

Proof Of Claim In A Bankruptcy Case

You probably did not take a bankruptcy course in law school, and you probably thought you would not need to know bankruptcy law in practice. Well, you're probably right, and if you did run into a bankruptcy matter, you could and should consult or refer the matter to a bankruptcy attorney. However, because you may not have the resources, time and/or option to consult with a bankruptcy attorney, are faced with a matter where your client has a claim against a person or entity who has filed for bankruptcy, and wish to file a Proof of Claim as a creditor in the bankruptcy case, this short article will attempt to provide you with the background and foundation in which you may build your knowledge in filing a Proof of Claim. Because the practice of bankruptcy, like other specializations, is intricate and complex, this short article can and will only provide you with some of the basics in filing your first Proof of Claim.

Do I have a claim in the bankruptcy case?

To answer this question, you need to determine if your claim is a "claim" as defined under the Bankruptcy Code. The definition of "claim" is significant, among other reasons, because (1) "a claim is the vehicle by which creditors recover money owed to them from property of the debtor's estate and (2) only claims can be discharged in a bankruptcy case". Personal and Small Business Bankruptcy Practice in California (2004), §7.2, p. 248 of Chapter 7 by Timothy J. Yoo.

The term "claim" is defined under 11 U.S.C. §101(5) of the Bankruptcy Code, which provides as follows:

(5) "claim" means -

(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or

(B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured;

You may need to look at other sections and/or definitions of the Bankruptcy Code and research case law to ultimately determine if you have a "claim" and what type of claim(s) you have in your specific case. There are also treatises and practice guides which may help you answer your questions, such as *Colliers On Bankruptcy and Personal and Small Business Bankruptcy Practice in California (2004)* by J. Scott Bovitz, et al. (Published by CEB of California). These authorities will help you determine if you have a claim, whether you have a secured or unsecured claim, and what type of secured or unsecured claim you may have. However, before you delve further into your first proof of claim, make sure that the deadline to file a proof of claim has not passed.

What is the deadline to file a proof of claim?

Before trying to determine if and how you should file a proof of claim, you should make sure that the deadline to file has not passed and if not, that you have given yourself enough time properly research and prepare a proof of claim. The deadline for filing a proof of claim in a Chapter 7 or Chapter 13 case is called the "claims bar date" or the "bar date". See *Personal and Small Business Bankruptcy Practice in California (2004)*, §7.30, p. 266 of Chapter 7 by Timothy J. Yoo. For Chapter 7 or Chapter 13 cases, all proofs of claims must be filed within 90 days after the initial meeting of creditors under 11 U.S.C. § 341(a). *Id.* This initial meeting is sometimes also called the 341(a) meeting.

There are five exceptions to the 90-day bar in Chapter 7 and Chapter 13 cases. (For a detailed discussion of the five exceptions see §7.31 of *Personal and Small Business Bankruptcy Practice in California*). Generally, in Chapter 11 cases the bar date for filing proofs of claim is set by the court, typically on motion by the debtor in possession. See Federal Rule of Bankruptcy Procedure 3003(c) and §7.32 of *Personal and Small Business Bankruptcy Practice in California*.

Where can I find the claims bar date?

If you are already listed as a creditor on the debtor's schedules, you should have received a notice of the claims bar date, if one was set. If you did not receive notice of the claims bar date, you can find it on-line using the World Wide Web. Like other Federal Courts in California and other jurisdictions, the Bankruptcy Court has, among other things, the docket of the main bankruptcy case, the docket of adversary proceeding(s) in that bankruptcy case, and the claims register of a pending bankruptcy case on-line. Such information is accessible on the World Wide Web through the Bankruptcy Court "PACER" system.

The Bankruptcy Court "PACER" system is not free. You must register with "PACER" and pay for it to access its information. A "PACER" account with the District Court allows you access to the Bankruptcy Court "PACER" system. Once you are on the Bankruptcy Court "PACER", enter the bankruptcy case number to access your case. You may also try searching for your case by entering, among other things, the debtor's name. If you cannot access your case, double check that you are searching for your case in the correct PACER system. Bankruptcy cases in the Central District may be filed in Los Angeles, Santa Ana, Riverside, Northern Division or San Fernando Valley, and each of these filing locations have their own respective PACER.

