

What's Wrong with This Claim?

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WHAT'S WRONG WITH THIS CLAIM?

Escrow Analyses and Proofs of Claim

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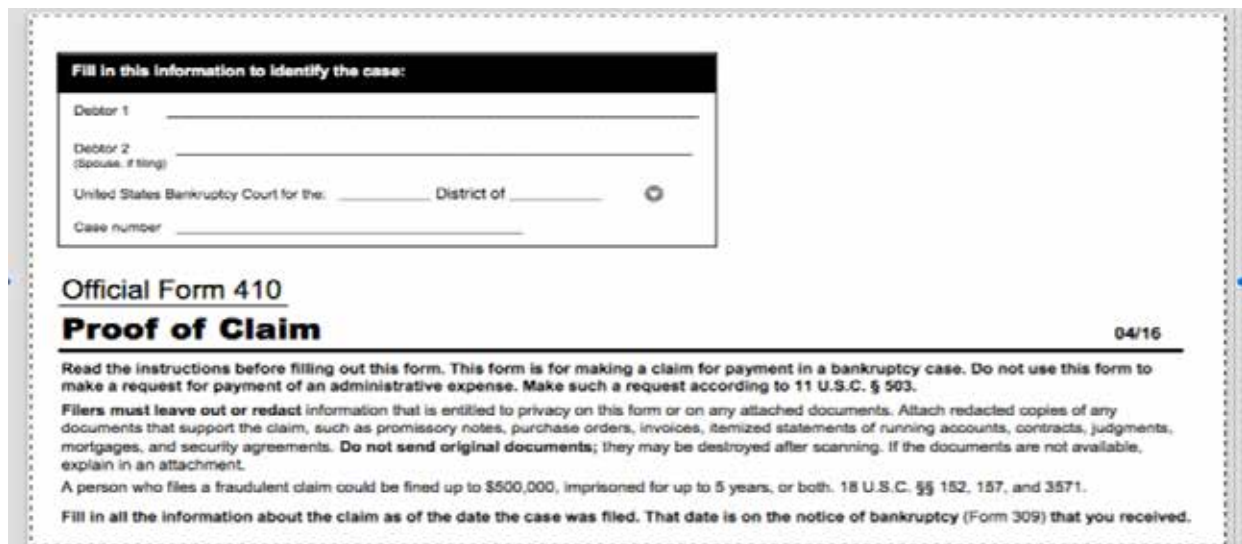
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IS THIS A VALID PROOF OF CLAIM?

I. Form and Content: Official Form 410

A. Identifying Debtor/Case Information (Box in top left corner of form):

1. Verify Debtor's Name is accurate
2. Verify Co-Debtor's Name is accurate, if applicable
3. Verify that the Case Number is accurate
4. Check the date for the deadline to file claims (bar date) and see if this claim has been filed after that deadline
 - a. Is it a governmental unit? Deadline is 180 days (except as otherwise provided in Fed. R. Bankr. P. 3002(c)(1))
 - b. Is it a Creditor other than governmental unit? Claim must be filed not later than 90 days after the first date set for the meeting of creditors. Deadline can be found on the Notice of Bankruptcy.



The image shows the top portion of Official Form 410, 'Proof of Claim'. At the top, a black box with white text reads 'Fill in this information to identify the case:'. Below this box are several lines for text entry: 'Debtor 1', 'Debtor 2 (Spouse, if filing)', 'United States Bankruptcy Court for the: District of', and 'Case number'. Below the entry fields, the text 'Official Form 410' and 'Proof of Claim' are printed in a large, bold font. To the right of 'Proof of Claim' is the date '04/16'. Below the title, there is a paragraph of instructions: '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.'

B. Identifying Creditor Information (Part 1 of form)

1. Check Name of Creditor on the claim against filed Schedules D, E, F and G (Part 1. #1)
 - a. If Name matches, move to Step 2
 - b. If Name does not match a listed claim, check for other names that the Creditor used with Debtor
 - c. Check to see if claim was acquired from someone else, which may help in identifying the claim (Part 1 #2)
 - d. If the other Name also does not match, look at attached or supplemental documents filed with the claim for any additional identifying information
2. Verify Creditor by address by comparing address listed on the claim against the addresses listed on the filed Schedules (Part 1 #3)
3. Verify Creditor by prior proof of claim filed, whether by another entity or an amended claim (Part 1 # 4 and #5)

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?	<input type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____														
3. Where should notices and payments to the creditor be sent? <small>Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)</small>	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%; text-align: left; padding: 2px;">Where should notices to the creditor be sent?</th> <th style="width: 50%; text-align: left; padding: 2px;">Where should payments to the creditor be sent? (if different)</th> </tr> </thead> <tbody> <tr> <td style="padding: 2px;">Name _____</td> <td style="padding: 2px;">Name _____</td> </tr> <tr> <td style="padding: 2px;">Number _____ Street _____</td> <td style="padding: 2px;">Number _____ Street _____</td> </tr> <tr> <td style="padding: 2px;">City _____ State _____ ZIP Code _____</td> <td style="padding: 2px;">City _____ State _____ ZIP Code _____</td> </tr> <tr> <td style="padding: 2px;">Contact phone _____</td> <td style="padding: 2px;">Contact phone _____</td> </tr> <tr> <td style="padding: 2px;">Contact email _____</td> <td style="padding: 2px;">Contact email _____</td> </tr> <tr> <td colspan="2" style="padding: 2px;">Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____</td> </tr> </tbody> </table>	Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)	Name _____	Name _____	Number _____ Street _____	Number _____ Street _____	City _____ State _____ ZIP Code _____	City _____ State _____ ZIP Code _____	Contact phone _____	Contact phone _____	Contact email _____	Contact email _____	Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	
Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)														
Name _____	Name _____														
Number _____ Street _____	Number _____ Street _____														
City _____ State _____ ZIP Code _____	City _____ State _____ ZIP Code _____														
Contact phone _____	Contact phone _____														
Contact email _____	Contact email _____														
Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____															
4. Does this claim amend one already filed?	<input type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on MM / DD / YYYY														
5. Do you know if anyone else has filed a proof of claim for this claim?	<input type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____														

C. Identifying Claim Information (Part 2 of form)

1. Review account number and compare it to the account numbers disclosed on the filed Schedules (Part 2 #6)
2. Review amount of the claim and compare it to the Claim Amount disclosed on the filed Schedules (Part 2 #7)
3. Review basis of the claim (Part 2 #8) and compare to the filed Schedules
 - a. Be especially on the lookout for the following basis of claims: mortgage, taxes (real property and income), lease agreements, retail installment contracts, purchase money security interest (PMSI).
 - b. Make sure the claim is properly disclosed on the appropriate Schedule
 - c. If Chapter 13 Case then needs to verify that the Claim is treated appropriately in the Chapter 13 Plan.

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?	<input type="checkbox"/> No <input type="checkbox"/> 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? <input type="checkbox"/> No <input type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
8. What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information. <div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div>

4. Is the Claim Secured? (Part 2 #9)
 - a. Review the nature of the property and identifying information for such property
 1. Is it listed on Schedule A/B? If no, why is it not listed?

- Does the Debtor own the property?
- Did Debtor forget to disclose? (Example: Vehicle that is titled in Debtor's name but Debtor's child drives the vehicle)
- Did the Creditor use erroneous information in attaching the debtor to this property (wrong social security number, incorrect name, etc.)
- b. Review attached documents evidencing the perfection of a security interest
 - If Claim based on writing: copy of the writing shall be filed with the proof of claim
 - If Claim includes interest, fees, expenses or other charges: an itemized statement of the interest, fees, expenses or charges shall be filed with the proof of claim
 - If security interest is claimed: statement of amount necessary to cure any default as of the date of petition shall be filed with proof of claim
 - If an escrow account has been established: escrow account statement prepared as of the date the petition was filed shall be filed with the proof of claim
- c. Review the value of the property listed on the claim
 - Very important when/if in a Chapter 13 Case and the Chapter 13 Plan is proposing to cram down a secured claim
- d. Review amount necessary to cure any default
 - Very important when/if in a Chapter 13 Case and the Chapter 13 Plan proposes to pay any claims direct by Debtor
 - o Review attached documents to clarify what exactly is included in the arrearage portion of the claim
 - Example: Mortgage Claim may include an arrearage made up of escrow shortage

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- In a Chapter 13 Case, need to treat the arrearage if not appropriately treated
- Can make the argument to keep obligation as a direct pay if arrearage is only made up of an escrow shortage not missed mortgage payments

9. Is all or part of the claim secured?	<input type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property.
Nature of property: <input type="checkbox"/> Real estate. If the claim is secured by the debtor's principal residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____	
Basis for perfection: _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)	
Value of property: \$ _____	
Amount of the claim that is secured: \$ _____	
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)	
Amount necessary to cure any default as of the date of the petition: \$ _____	
Annual Interest Rate (when case was filed) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable	
10. Is this claim based on a lease?	<input type="checkbox"/> No <input type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ _____
11. Is this claim subject to a right of setoff?	<input type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____

5. Is this claim based on a lease? (Part 2 #10)
 - a. If yes and a Chapter 13 Case, is the lease treated appropriately in the plan?
 - b. Is there an arrearage?

- Is the arrearage made up of late charges?
 - o Argue to keep payments direct by Debtor as debtor was not behind in lease payments but did not pay all the related late charges.
 - Is the arrearage made up of past due payments?
 - o Need to either reject lease or treat lease in Plan to be paid via the Trustee.
6. Is this claim subject to a right to setoff?
- a. If yes- review property identification
7. Is all or part of the claim entitled to priority? (Most Common Priority Debts)
- a. Domestic support obligation as priority debt
- Continuing domestic support obligation and/or domestic support obligation arrearage?
 - Treated in Plan as direct or Trustee pay?
 - o Direct Pay- Must be paid over life of plan and likely will need creditor to sign off on the Order Confirming Plan
 - o Trustee Pay- Make sure plan funds for full priority amount

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12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☐ No

☐ Yes. *Check one:*

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

☐ Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

☐ Wages, salaries, or commissions (up to \$12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

☐ Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

Amount entitled to priority

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

b. Taxes or penalties owed to governmental units

- Review attached documentation

- What amounts are due and owing for which tax years?
- Any unasessed returns?
 - Provide any returns for the tax years that the taxing authority states are unasessed and request that an amended proof of claim to be filed, which may change the claim amount based on the filed return.
- For a chapter 13 case, does the Plan treat the priority claim in its entirety?

CHAPTER 13 PROOFS OF CLAIM IN RELATION TO THE CHAPTER 13
TRUSTEE DISBURSEMENT PROCESSES

The chapter 13 trustee is charged with the responsibility of disbursing funds according to the chapter 13 plan proposed by the debtor and confirmed by the court 11 USC 1326 (c). However, the appropriate disbursement of the funds may be influenced by the creditor's proofs of claim filed in the case. For instance, while the plan, the schedules, and the matrix, may list a particular creditor based on the debtor's credit report or bills, the payment address for that particular creditor may be different from or bare no relationship to the address in the debtor provided schedules, plan or matrix.

For that reason and many others reasons, duty requires the chapter 13 trustee careful review all proofs of claim. Duty also requires that the trustee object to claims if a purpose would be served in doing so. As a result, the chapter 13 trustee, through the staff of the chapter 13 trustee office reviews all proofs of claims filed in any given case. This duty may be different than that of the debtor attorney, who, without violating ethical or legal duties, can refrain from a review of, in particular, general unsecured proofs of claim. The chapter 13 plan of the debtor may be unimpacted by any particular proof of claim. Further, it may be cost effective to allow an otherwise objectionable proof of claim to remain undisturbed while the plan progresses to completion.

The chapter 13 trustee, however, because of the need to disburse funds accurately pursuant to the plan as confirmed, must review each claim. In the process of reviewing each claim, the chapter 13 trustee office has noted recurring issues with proofs of claims filed. The following will be a review of the commonly noted problems with citation to authority or practicality, the impact of the claim issue on the plan as confirmed, and a best practices directive for each noted issues.

