

**COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544**

KAREN E. SCHREIER
CHAIR

LESLIE J. ABRAMS
CHRISTINE M. ARGUELLO
SARA DARROW
PEDRO A. DELGADO HERNANDEZ
PAUL ENGELMAYER
MARY P. GORMAN
ROBERT E. GROSSMAN
CATHARINA HAYNES

LAUREL M. ISICOFF
THOMAS L. LUDINGTON
WILLIAM L. OSTEEN, JR.
EDUARDO C. ROBRENO
BRENDAN L. SHANNON
N. RANDY SMITH
JOHN E. WAITES

January 15, 2019

Honorable Dennis Dow
United States Bankruptcy Court
Charles Evans Whittaker
United States Courthouse
400 East Ninth Street, Room 6562
Kansas City, MO 64106

Dear Judge Dow:

I write on behalf of the Committee on the Administration of the Bankruptcy System (Bankruptcy Committee) to request that the Advisory Committee on Bankruptcy Rules (Rules Committee) consider creating a Director's Bankruptcy Form for an application for withdrawal of unclaimed funds, instructions, and proposed order.

In December 2017, the Bankruptcy Committee established an Unclaimed Funds Task Force (Task Force) to explore options for improving the judiciary's management of unclaimed funds attributable to bankruptcy courts. The Task Force is comprised of district and bankruptcy judges, clerks of court, and liaisons from the Bankruptcy Administrators program and the Department of Justice Executive Office for United States Trustees. The Task Force developed several proposals and made recommendations to the Bankruptcy Committee at its December 2018 meeting, including the recommendation set forth herein.

Volume 13, Chapter 10 of the *Guide to Judiciary Policy (Guide)* provides guidance to courts regarding documentation needed to support the disbursement of unclaimed funds. *Guide*, Vol. 13, Ch. 10, §§ 1020.50, 60. While courts adhere to the policies set forth in the *Guide*, they have developed their own instructions and forms locally for the withdrawal of unclaimed funds. As a result, there are variations in

procedures among the courts. National creditors must comply with all variations in procedures, which serves as a disincentive for claiming their funds. A recent survey of the bankruptcy clerks and their staff found that 84 percent of respondents were supportive of achieving more standardization in instructions and forms nationally.

The Task Force developed a draft application for withdrawal of unclaimed funds, instructions, and proposed orders, that would standardize the process for claimants to seek to withdraw unclaimed funds and for bankruptcy courts to process and approve such applications. Implementing standardized forms would make it easier for claimants to withdraw unclaimed funds, thereby helping to reduce the increasing unclaimed funds balance and improve bankruptcy courts' management of unclaimed funds.

The Bankruptcy Committee recommends that the Rules Committee consider adopting the draft Director's Bankruptcy Form for the application, instructions, and proposed orders included in the attachments.

Chief Judge Mary P. Gorman (Bankr. C.D. Ill.), the Bankruptcy Committee liaison to the Rules Committee and a Task Force member, and I are both available should you have any questions or wish to discuss further.

Sincerely,



Karen E. Schreier, Chair

cc: Honorable David G. Campbell
Honorable Stuart M. Bernstein
Honorable Mary P. Gorman
Ms. Mary Louise Mitterhoff
Ms. Michele E. Reed
Ms. Rebecca Womeldorf
Ms. Bridget M. Healy
Ms. Meredith V. Mathis
Mr. Scott Myers

Attachments

UNITED STATES BANKRUPTCY COURT
FOR THE _____ DISTRICT OF _____

Debtor 1:	Case No.:
Debtor 2 (if applicable):	Chapter:

APPLICATION FOR UNCLAIMED FUNDS

1. Claim Information

For the benefit of the Claimant(s)¹ named below, application is made for the disbursement of unclaimed funds on deposit with the court. I have no knowledge that any other party may be entitled to these funds, and I am not aware of any dispute regarding these funds.

Note: If there are joint Claimants, complete the fields below for both Claimants.

