

# Kimball, Tirey & St. John LLP

## **Proofs of Claim in Bankruptcy: New Deadlines under FRBP3002**

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Amendments to the Federal Rules of Bankruptcy Procedure (“FRBP”) will take effect on December 1, 2017. They will decrease the time for creditors to file claims in certain bankruptcy cases. While these new deadlines do not affect Chapter 11 cases, creditors will have reduced time in Chapter 7, 12, and 13 cases to file proofs of claim.

### **Secured Creditors Must File Claims**

Currently, unsecured creditors must file proofs of claim, but secured creditors are not required to file proofs of claim.

Effective December 1, 2017, both unsecured and secured creditors will be required to file proofs of claim.

### **70 Day Deadline**

Currently, proofs of claim must be filed 90 days after the date first set for the §341(a) meeting of creditors. As the meeting of creditors is generally set about 28 days after the date the petition is filed, the current deadline gives creditors about 120 days to file their proofs of claim. Effective December 1, 2017, the new deadline to file a claim is within “70 days after the order for relief under that chapter or the date of the order of conversion to a case under Chapter 12 or Chapter 13.” FRBP 3002(c). The rule applies to voluntary Chapter 7, 12, and 13 cases; there are separate rules for all other types of cases. The order for relief is the date of filing of the bankruptcy petition.

This change in deadline increases the burden on creditors because, in many cases, a debtor may not file complete schedules until weeks after the start of the case, delaying notice of the bankruptcy from the clerk of the court. Creditors must take steps to increase their vigilance to properly process any Notice of Chapter (7/12/13) Bankruptcy Case to ensure that their rights are protected.

The new rule does not eliminate the protection provided by 3002(c)(5) which states that if a Notice of No Dividend is given under FRBP 2002(e) in the notice of bankruptcy case, the deadline to file a proof of claim does not start until the bankruptcy trustee gives proper notice of a claims bar date. While most Chapter 7 cases contemplate no distribution to creditors, most Chapter 12 and 13 cases provide for some amount of repayment under the terms of a plan. Therefore, creditors in a Chapter 12 or 13 cases must be very diligent in preparing and filing their claims.

One area that could prove problematic for commercial landlords is the retention and disposition of security deposits. A tenant that rejects the lease and immediately vacates the premises with rent payable for the remaining lease term could place the landlord in the unenviable position of having to claim a secured interest in the deposit with only future rent owing as an unsecured

claim. Current bankruptcy law may require a hearing to establish the rights of deposit retention if the landlord fails to file a proof of claim which asserts the landlord's secured and unsecured claims. Failure to file could provide a Chapter 7 trustee a compelling argument that the landlord must disgorge the deposit and tender the same to the trustee because there is no allowable claim on which the landlord could be paid. Commercial leases routinely permit application of the deposit to future rents, unamortized tenant improvements, commissions or other lease-related debt, all of which may be lost by failing to file the proof of claim. Shortened time to file proofs of claim makes the landlord vulnerable to loss of the deposit. To avoid losing rights, landlords should file proofs of claim within 70 days, when required.

## **Relief?**

The new rule provides creditors with some relief to the 70 day deadline upon a motion to extend the deadline for not more than 60 days from the date the order extending the deadline is entered. FRBP 3002(c)(6). The grounds for the motion to extend the deadline are limited to 1) insufficient notice under the circumstances to give a reasonable time to file a proof of claim because the debtor failed to timely file a list of creditors or 2) the creditor had insufficient notice under the circumstances to give a reasonable time to file a proof of claim because the notice was mailed to a foreign address. This motion can be filed before or after the 70 day deadline expires, but it is uncertain how courts may treat motions filed significantly after the deadline. It is certain that there will be some difficulties with the judicial processing of these motions insofar as if this motion will always require a noticed hearing or if certain bankruptcy courts will adopt forms and expedited procedures to deal with routine filings.

Creditors may file bare-bones or incomplete proofs of claim to comply with the new deadline. Creditors do have the right to amend proofs of claim after filing, but this is not ideal as it will draw attention to the amended claim by the debtor, the trustee, and other interested parties.

Creditors must be aware of their changed obligations under new FRBP 3002 and how to prepare and present their proofs of claims in bankruptcy cases. A knowledgeable bankruptcy and creditor's rights attorney can help creditors with proofs of claim and their rights as a creditor in a bankruptcy case.

*Kimball, Tirey & St. John LLP's collections, creditor's rights, and bankruptcy attorneys routinely represent individuals and entities as creditors in bankruptcy cases and can provide excellent representation at an affordable price. Any questions regarding this article can be directed to Kurt Rifbjerg at [kurt.rifbjerg@kts-law.com](mailto:kurt.rifbjerg@kts-law.com) or Robert Thorn at [robert.thorn@kts-law.com](mailto:robert.thorn@kts-law.com) or by calling (800) 574-5587.*

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