1. **Late Claims** - The claim filing date is established based on the petition filing date for all creditors listed in the schedules. Pursuant to 11 USC 501(b) and FRBP 3002 (c) the proof of claim is "timely filed if it is filed no later than 90 days after the first date set for the meeting of creditors called under Section 341(a)..." FRBP 3002(c)(1) "proof of claim by a governmental unit ... is timely filed if it is filed not later than 180 day after the date of the order for relief" A creditor not

listed in the schedules is an omitted creditor and to the extent no claim is filed for that creditor, the claim survives the chapter 13 discharge. Late addition of pre-petition creditor can cause problems with the case completion. But to all creditors who are correctly listed in the schedules, the claim bar date is a barrier to payment in the confirmed chapter 13 plan.

BEST PRACTICES: 1. Do not miss the bar date.

To be remembered, if bar date is missed by the creditor, the debtor attorney and trustee have an additional 30 days post bar date to file protective proofs of claim (see FRBP 3004).

2. **Duplicate Claims** - Three common situations may give rise to duplicate proofs of claim. In the first instance, a duplicate claim is filed by a single creditor who is attempting to correct some defect in the claim as originally filed. However, the creditor fails to file the claim as “AMENDED” (paragraph #4 of the POC Official Form 410), fails to indicate the claim is amending a previous claim. If the filed claim is not noted as amended, the bankruptcy court clerk’s office will identify the claim as a new claim. The trustee conforms to the clerk’s designation setting up a new claim. The trustee must then either pay on this claim pursuant to the plan as confirmed or object to the claim.

BEST PRACTICES: when amending a previously filed proof of claim, indicate so in the claim form (paragraph #4 of the POC Official Form 410).

The second common scenario is found with claims for real property taxes. Depending on the date the petition filed, more than one municipality may have the responsibility for collecting real property taxes. As time passes after real property taxes become delinquent, the local municipality will transfer the delinquent account to the county for collection. However, the local municipality may have filed the proof of claim for the delinquent real property taxes while handling the account. Then after the account is transferred to the succeeding municipal authority, the second municipality files a proof of claim.

BEST PRACTICES: for Debtor attorneys, review the claim register for duplicate claims. You will be in the best position to determine which municipality has the rightful claim to payment from the chapter 13 plan.

Finally, a common situation leading to duplicate claims is caused by the sale or assignment of a debt from the original commercial lender to a secondary collector. Both the original creditor and the successor may file proofs of claim for the debt. The trustee has only the debtor's schedules to review to evaluate the competing claims. The schedules, if completed correctly with the account number for the creditor, the date of the creation of the debt, and the amount of the debt at the time of filing, may provide evidence to use in sorting out the competing claims.

BEST PRACTICES: Creditor attorneys, the best evidence of the proper payee is supporting documentation filed with the proof of claim showing the debt assignment.

Debtor attorneys: provide all required information in the schedules.

3. **Personal Identifying Information** - Pursuant to the policy of the Judicial Conference of the United States and the E-Government Act of 2002, "filing parties shall omit or, where inclusion is necessary, partially redact the following personal data identifiers from all pleadings, documents, and exhibits, whether filed electronically or in paper...."

The following is the prohibited personal identifying information:

- a) Minors' Names. If the involvement of a minor child must be mentioned, only the minor's initials should be used.
- b) Financial Account Numbers. If the financial account numbers are relevant, only the last four numbers of the account number should be used.
- c) Social Security Numbers. If an individual's Social Security number or individual taxpayer identification number is relevant in a pleading, only the last four digits of that number should be used. Official Form 21, Statement of Social Security Number, should contain the full Social Security number or individual taxpayer identification number and should be processed as prescribed by the Court.
- d) Date of Birth.

Undoubtedly, debtor personal information had been obtained by the creditor in the process of extending credit or providing services. When this personal identifying information is

found in the proof of claim filed by the creditor, the bankruptcy court clerk prevents review of this document. The trustee will pay on the claim if the claim information is available.

BEST PRACTICES: avoid including protected information.

4. **Unsecured Creditors Not Providing Proper Documentation To Verify Debt** - FRBP 3001 (c)1 states, “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.”

FRBP 3001 (c) 3 states “When a claim is based on an open-ended or revolving consumer credit agreement – except one for which a security interest is claim in the debtor’s real property-a statement shall be filed with the proof of claim, including all the following information that applies to the account:

- (i) the name of the entity from whom the creditor purchased the account;
- (ii) the name of the entity to whom the debt was owed at the time of an account holder’s last transaction on the account;
- (iii) the date of an account holder’s last transaction;
- (iv) the date of the last payment on the account; and
- (v) the date on which the account was charged to profit and loss.”

While failure to provide the information may not make the claim defective, stricken or otherwise objectionable, providing this information insures proper payment to the creditor pursuant to the plan as confirmed.

BEST PRACTICES: Attach the required documentation to the proof of claim.

5. **Zombie Debt** - This problem appears in two ways, debt that was never the debtor’s liability and debt that was the debtor’s liability, but the statute of limitation has run on collections. From a trustee perspective, the information the trustee has regarding debtor’s financial situation is contained in the schedules. To the extent the schedules are a complete, the trustee is better able to review the proofs of claim filed to determine if the claim is legitimate.

BEST PRACTICES: For debtor attorneys, review the claims filed in the case. Although the claim amount, if disallowed, may not impact the plan completion, objection to a clearly fabricated claim or time barred claim may act as a deterrent to the future filing of similar claims.

6. **Miscalculating Interest** - Interest on the debt principal balance is allowable to the date of the filing of the petition (FRBP 3001 (a)(2)(A) (“If, in addition to its principal amount, a claim includes interest, fees, expense or other charges ***incurred before the petition was filed***, an itemized statement of the interest, fees expense or charges shall be filed with the proof of claim”). To the extent the proof of claim attachments provide an itemization of the debt the Trustee is able to determine what component of the debt is interest. While the amount of the interest in most cases to the date of the filing of the proof of claim is minimal, the interest calculation is not correct and therefore objectionable.

BEST PRACTICES: For creditors, make sure the interest calculation on the debt is only to the date of filing of the bankruptcy, not to the date of the filing of the proof of claim.

7. **Proving Secured Claims** - Attachments to the proofs of claim are required for secured proofs of claim (FRBP 3001(d)). Proof of security interest is required in all cases. “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” FRBP 3001 (d). The proof of security interest is not limited to real property or to institutional creditors. For example, in the cases where the debtor’s family member has provided financing for the purchase of a vehicle and is listed a secured to be paid as so in the plan, the proof of claim attachment must show the security interest.

Even when the attachments are provided, legibility of the attachments may be a problem. Clear images of the documents purporting to evidence the security interest in the collateral are essential to the trustee’s review of the proof of claim.

BEST PRACTICES: For creditors, attach legible pertinent documentation to the proofs of claim. For debtor attorneys, it may be in your client’s interest to monitor the trustee’s objections to the secured proofs of claim as disallowance of a secured proof of claim could

mean no payment to that secured creditor. A claim disallowed is a creditor to whom the trustee does not make a payment. In the case of a secured creditor, this may be a detriment to the debtor.

8. **Notice of Post-Petition Mortgage Payment Changes** - FRBP 3002.1 requires notice of post-petition mortgage payment changes and fees. The difficult is when the notice is filed, but no proof of claim was filed or the notice is filed, but for a secured claim not subject to the rule. If the debt is not secured by a security interest in the debtor's principal residence or is not is provided for in the plan under section 1322(b) (5) of the code, the notice of post-petition mortgage fees is not appropriate. While filing of the notice will not necessarily raise an objection from the trustee, it is not technically correct to file such notices in those cases.

BEST PRACTICES: for creditor attorneys, make sure you understand the treatment of your claim in the chapter 13 plan.

Barbara Foley, Chapter 13 Trustee, Kalamazoo, MI 49007

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Fill in this information to identify the case:

Debtor 1 [REDACTED]

Debtor 2
(Spouse, if filing)

United States Bankruptcy Court for the Eastern District Of Michigan

Case number [REDACTED]

Official Form 410

Proof of Claim

04/16

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?	[REDACTED] 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?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent?	Where should notices to the creditor be sent? [REDACTED] Name [REDACTED] Number Street [REDACTED] City State Zip Code Contact phone [REDACTED] Contact email <u>N/A</u>	Where should payments to the creditor be sent? (if different) [REDACTED] Name [REDACTED] Number Street [REDACTED] City State Zip Code Contact phone [REDACTED] Contact email <u>N/A</u>
Uniform claim identifier for electronic payments in chapter 13 (if you use one)		
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known)? _____ Filed on _____ <div style="text-align: right;">MM / DD / YYYY</div>	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> 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

Page 2

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12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507 (a) ☒ No ☐ Yes. Check all that Apply

A Claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B)	Amount entitled to priority \$ _____
<input type="checkbox"/> Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7)	\$ _____
<input type="checkbox"/> Wages, salaries or commissions (up to \$12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4)	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units 11 U.S.C. § 507(a)(8)	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5)	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)() that applies	\$ _____

* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment

Part 3 Sign Below

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

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

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

Check the appropriate box:

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

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

I have examined the information in the *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 05/26/2016
MM / DD / YYYY

/s/ Heather D. McGivern
Signature

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

Heather D. McGivern, Esq. P59393
Elizabeth M. Abood-Carroll, Esq. P46304
Craig B. Rule, Esq. P67005
Ryan Byrd, Esq. P75906

Name _____
First Name Middle Name Last Name

Title Attorneys for _____

Company Orlans Associates, P.C.

Address P.O. Box 5041
Number Street

Troy, MI 48007
City State Zip Code

Contact phone (248) 502-1400 Email hmcgivern@orlans.com

Mortgage Proof of Claim Attachment

12/15

If you file a claim secured by a security interest in the debtor's principal residence, you must use this form as an attachment to your proof of claim. See separate instructions.

Part 1: Mortgage and Case Information	Part 2: Total Debt Calculation	Part 3: Arrearage as of Date of the Petition	Part 4: Monthly Mortgage Payment
Case Number: [REDACTED]	Principal Balance: \$490,957.16	Principal & interest due: \$44,419.01	Principal & interest: \$1,531.69
Debtor 1: [REDACTED]	Interest due: \$23,552.70	Prepetition fees due: \$1,788.61	Monthly escrow: \$2,019.74
Debtor 2: [REDACTED]	Fees, Costs due: \$1,788.61	Escrow deficiency for funds advanced: \$36,931.57	Private mortgage insurance: \$0.00
	Deferred Amount: \$125,518.74		
Last 4 digits to identify: [REDACTED]	Escrow deficiency for funds advanced: \$36,931.57	Projected escrow shortage: \$11,891.61	Total monthly payment: \$3,551.43
Creditor: [REDACTED]	Less total funds on hand: -\$0.00	Less funds on hand: -\$0.00	Effective Date of Payment: February 1, 2016
Servicer: [REDACTED]	Total Debt: \$878,748.78	Total prepetition arrearage: \$95,030.80	
Fixed accrual/daily simple interest/other: [REDACTED] Fixed Accrual			

Part 5: Loan Payment History from First Date of Default – See attached

AMERICAN BANKRUPTCY INSTITUTE

REPRESENTATION OF PRINTED DOCUMENT

ANNUAL ESCROW ACCOUNT DISCLOSURE STATEMENT

Analysis Date: 02/01/2016
Loan Number: [REDACTED]
Property Address: [REDACTED]

	CURRENT PAYMENT	NEW PAYMENT EFFECTIVE 02/01/2016
Principal & Interest	\$1,531.69	\$1,531.69
Escrow Deposit	\$0.00	\$2,019.74
Total Monthly Payment	\$1,531.69	\$3,551.43

Customer Service: [REDACTED]
Mon - Fri, 8:00 a.m. to 7:00 p.m. (CST)
[REDACTED]

In accordance with federal guidelines, Caliber Home Loans, Inc. will review your escrow account annually. Certain conditions may require your escrow account to be reviewed more than once in a 12 month period. This statement details your actual escrow account activity since your previous disclosure statement or your initial disclosure and reflects the anticipated activity for the next 12 months.