Amount:	
Claimant's Name:	
Claimant's Current Mailing Address, Telephone Number, and Email Address:	

2. Applicant Information

Applicant² represents that Claimant is entitled to receive the unclaimed funds based upon:
(check the statements that apply)

- Claimant is the Owner of Record³ entitled to the unclaimed funds appearing on the records of the court.
- Claimant is entitled to the unclaimed funds by assignment, purchase, merger, acquisition, succession or by other means.
- Applicant is Claimant's non-attorney representative (*e.g.*, unclaimed funds locator).
- Applicant is Claimant's attorney.
- Applicant is a representative of the deceased Claimant's estate.

¹ The Claimant is the party entitled to the unclaimed funds.

² The Applicant is the party filing the application. The Applicant and Claimant may be the same.

³ The Owner of Record is the original payee.

3. Supporting Documentation

Applicant has read the court’s instructions for filing an Application for Unclaimed Funds and is providing the required supporting documentation with this application.

4. Service on United States Attorney

Applicant understands that a copy of this application and supporting documentation must be sent to the United States Attorney, pursuant to 28 U.S.C. § 2042, at the following address:

Office of the United States Attorney
_____ District of _____
[Court enters address here]

5. Applicant Declaration

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: _____

Signature of Applicant

Printed Name of Applicant

Address

Telephone: _____

Email: _____

5. Co-Applicant Declaration (if applicable)

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: _____

Signature of Co-Applicant (if applicable)

Printed Name of Co-Applicant (if applicable)

Address

Telephone: _____

Email: _____

6. Notarization

STATE OF _____

COUNTY OF _____

This Application for Unclaimed Funds, dated _____ was subscribed and sworn to before me this ____ day of _____, 20____ by

who signed above and is personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument. WITNESS my hand and official seal.

(SEAL) Notary Public _____

My commission expires:

6. Notarization

STATE OF _____

COUNTY OF _____

This Application for Unclaimed Funds, dated _____ was subscribed and sworn to before me this ____ day of _____, 20____ by

who signed above and is personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument. WITNESS my hand and official seal.

(SEAL) Notary Public _____

My commission expires:

CERTIFICATE OF SERVICE

In accordance with 28 U.S.C. § 2042, the undersigned hereby certifies that on the date designated below, a true and correct copy of the foregoing application with all required documentation was mailed to:

United States Attorney

Names and addresses of all other parties served:

Date: _____

Signature: _____

Name: _____

Address: _____

Instructions for Filing Application for Unclaimed Funds

These template instructions can be modified by a bankruptcy court as needed.¹

Unclaimed funds are held by the court for an individual or entity who is entitled to the money, but who has failed to claim ownership of it. The United States Courts, as custodians of such funds, have established policies and procedures for holding, safeguarding and accounting for the funds.

I. Searching Unclaimed Funds

To search unclaimed funds, use the Unclaimed Funds Locator. Select _____ (name of court) from the dropdown list and enter the applicable search criteria. If you need access to a computer to perform the search, you may use the court's public computer terminal(s) located at _____. Additionally, you may contact the Clerk's office at xxx-xxx-xxxx to verify unclaimed funds balances.

Note to court: If your court is not using the Unclaimed Funds Locator, please specify how your court is making unclaimed funds data accessible to the public.

II. Filing Requirements for Disbursement of Unclaimed Funds

a. Application for Unclaimed Funds

Any party who seeks the release of unclaimed funds must file an Application for Unclaimed Funds in substantial conformance with the court's standard application form and serve a copy of the application on the United States Attorney for the _____ District of _____. For purposes of this procedure, the "Applicant" is the party filing the application, and the "Claimant" is the party entitled to the unclaimed funds. The Applicant and Claimant may be the same.

b. Supporting Documentation

1. Payee Information

Funds are payable to the Claimant. In conjunction with the Application for Unclaimed Funds, Claimant's tax identification number (TIN) must be provided to the court on a certification form signed by the Claimant to whom funds are being distributed.

A. Domestic Claimant

A Claimant within the United States may use the AO 213 or W-9 certification form. If a Claimant wants payment via Electronic Funds Transfer (EFT), then the AO 213 form must be used.

¹ The notes to courts appearing in italics are for internal use only and are intended to be removed in a court's final version of the instructions.

