

Publications

Client Alert: Effective December 1, 2015, Most Official Bankruptcy Forms will be Replaced with Revised, Reformatted and Renumbered Versions; New Official Forms will be Required in All Bankruptcy Cases

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As part of a modernization project that was begun by the Advisory Committee on Bankruptcy Rules in 2008, most of the Official Bankruptcy Forms will be replaced with substantially revised, renumbered and reformatted versions, effective December 1, 2015 (New Forms). The New Forms were approved by the Judicial Conference on September 17, 2015.

The goal of this modernization project has been to simplify the language within the forms in order to make them more understandable for attorneys and *pro se* parties. In turn, the hope is that these New Forms will generate more complete and accurate information for those involved in bankruptcy cases. In addition, the New Forms, effective December 1, 2015 are designed to work with scheduled enhancements to the federal bankruptcy courts' case opening and electronic case management system. Again, the hope is that in improving the interface between management system technology and the required forms will increase efficiency and reduce the need to produce the same information in multiple formats.

The greatest impact of revisions to the forms is for debtors. The case opening petition New Forms are very different, and the traditional two page petition is now eight pages. The established voluntary (Form B1) and involuntary (Form B5) petition forms now are categorized by type of debtor --individual and non-individual. With the New Forms, there are now five case opening petition forms to choose from: B101 Voluntary Petition for Individuals Filing for Bankruptcy, B401 Petition for Recognition of Foreign Proceeding, B201 Voluntary Petition for Non-Individuals Filing for Bankruptcy, B105 Involuntary Petition Against an Individual, and B205 Involuntary Petition Against a Non-Individual. The Schedules and Summary of Schedules also are separated by debtor-individual and non-individual types and certain Schedules have been combined.

For creditors involved in bankruptcy proceedings, Official Form 410 replaces Official Form B10, Proof of Claim. The proof of claim has been substantially reorganized, and there is a new question requesting information about claims based upon leases. Official Form 410A, the Mortgage Proof of Claim, also has been substantially revised. It now requires the mortgage claimant to provide a loan history revealing when payments were received, how payments were applied, when charges and fees were incurred, and when escrow charges were satisfied. Per the Committee Notes, the loan history “should begin with the first date on which the borrower failed to make a payment in accordance with the terms of the note and mortgage, unless the note was subsequently brought current with no principal interest, fees, escrow payments, or other charges immediately payable.” Since Official Form 410 can be completed through automation, the Committee’s goal is that mortgage claimants may comply with Rule 3001(c)(2)(c) of the Federal Rules of Bankruptcy Procedure with more efficiency and accuracy.

In order to implement and transition to the New Forms, many bankruptcy courts will be shutting down access to electronic filing for a limited time on November 30, 2015 or December 1, 2015. Notice of the shutdown time periods for each of the bankruptcy courts can be found on their websites. The New Forms are required to be used on December 1, 2015, in all cases. The New Forms and an extensive conversion chart showing the new form numbers (Proof of Claim Form B10, is now Form 410) are available at <http://www.uscourts.gov/forms/bankruptcy-forms>. Parties using automated bankruptcy forms, such as petitions or proofs of claim, will need to make sure that their automated systems are updated with the New Forms. If the New Forms are not used for filing, effective December 1, 2015, the filer will be at risk of the bankruptcy court issuing a deficiency notice or not accepting the document for filing.

Whether or not the goals of the Advisory Committee will be obtained through the use of the New Forms is still to be seen. The first step will come with the implementation of the New Forms on December 1, 2015, and once this implementation occurs, more changes are expected within the bankruptcy practice. Most bankruptcy courts are in the process of making modifications and amendments to their local court rules. Further announcements and notices regarding these New Forms and revisions to local court rules may be found on the websites for the bankruptcy courts. We would be happy to discuss any questions that you have regarding these New Forms and how these changes in bankruptcy may impact you.