

THE HFA INSTITUTE 2025

BANKRUPTCY 101

How you can continue to assist your borrowers during and after a bankruptcy.



National Council of
State Housing Agencies



**MRBs and
Other Federal
Homeownership
Programs**
JANUARY 15 – 17



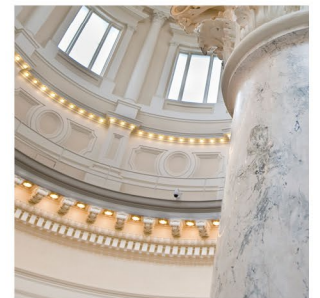
Housing Credit
JANUARY 14 – 16



**Section 8 and
Other Federally
Assisted
Multifamily
Housing**
JANUARY 15 – 17



**HOME and
Housing Trust
Fund**
JANUARY 12 – 14



Presented by Hilary Bonial, Bonial & Associates, P.C.

- Bonial & Associates, P.C. (BPC), headquartered in Dallas, Texas, was founded over 30 years ago to deliver cost-effective full-service default legal servicing solutions to our colleagues in the lending and servicing industries.
- BPC provides Nationwide Bankruptcy Services.
- BPC provides foreclosure, eviction, and related litigation matters in TX, CA, MO, KS, NE, OK.
- BPC has offices in TX, CA, MO, OK, NE, KS, GA.
- Hilary Bonial, Managing Director. Board certified in Consumer Bankruptcy

WHAT IS BANKRUPTCY?

bank·rupt·cy

Noun \ˈbɑŋk-(,)rəp(t)-sē\

: the condition of being bankrupt

: a condition of financial failure caused by not having the money that you need to pay your debts

: an occurrence in which a person, business, etc., goes bankrupt

Merriam Webster Dictionary

- A legally declared impairment or inability of an individual or organization to pay its creditors.
- Bankruptcy laws help people who can no longer pay their creditors get a fresh start, either by liquidating assets to pay their debts or by creating a repayment plan.
- Most cases are filed under three main chapters of the Bankruptcy Code:
 - ❖ Chapter 7, Chapter 11, and Chapter 13
- Federal Courts have exclusive jurisdiction over bankruptcy cases.
- The first known bankruptcy laws can be traced back to England in 1542.

Bankruptcy Procedure

The Petition is Filed

- A voluntary case is commenced when a debtor files a petition with the Bankruptcy Court.
- A petition may be filed by an individual, a husband and wife together, or by a corporation or other entity.
- A petition provides the Bankruptcy Court with the basic information needed to begin the case, to monitor for multiple filings, to assign the case to a Judge and Trustee, and to provide statistical information.

The Schedules are Filed

- A debtor, under any chapter of the Code, must file:
 1. A list of creditors and their addresses
 2. Assets and liabilities
 3. Current income and expenditures
 4. Statement of debtor's financial affairs, and
 5. Schedule of executory contracts and unexpired leases.
- Failure to file any of the above schedules could be grounds for dismissal of the case.
- All petitions, schedules, statements, and amendments have to be verified or include a declaration as to the accuracy under penalty of perjury.

The Automatic Stay

- The automatic stay halts *all* collection and/or recovery activities and begins as soon as the bankruptcy petition is filed.
- Applies to all Bankruptcy Chapters.
- The automatic stay applies to creditors whether they know of its existence or not.
- Willful or knowing violations of the automatic stay can result in sanctions, attorney's fees, and even punitive damages.
- The automatic stay continues for the duration of the bankruptcy.

Chapter 7 – Liquidation Bankruptcy

- In a Chapter 7 bankruptcy, the goal is for the debtor's non-exempt assets to be **liquidated** and for an individual debtor's debts to be discharged.
- Means Test– Debtors must show they do not have the excess income available to fund a Chapter 13 plan.
- **Individuals** and **Entities** may file for bankruptcy under Chapter 7 (with the exception of certain specialized industries).
- Chapter 7 may be filed **voluntarily** or **involuntarily**.
- Chapter 7 cases are a lot quicker than other chapters under the Bankruptcy Code– they generally last about 4 months.

Chapter 7 – Statement of Intent

- In addition to the schedules, the debtor is required to file a statement of intent in a Chapter 7 if the debtor is an *individual* and has debts *secured by property*.
- The debtor has within 30 days of petition, or before the 341 hearing, whichever is earlier, to file the statement of intent.
- Within the statement of intention, the debtor must specify what he would like to do with his secured property. He must choose one of three options:
 - **Surrender**– the debtor gives the collateral back to the creditor.
 - **Redeem**– the debtor pays the current value or the amount of the secured claim in full to the creditor at the time of redemption (§ 722).
 - **Reaffirm**– the debtor and creditor enter into an agreement for the debtor to continue making payments on the collateral, generally pursuant to the original contract terms. The reaffirmation agreement reimposes the debtor’s liability to pay, and therefore the debt is not discharged through the bankruptcy (§ 524(c)).
- The debtor has up to 45 days after the first date set for the 341 hearing to perform their intent.