ESCROW ACTIVITY FOR THE NEXT 12 MONTH ESCROW CYCLE

Month	Anticipated Payment	Anticipated Disbursement	Description	Anticipated Balance	Required Balance
Feb 2016	2,019.74	.00	STARTING BALANCE	11,891.61	11,891.61
Mar 2016	2,019.74	5,087.00	HOMEOWNER NS	13,911.35	13,911.35
Apr 2016	2,019.74	.00		10,844.09	10,844.09
May 2016	2,019.74	.00		12,863.83	12,863.83
Jun 2016	2,019.74	.00		14,883.57	14,883.57
Jul 2016	2,019.74	.00		16,903.31	16,903.31
Aug 2016	2,019.74	16,903.31	CITY/TOWN	18,923.05	18,923.05
Sep 2016	2,019.74	.00		4,039.48	4,039.48
Oct 2016	2,019.74	.00		6,059.22	6,059.22
Nov 2016	2,019.74	.00		8,078.96	8,078.96
Dec 2016	2,019.74	2,246.57	CITY/TOWN	10,098.70	10,098.70
Jan 2017	2,019.74	.00		9,871.87	9,871.87
TOTAL	24,236.88	-24,236.88		11,891.61	11,891.61

BASED ON THE ANTICIPATED ESCROW DISBURSEMENTS
AND PAYMENTS, WE HAVE DETERMINED THAT YOUR
ESCROW ACCOUNT HAS ADEQUATE FUNDS.
NEITHER A SHORTAGE NOR A SURPLUS EXISTS.

INTERNET REPRESENTATION

2016 HON. STEVEN W. RHODES CONSUMER BANKRUPTCY CONFERENCE

ANNUAL ESCROW ACCOUNT DISCLOSURE STATEMENT

LOAN NUMBER: [REDACTED]

DATE ANALYZED: 02/01/2016

PRIOR 12 MONTH ESCROW HISTORY

This statement itemizes your actual escrow account transactions since your previous analysis statement or final disclosure. The projections from your previous escrow analysis are to the left of the actual payments and disbursements. By comparing the actual escrow payment with the previous projections listed, you can determine where a difference may have occurred. An asterisk (*) indicates a difference in either the amount or date.

When applicable, the letter 'E' beside an amount indicates that a payment or disbursement has not yet occurred but is estimated to occur as shown.

Month of Act v ty	Ant c pated Depos t	Actual Depos t	Ant c pated Payment and Descr pt on	Actual Payment and Descr pt on	Ant c pated Balance	Actual Balance
				START NG BAL	00	00
Feb 2015	00		0 00	0 00	0 00	0 00
Mar 2015	00		0 00	0 00	0 00	0 00
Apr 2015	00		0 00	0 00	0 00	0 00
May 2015	00		0 00	0 00	0 00	0 00
Jun 2015	00		0 00	0 00	0 00	0 00
Jul 2015	00		0 00	0 00	0 00	0 00
Aug 2015	00	-34 685 00	0 00	0 00	0 00	-34 685 00
Sep 2015	00		0 00	0 00	0 00	-34 685 00
Oct 2015	00		0 00	0 00	0 00	-34 685 00
Nov 2015	00		0 00	0 00	0 00	-34 685 00
Dec 2015	00		0 00	-2 246 57 C TY/TOWN	0 00	-36 931 57
Jan 2016	00		0 00	0 00	0 00	-36 931 57

Fill in this information to identify the case:

Debtor 1 [REDACTED]

Debtor 2 [REDACTED]
(Spouse, if filing)

United States Bankruptcy Court for the Eastern District Of Michigan

Case number [REDACTED]

Official Form 410

Proof of Claim

04/16

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?	[REDACTED] 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?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent?	Where should notices to the creditor be sent? [REDACTED] Name [REDACTED] Number Street [REDACTED] City State Zip Code Contact phone [REDACTED] Contact email [REDACTED]	Where should payments to the creditor be sent? (if different) [REDACTED] Name [REDACTED] Number Street [REDACTED] City State Zip Code Contact phone [REDACTED] Contact email [REDACTED]
Federal Rule of Bankruptcy Procedure (FRBO) 2002(g)	Uniform claim identifier for electronic payments in chapter 13 (if you use one)	
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known)? _____ Filed on _____ MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	

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?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: [REDACTED]
7. How much is the Claim? <u>\$105,985.86</u>	Does this amount include interest or other charges? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy rule 3001(c)(2)(A).
8. What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information. <u>Money Loaned</u>
9. Is all part of the claim Secured?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. The claim is secured by a lien on property. Nature of Property: <input checked="" type="checkbox"/> Real Estate. If the claim is secured by the debtor's principal residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other. Describe: _____ Basis for Perfection: <u>Recorded Mortgage on</u> [REDACTED] 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: <u>\$105,985.86</u> Amount of the claim that is unsecured: _____ (The sum of the secured and unsecured amounts should match the amount in the line 7.) Amount necessary to cure any default as of the date of the petition: <u>\$8,070.91</u> Annual Interest Rate (when case was filed) <u>4.5000%</u> <input checked="" type="checkbox"/> Fixed <input type="checkbox"/> Variable
10. Is this claim based on a lease?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. _____
11. Is this claim subject to a right of setoff?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Identify the Property: _____

AMERICAN BANKRUPTCY INSTITUTE

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507 (a)

☒ No

☐ Yes. Check all that Apply

Amount entitled to priority

A Claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

- | | |
|---|----------|
| <input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B) | \$ _____ |
| <input type="checkbox"/> Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7) | \$ _____ |
| <input type="checkbox"/> Wages, salaries or commissions (up to \$12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4) | \$ _____ |
| <input type="checkbox"/> Taxes or penalties owed to governmental units 11 U.S.C. § 507(a)(8) | \$ _____ |
| <input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5) | \$ _____ |
| <input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)() that applies | \$ _____ |

* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment

Part 3 Sign Below

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

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

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

Check the appropriate box:

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

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

I have examined the information in the *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 09/06/2016
MM / DD / YYYY

/s/ Heather D. McGivern
Signature

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

Heather D. McGivern, Esq. P59393
Elizabeth M. Abood-Carroll, Esq. P46304
Craig B. Rule, Esq. P67005
Ryan Byrd, Esq. P75906

Name _____
First Name Middle Name Last Name

Title Attorneys for _____

Company Orlans Associates, P.C.

Address P.O. Box 5041
Number Street

Troy, MI 48007
City State Zip Code

Contact phone (248) 502-1400 Email hmcgivern@orlans.com

Mortgage Proof of Claim Attachment

12/15

If you file a claim secured by a security interest in the debtor's principal residence, you must use this form as an attachment to your proof of claim. See separate instructions.

Part 1: Mortgage and Case Information	Part 2: Total Debt Calculation	Part 3: Arrearage as of Date of the Petition	Part 4: Monthly Mortgage Payment
Case Number: [REDACTED]	Principal Balance: \$101,106.46	Principal & interest due: \$4,354.38	Principal & interest: \$725.73
Debtor 1: [REDACTED]	Interest due: \$2,376.01	Prepetition fees due: \$2,372.18	Monthly escrow: \$202.20
Debtor 2: [REDACTED]	Fees, Costs due: \$2,372.18	Escrow deficiency for funds advanced: \$131.21	Private mortgage insurance: \$0.00
Last 4 digits to identify: [REDACTED]	Escrow deficiency for funds advanced: \$131.21	Projected escrow shortage: \$1,213.14	Total monthly payment: \$927.93
Creditor: [REDACTED]	Less total funds on hand: -\$0.00	Less funds on hand: -\$0.00	Effective Date of Payment: May 1, 2016
Servicer: [REDACTED]	Total Debt: \$105,985.86	Total prepetition arrearage: \$8,070.91	
Fixed accrual/daily simple interest/other: Fixed Accrual			

Part 5: Loan Payment History from First Date of Default – See attached

Official Form 410

Proof of Claim

Page 4

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REPRESENTATION OF PRINTED DOCUMENT

ESCROW ACCOUNT DISCLOSURE STATEMENT

LOAN NUMBER: [REDACTED]

DATE: June 30, 2016

CURRENT MONTHLY MORTGAGE PAYMENT

Principal & Interest	725.73
Escrow	202.20
Prorated Escrow Surplus	-5.32
Total Payment	922.61

NEW PAYMENT INFORMATION

Principal & Interest	725.73
Escrow	202.20
Total Payment	927.93
New Payment Effective Date	05/01/16

COMING YEAR ESCROW PROJECTION

This statement provides a detailed summary of activity related to your escrow account. [REDACTED] maintains your escrow account to pay such items as property taxes, insurance premiums, and mortgage insurance.

This section lists a 12-month running escrow balance to determine the appropriate target balance and to determine if a shortage or surplus exists. This is a projection of the anticipated activity in your escrow account for the coming 12 months.

ANTICIPATED ESCROW DISBURSEMENT	MONTH	PAYMENTS TO ESCROW	DESCRIPTION	PAYMENTS FROM ESCROW	CUR BAL PROJECTION	REQ BAL PROJECTION
CITY TAX \$1,778.34	May	202.20	BEGINNING BALANCE		888.06	1,213.14
HAZARD INS \$648.00	June	202.20			1,090.26	1,415.34
	July	202.20			1,292.46	1,617.54
	August	202.20	CITY TAX	677.83	1,019.03	1,344.11
	September	202.20	HAZARD INS	648.00	573.23	898.31
	October	202.20			775.43	1,100.61
TOTAL DISBURSEMENTS \$2,426.34	November	202.20			977.63	1,302.71
DIVIDED BY 12 MONTHS	December	202.20	CITY TAX	1,109.51	79.32	404.40
MONTHLY ESCROW DEPOSIT \$202.20	January	202.20			281.52	606.60
	February	202.20			483.72	808.80
	March	202.20			685.92	1,011.00
	April	202.20			888.12	1,213.20

CALCULATION OF ESCROW ADJUSTMENT

BEGINNING PROJECTED BALANCE	\$888.06
BEGINNING REQUIRED BALANCE	\$1,213.14

ESCROW SHORTAGE	\$325.08
-----------------	----------

The required minimum balance allowed by federal law (RESPA) is two times your monthly escrow payment (excluding MIP/PMI), unless your mortgage document or state law specifies a lower amount.

* The projected escrow balance at the low point.
** The lowest balance the escrow account should attain during the projected period.

MORE INFORMATION ON REVERSE SIDE

IMPORTANT MESSAGES

Make your check, money order or cashier's check payable to PNC Mortgage. All Payments must be funds from a U.S. Bank Account and are subject to [REDACTED] acceptance. Do NOT send cash by mail.

We understand that you have filed for bankruptcy and have not yet received a discharge. None of the information requested in this statement will be used for the collection of any debts or for purposes prohibited by the Bankruptcy Code or other applicable Federal or state law.

INTERNET REPRINT ESCROW SHORTAGE COUPON

Account Number: [REDACTED] Shortage Amount: \$325.08

Customer Name: [REDACTED]

If you wish to pay the shortage amount in full, please mail a check for the shortage amount, along with this coupon, in the envelope provided. When paying your escrow shortage, please do not make your payment via electronic on-line banking, as it will not be applied directly to escrow. Payment should be remitted no later than 15 business days after receipt of this notification. Your new monthly mortgage payment will be reduced to \$927.93 once you pay the shortage amount. In order to avoid a delay in the processing of your payment, please DO NOT include your mortgage payment with the shortage payment.

Click here to pay the shortage amount

This is a copy of your escrow shortage coupon. If you cannot find your original statement, please contact Customer Service at [REDACTED] to request a new statement or click the link above to pay your escrow shortage online. Please DO NOT print and mail a copy of this coupon with your payment, because it may cause a delay in the posting of your payment.

ESCROW ACCOUNT DISCLOSURE STATEMENT

LOAN NUMBER: [REDACTED]

DATE: June 30, 2016

Your projected escrow balance as of 04/30/16 is \$888.06. Your required beginning escrow balance, according to this analysis, should be \$1,213.14. This means you have a shortage of \$325.08. We have divided the shortage interest-free, over 0 months. If you choose to pay the shortage in full, then your new monthly mortgage payment will be reduced to \$627.93.

Once during this analysis period, your required escrow balance should be reduced to a target balance of \$404.40, as it does in December. Under Federal law, your target balance should not exceed an amount equal to two months of escrow payments for taxes and insurance, unless your mortgage document or state law specifies a lower amount.

Projected Activity from the Previous Analysis

This is a projection of the activity for your escrow account from the Previous Analysis. This projection was based on the disbursements anticipated to be made from your escrow account. Compare this projection to the actual escrow activity in the Account History (summarized below).