When you have accessed your case, click on the button for "Claims" to access the claims register. Once the claims register page has appeared, the claims bar date, if any, should be at the top of the page. The Bankruptcy Court PACER system for the Central District can be accessed through the Central District Bankruptcy Court website at <http://www.cacb.uscourts.gov>. Among other ways, you may find the "webPACER" option under the "QUICK FIND" menu of the Bankruptcy Court website.

What if the deadline to file a proof of claim has passed?

If you fail to timely file a proof of claim, you may file a motion requesting the Bankruptcy Court to permit the claim to be filed late. Under Rule 9006(b)(1) of the Federal Rules of Bankruptcy Procedure, the Bankruptcy Court may grant such a motion if the failure to file the proof of claim on time was a result of "excusable neglect". See *Personal and Small Business Bankruptcy Practice in California (2004)*, §7.33 of Chapter 7 by Timothy J. Yoo.

Why file a proof of claim?

By filing a proof of claim in the Bankruptcy Case, a creditor asserts its right to receive a distribution from the bankruptcy estate, if any. However, filing a proof of claim does not guarantee a distribution to the creditor. A proof of claim may be objected to and disallowed in whole or in part, and if there are no assets in the bankruptcy estate, then even if a proof of claim was valid, a creditor would receive nothing on its claim.

Be aware that unsecured creditors in Chapter 7 and Chapter 13 cases must file a proof of claim in order to be entitled to receive estate distributions. See Federal Rule of Bankruptcy Procedure 3002(a) and *Personal and Small Business Bankruptcy Practice in California (2004)*, §7.26 of Chapter 7 by Timothy J. Yoo.

Should I file a proof of claim?

Although you may have a valid claim in a Bankruptcy Case and be entitled to file a proof of claim, you should first research the potential risks for creditors in filing a proof of claim. As summarized in *Personal and Small Business Bankruptcy Practice in California*, these risks include "(1) submitting the creditor to the jurisdiction of the bankruptcy court, (2) giving the debtor and other creditors the right to conduct discovery regarding the creditor's claim, and (3) waiving the right to a jury trial." *Personal and Small Business Bankruptcy Practice in California (2004)*, §7.26 of Chapter 7 by Timothy J. Yoo. Thus, you clearly should adequately research and/or consult a bankruptcy attorney if you have any questions or doubts.

Make sure you properly prepare the proof of claim.

Federal Rule of Bankruptcy Procedure 3001 sets forth the requirements for preparation of a proof of claim. A proof of claim must be filed on or substantially conform to Official Form 10. See Personal and Small Business Bankruptcy Practice in California (2004), §7.35 of Chapter 7 by Timothy J. Yoo. A copy of the form proof of claim maybe download from the Bankruptcy Court Website stated above. If a claim includes pre-petition interest or other charges such as attorneys fees, the claim must provide a detailed breakdown of the interest and charges. Id.

In addition, a summary sheet should be attached to the proof of claim showing how the total amount of a claim was computed. Id. If a claim is based on a writing, you must file a copy of the writing as an attachment to your proof of claim. See Federal Rule of Bankruptcy Procedure 3001(c); Id. at §7.37.

Who should I serve the proof of claim upon?

A copy of the filed proof of claim should be served on the debtor and any trustee appointed in the case so that you may give notice of the claim to the debtor and the trustee.

Make sure your proof of claim has been correctly filed.

To be on the safe side, after you have filed your proof of claim, you should check to see if your proof of claim has been properly registered by the Bankruptcy Court. To do so, you need to get a copy of the claims register or access the claims register through the PACER system, as explained herein. Once you access the claims register, check to see if your claim is on the register and also check to see if the details of your claim have been properly reflected on the register, such as the amount of your claim and the type of claim.