proposed a plan that is not feasible or confirmable may be sufficient to show there is no prospect for an effective reorganization. *In re Sun Valley Newspapers, Inc.* (9th Cir. BAP 1994) 171 BR 71, 73-74, 77; *In re Sun Valley Ranches, Inc.* (9th Cir. 1987) 823 F2d 1373, 1376; *In re Bonner Mall Partnership* (9th Cir. 1993) 2 F3d 889, 917.
- Post-Petition Delinquency
 - Minimum two month post-petition delinquency like Ch 13
 - Payments in the amount of the new payment per the plan do not make the Debtor delinquent

MFR Resolution

- APO?
- Stipulation for Plan Treatment





Chapter 11 Plan

- Typically filed at the same time as the Disclosure Statement
- Creditors broken up into different classes (impaired and unimpaired), and plan describes how each class will be treated.
- Common objections – interest rate, term, feasibility, arrears.
- Plan breaks out creditors in “classes”
- Creditors can vote to accept or reject the plan – debtor’s goal is to have every class vote in favor of the plan.
 - Each class – deemed to accept plan if creditors that hold two-thirds in amount and more than one half of the number of allowed claims in the class.
 - Negotiations of plan treatment occur here

CONCLUSION – Q&A



Intersect Ch 11 Fact Pattern

Superman and Wonder Woman decide to get married after years of crime fighting. After they are married, they buy a home. It is located at 123 Main St., Anytown, USA. As they further their careers as crime fighters, the happy couple invests in real estate. They buy several single family homes throughout the U.S.. Shortly, thereafter, the couple creates a LLC for their investment properties, Happy Couple Crime Fighters, LLC.

The primary rental property is 789 Superhero Lane, Prairie City, MO. This is a large single family home. Our happy couple has tenants who are on a month to month lease. They are timely paying the rent.

Fast forward 5 years, Superman and Wonder Woman along with their other superhero friends have pretty much eliminated all of the evildoers in the world. As a result, they have fallen on hard times. They completely rely on the Happy Couple Crime Fighters, LLC for their income. The economy of the world has started to take a downturn. While Superman and Wonder Woman were fighting crime, home values skyrocketed. Mortgages were very easy to come by. They took out several mortgages on all of their properties to fund the purchase of more rentals as well as complete some upgrades. But, now the economy cannot sustain all of the debt and property values have started to drop.

Superman and Wonder Woman decide to consult Shady Attorney, Esq. Shady Attorney recommends that they file a Chapter 11 bankruptcy case. Before they make the final decision to file for bankruptcy, they discuss the matter with Captain America a trusted ally and confidant. Captain America is in a similar situation and asks if he can transfer title of his primary rental property which has a foreclosure sale scheduled at the end of the week into the name of Happy Couple Crime Fighters, LLC. Superman and Wonder Woman agree because “WHY NOT!”. The next day Superman and Wonder Woman authorize Shady Attorney to file a Chapter 11 bankruptcy case for Happy Couple Crime Fighters, LLC.

We find our happy couple in the bankruptcy court approximately 1 month later.... Let’s check in and see what is happening....

Now that the happy couple has resolved how any rent they are collecting will be spent, they have to turn their attention with Shady Attorney to the value of their properties. Shady Attorney recommends resolving the value before proposing the plan. This is not his normal practice. He normally files the Disclosure Statement and Plan and “lets it ride.” Normally, he only files the motion to value if someone objects to the Disclosure Statement and Plan. However, he decided to proceed in a different manner in their case because of the transfer of Captain America’s property, 456 Super Agility Road, Middle of Nowhere, OK.

Yet again, we find Superman and Wonder Woman in the bankruptcy court duking it out.

With the banks surviving their battle with the Super Couple, they turn their attention to the Disclosure Statement and Plan. Shady Attorney throws a Disclosure Statement and Plan together. He omits how Superman and Wonder Woman will fund the plan. Also, he fails to disclose whether they will be selling any property. According to the Schedules that they filed with the petition, the net income is -\$3,000.00 per month.

Happy Couple Crime Fighters, LLC had the disclosure statement disapproved by the court. It's back to the drawing board for Shady Attorney. This time, he decides the couple needs to sell a property. They should list the rental at 789 Superhero Lane, Prairie City, MO for sale. He anticipates that it will sell before the Amended Disclosure Statement and Plan are due to be filed with the court.