The escrow payment in this projection may not equal the escrow payment in the Account History if an adjustment was made to collect a shortage or refund a surplus.

Adjustments to the payment and differences between the anticipated and actual disbursements may prevent the actual balance from reaching the projected low escrow balance.

Date	Description	Payments	Disbursements	Balance
	BEGINNING BALANCE			1,010.94
04/16		202.20		1,213.14
05/16		202.20		1,415.34
06/16		202.20		1,617.54
07/16		202.20		1,819.74
08/16	CITY TAX	202.20	677.83	1,344.11
09/16	HAZARD INS	202.20	848.00	896.31
10/16		202.20		1,100.51
11/16		202.20		1,302.71
12/16	CITY TAX	202.20	1,100.51	404.40 **
01/17		202.20		606.60
02/17		202.20		808.80
03/17		202.20		1,011.00
TOTAL		2,426.40	2,426.34	

Account History

This is a statement of actual escrow account activity from April 2016 through April 2016. Compare it to the Projected Activity from the Previous Analysis which appears above the Account History.

Your total mortgage payment during the past year was \$922.61 of which \$725.73 was your Principal and Interest payment and \$202.20 was your escrow payment.

Date	Description	Payments	Disbursements	Balance
	BEGINNING BALANCE			-131.21
07/16		1,019.27 e		888.06
TOTAL		1,019.27	0.00	

* Indicates a difference from projected activity either in the amount or the date.

** Required minimum escrow balance.

e Indicates estimates for future payments or disbursements.

If you have any questions about this analysis statement, please visit us at [REDACTED] or send us an email, write to us at [REDACTED] Attention: Customer Service Research, [REDACTED] or call our Customer Service Department toll free number [REDACTED]

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Fill in this information to identify the case:

Debtor 1 [REDACTED]

Debtor 2 [REDACTED]
(Spouse, if filing)

United States Bankruptcy Court for the: Eastern District of Michigan

Case number [REDACTED]

Read the instructions before filling out this form. Use this form to make 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.

Official Form 410 Proof of Claim

04/16

Part 1: Identify the Claim

1. Who is the current creditor? [REDACTED]

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

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

Name	[REDACTED]	Name	[REDACTED]
Number	[REDACTED]	Number	[REDACTED]
Street	[REDACTED]	Street	[REDACTED]
City	[REDACTED]	City	[REDACTED]
State	[REDACTED]	State	[REDACTED]
ZIP Code	[REDACTED]	ZIP Code	[REDACTED]
Contact phone	[REDACTED]	Contact phone	[REDACTED]
Contact email	[REDACTED]	Contact email	[REDACTED]

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

4. Does this claim amend one already filed? ☒ No ☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM/DD/YYYY

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

6. Do you have any number you use to identify the debtor?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: XXXXXXXXXX	
7. How much is the claim? \$ 69,698.07	Does this amount include interest or other charges? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).	
8. What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as healthcare information. <u>Money Loaned</u>	
9. Is all or part of the claim secured?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. The claim is secured by a lien on property. Nature of property: <input checked="" type="checkbox"/> Real estate. If the claim is secured by the debtor's principal residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410 A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: REDACTED	
<p>Basis for perfection: <u>Recorded Mortgage/Deed of Trust</u></p> <p>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.)</p>		
<p>Value of property: \$ _____</p> <p>Amount of the claim that is secured: \$ 69,698.07</p> <p>Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)</p> <p>Amount necessary to cure any default as of the date of the petition: \$ 450.00</p> <p>Annual Interest Rate (when case was filed) 3.5 % <input checked="" type="checkbox"/> Fixed <input type="checkbox"/> Variable </p>		
10. Is this claim based on a lease?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ _____	
11. Is this claim subject to a right of setoff?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____	

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12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507 (a) ☒ No ☐ Yes. Check all that Apply

A Claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B)	\$ _____
<input type="checkbox"/> Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7)	\$ _____
<input type="checkbox"/> Wages, salaries or commissions (up to \$12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4)	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units 11 U.S.C. § 507(a)(8)	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5)	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)() that applies	\$ _____

* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment

Part 3 Sign Below

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

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

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

Check the appropriate box:

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

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

I have examined the information in the *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 05/25/2016
MM / DD / YYYY

/s/ Heather D. McGivern
Signature

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

Heather D. McGivern, Esq. P59393
Elizabeth M. Abood-Carroll, Esq. P46304
Craig B. Rule, Esq. P67005
Ryan Byrd, Esq. P75906

Name _____
First Name Middle Name Last Name

Title Attorneys for _____

Company Orlans Associates, P.C.

Address P.O. Box 5041
Number Street

Troy, MI 48007
City State Zip Code

Contact phone (248) 502-1400 Email RByrd@orlans.com

2016 HON. STEVEN W. RHODES CONSUMER BANKRUPTCY CONFERENCE

Mortgage Proof of Claim Attachment

(12/15)

If you file a claim secured by a security interest in the debtor's principal residence, you must use this form as an attachment to your proof of claim. See separate instructions.

Part 1: Mortgage and Case Information		Part 2: Total Debt Calculation		Part 3: Arrearage as of Date of the Petition		Part 4: Monthly Mortgage Payment	
Case number:		Prnc pa ba ance:	70 233 91	Prnc pa & nterest due:	352 73	Prnc pa & nterest:	352 73
Debtor 1:		Interest due:	299 13	Prepet l on fees due:	0 00	Month y escrow:	251 76
Debtor 2:		Fees, costs due:	0 00	Escrow def c ency for funds advanced:	0 00	Pr vale mortgage insurance:	74 84
Last 4 d g ts to dent fy:		Escrow def c ency for funds advanced:	0 00	Projected escrow shortage:	448 33	Opt ona Products:	0 00
Cred tor:	See 410 part 1 1	Other:	74 84	Other:	0 00	Total month y payment:	679 33
Serv cer:		Less tota funds on hand:	909 81	Less funds on hand:	351 06	*Add l ona changes to the month y payment amount may be requrd because nterest rate adjustments or escrow requ rement changes.	
Fixed accrua l da y smp e nterest/other:	Fixed Accrual	Total debt:	69 698 07	Total prepet l on arrearage:	450 00		

Part 5: Loan Payment History from First Date of Default

A. Date	Account Act v ty			E. Desor pt on	F. Contractua due date	How Funds Were App ed/Amount Incurred						Ba ance After Amount Rece ved or Incurred				
	B. Contractua payment amount	C. Funds rece ved	D. Amount ncurred			G. Pr n, nt & esc past due ba ance	H. Amount to prnc pa	I. Amount to nterest	J. Amount to escrow	K. Amount to fees or charges	L. Unapp ed funds	M. Prnc pa ba ance	N. Accrued nterest ba ance	O. Escrow ba ance	P. Fees / Charges ba ance	Q. Unapp ed funds ba ance
04/01/2016				Beginning Balances	04/01/2016	0 00						70 233 91	0 00	633 59	0 00	351 06
04/01/2016	679 33			Monthly payment	04/01/2016	679 33						70 233 91	0 00	633 59	0 00	351 06
04/03/2016			74 84	Mortgage insurance disbursement	04/01/2016	679 33	0 00	0 00	-74 84		0 00	70 233 91	0 00	558 75	0 00	351 06
04/14/2016				Bankruptcy Filed	04/01/2016	679 33						70 233 91	0 00	558 75	0 00	351 06

Office Form 410A

Mortgage Proof of Claim Attachment

page 1 of 1

Addendum Page

Basis for asserting that the applicable party has the right to foreclose: Debtor(s) executed a promissory note secured by a mortgage, deed of trust, or security deed. The Promissory note is either made payable to creditor or has been duly indorsed. Creditor, directly or through an agent, has possession of the promissory note. Creditor is the original mortgagee or beneficiary or the assignee of the mortgage, deed of trust, or security deed.

Additional Disclaimers (where applicable)

410

Part 2: Question 9-Describe contains the property address and may contain a description for "Other".

410A

Part 1:

Full creditor name cannot be displayed due to space limitation, see 410 part 1.1 for full name.

Part 2:

Principal Balance is from Part 5, Column M as of the Bankruptcy File Date.

Interest Due is the interest due as of the Bankruptcy File Date.

Fees, costs due is from Part 5, Column P as of the Bankruptcy File Date and includes any outstanding fees (i.e. late charges, property inspections) and cost (i.e. attorney costs), also included are corporate advances (i.e. tax, insurance) for non-escrowed loans as of the Bankruptcy File Date. Any fees, costs due that are incurred pre-petition and waived post-petition will not be included.

Escrow deficiency for funds advanced is from Part 5, Column O (if negative balance) as of the Bankruptcy File Date.

Other includes any applicable Private Mortgage Insurance, other Optional Products (i.e. A & H, Life) or Deferred Interest, where applicable, due as of the Bankruptcy File Date. This line was added to ensure transparency.

Less Total Funds on hand is the total of Part 5, Column O (if positive balance) and Q as of the Bankruptcy File Date.

Total Debt not to be used for payoff purposes.

The Total debt figures in Part 2 of the Form 410A and the corresponding figure in Part 2(7) of the Form 410 include an amount for the MIP/PMI premium(s) that are due as of the petition date but may not be disbursed to the third party until after the petition date. These transactions will not appear in Part 5 of the 410A because they are post-petition disbursements. To the extent a breakdown of the Other amount in Part 2 of the 410A is requested, it will be provided.

Part 3:

Principal and Interest is the principal and interest portion of Part 5, Column G, as of the Bankruptcy File Date. (If post-petition payments are included as required by Local Rule or practice, this field will include post-petition principal and interest amounts).

Pre-Petition Fees Due is from Part 5, Column P as of the Bankruptcy File Date. Any fees, costs due that are incurred pre-petition and waived post-petition will not be included.

Escrow Deficiency for Funds Advanced is from Part 5, Column O (if negative balance) as of the Bankruptcy File Date.

Projected Escrow Shortage is the Escrow Required from the escrow analysis minus a positive escrow balance as of the Bankruptcy File Date. (If post-petition payments are included as required by Local Rule or practice, this field will include post-petition escrow amounts).

Other includes any applicable Optional Products (i.e. A & H, Life) due as of the bankruptcy file date. This line was added to ensure transparency. (If post-petition payments are included as required by Local Rule or practice, this field will include post-petition Optional Product amounts).

Less Funds on Hand is from Part 5, column Q as of the Bankruptcy File Date.

Part 4:

Optional Products includes any applicable optional products (i.e. A & H, Life) due as of the Bankruptcy File Date. This line was added to ensure transparency.

(*)This disclaimer has been added to the form to explain that the monthly payment amount may change periodically throughout the life of the loan.

Part 5:

If any of the transactions in the loan payment history contain amounts for optional products, the amount for that product will be reflected in either the Contractual payment amount or the Funds Received amount, and will be applied in those amounts. It will also be reflected in column G as described below.

Column G In addition to the items listed, this also includes any past due PMI or optional products (i.e. A & H, Life) amounts, as applicable. Optional product (i.e. A & H, Life) amounts will not be included in columns H-Q due to no appropriate column heading for this type of transaction.

Column J includes taxes, insurance and MIP/PMI as applicable.

Addendum Page

Basis for asserting that the applicable party has the right to foreclose: Debtor(s) executed a promissory note secured by a mortgage, deed of trust, or security deed. The Promissory note is either made payable to creditor or has been duly indorsed. Creditor, directly or through an agent, has possession of the promissory note. Creditor is the original mortgagee or beneficiary or the assignee of the mortgage, deed of trust, or security deed.

Additional Disclaimers (where applicable)

410

Part 2: Question 9-Describe contains the property address and may contain a description for "Other".

410A

Part 1:

Full creditor name cannot be displayed due to space limitation, see 410 part 1.1 for full name.

Part 2:

Principal Balance is from Part 5, Column M as of the Bankruptcy File Date.

Interest Due is the interest due as of the Bankruptcy File Date.

Fees, costs due is from Part 5, Column P as of the Bankruptcy File Date and includes any outstanding fees (i.e. late charges, property inspections) and cost (i.e. attorney costs), also included are corporate advances (i.e. tax, insurance) for non-escrowed loans as of the Bankruptcy File Date. Any fees, costs due that are incurred pre-petition and waived post-petition will not be included.

