

## **ANDREW B. FINBERG, CHAPTER 13 STANDING TRUSTEE CLAIMS GUIDELINES**

The guidelines provided by the trustee are intended to assist the practitioner in understanding the manner in which this Trustee's office typically handles claims issues. Since there is enormous diversity in the manner in which creditors are treated in Chapter 13 plans and in the manner in which claims are filed, this guideline is not intended to encompass the treatment of ALL claims under plans. If a practitioner has a particular question about the treatment of a claim or creditor under a proposed or confirmed chapter 13 plan, that question is best addressed through direct communications with the Trustee's office.

It is the responsibility of Debtor's attorney and self-represented debtors to review all claims and object to any as may be appropriate. The review of claims should be undertaken prior to confirmation, after the claims bar date and after the government claims bar date.

The Trustee's office makes its best efforts to promptly docket a Proposed Distribution report upon the expiration of the Claims Bar Date. Debtor's attorney, Self-Represented debtor and creditors must immediately review the Proposed Distribution Report and notify the Trustee's office, in writing, of any incorrect amount due, treatment, or classification of any claim.

Debtor's attorney and Self-Represented debtors must promptly review the Proposed Distribution Report and the National Data Center site to determine if a Modified Plan is required. If unscheduled or higher than scheduled claims are not addressed in a timely manner, the Trustee may move to dismiss debtor's case for lack of feasibility.

### **1. ADMINISTRATIVE, SECURED AND PRIORITY CLAIMS**

#### **a. THE CLAIM AMOUNT IS HIGHER THAN PROVIDED IN THE PLAN**

##### **- PRE-CONFIRMATION**

If an administrative, secured or priority claim is filed for an amount that is higher than the amount scheduled to be paid through Debtor's plan, the claim will be set-up to be paid as filed unless an objection to the claim is filed. If the higher claim is filed prior to confirmation, Debtor's plan payments will be adjusted to reflect the higher claim.

##### **- PREVIOUSLY CONFIRMED PLAN**

If a plan has been previously confirmed and a higher claim is filed which makes the case not feasible, Debtor and Debtor's attorney will be notified in writing advising that the feasibility issues created by the higher proof of claim must be addressed within thirty (30) days. If feasibility issues are not addressed, the Trustee will move to dismiss Debtor's case.

EXCEPTION: If the plan provided for the cram down of a secured claim and a proof of claim is filed for a different amount than scheduled on Debtor's plan, the Trustee will set up the secured claim amount per the plan and use the proof of claim amount to set up the cram balance as a general unsecured claim.

**b. THE CREDITOR FILING THE CLAIM IS NOT LISTED IN THE PLAN OR SCHEDULES**

**- PRE-CONFIRMATION**

If an administrative, secured or priority claim is filed for a creditor that is not listed in Debtor's schedules or chapter 13 plan, the claim will be set up to be paid unless an objection to the claim or modified plan providing for the claim is filed. If the claim is filed prior to confirmation, Debtor will need to address the claim in the plan.

**- PREVIOUSLY CONFIRMED PLAN**

If the claim is filed after a plan was previously confirmed, Debtor and Debtor's attorney will be notified in writing advising that feasibility issues created by the proof(s) of claim must be addressed within thirty (30) days. If feasibility issues are not addressed, the Trustee will move to dismiss Debtor's case.

**2. SECURED AND NON-DISCHARGEABLE UNSECURED CLAIMS**

**a. SECURED CREDITOR OUTSIDE**

- If a plan provided for a secured creditor to be paid outside the plan and that creditor files a proof of claim, the Trustee will only pay the arrearages listed on the claim. If Debtor disagrees with this treatment, Debtor must object to the claim or modify the plan to provide for treatment of the claim.

**b. NON-DISCHARGEABLE UNSECURED CREDITOR**

- If a plan clearly proposes to pay 100% to timely filed unsecured claims through the plan with 100% of non-dischargeable unsecured claims (i.e. student loans) outside, the Trustee will not pay non-dischargeable unsecured claims through the plan.