It's a miracle! Three days after listing, 789 Superhero Lane, Prairie City, MO for sale, they have prospective buyers. Mr. and Mrs. Lex Luthor have offered to buy 789 Superhero Lane, Prairie City, MO for \$200,000.00. However, Superman and Wonder Woman owe \$275,000.00 on it because they used some of the equity to make improvements and as down payments for other rentals. Shady Attorney says that the discrepancy between the sales price and the amount owed is not an issue, and files a Motion to Sell.

After the long drawn out fight over the ability of Superman and Wonder Woman to sell 789 Superhero Lane, Prairie City, MO for less than the amount owed, their case has now been pending for a year and a half. The other lenders are becoming extremely frustrated. Super Bank, the primary lender of all crime fighters, holds the Note to 123 Main St., Anytown, USA. Superman and Wonder Woman have been so busy with all the other matters in their Chapter 11 case, they have not made ANY post-petition payments.

Breakout Session 4: Chapter 13 Cramdowns, Surrendering & Serial Filers

Ft. Worth Ballroom 2

10:45 a.m. – 11:45 a.m.

This panel will address hot topics within the courts including cram downs, surrendering property and serial filers, and the differences in handling these issues in multiple jurisdictions. Additionally, with the new 70 day time limit on filing a Proof of Claim, attendees can expect to obtain information as to what constitutes “excusable neglect” for late files, while getting valuable information on the elusive Bankruptcy Rule 5009 and how it may impact the Secured Creditor’s lien.

Speakers:

- Natalie Grigg, Esq., Partner, Woods Oviatt Gilman LLP - **Moderator**
- Mark Meyer, Esq., Partner, Rosenberg & Associates, LLC
- Roy Diaz, Esq., Shareholder, SHD Legal Group, PA
- Vanessa A. Leo, Esq., Attorney, Shapiro Pendergast & Hasty, LLP

i n t e r s e c t

BREAKOUT SESSION 4

Chapter 13 Track

Ft. Worth 2

10:45 - 11:45AM

Chapter 13 Cramdowns, Surrendering & Serial Filers

This panel will address hot topics within the courts including cram downs, surrendering property and serial filers, and the differences in handling these issues in multiple jurisdictions. Additionally, with the new 70 day time limit on filing a Proof of Claim, attendees can expect to obtain information as to what constitutes “excusable neglect” for late files, while getting valuable information on the elusive Bankruptcy Rule 5009 and how it may impact the Secured Creditor’s lien.

INTERSECT | PRESENTERS

Moderator



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DEALING WITH SERIAL FILERS



11 USC § 362((c)(3)

If the debtor had a prior case dismissed within 1 year of the filing of the current case, stay terminates after 30 days unless the court grants a motion to continue the stay.

If the stay terminates after 30 days, there is conflicting authority on whether the stay terminates as to the debtor and the estate or just as to the debtor – check with your local counsel.

If in a specific jurisdiction, the stay does not terminate as to the estate and the collateral is part of the estate, the stay remains in effect and foreclosure cannot proceed.



11 USC § 362((c)(4)

If the debtor had 2 prior cases dismissed within 1 year of the filing of the current case, the automatic stay does not go into effect upon the filing of the case.

It is not required, but creditors may file a motion and obtain an order confirming no stay is in effect.

Obtain Relief From Stay Pursuant to 11 USC § 362((c)(4)

May obtain relief from the automatic stay with respect to real property if the court finds the filing of the case was part of a scheme to delay, hinder or defraud creditors that involved either:

- Transfer of all or part interest in the property without consent of the creditor or court approval; or
- Multiple bankruptcy filings affecting such property.

An order obtained pursuant to this section if recorded in the land records is then binding for 2 years in any other case filed which affects the property.

OBTAINING *IN REM* RELIEF

In rem relief is the imposition of an equitable servitude upon the property or relief which runs with the property and is binding upon the debtor and any other non-debtor co-owners which prevents a new automatic stay from going into effect for 180 days.

Need to show the debtor is a serial filer and the debtor's filings constitute an abuse of the bankruptcy process.

Factors to look for:

- Number of filings. There is no magic number but generally at least 2 prior filings.
- Filings made just to stop foreclosures, usually on the eve of the foreclosure sale.
- Cases dismissed soon after filing.
- No effort to prosecute the case: failure to file documents, failure to file a plan or get a plan confirmed.
- Spouses or co-owners alternating filings and dismissals.