Escrow deficiency for funds advanced is from Part 5, Column O (if negative balance) as of the Bankruptcy File Date.

Other includes any applicable Private Mortgage Insurance, other Optional Products (i.e. A & H, Life) or Deferred Interest, where applicable, due as of the Bankruptcy File Date. This line was added to ensure transparency.

Less Total Funds on hand is the total of Part 5, Column O (if positive balance) and Q as of the Bankruptcy File Date.

Total Debt not to be used for payoff purposes.

The Total debt figures in Part 2 of the Form 410A and the corresponding figure in Part 2(7) of the Form 410 include an amount for the MIP/PMI premium(s) that are due as of the petition date but may not be disbursed to the third party until after the petition date. These transactions will not appear in Part 5 of the 410A because they are post-petition disbursements. To the extent a breakdown of the Other amount in Part 2 of the 410A is requested, it will be provided.

Part 3:

Principal and Interest is the principal and interest portion of Part 5, Column G, as of the Bankruptcy File Date. (If post-petition payments are included as required by Local Rule or practice, this field will include post-petition principal and interest amounts).

Pre-Petition Fees Due is from Part 5, Column P as of the Bankruptcy File Date. Any fees, costs due that are incurred pre-petition and waived post-petition will not be included.

Escrow Deficiency for Funds Advanced is from Part 5, Column O (if negative balance) as of the Bankruptcy File Date.

Projected Escrow Shortage is the Escrow Required from the escrow analysis minus a positive escrow balance as of the Bankruptcy File Date. (If post-petition payments are included as required by Local Rule or practice, this field will include post-petition escrow amounts).

Other includes any applicable Optional Products (i.e. A & H, Life) due as of the bankruptcy file date. This line was added to ensure transparency. (If post-petition payments are included as required by Local Rule or practice, this field will include post-petition Optional Product amounts).

Less Funds on Hand is from Part 5, column Q as of the Bankruptcy File Date.

Part 4:

Optional Products includes any applicable optional products (i.e. A & H, Life) due as of the Bankruptcy File Date. This line was added to ensure transparency.

(*)This disclaimer has been added to the form to explain that the monthly payment amount may change periodically throughout the life of the loan.

Part 5:

If any of the transactions in the loan payment history contain amounts for optional products, the amount for that product will be reflected in either the Contractual payment amount or the Funds Received amount, and will be applied in those amounts. It will also be reflected in column G as described below.

Column G In addition to the items listed, this also includes any past due PMI or optional products (i.e. A & H, Life) amounts, as applicable. Optional product (i.e. A & H, Life) amounts will not be included in columns H-Q due to no appropriate column heading for this type of transaction.

Column J includes taxes, insurance and MIP/PMI as applicable.

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Column N will only be populated if the loan is Daily Simple Interest or if Deferred Interest exists on the account.

Column O Includes taxes, insurance and MIP/PMI as applicable.

For informational purposes

Escrow account disclosure statement
and notice of new mortgage payment

Loan number: [REDACTED]
 Next payment due date: April 01, 2016
 New payment effective date: May 01, 2016
 New payment amount: \$679.33
 Principal balance: \$70,433.91
 Interest rate: 3.500%
 Statement date: April 26, 2016
 Account review period: Jul 2015 - Apr 2016
 Customer service: 1 800 340 0473
 Customer service hours: Mon - Fri 7 a.m. - 8 p.m. CT.

We accept telecommunications relay service calls.

Property address: [REDACTED]

Dear MEHDI A RIZVI

Each year, we review your escrow account to make sure the escrow portion of your scheduled mortgage payment covers your property taxes and/or insurance premiums. Increases or decreases in your annual taxes and/or insurance premiums may cause your mortgage payment amount to change. Here are the details of your most recent escrow account review.

Note: This notice is for informational purposes only and is being provided as a courtesy should you voluntarily decide to make any escrow shortage payment, if applicable. This notice should not be construed as an attempt to collect a debt or a demand for payment contrary to any protection you may have received pursuant to your bankruptcy case.

New escrow and mortgage payment amount

New payment effective date May 01, 2016 ¹	Current payment (\$)	New payment (\$)
Principal and/or interest	352.73	352.73
Escrow payment	324.86	326.60
Escrow shortage/prepayment ²	0.00	0.00
Total payment amount	677.59	679.33

1. If you use one of our automatic payment options, we will adjust your electronic withdrawal(s) to ensure your May 01, 2016 payment is made in full.

2. If your current payment includes an amount to cover a previous escrow shortage, this amount will be added. If your current payment includes an adjustment for extra funds you deposited to your escrow account, this amount will be deducted.

Your account is in balance. Our calculation has resulted in no projected shortage or overage in your escrow account.

A guide to your escrow questions and answers is available at: [REDACTED]

*** This section intentionally left blank ***

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Page 2 of 3

For informational purposes

Loan number: [REDACTED]

The following information covers your projected escrow account activity from May 2016 to Apr 2017

Projected escrow account disbursements

Annualized items to be paid from your escrow account (\$):

MORTGAGE INS	898.08
CITY TAX	2,194.55
HAZARD INS	826.61
Total disbursements	3,919.24
Scheduled escrow payment	326.60¹

1. Your escrow payment is calculated by dividing the total disbursements by 12.

Projected escrow account activity for the next 12 months

Date	Anticipated payments (\$)		Description	Escrow balance (\$)	
	To escrow	From escrow		Projected	Required
May 2016			Starting balance	883.61	1,007.08
May 2016	326.60	74.84	FHA INSURANCE	1,135.37	1,258.84
Jun 2016	326.60	74.84	FHA INSURANCE	1,387.13	1,510.60
Jul 2016	326.60	74.84	FHA INSURANCE	1,638.89	1,762.36
Aug 2016	326.60	74.84	FHA INSURANCE	1,890.65	2,014.12
Sep 2016	326.60	74.84	FHA INSURANCE	2,142.41	2,265.88
Sep 2016	0.00	1,669.85	TAYLOR CITY	472.56	596.03
Oct 2016	326.60	74.84	FHA INSURANCE	724.32	847.79
Nov 2016	326.60	74.84	FHA INSURANCE	976.08	1,099.55
Dec 2016	326.60	74.84	FHA INSURANCE	1,227.84	1,351.31
Dec 2016	0.00	524.70	TAYLOR CITY	703.14	826.61
Jan 2017	326.60	74.84	FHA INSURANCE	954.90	1,078.37
Feb 2017	326.60	74.84	FHA INSURANCE	1,206.66	1,330.13
Feb 2017	0.00	826.61	ALLSTATE INSURANCE	380.05 ²	503.52 ³
Mar 2017	326.60	74.84	FHA INSURANCE	631.81	755.28
Apr 2017	326.60	74.84	FHA INSURANCE	883.57	1,007.04
Total	3,919.20	3,919.24			

The projected escrow account activity is based on the most recent tax and/or insurance information available as well as the assumption that your payments will be received as agreed.

2. **Projected low point.** The point during the annual period at which the projected escrow balance will reach its lowest point.

3. **Required escrow balance.** To cover unanticipated disbursements, including increases to tax or insurance payments, there is a 2-month minimum escrow balance allowable by state law and/or your mortgage contract. This amount does not include mortgage insurance.

• Your 2-month minimum escrow balance is \$503.52

• State law requires that this minimum escrow balance not exceed \$503.52

• *Note:* If you have an adjustable rate mortgage (ARM), you will receive a notice about your new mortgage payment when your ARM rate is scheduled to change.

Information about your escrow account

Your lowest projected escrow account balance (low point) (\$)	380.05
Plus escrow adjustment⁴ (\$)	123.47
Less your required minimum escrow account balance (\$)	503.52
This means your escrow account is in balance	0.00

4. An Escrow Adjustment of \$123.47, scheduled to be repaid through the bankruptcy, is included in this calculation.

2016 HON. STEVEN W. RHODES CONSUMER BANKRUPTCY CONFERENCE

Page 3 of 3

For informational purposes

Loan number: [REDACTED]

The following information covers your escrow account history activity from Jul 2015 to Apr 2016

Date	Payments to escrow (\$)		Payments from escrow (\$)		Description	Escrow balance (\$)	
	Projected	Actual	Projected	Actual		Projected	Actual
Jul 2015					Starting balance	1,489.97	1,544.87
Jul 2015	324.86	0.00 ¹	76.52	0.00 ¹	FHA INSURANCE	1,738.31	1,544.87
Jul 2015	0.00	0.00	0.00	76.52 ¹	FHA INSURANCE	1,738.31	1,468.35
Aug 2015	324.86	349.40 ¹	76.52	0.00 ¹	FHA INSURANCE	1,986.65	1,817.75
Aug 2015	0.00	0.00	0.00	76.52 ¹	FHA INSURANCE	1,986.65	1,741.23
Sep 2015	324.86	349.40 ¹	76.52	0.00 ¹	FHA INSURANCE	2,234.99	2,090.63
Sep 2015	0.00	0.00	1,624.01	1,669.85 ¹	TAYLOR CITY	610.98	420.78
Sep 2015	0.00	0.00	0.00	76.52 ¹	FHA INSURANCE	610.98	344.26
Oct 2015	324.86	349.40 ¹	76.52	0.00 ¹	FHA INSURANCE	859.32	693.66
Oct 2015	0.00	0.00	0.00	76.52 ¹	FHA INSURANCE	859.32	617.14
Nov 2015	324.86	349.40 ¹	76.52	0.00 ¹	FHA INSURANCE	1,107.66	966.54
Nov 2015	0.00	0.00	0.00	76.52 ¹	FHA INSURANCE	1,107.66	890.02
Dec 2015	324.86	349.40 ¹	76.52	0.00 ¹	FHA INSURANCE	1,356.00	1,239.42
Dec 2015	0.00	0.00	575.18	524.70 ¹	TAYLOR CITY	780.82	714.72
Dec 2015	0.00	0.00	0.00	76.52 ¹	FHA INSURANCE	780.82	638.20
Jan 2016	324.86	0.00 ¹	76.52	76.52	FHA INSURANCE	1,029.16	561.68
Jan 2016	0.00	0.00	0.00	826.61 ¹	ALLSTATE INSURANCE	1,029.16	264.93
Feb 2016	324.86	698.80 ¹	76.52	0.00 ¹	FHA INSURANCE	1,277.50	433.87
Feb 2016	0.00	0.00	780.82	0.00 ¹	ALLSTATE INSURANCE	496.68	433.87
Feb 2016	0.00	0.00	0.00	74.84 ¹	FHA INSURANCE	496.68	359.03
Mar 2016	324.86	349.40 ¹	76.52	0.00 ¹	FHA INSURANCE	745.02	708.43
Mar 2016	0.00	0.00	0.00	74.84 ¹	FHA INSURANCE	745.02	633.59
Apr 2016 est.	324.86	324.86	76.52	0.00 ¹	FHA INSURANCE	993.36	958.45
Apr 2016	0.00	0.00	0.00	74.84 ¹	FHA INSURANCE	993.36	883.61
Totals	3,248.60	3,120.06	3,745.21	3,781.32			

¹ Indicates where a difference exists between the projected and actual account activity.



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A guide to your escrow questions and answers is available at: [REDACTED]



User Name: HEATHER MCGIVERN

Date and Time: Sep 22, 2016 12:11

Job Number: 37405482

Document (1)

1. [12 USCS § 3500.17](#)

Client/Matter: a

Search Terms: respa

Search Type: Natural Language

Narrowed by:

Content Type
Statutes and Legislation

Narrowed by
Sources: USCS - United States Code Service - Titles 1
through 54

12 USCS § 3500.17

Current through PL 114-219, approved 7/29/16

United States Code Service - Titles 1 through 54 > TITLE 12. BANKS AND BANKING > CHAPTER 27. REAL ESTATE SETTLEMENT PROCEDURES > REGULATION X (24 CFR PART 3500)--REAL ESTATE SETTLEMENT PROCEDURES

§ 3500.17. Escrow accounts.