Chapter 7 – Reaffirmation Agreement

Form 2400A (12/15)

Check one:

Presumption of Undue Hardship

No Presumption of Undue Hardship

See Debtor's Statement in Support of Reaffirmation, Part II below, to determine which box to check.

UNITED STATES BANKRUPTCY COURT

In re Debtor

Case No.
Chapter

REAFFIRMATION DOCUMENTS

Name of Creditor:

Check this box if Creditor is a Credit Union

PART I. REAFFIRMATION AGREEMENT

Reaffirming a debt is a serious financial decision. Before entering into this Reaffirmation Agreement, you must review the important disclosures, instructions, and definitions found in Part V of this form.

A. Brief description of the original agreement being reaffirmed:
For example, auto loan

B. **AMOUNT REAFFIRMED:** \$

The Amount Reaffirmed is the entire amount that you are agreeing to pay. This may include unpaid principal, interest, and fees and costs (if any) arising on or before which is the date of the Disclosure Statement portion of this form (Part V).

See the definition of "Amount Reaffirmed" in Part V, Section C below.

C. The **ANNUAL PERCENTAGE RATE** applicable to the Amount Reaffirmed is %.

See definition of "Annual Percentage Rate" in Part V, Section C below.

This is a (check one) Fixed rate Variable rate

If the loan has a variable rate, the future interest rate may increase or decrease from the Annual Percentage Rate disclosed here.

This is a Director's Bankruptcy Form. They are issued by the Director of Administrative Office of the US Courts. The use of Director's Forms may be required by local rules or general orders, but otherwise exist for the convenience of parties.

Chapter 7 - Discharge

- Releases the debtor from personal liability for certain debts.
- In a Chapter 7, the court generally grants the discharge promptly on expiration of the time fixed for filing a complaint objecting to discharge (60 days following the first date set for the 341 hearing).
- Just as in a Chapter 13, a **discharge injunction** goes into effect, and creditors are no longer able to collect on those discharged debts (unless they have a reaffirmation agreement).
- Secured creditors are always secured by their Lien.
- A debtor may only receive a chapter 7 discharge if they have not received:
 - A chapter 7 or 11 discharge within 8 years (before the second petition is filed); or
 - A chapter 12 or 13 discharge within 6 years (before the second petition is filed), unless
 - (1) the debtor paid all “allowed unsecured” claims in the earlier case IN FULL or (2) the debtor made payments under the plan in the earlier case totaling at least 70% of the allowed unsecured claims and the debtor’s plan was proposed in good faith.

Chapter 13 – Debt Reconsolidation Plan

- A **voluntary** bankruptcy instituted by an **individual** who proposes a plan to repay his creditors over time, usually with installment payments.
- Most debt is repaid within 3-5 years under the **plan**. The debtor pays some or all of his pre-bankruptcy debts out of post-petition earnings.
- Chapter 13 allows a debtor to **keep assets** that might otherwise be sold in a Chapter 7.
- Only individuals with **regular income** may file Chapter 13.

Chapter 13 - Plan

- The debtor files a plan within 14 days of the petition filing, which proposes how each creditor will be paid over time.
- As of December 1, 2017, a plan must be filed on the Official Plan Form unless a jurisdiction has adopted a Local Plan Form that complies with Rule 3015.1. A debtor is required to indicate whether there are any sections in the plan that are “nonstandard”.
- Payments are generally set at a fixed amount paid on a regular basis (typically biweekly or monthly). Payments can be paid directly to the creditor “outside of the plan” or distributed by the Trustee “inside the plan”.
- No later than 45 days after the 341 hearing, the Judge must hold a confirmation hearing to decide whether the plan is feasible and meets the standards for confirmation. Creditors receive notice of the hearing and get an opportunity to object to the confirmation of the plan (at least 7 days before the hearing on confirmation).
- If the Court confirms the plan, the Trustee will distribute funds received under the plan as soon as possible. If the Court declines to confirm the plan, the debtor may file an amended plan.
 - A confirmed plan sets the secured value of a collateral, and is binding on the secured creditor (even if the POC or schedules differ)
 - A debtor can file a modified plan after confirmation if circumstances change.