CRAMDOWNS

- Section 1325(a)(5)(B) allows the court to reduce the balance of a secured loan to the fair market value of the collateral (the “cramdown.”)
- Section 506 of the code allows the debtor to file a motion to value secured collateral.
- Section 1322(b) states the “plan may modify the right of holders of secured claims, other than a claim secured by a security interest in real property that is the debtor’s principal residence...” A debtor cannot modify the claim or mortgage of a principal residence.
- If successful, the debtor will only have to repay the fair market value of the property (the secured portion of the loan) in full through the Chapter 13 plan.

CRAMDOWNS (cont'd)

- The unsecured portion (the amount over the fair market value) will be treated like the other unsecured debts in the Chapter 13 plan and the debtor will usually pay less than 100% of those debts.
- The interest rate can also be reduced in a Chapter 13 cramdown. In *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004), the Supreme Court ruled that the new interest rate will be calculated by taking the prime interest rate and adjusting it upward based on the additional risk involved in lending to a debtor.

CRAMDOWNS (cont'd)

- How to treat mixed-use property under § 1123(b)(5) (Chapter 11)
 - ❑ Courts generally take one of three approaches: (1) a bright-line test allowing modification of a lien if the collateral is the debtor's primary residence and is also used to produce income; (2) a bright-line test prohibiting modification of a lien if the collateral is real property that is also the debtor's primary residence, without regard to any other use of the property; and (3) a case-by-case approach
 - ❑ The Southern District Court of Florida in *In re Hock*, Case No. 14-32157-BKC-PGH (Aug. 15, 2017), prohibited the debtors from modifying the rights of the secured creditor as the secured creditor's claim was secured only by a security interest in real property that was the debtors' principal residence—even though the real property was also used by the debtors to produce income.

CRAMDOWNS (cont'd)

- Statutory interpretation - if Congress had meant to apply the anti-modification provision to claims secured only by real property used only or exclusively as the debtor's principal residence, Congress could easily have stated that a chapter 11 debtor may modify the rights of holders of secured claims, "other than a claim secured only by a security interest in real property that is exclusively the debtor's principal residence."

CRAMDOWNS (cont'd)

Best Practices:

- ✓ Always have a reliable valuation on the property prior to deciding whether to contest the Motion to Value.
If there appears to be equity, or it is believed that there is equity in the property, it will be necessary to obtain a certified appraisal valuing the property as of the bankruptcy filing date.
- ✓ Good to also contact Debtor's counsel to determine if an agreement can be reached as to valuation. In lots of situations, Judges will "split the baby" and determine that the value of the property is directly in the middle of debtor's and creditor's valuation.
- ✓ If the Debtor lives in the property a Creditor should always dispute the Debtor's ability to cramdown the property.

SURRENDER

- A debtor must file a statement of intention in Chapter 7 or a Chapter 13 plan of reorganization and choose one of the following three designations with respect to a secured creditor: (1) reaffirm the debt, (2) surrender the property, or (3) redemption. Section 521(a)(2)(A). The debtor must then perform that intention. Section 521(a)(2)(B).
- The Eleventh Circuit concluded in *In re Failla*, 838 F.3d 1170 (11th Cir. Oct. 4, 2016), that “surrender,” as used in Section 521(a)(2)(A), means that the debtor is “giving up of a right or claim” and requires debtors to drop their opposition to a foreclosure action.”
- A lender’s bankruptcy counsel should let foreclosure counsel know whether borrowers have surrendered the property in the bankruptcy. Foreclosure counsel should then ensure that a suggestion of bankruptcy is filed in the foreclosure action along with a request for judicial notice of copies of the debtor’s Chapter 7 statement of intention or Chapter 13 plan for reorganization.