(a) **General.** This section sets out the requirements for an escrow account that a lender establishes in connection with a federally related mortgage loan. It sets limits for escrow accounts using calculations based on monthly payments and disbursements within a calendar year. If an escrow account involves biweekly or any other payment period, the requirements in this section shall be modified accordingly. A HUD Public Guidance Document entitled "Biweekly Payments-Example" provides examples of biweekly accounting and a HUD Public Guidance Document entitled "Annual Escrow Account Disclosure Statement-Example" provides examples of a 3-year accounting cycle that may be used in accordance with paragraph (c)(9) of this section. A HUD Public Guidance Document entitled "Consumer Disclosure for Voluntary Escrow Account Payments" provides a model disclosure format that originators and servicers are encouraged, but not required, to provide to consumers when the originator or servicer anticipates a substantial increase in disbursements from the escrow account after the first year of the loan. The disclosures in that model format may be combined with or included in the Initial Escrow Account Statement required in § 3500.17(g).

(b) **Definitions.** As used in this section:

Aggregate (or) composite analysis, hereafter called *aggregate analysis*, means an accounting method a servicer uses in conducting an escrow account analysis by computing the sufficiency of escrow account funds by analyzing the account as a whole. Appendix E to this part sets forth examples of aggregate escrow account analyses.

Annual Escrow Account Statement means a statement containing all of the information set forth in § 3500.17(i). As noted in § 3500.17(i), a servicer shall submit an annual escrow account statement to the borrower within 30 calendar days of the end of the escrow account computation year, after conducting an escrow account analysis.

Cushion or reserve (hereafter *cushion*) means funds that a servicer may require a borrower to pay into an escrow account to cover unanticipated disbursements or disbursements made before the borrower's payments are available in the account, as limited by § 3500.17(c).

Deficiency is the amount of a negative balance in an escrow account. As noted in § 3500.17(f), if a servicer advances funds for a borrower, then the servicer must perform an escrow account analysis before seeking repayment of the deficiency.

Delivery means the placing of a document in the United States mail, first-class postage paid, addressed to the last known address of the recipient. Hand delivery also constitutes delivery.

Disbursement date means the date on which the servicer actually pays an escrow item from the escrow account.

Escrow account means any account that a servicer establishes or controls on behalf of a borrower to pay taxes, insurance premiums (including flood insurance), or other charges with respect to a federally related mortgage loan, including charges that the borrower and servicer have voluntarily agreed that the servicer should collect and pay. The definition encompasses any account established for this purpose, including a trust account, "reserve account", "impound account", or other term in different localities. An "escrow account" includes any arrangement where the servicer adds a portion of the borrower's payments to principal and

HEATHER MCGIVERN

12 USCS § 3500.17

subsequently deducts from principal the disbursements for escrow account items. For purposes of this section, the term "escrow account" excludes any account that is under the borrower's total control.

Escrow account analysis means the accounting that a servicer conducts in the form of a trial running balance for an escrow account to:

- (1) Determine the appropriate target balances;
- (2) Compute the borrower's monthly payments for the next escrow account computation year and any deposits needed to establish or maintain the account; and
- (3) Determine whether shortages, surpluses or deficiencies exist.

Escrow account computation year is a 12-month period that a servicer establishes for the escrow account beginning with the borrower's initial payment date. The term includes each 12-month period thereafter, unless a servicer chooses to issue a short year statement under the conditions stated in § 3500.17(i)(4).

Escrow account item or separate item means any separate expenditure category, such as "taxes" or "insurance", for which funds are collected in the escrow account for disbursement. An escrow account item with installment payments, such as local property taxes, remains one escrow account item regardless of multiple disbursement dates to the tax authority.

Initial escrow account statement means the first disclosure statement that the servicer delivers to the borrower concerning the borrower's escrow account. The initial escrow account statement shall meet the requirements of § 3500.17(g) and be in substantially the format set forth in § 3500.17(h).

Installment payment means one of two or more payments payable on an escrow account item during an escrow account computation year. An example of an installment payment is where a jurisdiction bills quarterly for taxes.

Payment due date means the date each month when the borrower's monthly payment to an escrow account is due to the servicer. The initial payment date is the borrower's first payment due date to an escrow account. means the date on which the servicer actually pays an escrow item from the escrow account.

Penalty means a late charge imposed by the payee for paying after the disbursement is due. It does not include any additional charge or fee imposed by the payee associated with choosing installment payments as opposed to annual payments or for choosing one installment plan over another.

Pre-accrual is a practice some servicers use to require borrowers to deposit funds, needed for disbursement and maintenance of a cushion, in the escrow account some period before the disbursement date. Pre-accrual is subject to the limitations of § 3500.17(c).

Shortage means an amount by which a current escrow account balance falls short of the target balance at the time of escrow analysis.

Single-item analysis means an accounting method servicers use in conducting an escrow account analysis by computing the sufficiency of escrow account funds by considering each escrow item separately. Appendix E to this part sets forth examples of single-item analysis.

Submission (of an escrow account statement) means the delivery of the statement.

Surplus means an amount by which the current escrow account balance exceeds the target balance for the account.

System of recordkeeping means the servicer's method of keeping information that reflects the facts relating to that servicer's handling of the borrower's escrow account, including, but not limited to, the payment of amounts from the escrow account and the submission of initial and annual escrow account statements to borrowers.

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Target balance means the estimated month end balance in an escrow account that is just sufficient to cover the remaining disbursements from the escrow account in the escrow account computation year, taking into account the remaining scheduled periodic payments, and a cushion, if any.

Trial running balance means the accounting process that derives the target balances over the course of an escrow account computation year. Section 3500.17(d) provides a description of the steps involved in performing a trial running balance.

(c) **Limits on payments to escrow accounts.**

- (1) A lender or servicer (hereafter servicer) shall not require a borrower to deposit into any escrow account, created in connection with a federally related mortgage loan, more than the following amounts:
 - (i) **Charges at settlement or upon creation of an escrow account.** At the time a servicer creates an escrow account for a borrower, the servicer may charge the borrower an amount sufficient to pay the charges respecting the mortgaged property, such as taxes and insurance, which are attributable to the period from the date such payment(s) were last paid until the initial payment date. The "amount sufficient to pay" is computed so that the lowest month end target balance projected for the escrow account computation year is zero (--0--) (see Step 2 in Appendix E to this part). In addition, the servicer may charge the borrower a cushion that shall be no greater than one-sixth (1/6) of the estimated total annual payments from the escrow account.
 - (ii) **Charges during the life of the escrow account.** Throughout the life of an escrow account, the servicer may charge the borrower a monthly sum equal to one-twelfth (1/12) of the total annual escrow payments which the servicer reasonably anticipates paying from the account. In addition, the servicer may add an amount to maintain a cushion no greater than one-sixth (1/6) of the estimated total annual payments from the account. However, if a servicer determines through an escrow account analysis that there is a shortage or deficiency, the servicer may require the borrower to pay additional deposits to make up the shortage or eliminate the deficiency, subject to the limitations set forth in § 3500.17(f).
- (2) **Escrow analysis at creation of escrow account.** Before establishing an escrow account, the servicer must conduct an escrow account analysis to determine the amount the borrower must deposit into the escrow account (subject to the limitations of paragraph (c)(1)(i) of this section), and the amount of the borrower's periodic payments into the escrow account (subject to the limitations of paragraph (c)(1)(ii) of this section). In conducting the escrow account analysis, the servicer must estimate the disbursement amounts according to paragraph (c)(7) of this section. Pursuant to paragraph (k) of this section, the servicer must use a date on or before the deadline to avoid a penalty as the disbursement date for the escrow item and comply with any other requirements of paragraph (k) of this section. Upon completing the initial escrow account analysis, the servicer must prepare and deliver an initial escrow account statement to the borrower, as set forth in paragraph (g) of this section. The servicer must use the escrow account analysis to determine whether a surplus, shortage, or deficiency exists and must make any adjustments to the account pursuant to paragraph (f) of this section.
- (3) **Subsequent escrow account analyses.** For each escrow account, the servicer must conduct an escrow account analysis at the completion of the escrow account computation year to determine the borrower's monthly escrow account payments for the next computation year, subject to the limitations of paragraph (c)(1)(ii) of this section. In conducting the escrow account analysis, the servicer must estimate the disbursement amounts according to paragraph (c)(7) of this section. Pursuant to paragraph (k) of this section, the servicer must use a date on or before the deadline to avoid a penalty as the disbursement date for the escrow item and comply with any other requirements of paragraph (k) of this section. The servicer must use the escrow account analysis to determine whether a surplus, shortage, or deficiency exists, and must make any adjustments to the account pursuant to paragraph (f) of this section. Upon completing an escrow account analysis, the servicer must prepare and submit an annual escrow account statement to the borrower, as set forth in paragraph (i) of this section.

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- (4) **Aggregate accounting required.** All servicers must use the aggregate accounting method in conducting escrow account analyses.
 - (5) **Cushion.** The cushion must be no greater than one-sixth (1/6) of the estimated total annual disbursements from the escrow account.
 - (6) **Restrictions on pre-accrual.** A servicer must not practice pre-accrual.
 - (7) **Servicer estimates of disbursement amounts.** To conduct an escrow account analysis, the servicer shall estimate the amount of escrow account items to be disbursed. If the servicer knows the charge for an escrow item in the next computation year, then the servicer shall use that amount in estimating disbursement amounts. If the charge is unknown to the servicer, the servicer may base the estimate on the preceding year's charge, or the preceding year's charge as modified by an amount not exceeding the most recent year's change in the national Consumer Price Index for all urban consumers (CPI, all items). In cases of unassessed new construction, the servicer may base an estimate on the assessment of comparable residential property in the market area.
 - (8) **Provisions in mortgage documents.** The servicer must examine the mortgage loan documents to determine the applicable cushion for each escrow account. If the mortgage loan documents provide for lower cushion limits, then the terms of the loan documents apply. Where the terms of any mortgage loan document allow greater payments to an escrow account than allowed by this section, then this section controls the applicable limits. Where the mortgage loan documents do not specifically establish an escrow account, whether a servicer may establish an escrow account for the loan is a matter for determination by other Federal or State law. If the mortgage loan document is silent on the escrow account limits and a servicer establishes an escrow account under other Federal or State law, then the limitations of this section apply unless applicable Federal or State law provides for a lower amount. If the loan documents provide for escrow accounts up to the RESPA limits, then the servicer may require the maximum amounts consistent with this section, unless an applicable Federal or State law sets a lesser amount.
 - (9) **Assessments for periods longer than one year.** Some escrow account items may be billed for periods longer than one year. For example, servicers may need to collect flood insurance or water purification escrow funds for payment every three years. In such cases, the servicer shall estimate the borrower's payments for a full cycle of disbursements. For a flood insurance premium payable every 3 years, the servicer shall collect the payments reflecting 36 equal monthly amounts. For two out of the three years, however, the account balance may not reach its low monthly balance because the low point will be on a three-year cycle, as compared to an annual one. The annual escrow account statement shall explain this situation (see example in the HUD Public Guidance Document entitled "Annual Escrow Account Disclosure Statement-Example", available in accordance with § 3500.3).
- (d) **Methods of escrow account analysis.**
- (1) The following sets forth the steps servicers must use to determine whether their use of aggregate analysis conforms with the limitations in § 3500.17(c)(1). The steps set forth in this section result in maximum limits. Servicers may use accounting procedures that result in lower target balances. In particular, servicers may use a cushion less than the permissible cushion or no cushion at all. This section does not require the use of a cushion.
 - (2) **Aggregate analysis.**
 - (i) In conducting the escrow account analysis using aggregate analysis, the target balances may not exceed the balances computed according to the following arithmetic operations:
 - (A) The servicer first projects a trial balance for the account as a whole over the next computation year (a trial running balance). In doing so the servicer assumes that it will make estimated disbursements on or before the earlier of the deadline to take advantage of discounts, if available, or the deadline to avoid a penalty. The servicer does not use pre-accrual on these

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disbursement dates. The servicer also assumes that the borrower will make monthly payments equal to one-twelfth of the estimated total annual escrow account disbursements.

- (B) The servicer then examines the monthly trial balances and adds to the first monthly balance an amount just sufficient to bring the lowest monthly trial balance to zero, and adjusts all other monthly balances accordingly.
- (C) The servicer then adds to the monthly balances the permissible cushion. The cushion is two months of the borrower's escrow payments to the servicer or a lesser amount specified by State law or the mortgage document (net of any increases or decreases because of prior year shortages or surpluses, respectively).
- (ii) **Lowest monthly balance.** Under aggregate analysis, the lowest monthly target balance for the account shall be less than or equal to one-sixth of the estimated total annual escrow account disbursements or a lesser amount specified by State law or the mortgage document. The target balances that the servicer derives using these steps yield the maximum limit for the escrow account. Appendix E to this part illustrates these steps.

