

GUIDELINES FOR REVIEWING MORTGAGE PROOFS OF CLAIM

The Bankruptcy Code requires standing trustees to examine proofs of claim and object to the allowance of any claim that is improper if a purpose would be served. This duty pertains to all judicial districts, even districts in which local rules or practices expressly provide that debtor's counsel are required to review proofs of claim as part of the representation of their client. If a specific provision of these guidelines conflicts with a local rule, administrative order, or case law, the local rule, administrative order, or case law will control.

For claims secured by a lien on the debtor's residence that are to be paid by the trustee under the plan the trustee must, at a minimum:

1. Verify that copies of documents supporting a perfected security interest are attached to the proof of claim. If the secured creditor/mortgagee fails to attach copies of documents supporting a perfected security interest and the trustee is unable to confirm that the creditor/mortgagee has perfected its security interest, the trustee must take appropriate action.
2. Verify that there is an itemization of the pre-petition fees, costs, and other charges attached to the proof of claim. If the proof of claim does not include an itemization of the fees, costs, and other charges and the trustee is unable to obtain the itemization, the trustee must take appropriate action.
3. Verify whether the proof of claim includes a flat fee for review of the chapter 13 plan prior to confirmation and for preparation of the proof of claim and, if so, whether the fee is reasonable and fairly reflects the attorney's fee incurred. If the trustee determines that the fee is not reasonable, the trustee must object to the claim or take such other action as may be appropriate.
4. Verify that the secured creditor has filed a proof of claim. If no claim has been filed, the trustee must ensure that the mortgagee's claim is not paid or take other action as may be appropriate.
5. If a trustee determines, based on the trustee's facial review of the mortgage proof of claim, that the fees, costs, or charges are material and improper, the trustee must take appropriate action.