

Form 89 Motion for Order Directing Claimant to Appear for Rule 2004 Examination¹

MOTION

[Caption: Official Form 416A]

Motion for Order Directing [name] Mortgage Company to Appear for Examination and Produce Documents

The Debtor hereby requests, pursuant to Federal Rule of Bankruptcy Procedure 2004, that [name] Mortgage Company be directed to designate an officer, agent, or other person to appear for examination with respect to the proof of claim it has filed in this matter, and to produce the documents requested on Exhibit A attached hereto. In support of this motion, Debtor states as follows:

1. The Debtor filed the instant voluntary petition under chapter 13 of the Bankruptcy Code on [date].

2. [Name] Mortgage Company is the current holder [or servicer] of the mortgage on the debtor's home.

3. [Name] Mortgage Company filed a secured proof of claim in the instant case on or about [date] in the amount of \$105,037.85, claiming an arrearage owed of \$26,315.11. The Attachment A to the creditor's proof of claim lists without explanation various charges in Part 3 under "prepetition fees due." Part 5 of the form contains several entries in the account activity section 5 for "corporate advances" in excess of \$8000.

4. The Debtor disputes the amount claimed as an arrearage on the mortgage account and believes that the amount includes charges that are not authorized by the mortgage contract or are otherwise unlawful. The Debtor also believes that the claim may include postpetition attorney fees that have not been properly disclosed or approved by this Court.

5. The Debtor has attempted to obtain information necessary to evaluate the claim by serving upon [name] Mortgage Company a "**request for information**" under the Real Estate Settlement Procedures Act, 12 U.S.C. section 2605(e) and Regulation X, 12 C.F.R. § 1024.36, but [name] Mortgage Company has not responded.

6. It is necessary for the Debtor to examine a representative of [name] Mortgage Company to obtain an explanation of and documents related to the arrearage claim amount so as to determine whether sufficient grounds exist to object to the claim prior to the confirmation hearing presently scheduled for [date].

WHEREFORE, the Debtor requests that this motion be granted.

¹ If the debtor disputes a mortgage arrearage or other creditor claim, and is unable to obtain necessary information or a response to a request for information (see Form 86, Appx. G.8, *supra*) prior to confirmation, this form may be used to seek an order to conduct an examination of a creditor representative under Fed. R. Bankr. P. 2004. If granted, the debtor should also have a subpoena issued and served in accordance with Fed. R. Bankr. P. 9016.

Date:

[signature]

Attorney for Debtor

EXHIBIT A

Exhibit A

Debtor's Request for Production of Documents Directed to [name] Mortgage

Company

The Debtor, [name], by her counsel, and pursuant to Fed. R. Bankr. P. 2004, makes this request for production of documents directed to [name] Mortgage Company. Defendant is requested to produce the documents described below at the Rule 2004 examination to be held as ordered by the Bankruptcy Court.

DEFINITIONS

1. The term "person(s)" means all entities, and, without limiting the generality of the foregoing, includes natural persons, joint owners, associations, companies, partnerships, joint ventures, corporations, trusts and estates.

2. The term "document(s)" means all written, printed, recorded or graphic matter, photographic matter or sound reproductions, video tapes and/or films, however produced or reproduced, pertaining in any manner to the subject matter indicated, including computer tapes, discs, or other electronically stored data.

3. The terms "you" and "your" refer to [name] Mortgage Company and all agents, employees, officers, and other representatives acting on its behalf.

4. The term "Debtor" refers to [name].

5. The term "[name] law firm" refers to "[name], L.L.C." and all agents, employees, officers and other representatives acting on its behalf.

6. The terms "mortgage" and "mortgages" refer to residential mortgages owned or serviced by [name] Mortgage Company.

7. The term "bankruptcy related fees" refers to any fees or other charges billed, assessed or charged to mortgagors and/or their mortgage accounts in connection with or as a result of the bankruptcy filing of the mortgagor.

8. The terms "and" and "or" shall be interpreted conjunctively and disjunctively, to give the interrogatories the broadest interpretation.

9. The singular shall include the plural, and the plural shall include the singular.

Document Requests

1. All documents sent to the Debtor that relate to your purchase or acquisition of the Debtor's mortgage or of the servicing rights of the Debtor's mortgage.

2. All documents that you received or sent relating to the Debtor and/or her mortgage account.

3. All documents, by type, that you sent or received on a regular periodic basis (weekly,

monthly, annually, and so forth) relating to the Debtor's mortgage.

4. All documents, including servicing guidelines, handbooks or other manuals, which evidence how you protected your security interest as a mortgagee in regard to the Debtor's mortgage.

5. All documents that relate to or constitute a file maintained by you with respect to the mortgage and/or note signed by the Debtor, including, but not limited to, any account statements, correspondence, communication logs, and other information with respect to the Debtor's mortgage and/or loan.

6. Documents evidencing the application of each payment the Debtor made on her mortgage and/or loan.

7. Documents evidencing each assessment of interest, fees and/or other charges on the Debtor's mortgage account.

8. Documents identifying all formulas and/or calculations used to determine the amount of any fees and/or other charges assessed, imposed or charged to the Debtor mortgage account to protect your security interest as a mortgagee.

9. Documents identifying all formulas and/or calculations used to determine the amount of any bankruptcy related fees charged to the Debtor.

10. All documents that refer to, reflect, or concern each assessment or addition of any bankruptcy related fees to the Debtor's mortgage account.

11. All documents that refer to, reflect, or concern communications between you and the [name] law firm in regard to the Debtor and/or the Debtor's mortgage.

12. All documents that refer to, reflect, or concern communications between the [name] law firm and the Debtor.

13. All documents that constitute, refer to, or concern any agreement or other understanding between you and the [name] law firm concerning work performed or to be performed by the [name] law firm for you or on your behalf.

14. All documents that refer to, reflect, or concern the work performed by the [name] law firm concerning the Debtor and/or Debtor's mortgage.

15. All documents that refer to, reflect, or concern any pleading, proof of claim, or other document filed by the [name] law firm in the Debtor's bankruptcy cases.

16. All documents that refer to, reflect, or concern the payment of any fees to the [name] law firm concerning the Debtor and/or Debtor's mortgage.

17. All documents related to and leading up to your decision to assess bankruptcy related fees on the Debtor's mortgage without seeking bankruptcy court approval including, *inter alia*, all reports, studies, memoranda, organizational minutes, files and notes discussing this issue.

18. All documents related to your determination that it was not required to seek bankruptcy court approval before assessing bankruptcy related fees on the Debtor's mortgage including, *inter alia*, all reports, studies, memoranda, organizational minutes, files and notes discussing this issue.

19. All documents related to your implementation of policies concerning the assessment or collection of bankruptcy related fees including, *inter alia*, all reports, studies, memoranda, organizational minutes, files and notes discussing this issue.

20. A sample of all form notices, statements or other documents that are or have been used to notify mortgagors that they are or have been assessed bankruptcy related fees.

21. A sample of all form notices, statements or other documents that are or have been sent to mortgagors in an attempt to collect bankruptcy related fees.

22. All documents identifying past and present policies and procedures related to the assessment or collection of bankruptcy related fees.

23. All documents, including reports, studies, memoranda, organizational minutes, files and notes addressing the assessment or collection of bankruptcy related fees.

24. Documents identifying all system(s) that you use or have used, at any time from [*date*] to the present, to file documents you receive and/or send relating to each of the mortgages you own or service.