(e) **Transfer of servicing.**

- (1) If the new servicer changes either the monthly payment amount or the accounting method used by the transferor (old) servicer, then the new servicer shall provide the borrower with an initial escrow account statement within 60 days of the date of servicing transfer.
 - (i) Where a new servicer provides an initial escrow account statement upon the transfer of servicing, the new servicer shall use the effective date of the transfer of servicing to establish the new escrow account computation year.
 - (ii) Where the new servicer retains the monthly payments and accounting method used by the transferor servicer, then the new servicer may continue to use the escrow account computation year established by the transferor servicer or may choose to establish a different computation year using a short-year statement. At the completion of the escrow account computation year or any short year, the new servicer shall perform an escrow analysis and provide the borrower with an annual escrow account statement.
- (2) The new servicer shall treat shortages, surpluses and deficiencies in the transferred escrow account according to the procedures set forth in § 3500.17(f).

(f) **Shortages, surpluses, and deficiencies requirements.**

- (1) **Escrow account analysis.** For each escrow account, the servicer shall conduct an escrow account analysis to determine whether a surplus, shortage or deficiency exists.
 - (i) As noted in § 3500.17(c) (2) and (3), the servicer shall conduct an escrow account analysis upon establishing an escrow account and at completion of the escrow account computation year.
 - (ii) The servicer may conduct an escrow account analysis at other times during the escrow computation year. If a servicer advances funds in paying a disbursement, which is not the result of a borrower's payment default under the underlying mortgage document, then the servicer shall conduct an escrow account analysis to determine the extent of the deficiency before seeking repayment of the funds from the borrower under this paragraph (f).
- (2) **Surpluses.**
 - (i) If an escrow account analysis discloses a surplus, the servicer shall, within 30 days from the date of the analysis, refund the surplus to the borrower if the surplus is greater than or equal to 50 dollars (\$ 50). If the surplus is less than 50 dollars (\$ 50), the servicer may refund such amount to the borrower, or credit such amount against the next year's escrow payments.
 - (ii) These provisions regarding surpluses apply if the borrower is current at the time of the escrow account analysis. A borrower is current if the servicer receives the borrower's payments within 30

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days of the payment due date. If the servicer does not receive the borrower's payment within 30 days of the payment due date, then the servicer may retain the surplus in the escrow account pursuant to the terms of the mortgage loan documents.

- (iii) After an initial or annual escrow analysis has been performed, the servicer and the borrower may enter into a voluntary agreement for the forthcoming escrow accounting year for the borrower to deposit funds into the escrow account for that year greater than the limits established under paragraph (c) of this section. Such an agreement shall cover only one escrow accounting year, but a new voluntary agreement may be entered into after the next escrow analysis is performed. The voluntary agreement may not alter how surpluses are to be treated when the next escrow analysis is performed at the end of the escrow accounting year covered by the voluntary agreement.

(3) Shortages.

- (i) If an escrow account analysis discloses a shortage of less than one month's escrow account payment, then the servicer has three possible courses of action:
 - (A) The servicer may allow a shortage to exist and do nothing to change it;
 - (B) The servicer may require the borrower to repay the shortage amount within 30 days; or
 - (C) The servicer may require the borrower to repay the shortage amount in equal monthly payments over at least a 12-month period.
- (ii) If an escrow account analysis discloses a shortage that is greater than or equal to one month's escrow account payment, then the servicer has two possible courses of action:
 - (A) The servicer may allow a shortage to exist and do nothing to change it; or
 - (B) The servicer may require the borrower to repay the shortage in equal monthly payments over at least a 12-month period.

(4) Deficiency. If the escrow account analysis confirms a deficiency, then the servicer may require the borrower to pay additional monthly deposits to the account to eliminate the deficiency.

- (i) If the deficiency is less than one month's escrow account payment, then the servicer:
 - (A) May allow the deficiency to exist and do nothing to change it;
 - (B) May require the borrower to repay the deficiency within 30 days; or
 - (C) May require the borrower to repay the deficiency in 2 or more equal monthly payments.
- (ii) If the deficiency is greater than or equal to 1 month's escrow payment, the servicer may allow the deficiency to exist and do nothing to change it or may require the borrower to repay the deficiency in two or more equal monthly payments.
- (iii) These provisions regarding deficiencies apply if the borrower is current at the time of the escrow account analysis. A borrower is current if the servicer receives the borrower's payments within 30 days of the payment due date. If the servicer does not receive the borrower's payment within 30 days of the payment due date, then the servicer may recover the deficiency pursuant to the terms of the mortgage loan documents.

(5) Notice of Shortage or Deficiency in Escrow Account. The servicer shall notify the borrower at least once during the escrow account computation year if there is a shortage or deficiency in the escrow account. The notice may be part of the annual escrow account statement or it may be a separate document.

(g) Initial escrow account statement.

- (1) **Submission at settlement, or within 45 calendar days of settlement.** As noted in § 3500.17(c)(2), the servicer shall conduct an escrow account analysis before establishing an escrow account to

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determine the amount the borrower shall deposit into the escrow account, subject to the limitations of § 3500.17(c)(1)(i). After conducting the escrow account analysis for each escrow account, the servicer shall submit an initial escrow account statement to the borrower at settlement or within 45 calendar days of settlement for escrow accounts that are established as a condition of the loan.

- (i) The initial escrow account statement shall include the amount of the borrower's monthly mortgage payment and the portion of the monthly payment going into the escrow account and shall itemize the estimated taxes, insurance premiums, and other charges that the servicer reasonably anticipates to be paid from the escrow account during the escrow account computation year and the anticipated disbursement dates of those charges. The initial escrow account statement shall indicate the amount that the servicer selects as a cushion. The statement shall include a trial running balance for the account.
 - (ii) Pursuant to § 3500.17(h)(2), the servicer may incorporate the initial escrow account statement into the HUD-1 or HUD-1A settlement statement. If the servicer does not incorporate the initial escrow account statement into the HUD-1 or HUD-1A settlement statement, then the servicer shall submit the initial escrow account statement to the borrower as a separate document.
- (2) ***Time of submission of initial escrow account statement for an escrow account established after settlement.*** For escrow accounts established after settlement (and which are not a condition of the loan), a servicer shall submit an initial escrow account statement to a borrower within 45 calendar days of the date of establishment of the escrow account.
- (h) ***Format for initial escrow account statement.***
- (1) The format and a completed example for an initial escrow account statement are set out in HUD Public Guidance Documents entitled "Initial Escrow Account Disclosure Statement-Format" and "Initial Escrow Account Disclosure Statement-Example", available in accordance with § 3500.3.
 - (2) ***Incorporation of Initial Escrow Account Statement Into HUD-1 or HUD-1A Settlement Statement.*** Pursuant to § 3500.9(a)(11), a servicer may add the initial escrow account statement to the HUD-1 or HUD-1A settlement statement. The servicer may include the initial escrow account statement in the basic text or may attach the initial escrow account statement as an additional page to the HUD-1 or HUD-1A settlement statement.
 - (3) ***Identification of Payees.*** The initial escrow account statement need not identify a specific payee by name if it provides sufficient information to identify the use of the funds. For example, appropriate entries include: county taxes, hazard insurance, condominium dues, etc. If a particular payee, such as a taxing body, receives more than one payment during the escrow account computation year, the statement shall indicate each payment and disbursement date. If there are several taxing authorities or insurers, the statement shall identify each taxing body or insurer (e.g., "City Taxes", "School Taxes", "Hazard Insurance", or "Flood Insurance," etc.).
- (i) ***Annual escrow account statements.*** For each escrow account, a servicer shall submit an annual escrow account statement to the borrower within 30 days of the completion of the escrow account computation year. The servicer shall also submit to the borrower the previous year's projection or initial escrow account statement. The servicer shall conduct an escrow account analysis before submitting an annual escrow account statement to the borrower.
- (1) ***Contents of Annual Escrow Account Statement.*** The annual escrow account statement shall provide an account history, reflecting the activity in the escrow account during the escrow account computation year, and a projection of the activity in the account for the next year. In preparing the statement, the servicer may assume scheduled payments and disbursements will be made for the final 2 months of the escrow account computation year. The annual escrow account statement must include, at a minimum, the following (the items in paragraphs (i)(1)(i) through (i)(1)(iv) must be clearly itemized):

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- (i) The amount of the borrower's current monthly mortgage payment and the portion of the monthly payment going into the escrow account;
 - (ii) The amount of the past year's monthly mortgage payment and the portion of the monthly payment that went into the escrow account;
 - (iii) The total amount paid into the escrow account during the past computation year;
 - (iv) The total amount paid out of the escrow account during the same period for taxes, insurance premiums, and other charges (as separately identified);
 - (v) The balance in the escrow account at the end of the period;
 - (vi) An explanation of how any surplus is being handled by the servicer;
 - (vii) An explanation of how any shortage or deficiency is to be paid by the borrower; and
 - (viii) If applicable, the reason(s) why the estimated low monthly balance was not reached, as indicated by noting differences between the most recent account history and last year's projection. HUD Public Guidance Documents entitled "Annual Escrow Account Disclosure Statement-Format" and "Annual Escrow Account Disclosure Statement-Example" set forth an acceptable format and methodology for conveying this information.
- (2) **No annual statements in the case of default, foreclosure, or bankruptcy.** This paragraph (i)(2) contains an exemption from the provisions of § 3500.17(i)(1). If at the time the servicer conducts the escrow account analysis the borrower is more than 30 days overdue, then the servicer is exempt from the requirements of submitting an annual escrow account statement to the borrower under § 3500.17(i). This exemption also applies in situations where the servicer has brought an action for foreclosure under the underlying mortgage loan, or where the borrower is in bankruptcy proceedings. If the servicer does not issue an annual statement pursuant to this exemption and the loan subsequently is reinstated or otherwise becomes current, the servicer shall provide a history of the account since the last annual statement (which may be longer than 1 year) within 90 days of the date the account became current.
- (3) **Delivery with other material.** The servicer may deliver the annual escrow account statement to the borrower with other statements or materials, including the Substitute 1098, which is provided for federal income tax purposes.
- (4) **Short year statements.** A servicer may issue a short year annual escrow account statement ("short year statement") to change one escrow account computation year to another. By using a short year statement a servicer may adjust its production schedule or alter the escrow account computation year for the escrow account.
- (i) **Effect of short year statement.** The short year statement shall end the "escrow account computation year" for the escrow account and establish the beginning date of the new escrow account computation year. The servicer shall deliver the short year statement to the borrower within 60 days from the end of the short year.
 - (ii) **Short year statement upon servicing transfer.** Upon the transfer of servicing, the transferor (old) servicer shall submit a short year statement to the borrower within 60 days of the effective date of transfer.
 - (iii) **Short year statement upon loan payoff.** If a borrower pays off a mortgage loan during the escrow account computation year, the servicer shall submit a short year statement to the borrower within 60 days after receiving the pay-off funds.
- (j) **Formats for annual escrow account statement.** The formats and completed examples for annual escrow account statements using single-item analysis (pre-rule accounts) and aggregate analysis are set out in HUD Public Guidance Documents entitled "Annual Escrow Account Disclosure Statement-Format" and "Annual Escrow Account Disclosure Statement-Example".

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(k) Timely payments.