SURRENDER (cont'd)

- **Best Practices:**
 - ✓ Compel the debtor to designate his/her intentions with respect to the property, either in the statement of intentions or Chapter 13 plan.
 - ✓ Once a designation has been selected, ensure the debtor follows through with that designation.
 - Compel the debtor to reaffirm; or
 - File a motion for relief requesting that the debtor be compelled to surrender the property

POC – FILING CLAIMS TIMELY

- ❖ Claim Deadline – 70 Days from Date of Filing Petition for Relief or Conversion
 - ❖ Voluntary Chapter 7, Chapter 12 or Chapter 13
 - ❖ *Involuntary Chapter 7 Case – POC must be filed no later than **90 days** after the Relief Order*
- ❖ Amended Rule 3002 Requires a Secured Creditor to File a POC to Have an Allowed Claim
 - ❖ Failure to file a proof of claim does not affect the lien securing the debt
 - ❖ Lien not void if no claim is filed
- ❖ For Mortgage Claims Secured by Debtor's Principal Residence– Rule 3001(c)(2)(C)
 - ❖ If a security interest is claimed in property that is the debtor's principal residence, the attachment prescribed by the appropriate Official Form (Completed 410A) shall be filed with the proof of claim. If an escrow account has been established in connection with the claim, an escrow account statement prepared as of the date the petition was filed and in a form consistent with applicable non-bankruptcy law shall be filed with the attachment to the proof of claim.
- ❖ ELIMINATES PLACEHOLDER CLAIMS

POC – LATE FILING & EXCEPTIONS

- ❖ On Motion filed by creditor BEFORE OR AFTER the filing deadline, the court *may* extend the deadline to file the Proof of Claim **not more than 60 days from the date of the order granting the Motion**, if:
 - ❖ *Insufficient Notice as a result of:*
 - (i) *Debtor's failure to timely file the list of creditors' names and addresses required by Rule 1007(a); OR*
 - (ii) *Notice was insufficient under the circumstances to give the creditor a reasonable time a proof of claim, **AND** the notice mailed to the creditor at a foreign address*
 - ❖ Grounds for extension of time are **very limited**.
 - ❖ *Completely within the discretion of the court and the burden of proof is on the creditor to show insufficient notice.*
- ❖ What about "excusable neglect"?
 - ❖ No such exception in Chapter 13

POC – Supporting Documents

- ❖ Mortgage Claims – 120 days from petition date to file attachments required by Rule 3001(c)(1) & (d)
- ❖ Supporting Documents:
 - ❖ The writing
 - ❖ Evidence of perfection of security interest
 - ❖ Mortgage or Deed of Trust
 - ❖ Assignments
 - ❖ Note
 - ❖ Allonge
- ❖ What about extension of time for the supporting documents?
 - ❖ The amendment does not extend specifically the time for filing the attachments to the Proof of Claim.
 - ❖ Therefore, if you are filing a Motion to Extend Time to file a Proof of Claim:
 - ❖ Request an extension of supporting documents
 - ❖ If extension is granted, file the POC and supporting documents at the same time

POC – CONSEQUENCES FAILURE TO FILE

- ❖ If a creditor does not file a Proof of Claim, the claim will be ineligible to receive distributions under the confirmed plan.
- ❖ Options: Creditor may seek relief from stay and/or adequate protection of its interest;
 - ❖ Will a Consent Order on Motion for Relief allow a secured creditor a second chance at having an allowed claim?
 - ❖ Section 501(c) of the Bankruptcy Code and Rule 3004 address this issue by allowing a Debtor or Trustee to file a “surrogate” proof of claim, thereby resulting in the secured claim being eligible for treatment under the plan



POC – CONSEQUENCES

- ❖ Local Rules in several jurisdictions have provided for surrogate claims
 - ❖ Examples: Massachusetts
 - Surrogate claim is filed;
 - Clerk of Court provides notice to the secured creditor and deadline for the secured creditor to file an amended claim;
 - Failure by the secured creditor to amend the claim results in the surrogate proof of claim becoming the “allowed claim”
 - CAUTION – If the secured creditor takes no action or response to the bankruptcy, it risks disallowance/waiver of amount over and above what the surrogate claim provides

PROOFS OF CLAIM – CONCLUSION

- ❖ Amendments to Rule 3002 have significant impact on secured creditors:
 - ❖ A Proof of Claim must be filed in order for a secured creditor to be allowed and received distributions in Chapter 7, 12, or 13 proceedings;
 - ❖ Proof of Claim Deadline Shorten to 70 days from entry of the order for relief
 - ❖ Change from 90 days after the first scheduled 341 meeting of creditors
 - ❖ Mortgage Claims must include completed 410A form and escrow analysis from date of petition
 - ❖ 120 days from date of petition to file attachments (a copy of writing on which the claim is based; evidence of perfection)
- ❖ Very limited grounds for extension on time to file proof claim.
- ❖ Fixed 60 day extension period, only by order of the court.
- ❖ Financial institutions should consider re-examining their bankruptcy search timeline and claims filing policy and procedure to ensure the new deadlines are timely met.