Chapter 13 – Proof of Claim

- A creditor files a proof of claim, or POC, in order to put the Debtor, Trustee, and Court on notice of how much they were owed at the time of the bankruptcy petition.
- The POC is filed on a court mandated “Official” form that allows the creditor to state the amount of their claim, briefly describe the nature of the claim, and itemize arrears or other charges that might be owed.
- In addition to the POC, the creditor must attach supporting documents to show that the debtor actually owes the debt claimed.
- The bankruptcy establishes a deadline in which the POC must be filed, referred to as the “bar date”.
 - As of December 1, 2017, Rule 3002 mandates that “a proof of claim is timely filed if it is filed not later than 70 days after the order for relief under that chapter or the date of the order of conversion to a case under chapter 12 or chapter 13.”
- POC MUST include a detailed payment / transaction history from the date the borrowers were last current.

Chapter 13 – Proof of Claim Form

Fill in this information to identify the case:

Debtor 1 _____

Debtor 2 (Name, if filed) _____

United States Bankruptcy Court for the _____ District of _____

Case number _____

Official Form 410 04/19

Proof of Claim

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

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.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?

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

Other names the creditor used with the debtor _____

2. Has this claim been acquired from someone else?

No

Yes. From whom? _____

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

<p>Where should notices to the creditor be sent?</p> <p>Name _____</p> <p>Number Street _____</p> <p>City State ZIP Code _____</p> <p>Contact phone _____</p> <p>Contact email _____</p>	<p>Where should payments to the creditor be sent? (if different)</p> <p>Name _____</p> <p>Number Street _____</p> <p>City State ZIP Code _____</p> <p>Contact phone _____</p> <p>Contact email _____</p>
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Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____

4. Does this claim amend one already filed?

No

Yes. Claim number on court claims registry (if known) _____ Filed on _____

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

No

Yes. Who made the earlier filing? _____

Official Form 410 Proof of Claim page 1

Fill in this information to identify the case:

Debtor 1 _____

Debtor 2 (Name, if filed) _____

United States Bankruptcy Court for the _____ District of _____

Case number _____

Official Form 410 04/19

Proof of Claim

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

Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____

4. Does this claim amend one already filed?

No

Yes. Claim number on court claims registry (if known) _____ Filed on _____

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

No

Yes. Who made the earlier filing? _____

Official Form 410 Proof of Claim page 1

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

6. Do you have any number you use to identify the debtor?

No

Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? \$ _____ Does this amount include interest or other charges?

No

Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

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

9. Is all or part of the claim secured?

No

Yes. The claim is secured by a lien on property.

Nature of property:

Real estate. If the claim is secured by the debtor's principal residence, file a Mortgage Proof of Claim Attachment (Official Form 410-A) with this Proof of Claim.

Motor vehicle

Other. Describe: _____

Basis for perfection:

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

Value of property: \$ _____

Amount of the claim that is secured: \$ _____

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

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

Actual Interest Rate (when case was filed): _____%

Fixed

Variable

10. Is this claim based on a lease?

No

Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff?

No

Yes. Identify the property: _____

Official Form 410 Proof of Claim page 2

Chapter 13 - Discharge

- The discharge releases the debtor from all debts provided for by the plan or disallowed.
- A debtor is entitled to a discharge upon completion of all payments under the Plan, so long as the debtor:
 - Has not received a discharge in a prior case filed within a certain time frame (2 years for a prior Ch. 13; 4 years for a prior Ch. 7, 11, or 12)
 - Has completed an approved course in financial management
 - Certifies they paid their domestic support obligations (if applicable)
- There are limitations on the debtor's discharge, and some debts may not be eligible for discharge.
- Discharge Injunction– Creditors provided for in full or in part under the plan may no longer initiate any legal or other action against the debtor to collect the discharged obligation. This injunction is a permanent order issued at the end of the case, intended to ensure that the debtor will not be pursued by creditors seeking to recover on debts that have been discharged.

Other Bankruptcy Chapters

- Chapter 11 – Corporate reorganization
 - Sub-Chapter V – High debt individuals, Small Businesses
- Chapter 12 – Family farmer bankruptcy
- Chapter 15 – Ancillary & Cross border cases

Loss Mitigation in Bankruptcy

- Can you offer loss mitigation during an active bankruptcy case?
- Can you offer loss mitigation once a bankruptcy discharge has been entered?
- How to communicate during loss mitigation without violating bankruptcy law.
- Is court approval required?

Questions & Answers

- Thank you for the opportunity to share my love of bankruptcy law!
- Feel free to reach out to me with any bankruptcy questions you may have:
- Hilary.Bonial@BonialPC.com
- 972-643-6607