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United States Bankruptcy Court
Eastern District Of Louisiana
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January 19, 2011

Mr. Peter G. McCabe
Secretary of the Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
Washington, D.C. 20544

Re: Form B10 (Attachment A(12/1) publication draft-Mortgage Proof of Claim Attachment

Dear Mr. McCabe and Members of the Committee:

I commend the Committee on a tremendous step forward in passing rules which clarify the calculation of pre and post petition claims owed to mortgage lenders. I am heartened by your efforts and believe they will make a significant impact for the better in the judicial process. I would like to comment, however, on the mortgage proof of claim attachment to implement the rules you have drafted. While the draft is very good, and better than what exists today, with slight improvement, it could eliminate or sufficiently reduce litigation over challenges to mortgage loan proofs of claim. This will be of particular benefit to both lenders and debtors but also the courts through saved judicial resources. I respectfully request that two sections of the form be reviewed, sections 2 and 3.

Part 2 Statement of Prepetition Fees, Expenses and Charges

This chart is a good itemization of the total outstanding charges or costs claimed by the lender. However, it does not provide sufficient information for a borrower to reconcile his account with that of the lender. This is because the timing of a payment, charge, or assessment on a loan is critical to the calculation of the amounts due. So without a history of payment and assessment in date order, one cannot determine where, or if, a problem exists.

Prior to bankruptcy, many lenders do not give the borrower notice of the imposition of fees or charges against a borrower's account. Thus, payments on the loan may be applied to satisfy fees, charges or costs rather than principal and interest making it difficult for a borrower to account for the amounts claimed. For example, if an installment is completely used to satisfy outstanding fees or costs, the lender will report that the loan is past due for the installment due that month. The account will not reflect any outstanding fees or costs because they have been satisfied with the last

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installment payment. The borrower, however, has proof of payment for the installment and therefore challenges the proof of claim. This begins a time consuming and costly process only satisfied when the lender produces an accounting of the installment's application to other valid charges. Thus the problem is not a missing payment as the borrower assumes, but the imposition of additional charges or fees which then also need to be reviewed.

A simple excel type worksheet of the loan's history would back up the calculations in section 2 and provide sufficient detail to a debtor so that both lender and debtor can quickly identify any problems that may exist. In many cases it will enable counsel to come to the correct calculation without court intervention. Attached is a format that is easy to read and provides sufficient information on the timing and reason for a charge, as well as the application of payment. It has worked very well in my court to date.

As each payment is made, the date and amount are recorded. Then the payment's application is divided among the four (4) categories shown (principal, accrued interest, escrow and charges). Any charges to the account are recorded as made on the date assessed. The comment section provides a place for identification, i.e., attorneys' fees, BPO or appraisal costs, inspection fee, etc., or explanation. The amortization of the loan can be tracked by all to determine if 1) all payments have been received and applied; 2) the amount, timing and type of charge or cost levied against the account; 3) the amount placed in escrow and deductions made against escrow by date, amount and type; and 4) the outstanding principal, interest, escrow and fee/cost balances. While any loan could have an extensive history, experience shows that most debtors obtain their loans within five (5) years of filing, a relatively short window of time to research and report.

The amounts reflected on the ledger can also be automated to fill in Parts 2 and 3.

Part 3 Statement of Amount Necessary to Cure Default as of the Petition Date:

Part 3 is a sufficient summary of the prepetition amounts owed but is lacking in the calculation of past due escrow balances. To simplify, the amounts reflected should only include the past due, prepetition principal and interest portions of installments. Escrow balances should be calculated through a separate method. Again, the one I have ordered for use has been accepted by all lenders and is simple to implement. It is also compliant with RESPA.

<u>Escrow charges</u>	<u>Amount</u>	<u>Date paid</u>	<u>Mo amt</u>	<u>Mos to petition date</u>	<u>Total due</u>
Hazard Ins	\$A	X/X/XX	A/12=M	X/X/XX-Petition date=N	M*N
Flood Ins	\$B	X/X/XX	B/12=O	X/X/XX-petition date=P	O*P
Taxes	\$C	X/X/XX	C/12=Q	X/X/XX-Petition date=R	Q*R
Total			S		T

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The two (2) months worth of escrow payments allowed under RESPA is calculated:
 $[(A + B + C)/12] \times 2 = U$

$U + T = \text{Catch Up Escrow Payments}$

The actual escrow balance on petition date minus the Catch Up Escrow Payments ($U + T$) = escrow balance on proof of claim

The debtor's postpetition escrow account should begin with a balance equal to the Catch Up Escrow Payments ($U + T$).

$S =$ new monthly postpetition escrow payment added to postpetition installments of principal and interest

Many lenders have reviewed this calculation and found it to be correct. It does assume that the past due amounts owed for escrow charges and missed prepetition escrow payments are reflected on the proof of claim as part of the arrearage to satisfy post petition.

This method stabilizes a debtor's monthly installment and avoids a large and precipitous increase in the amount due post petition. If a lender attempts to collect the entire past due escrow in the months immediately following a filing, very often the payment rises to such a level that future default is certain or a cure is impossible. By spreading the past due amount over the plan life, a manageable repayment of the default is possible. Since most loans allow a lender to apply the first dollars received to outstanding escrow defaults, often a lender can recoup its advances quickly from the first monies received from a chapter 13 trustee.

Thank you for the opportunity to comment on your proposals. If possible, I would like to address the Committee on the issues presented and any others my letter may raise.

Sincerely,

Elizabeth W. Magner

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LOAN HISTORY ATTACHMENT TO MORTGAGE PROOF OF CLAIM

Debtor name
Case No:

Date	Amt. Pd	Application				Charges/ Costs/ Fees			Total O/S				Comments
		Principal Pd	Int. Pd	Escrow Pd	Other Pd	Late Fee	Escrow Chg	Other	Prin.	Int.	Escrow	Other	