SECURED CLAIM – ORDER DECLARING LIEN SATISFIED

Lien Release via Motion & Order: Bankruptcy Rule 5009 - In a Chapter 12 or 13 cases, the debtor may request an order declaring that a secured claim has been satisfied and that the lien has been released under the terms of the confirmed plan.

See Amended Rule 5009(d) - The Judicial Conference noted that a debtor may need documentation for title purposes of the elimination of a second mortgage or other lien that was secured by property of the estate.

Secured creditors should monitor these additional filings for accuracy.

ORDER DECLARING LIEN SATISFIED

Eastern District of Kentucky Form:

CHAPTER 12 OR 13 ORDER DECLARING LIEN SATISFIED

This matter is before the Court on the Debtor’s motion to declare liens satisfied pursuant to Federal Rule of Bankruptcy Procedure 5009(d). The Debtor represents that the following secured claim or claims have been satisfied and the related lien or liens have been released under the terms of the Debtor’s confirmed plan [ECF No. ____]:

Name of Lienholder	Recording Office	Book/Page or Filing Number

It is ORDERED the lien or liens described above are deemed satisfied and no longer have any force or effect. The Lienholder shall release the lien or liens within 30 days of the entry of this Order. If the Lienholder fails to act within 30 days, the Debtor is authorized to present this Order to the applicable recording office and the designated recording officer shall note the release in the applicable lien records.

CONCLUSION – Q&A



Closing Super Session – Daily Debrief: Takeaways and Closing Q&A

Ft. Worth Ballroom 1

2:00 p.m. – 3:00 p.m.

We will recap some of the high points from each of our sessions in an interactive format. Participants will gain a greater understanding of the current issues in bankruptcy, and have an opportunity to learn something from the sessions you may have missed during the day, as well as having an opportunity to ask questions.

Speakers – All Moderators from Previous Sessions:

- Nicole Mariani Noel, Esq., Attorney, Kass Shuler, PA
- Deanna Lee Westfall, Esq., Director/Managing Attorney, Weinstein & Riley PS
- Michael J McCormick, Esq., Senior Partner - Bankruptcy Department, McCalla Raymer Leibert Pierce, LLC
- Kris Zilberstein, Esq., Managing Bankruptcy Attorney, The Law Offices of Michelle Ghidotti
- Natalie Grigg, Esq., Partner, Woods Oviatt Gilman LLP

intersect

the intersection of servicing + bankruptcy

COMMUNICATION IS KEY

escalate PROBLEMATIC ISSUES through
Counsel, *not Staff*

Provide PROPOSED SOLUTIONS
along with Problematic Issues

Presented by Steve S.

i n t e r s e c t

CLOSING SUPER SESSION

Ft. Worth 1

2:00 - 3:00PM

Daily Debrief: Takeaways and Closing Q&A

Moderators from each of today's sessions will recap some of the high points from their presentations. You will have an opportunity to learn something from each of the sessions you may have missed during the day, and gain a greater understanding of the current issues in bankruptcy.

Have a Question? Just Ask Us.

Opening Super Session



Nicole Mariani Noel
Partner
Kass Shuler, PA
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Breakout Session 1 & 5



Deanna Westfall
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Breakout Session 2 & 6



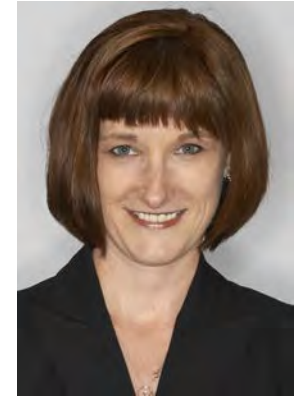
Mike McCormick
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Breakout Session 3



Kris Zilberstein
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Breakout Session 4



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i n t e r s e c t

OPENING SUPER SESSION

Consumer Quickfire

Consumer “Quickfire” including discussions on multiple hot topics for consumer Chapter 7 and 13 cases, including post-confirmation/discharge pitfalls, valuation and discovery issues, in rem stay relief, and other topics.