### **3. PRIORITY CLAIMS OR SECURED CLAIMS – INTERNAL REVENUE SERVICE/ STATE – COMMONWEALTH TAXING AUTHORITY**

#### **PRE-CONFIRMATION**

If a priority unsecured or secured claims is filed by a Federal, State or Commonwealth taxing authority prior to confirmation indicating Debtor has **failed** to file tax returns for the tax years required under the Bankruptcy Code, the Trustee will not recommend confirmation of the plan until the claim is amended and Debtor demonstrates the required tax returns have been filed with the taxing authority.

#### **PREVIOUSLY CONFIRMED PLAN**

If a priority claim is filed by a Federal, State or Commonwealth taxing authority which reflects that Debtor has failed to file tax returns for the tax years required under the Bankruptcy Code after a plan has been previously confirmed, the Trustee will notify Debtor and Debtor's attorney to address the "estimated" tax liability claim within thirty (30) days. If the claim is not addressed by Debtor or amended by the taxing authority, the Trustee will move to dismiss Debtor's case.

### **4. SECURED MORTGAGE CLAIMS - LOAN MODIFICATION CONTEMPLATED IN PLAN**

#### **a. LOSS MITIGATION PROGRAM**

If a plan proposes to cure all pre-petition mortgage arrears by entering the loss mitigation program in order to obtain a loan modification, any claim for pre-petition mortgage arrears filed by the mortgagee will be set up by the Trustee but will not receive a distribution, pending the outcome of loan modification efforts. Debtor will need to modify the plan to provide for the claim if a loan modification is denied.

[Exception: If a plan provides for partial payment of the pre-petition mortgage arrears pending the outcome of a loan modification, the Trustee will disburse in accordance with the plan. Debtor will need to modify the plan and provide for the remainder of the arrears claim if the loan modification is denied].

#### **b. LOAN MODIFICATION – OUTSIDE**

If a plan proposes to cure all pre-petition mortgage arrears through a loan modification, outside the plan, Debtor will need to demonstrate that an application for loan modification has been filed with the affected mortgage creditor prior to confirmation. If a claim for pre-petition arrears is filed by the mortgagee, the Trustee will set up the claim but not disburse pending outcome of the loan modification, entry of an order modifying Debtor's previously confirmed plan or an order vacating the automatic stay is entered in favor of the mortgagee.

[Once loan modification order is entered the mortgage creditor at issue must file an amended proof of claim reflecting the terms of the loan modification.]

**5. SECURED CLAIMS – SURRENDERED PROPERTY  
PRE-CONFIRMATION/PREVIOUSLY CONFIRMED PLAN**

If a creditor files a secured claim pertaining to a property that is being surrendered through the plan, the Trustee will not disburse on the secured claim.

[An unsecured deficiency claim relating to surrendered property will be paid in accordance with the treatment provided to unsecured creditors under a plan.]

**6. ALL CREDITORS: SECURED, PRIORITY AND UNSECURED**

A creditor or someone on creditor's behalf must file a proof of claim in order for the creditor to receive a distribution under the plan.

[The Trustee will not file a proof of claim on behalf of a creditor.]

**7. DUPLICATE CLAIMS**

If any creditor files a duplicate proof of claim, the Trustee will notify the creditor to withdraw the duplicate claim. If the creditor does not address the duplicate claim within thirty (30) days, the Trustee will file a motion to strike the duplicate claim.

**8. LATE FILED CLAIMS**

If a creditor files a proof of claim after the applicable bar date, the claim will be set up and placed on reserve. Debtor or Debtor's attorney must promptly move to object to the late filed claim.

[Unsecured creditors not filing a claim may not receive a distribution in the case. If the creditor believes that other treatment is warranted the creditor must obtain an order of the court providing for the treatment of the claim and modification of the plan as may be warranted.]

Issued: May 2016