

UNITED STATES BANKRUPTCY COURT  
 EASTERN DISTRICT OF MISSOURI  
 THOMAS F. EAGLETON U.S. COURTHOUSE  
 111 SOUTH TENTH STREET-FIFTH FLOOR NORTH  
 ST. LOUIS, MISSOURI 63102

**BARRY S. SCHERMER**  
 CHIEF UNITED STATES BANKRUPTCY JUDGE

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February 21, 2012

Mr. Peter G. McCabe  
 Secretary  
 Committee on Rules of Practice and Procedure  
 Administrative Office of the U.S. Courts  
 One Columbus Circle  
 Washington, DC 20544

Re: Attachment A to Official Form B10 (Proof of Claim) - Escrow Arrearages

Dear Peter:

I write to bring to your attention an apparent glitch in Official Form B 10's Attachment A that went into effect on December 1, 2011 to effectuate the new provisions of Fed. R. Bankr. P. 3001 that also became effective on the same date. This came to our attention following discussions with attorneys that represent mortgage claimants in our Court.

It appears that the intention of the form is to have the addition of Part 1 and Part 2 on Attachment A equal the "Amount of Secured Claim" on the face of the 1310 proof of claim form. Prior to the introduction of Attachment A, the Amount of Secured Claim would be the total payoff amount owed to the mortgage lender. Because the "escrow shortage" reflected on Attachment A, Part 2, Line 13 is a future projection and not a component of the mortgage lender's secured claim, an incorrect total amount may be reflected on the Proof of Claim form's Amount of Secured Claim if the mortgage lender simply carries the total from Part 2 of Attachment A though to the Proof of Claim form.

Here is a real-world example of a payoff that a mortgage lender provided to its attorney in our district.

Principal balance:	\$106,048.23
Interest:	2,134.67
Late Charges:	105.84
Property Inspections:	13.50
Escrow Balance:	<u>170.10</u>
Total:	\$108,132.14

Because an escrow balance is a moment-in-time dollar amount which will be used in the future to fund amounts due, it is neither a refund amount nor an overage due to the borrower, and, therefore, it is not an amount that should be included in the payoff or the "Amount of Secured Claim."

Our example account's arrearages are reflected as follows:

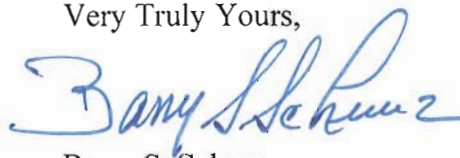
Payments 3 @ \$978.84:	\$2,936.52
Late Charges:	105.84 (reflected in Line 1 of Attachment A, Part 2)
Inspection:	13.50 (reflected in Line 10 of Attachment A, Part 2)
Escrow Shortage:	<u>1,199.22</u> (reflected in Line 13 of Attachment A, Part 2)
Total:	\$4,255.08

For Part 3 of Attachment A, which supplements this letter, the math works as planned. All of the amounts copied from Part 2 are added to the installments due to equal the amount of the arrearages. However, the addition of Part 1 and Part 2 creates a total payoff of \$109,331.36. This is because the escrow shortage reflected in Part 2 is added. Just as the escrow balance would not be subtracted from the payoff, an escrow shortage, which is a future projection, would never be added to the payoff. Before Attachment A went into effect, mortgage lenders would simply provide the current payoff (sans the "escrow shortage") in the proof of claim form, and then provide the escrow amount later once it had changed from a projected number to an actual amount due.

This situation has led to confusion amongst members of our bankruptcy bar. Some practitioners have modified Attachment A, particularly Line 13 of Part 2, to include a statement to the effect that the escrow shortage amount was not used in the calculation of the "Amount of Secured Claim" showing on the face of the B10 Proof of Claim Form. There is also concern that providing the projected amount for an "escrow shortage" could draw unnecessary claim objections from trustees before the actual escrow amount is firmed up.

I raise these issues so that a modification to the form can be considered to remedy this situation, or so that clarification can be provided in the forms' instructions or committee notes in the event that we are not correctly interpreting the forms. Please contact me with any questions or comments.

Very Truly Yours,



Barry S. Schermer,  
Chief Judge, United States Bankruptcy Court

## Mortgage Proof of Claim Attachment

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 Bankruptcy Rule 3001(c)(2).

Name of debtor: \_\_\_\_\_ Case number: \_\_\_\_\_

Name of creditor: \_\_\_\_\_ Last four digits of any number you use to identify the debtor's account: \_\_\_\_\_

### Part 1: Statement of Principal and Interest Due as of the Petition Date

Itemize the principal and interest due on the claim as of the petition date (included in the Amount of Claim listed in Item 1 on your Proof of Claim form).

1. Principal due

2. Interest due	Interest rate	From mm/dd/yyyy	To mm/dd/yyyy	Amount
				\$ _____
				\$ _____
				+ \$ _____

Total interest due as of the petition date \$ \_\_\_\_\_ Copy total here ▶ (2) + \$ \_\_\_\_\_

3. Total principal and interest due

### Part 2: Statement of Prepetition Fees, Expenses, and Charges

Itemize the fees, expenses, and charges due on the claim as of the petition date (included in the Amount of Claim listed in Item 1 on the Proof of Claim form).

Description	Dates incurred	Amount
1. Late charges		(1) \$ _____
2. Non-sufficient funds (NSF) fees		(2) \$ _____
3. Attorney's fees		(3) \$ _____
4. Filing fees and court costs		(4) \$ _____
5. Advertisement costs		(5) \$ _____
6. Sheriff/auctioneer fees		(6) \$ _____
7. Title costs		(7) \$ _____
8. Recording fees		(8) \$ _____
9. Appraisal/broker's price opinion fees		(9) \$ _____
10. Property inspection fees		(10) \$ _____
11. Tax advances (non-escrow)		(11) \$ _____
12. Insurance advances (non-escrow)		(12) \$ _____
13. Escrow shortage or deficiency (Do not include amounts that are part of any installment payment listed in Part 3.)		(13) \$ _____
14. Property preservation expenses. Specify:		(14) \$ _____
15. Other. Specify:		(15) \$ _____
16. Other. Specify:		(16) \$ _____
17. Other. Specify:		(17) + \$ _____
18. Total prepetition fees, expenses, and charges. Add all of the amounts listed above.		(18) \$ _____