Moderator



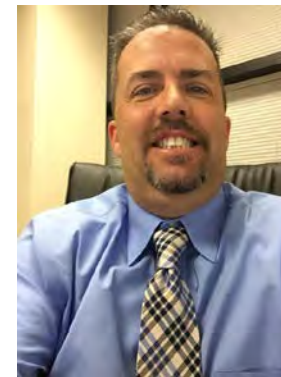
Nicole Mariani Noel
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Speaker



Michael T. Bates
*Vice President & Assistant
General Counsel*
JPMorgan Chase Bank, N.A.

Speaker



Christopher L. Carman
Litigation & Compliance Counsel
BSI Financial Services

Speaker



Cara Hardy
Director of Legal Services
Statebridge Company

Speaker



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Opening Super Session

- In Rem Relief from Stay
- Post Confirmation Discharge
- Valuation/Discovery
- Claims in Ch. 7
- FRBP 3002.1 Issues
- Missed Bar Date – What Now?
- Surcharge Issues
- CFPB



Q&A

OPENING SUPER SESSION

i n t e r s e c t

BREAKOUT SESSION 1 & 5
Chapter 11 Track

CHAPTER 11 OVERVIEW

- An overview of Chapter 11 Bankruptcy
- The important aspects of Chapter 11 Bankruptcy and how it differs from other forms of Bankruptcy
- Typical Motions and Events seen in Chapter 11 Bankruptcies
- The important concerns that are critical to the proper servicing of a loan that has been part of a Chapter 11 Bankruptcy
- Why retaining Local Counsel that is familiar with the handling of Chapter 11 bankruptcies in each jurisdiction is critical

INTERSECT | PRESENTERS



Moderator



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Speaker



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PRIMARY CONCERNS FOR SERVICERS

- A plan objection must be filed to ensure that the plan clearly states the new loan terms so the plan can be booked as a loan modification in the servicer system
- Booking the plan incorrectly is a major source of objections and complaints
- Plan Treatment needs to be reviewed closely and understood or problems can arise
 - Post-petition escrow
 - Post-petition / pre-confirmation delinquency
 - Default provisions (e.g., 30-day written notice)
 - Date for commencement of payments
 - Change of payment due date

PLAN CONFIRMATION

- If the Court determines that the Debtor has met all of the legal requirements for plan confirmation and has received sufficient votes for the Plan, the Court will enter a confirmation order. Some Orders include all of the necessary terms, while most will reference the final plan.
- The terms in the confirmed plan are binding
- The loan needs to be immediately re-booked with the new terms to avoid later sanctions
- The Plan will set forth an effective date, usually a certain amount of days after entry of the Confirmation Order, after which the Debtor has to start making the payments set forth in the Plan
- Most courts will ‘ADMINISTRATIVELY CLOSE’ the case upon plan confirmation.



TERMS THAT SERVICERS NEED IN CONFIRMED PLANS

- A creditor should object to a Plan unless they can determine the following information regarding payments through the Plan:
 - Principal balance (based on the value of the property unless it is the Debtor's principal residence)
 - Interest Rate
 - Treatment of Escrow
 - Starting Date for Payments
 - New Loan Term
 - Percentage paid to unsecured portion of claim, if any
 - Procedure for Relief from Stay if Debtor Defaults



Q&A

BREAKOUT SESSION 1 & 5

CHAPTER 11

i n t e r s e c t

BREAKOUT SESSIONS

2 & 6

Chapter 13 Track

New Code & Rule Changes, Servicing Cramdowns & Lien Strips Post-Confirmation and Discharge, Title Issues, Mobile Homes, and Rule 3001.

Issues facing Chapter 13 cases, including the servicing of crammed down loans after confirmation and/or discharge, title issues, mobile homes, the consequences of failing to strictly follow the requirements of Rule 3001 (i.e., the rule that governs the filing of a proof of claim). In addition, the session will discuss recent plan and rule changes (e.g., shortened deadlines to file a proof of claim and objection to confirmation) that went into effect on December 1, 2015, and issues arising from these changes.

