

The following Bankruptcy Law news may be of interest to you in your business and is provided as a bulletin for our clients and friends from the attorneys in the Hall Estill Bankruptcy practice group. Hall Estill publishes this newsletter and other business communications for informational purposes only. **This communication does not substitute for specific legal advice or opinions. Further, this newsletter is not intended to create an attorney-client relationship.**

A Basic Guide to Proofs of Claims in Bankruptcy

As a result of current economic conditions, individual and corporate bankruptcy filings are on the rise. Creditors of individuals and companies are often left to deal with such debtors' unpaid debts and unmet obligations. In the fast-paced realm of bankruptcy, creditors must act quickly and decisively to assert and protect their claims in a debtor's bankruptcy case. A proof of claim offers creditors a relatively cost-effective means to assert and protect such claims. The following is a basic guide to the requirements for filing a proof of claim and the reasons for doing so.

A. *What Is a Proof of Claim and What Information Is Required to Complete a Proof of Claim?*

A proof of claim is a written statement that describes the basis and amount of a creditor's claim against a debtor. Proofs of claims are prepared in accordance with an official form available from the clerk's office or official court website of the relevant bankruptcy court. The information required to complete a proof of claim includes the debtor's identity and the debtor's bankruptcy case number; the creditor's identity and an address where notices related to the debtor's bankruptcy case and payment, if any, may be mailed to the creditor; the amount of the claim; the basis for the claim; and, the type of claim (e.g., secured or unsecured). Furthermore, any documentation supporting the claim, particularly if the claim is secured in nature, should be attached to the proof of claim (although some courts impose a limit on the number of pages of supporting documentation that may be filed). A proof of claim must also be properly executed and signed by the creditor. A creditor may be subject to criminal fines or imprisonment for filing a false proof of claim.

B. *Who May File a Proof of Claim?*

Any creditor with a claim against a debtor may file a proof of claim in a debtor's bankruptcy case. If a creditor fails to file a proof of claim, a bankruptcy trustee, a debtor, or any entity liable to the creditor for the debt owed by the debtor may do so. A proof of claim may be filed by a creditor directly or by a creditor's authorized agent, legal counsel or other authorized representative.

C. *Why File a Proof of Claim?*

A proof of claim's purpose is to assert and protect a creditor's rights to participate in the distribution, if any, of a bankruptcy estate's assets. In a Chapter 7 or 13 bankruptcy case, an unsecured creditor *must* file a proof of claim to participate in the claims adjudication process. In a Chapter 9 or 11 bankruptcy case, any creditor or equity security holder with a claim or interest that has not been scheduled by the debtor or that is scheduled as disputed, contingent, or unliquidated, *must* file a proof of claim within the time set by the court for filing claims. Proofs of claims are not required to be filed by lien holders and other secured creditors (but such claims are protected only to the extent of the value of the collateral for the claim), or by creditors in a Chapter 11 bankruptcy case whose claims are scheduled by the debtor as undisputed, non-contingent and liquidated (but only to the extent of the amount scheduled by the debtor). Nevertheless, filing a proof of claim is generally recommended to ensure that a creditor's claim is recognized in the desired amount and treated on a desired basis. Further, a properly executed and filed proof of claim functions as evidence of the validity of a claim.

D. Effect of Filing a Proof of Claim

Filing a proof of claim submits a creditor to the relevant bankruptcy court's jurisdiction and waives the creditor's right to a jury trial on the creditor's claims. In some circumstances, a creditor may rather lose its unsecured claim than lose its right to a jury trial.

E. When and Where to File a Proof of Claim

Proofs of claims in Chapter 7, 12, or 13 bankruptcy cases must be filed within ninety (90) days after the **first date scheduled** for the meeting of creditors in the bankruptcy case or such other date as set by the court.. The first date scheduled for the meeting of creditors is listed in the Notice of Bankruptcy provided to creditors. In Chapter 9 or 11 bankruptcy cases, a proof of claim must be filed within the time established by the bankruptcy court, which generally is set forth in a Notice of Bar Date served on all creditors. Creditors should review the Notice of Bankruptcy and/or the Notice of Bar Date for instructions regarding a particular agent or address where proofs of claims should be directed for filing. Additionally, a creditor filing a proof of claim should include a copy of the same along with a pre-addressed, postage-paid envelope and request that this copy be file-stamped and returned to the creditor as evidence of the timely filing of the creditor's proof of claim.

For more information about this or any Bankruptcy Law topic, please contact one of the attorneys in Hall Estill's Bankruptcy practice group:

Larry G. Ball	lball@hallestill.com	405-553-2826
Timothy W. Bergin	tbergin@hallestill.com	202-973-1224
Thomas A. Creekmore III	tcreekmore@hallestill.com	918-594-0467
Seth A. Day	sday@hallestill.com	405-553-2869
Theodore Q. Eliot	teliot@hallestill.com	918-594-0607
Pamela H. Goldberg	pgoldberg@hallestill.com	918-594-0465
Bonnie N. Hackler	bhackler@hallestill.com	918-594-0627
M. Scott Hall	shall@hallestill.com	479-973-5206
Curtis E. Hogue	chogue@hallestill.com	479-973-5200
Jean C. López	jlopez@hallestill.com	918-594-0809
Thomas P. Nally	tnally@hallestill.com	918-594-0812
R. Mark Petrich	mpetrich@hallestill.com	918-594-0464
James M. Reed	jreed@hallestill.com	918-594-0462
John T. Richer	jricher@hallestill.com	918-594-0612
Steven W. Soulé	ssoule@hallestill.com	918-594-0466
Neal Tomlins	ntomlins@hallestill.com	918-594-0605
Stuart E. Van De Wiele	svandewiele@hallestill.com	918-594-0816