- (1) If the terms of any federally related mortgage loan require the borrower to make payments to an escrow account, the servicer must pay the disbursements in a timely manner, that is, on or before the deadline to avoid a penalty, as long as the borrower's payment is not more than 30 days overdue.
- (2) The servicer must advance funds to make disbursements in a timely manner as long as the borrower's payment is not more than 30 days overdue. Upon advancing funds to pay a disbursement, the servicer may seek repayment from the borrower for the deficiency pursuant to paragraph (f) of this section.
- (3) For the payment of property taxes from the escrow account, if a taxing jurisdiction offers a servicer a choice between annual and installment disbursements, the servicer must also comply with this paragraph (k)(3). If the taxing jurisdiction neither offers a discount for disbursements on a lump sum annual basis nor imposes any additional charge or fee for installment disbursements, the servicer must make disbursements on an installment basis. If, however, the taxing jurisdiction offers a discount for disbursements on a lump sum annual basis or imposes any additional charge or fee for installment disbursements, the servicer may at the servicer's discretion (but is not required by RESPA to), make lump sum annual disbursements in order to take advantage of the discount for the borrower or avoid the additional charge or fee for installments, as long as such method of disbursement complies with paragraphs (k)(1) and (k)(2) of this section. HUD encourages, but does not require, the servicer to follow the preference of the borrower, if such preference is known to the servicer.
- (4) Notwithstanding paragraph (k)(3) of this section, a servicer and borrower may mutually agree, on an individual case basis, to a different disbursement basis (installment or annual) or disbursement date for property taxes from that required under paragraph (k)(3) of this section, so long as the agreement meets the requirements of paragraphs (k)(1) and (k)(2) of this section. The borrower must voluntarily agree; neither loan approval nor any term of the loan may be conditioned on the borrower's agreeing to a different disbursement basis or disbursement date.

(l) System of recordkeeping.

- (1) Each servicer shall keep records, which may involve electronic storage, microfiche storage, or any method of computerized storage, so long as the information is easily retrievable, reflecting the servicer's handling of each borrower's escrow account. The servicer's records shall include, but not be limited to, the payment of amounts into and from the escrow account and the submission of initial and annual escrow account statements to the borrower.
- (2) The servicer responsible for servicing the borrower's escrow account shall maintain the records for that account for a period of at least five years after the servicer last serviced the escrow account.
- (3) A servicer shall provide the Secretary with information contained in the servicer's records for a specific escrow account, or for a number or class of escrow accounts, within 30 days of the Secretary's written request for the information. The servicer shall convert any information contained in electronic storage, microfiche or computerized storage to paper copies for review by the Secretary.
 - (i) To aid in investigations, the Secretary may also issue an administrative subpoena for the production of documents, and for the testimony of such witnesses as the Secretary deems advisable.
 - (ii) If the subpoenaed party refuses to obey the Secretary's administrative subpoena, the Secretary is authorized to seek a court order requiring compliance with the subpoena from any United States district court. Failure to obey such an order of the court may be punished as contempt of court.
- (4) Borrowers may seek information contained in the servicer's records by complying with the provisions set forth in [12 U.S.C. 2605\(e\)](#) and § 3500.21(f).
- (5) After receiving a request (by letter or subpoena) from the Department for information relating to whether a servicer submitted an escrow account statement to the borrower, the servicer shall respond within 30 days. If the servicer is unable to provide the Department with such information, the Secretary

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shall deem that lack of information to be evidence of the servicer's failure to submit the statement to the borrower.

(m) Penalties.

- (1) A servicer's failure to submit to a borrower an initial or annual **escrow** account statement meeting the requirements of this part shall constitute a violation of section 10(d) of **RESPA** ([12 U.S.C. 2609\(d\)](#)) and this section. For each such violation, the Secretary shall assess a civil penalty of 75 dollars (\$ 75), except that the total of the assessed penalties shall not exceed \$ 130,000 for any one servicer for violations that occur during any consecutive 12-month period.
- (2) Violations described in paragraph (m)(1) of this section do not require any proof of intent. However, if a lender or servicer is shown to have intentionally disregarded the requirements that it submit the **escrow** account statement to the borrower, then the Secretary shall assess a civil penalty of \$ 110 for each violation, with no limit on the total amount of the penalty.

(n) Civil penalties procedures. The following procedures shall apply whenever the Department seeks to impose a civil money penalty for violation of section 10(c) of **RESPA** ([12 U.S.C. 2609\(c\)](#)):

- (1) **Purpose and scope.** This paragraph (n) explains the procedures by which the Secretary may impose penalties under [12 U.S.C. 2609\(d\)](#). These procedures include administrative hearings, judicial review, and collection of penalties. This paragraph (n) governs penalties imposed under [12 U.S.C. 2609\(d\)](#) and, when noted, adopts those portions of 24 CFR part 30 that apply to all other civil penalty proceedings initiated by the Secretary.
- (2) **Authority.** The Secretary has the authority to impose civil penalties under section 10(d) of **RESPA** ([12 U.S.C. 2609\(d\)](#)).
- (3) **Notice of intent to impose civil money penalties.** Whenever the Secretary intends to impose a civil money penalty for violations of section 10(c) of **RESPA** ([12 U.S.C. 2609\(c\)](#)), the responsible program official, or his or her designee, shall serve a written Notice of Intent to Impose Civil Money Penalties (Notice of Intent) upon any servicer on which the Secretary intends to impose the penalty. A copy of the Notice of Intent must be filed with the Chief Docket Clerk, Office of Administrative Law Judges, at the address provided in the Notice of Intent. The Notice of Intent will provide:
 - (i) A short, plain statement of the facts upon which the Secretary has determined that a civil money penalty should be imposed, including a brief description of the specific violations under [12 U.S.C. 2609\(c\)](#) with which the servicer is charged and whether such violations are believed to be intentional or unintentional in nature, or a combination thereof;
 - (ii) The amount of the civil money penalty that the Secretary intends to impose and whether the limitations in [12 U.S.C. 2609\(d\)\(1\)](#), apply;
 - (iii) The right of the servicer to a hearing on the record to appeal the Secretary's preliminary determination to impose a civil penalty;
 - (iv) The procedures to appeal the penalty;
 - (v) The consequences of failure to appeal the penalty; and
 - (vi) The name, address, and telephone number of the representative of the Department, and the address of the Chief Docket Clerk, Office of Administrative Law Judges, should the servicer decide to appeal the penalty.

(4) Appeal procedures.

- (i) **Answer.** To appeal the imposition of a penalty, a servicer shall, within 30 days after receiving service of the Notice of Intent, file a written Answer with the Chief Docket Clerk, Office of Administrative Law Judges, Department of Housing and Urban Development, at the address provided in the Notice of Intent. The Answer shall include a statement that the servicer admits, denies, or does not have (and is unable to obtain) sufficient information to admit or deny each

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allegation made in the Notice of Intent. A statement of lack of information shall have the effect of a denial. Any allegation that is not denied shall be deemed admitted. Failure to submit an Answer within the required period of time will result in a decision by the Administrative Law Judge based upon the Department's submission of evidence in the Notice of Intent.

- (ii) **Submission of evidence.** A servicer that receives the Notice of Intent has a right to present evidence. Evidence must be submitted within 45 calendar days from the date of service of the Notice of Intent, or by such other time as may be established by the Administrative Law Judge (ALJ). The servicer's failure to submit evidence within the required period of time will result in a decision by the Administrative Law Judge based upon the Department's submission of evidence in the Notice of Intent. The servicer may present evidence of the following:

- (A) The servicer did submit the required escrow account statement(s) to the borrower(s); or
- (B) Even if the servicer did not submit the required statement(s), that the failure was not the result of an intentional disregard of the requirements of RESPA (for purposes of determining the penalty).

- (iii) **Review of the record.** The Administrative Law Judge will review the evidence submitted by the servicer, if any, and that submitted by the Department. The Administrative Law Judge shall make a determination based upon a review of the written record, except that the Administrative Law Judge may order an oral hearing if he or she finds that the determination turns on the credibility or veracity of a witness, or that the matter cannot be resolved by review of the documentary evidence. If the Administrative Law Judge decides that an oral hearing is appropriate, then the procedural rules set forth at 24 CFR part 30 shall apply, to the extent that they are not inconsistent with this section.

- (iv) **Burden of proof.** The burden of proof or the burden of going forward with the evidence shall be upon the proponent of an action. The Department's submission of evidence that the servicer's system of records lacks information that the servicer submitted the escrow account statement(s) to the borrower(s) shall satisfy the Department's burden. Upon the Department's presentation of evidence of this lack of information in the servicer's system of records, the burden of proof shifts from the Secretary to the servicer to provide evidence that it submitted the statement(s) to the borrower.

- (v) **Standard of proof.** The standard of proof shall be the preponderance of the evidence.

(5) **Determination of the Administrative Law Judge.**

- (i) Following the hearing or the review of the written record, the Administrative Law Judge shall issue a decision that shall contain findings of fact, conclusions of law, and the amount of any penalties imposed. The decision shall include a determination of whether the servicer has failed to submit any required statements and, if so, whether the servicer's failure was the result of an intentional disregard for the law's requirements.
- (ii) The Administrative Law Judge shall issue the decision to all parties within 30 days of the submission of the evidence or the post-hearing briefs, whichever is the last to occur.
- (iii) The decision of the Administrative Law Judge shall constitute the final decision of the Department and shall be final and binding on the parties.

(6) **Judicial review.**

- (i) A person against whom the Department has imposed a civil money penalty under this part may obtain a review of the Department's final decision by filing a written petition for a review of the record with the appropriate United States district court.
- (ii) The petition must be filed within 30 days after the decision is filed with the Chief Docket Clerk, Office of Administrative Law Judges.

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(7) Collection of penalties.

- (i) If any person fails to comply with the Department's final decision imposing a civil money penalty, the Secretary, if the time for judicial review of the decision has expired, may request the Attorney General to bring an action in an appropriate United States district court to obtain a judgment against the person that has failed to comply with the Department's final decision.
- (ii) In any such collection action, the validity and appropriateness of the Department's final decision imposing the civil penalty shall not be subject to review in the district court.
- (iii) The Secretary may obtain such other relief as may be available, including attorney fees and other expenses in connection with the collection action.
- (iv) Interest on and other charges for any unpaid penalty may be assessed in accordance with [31 U.S.C. 3717](#).

(8) Offset. In addition to any other rights as a creditor, the Secretary may seek to collect a civil money penalty through administrative offset.

(9) At any time before the decision of the Administrative Law Judge, the Secretary and the servicer may enter into an administrative settlement. The settlement may include provisions for interest, attorney's fees, and costs related to the proceeding. Such settlement will terminate the appearance before the Administrative Law Judge.

(o) Discretionary payments. Any borrower's discretionary payment (such as credit life or disability insurance) made as part of a monthly mortgage payment is to be noted on the initial and annual statements. If a discretionary payment is established or terminated during the **escrow** account computation year, this change should be noted on the next annual statement. A discretionary payment is not part of the **escrow** account unless the payment is required by the lender, in accordance with the definition of "settlement service" in § 3500.2, or the servicer chooses to place the discretionary payment in the **escrow** account. If a servicer has not established an **escrow** account for a federally related mortgage loan and only receives payments for discretionary items, this section is not applicable.

(Approved by the Office of Management and Budget under control number 2502-0501)

History

[Added Oct. 26, 1994, [59 F.R. 53902](#), effective May 24, 1995; Feb. 15, 1995, [60 F.R. 8812, 8816](#), effective May 24, 1995; May 9, 1995, [60 F.R. 24735](#), effective May 24, 1995; [61 F.R. 13241](#), March 26, 1996, effective April 25, 1996; [61 F.R. 46510](#), Sept. 3, 1996, effective Oct. 8, 1996; [61 F.R. 50219](#), Sept. 24, 1996, effective Oct. 24, 1996; [61 F.R. 58476](#), Nov. 15, 1996, effective Jan. 14, 1997; [63 F.R. 3236](#), Jan. 21, 1998, effective Feb. 20, 1998; [68 F.R. 12789](#), March 17, 2003, effective April 16, 2003; [72 F.R. 5589](#), Feb. 6, 2007, effective March 8, 2007; [73 F.R. 68242](#), Nov. 17, 2008, effective Jan. 16, 2009]

Annotations

Case Notes

Although [24 CFR § 3500.17\(c\)\(8\)](#) and (d)(1)(C) clearly incorporate state laws that provide greater consumer protections with respect to existence of **escrow** accounts and amount of money that borrowers must deposit therein, payment of interest is beyond their scope because like **RESPA** statutes ([12 USCS §§ 2601](#) et seq.), they concern only payments by consumers. [Flagg v Yonkers S&L Ass'n \(2004, SD NY\) 307 F Supp 2d 565](#), affd (2005, CA2 NY) [396 F3d 178](#), cert den (2005) [546 US 817](#), [126 S Ct 343](#), [163 L Ed 2d 55](#).

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