INTERSECT | PRESENTERS

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Speaker



Eddie Jimenez
Supervising Partner
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CHAPTER 13

- Only 11 of 94 federal districts have adopted the National Chapter 13 Plan (Form 113) – the rest have adopted new “opt out” plans
- The majority of “opt out” or conforming plans provide that the PoC controls over contrary (usually lower) amounts in the plan
- Secured creditors **MUST** file a proof of claim now to receive a distribution and the deadline to file a claim is much shorter
 - 70 days from the date the bankruptcy case was filed
 - In the case of the debtor’s principle residence, the servicer gets an additional 50 days to supplement for documentation
- The deadline to object to confirmation should now be uniform – 7 days before the confirmation hearing

CHAPTER 13

- Filing all the necessary documents with the PoC timely means the claims is presumed valid – the debtor must come forward with evidence to rebut
- A pattern of failing to provide all the necessary documentation can destroy the presumption and shift the initial burden in all cases
- For mobile homes, the definition or process of Affixation and Surrender/Cancellation of the Title vary by state
- Important to get an appraisal of both the land and mobile home
- Severe consequences for failing to properly service or adjust systems after a cramdown, especially in Chapter 11
- Important to know in Chapter 11 if the discharge occurs after completion of payments, or whether it came at the time of confirmation.



Q&A

BREAKOUT SESSION 2 & 6

CHAPTER 13

i n t e r s e c t

BREAKOUT SESSION 3

Chapter 11 Track

The Life and Times of a Chapter 11

Walk you through what could happen in a Chapter 11. Superman and Wonder Woman have gotten married and have had to file a Chapter 11 case in the Bankruptcy Court. Review common scenarios and how they impact you as Superman and Wonder Woman work their way through a Chapter 11.



INTERSECT | PRESENTERS



Moderator



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Speaker



Christopher DeNardo

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Speaker



Shirley Palumbo

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CHAPTER 11

- Retain counsel as soon as you receive notice of the case
- Negotiate plan treatment early
 - Start with regular payments at the Motion for Use of Cash Collateral
 - Ensure that the property taxes are paid vs. post-petition default
- Is it bad faith? Do you need an in rem MFR?

CHAPTER 11

- Beware the Motion to Sell
 - Avail of Section 363(e) and seek adequate protection.
 - Adequate protection may take a variety of forms but in general, it could be in the form of:
 - An opposition demanding that the court should not approve the sale unless the Secured Creditor is paid in full as per a valid payoff letter,
 - The lien re-attaches to the premises unless a payoff or agreed upon partial payment is made by a date certain,
 - A floor price be placed on any protective auction sale,
 - The approval order should direct that payment be made at the closing of the sale or by a date certain.

CHAPTER 11

- MFRs – what do you need
 - Note and allonge
 - Assignments
 - DOT/Mortgage
 - Post-petition payment history (2 month default)
 - Value – need little to no equity depending on jurisdiction
 - Failure to propose a feasible plan. A plan cannot “be in prospect”
 - Has it been more than 6 months since the case was filed?



Q&A

BREAKOUT SESSION 3

CHAPTER 11

i n t e r s e c t

BREAKOUT SESSION 4
Chapter 13 Track

Chapter 13 Cramdowns, Surrendering & Serial Filers

Hot topics within the courts including cram downs, surrendering property and serial filers, and the differences in handling these issues in multiple jurisdictions. Additionally, with the new 70 day time limit on filing a Proof of Claim, obtain information as to what constitutes “excusable neglect” for late files, while getting valuable information on the elusive Bankruptcy Rule 5009 and how it may impact the Secured Creditor’s lien.

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Speaker



Vanessa Leo, Esq.
Attorney
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CHAPTER 13

- Serial Filers – need to establish an abuse of the bankruptcy process to obtain an order that is then filed in the land records and is binding for 2 years
- Cramdowns – reduce the balance of a secured loan to the FMV except if it is a claim or mortgage for a principal residence
- Surrender – giving up of a right or claim to the home that requires a debtor to drop their opposition to the foreclosure action



CHAPTER 13

- POC – FILING TIMELY CLAIMS - 70 day time limit from date of filing the Petition
 - Failure to file does not affect the validity of the lien
 - Eliminates placeholder claims
- Late Filings
 - Court may extend the time to file
 - Standard of proof that must be met
- Take away: review bankruptcy search timelines and claim filing policies and procedures



CHAPTER 13

- Secured Claims and Rule 5009 – order requesting that a secured claim has been deemed satisfied and the lien is released
 - Take away: monitor these filings



Q&A

BREAKOUT SESSION 4

CHAPTER 13



CONCLUDING REMARKS

Join us now for our networking reception
outside the ballroom from 3-4 PM.

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Mr. Mihlar has served as member of the Northern District of Illinois Bankruptcy Court Liaison Committee and as co-chair of ABI's Chicago Annual Consumer Bankruptcy Conference.

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