B. Foreign Claimant

A foreign Claimant may use a W-8 certification form accompanied by the AO-215 form.

If you have problems completing a form, please contact the Clerk's office at xxx-xxx-xxxx.

Note to court: While making funds payable to the Claimant is included as the default language, specify above how funds are payable in your court, if different (e.g., payable jointly to the owner of record and funds locator if authorized by a power of attorney).

2. Additional Supporting Documentation

Requirements for additional supporting documentation vary depending on the type of Claimant and whether the Claimant is represented. Please read the instructions below to identify what must accompany your Application for Unclaimed Funds.

Sufficient documentation must be provided to the court to establish the Claimant's identity and entitlement to the funds. Proof of identify must be provided in unredacted form with a current address. If there are joint Claimants, then supporting documentation must be provided for both Claimants.

A. Owner of Record

The Owner of Record is the original payee entitled to the funds appearing on the records of the court. If the Claimant is the Owner of Record, the following additional documentation is required:

i. Owner of Record - Individual

- a. Proof of identity of the Owner of Record (e.g., unredacted copy of driver's license, other state-issued identification card, or U.S. passport that includes current address); and
- b. A notarized signature of the Owner of Record (incorporated in application).

ii. Owner of Record - Business or Government Entity

- a. Application must be signed by an authorized representative for and on behalf of the business or government entity;
- b. A notarized statement of the signing representative's authority; and
- c. Proof of identity of the signing representative (e.g., unredacted copy of driver's license, other state-issued identification card, or U.S. passport that includes current address).

If the Owner of Record's name has changed since the funds have been deposited with the court, then proof of the name change must be provided.

B. Successor Claimant

A successor Claimant may be entitled to the unclaimed funds as a result of assignment, purchase, merger, acquisition, succession or by other means. If the Claimant is a successor to the original Owner of Record, the following documentation is required:

i. Successor Claimant - Individual

- a. Proof of identity of the successor Claimant (*e.g.*, unredacted copy of driver's license, other state-issued identification card, or U.S. passport that includes current address);
- b. A notarized signature of the successor Claimant (incorporated in application); and
- c. Documentation sufficient to establish chain of ownership or the transfer of claim from the original Owner of Record.

ii. Successor Claimant – Business or Government Entity

- a. Application must be signed by an authorized representative for and on behalf of the successor entity;
- b. A notarized statement of the signing representative's authority;
- c. A notarized power of attorney signed by an authorized representative of the successor entity;
- d. Proof of identity of the signing representative (*e.g.*, unredacted copy of driver's license, other state-issued identification card, or U.S. passport that includes current address); and
- e. Documentation sufficient to establish chain of ownership or the transfer of claim from the original Owner of Record.

iii. Deceased Claimant's Estate

- a. Proof of identity of the estate representative (*e.g.*, unredacted copy of driver's license, other state-issued identification card, or U.S. passport that includes current address);
- b. Certified copies of probate documents or other documents authorizing the representative to act on behalf of the decedent or decedent's estate in accordance with applicable state law (*e.g.*, small estate affidavit); and
- c. Documentation sufficient to establish the deceased Claimant's identity and entitlement to the funds.

Note to court: Your court may choose to tailor these instructions based on the laws in your state.

C. Claimant Represented By Attorney or Funds Locator

If the Claimant is represented by an attorney or funds locator, the following documentation is required:

i. Attorney

- a. Proof of identify of the attorney (*e.g.*, unredacted copy of driver's license, other

state-issued identification card, or U.S. passport that includes current address); and

- b. Documentation sufficient to establish the Claimant's identity and entitlement to the funds, as set forth above.

ii. Funds Locator

- a. Proof of identity of the funds locator (e.g., unredacted copy of driver's license, other state-issued identification card, or U.S. passport that includes current address);
- b. A notarized power of attorney signed by the Claimant (or Claimant's authorized representative) on whose behalf the funds locator is acting; and
- c. Documentation sufficient to establish the Claimant's identity and entitlement to the funds, as set forth above.

c. Certificate of Service

When filing an Application for Unclaimed Funds, the Applicant must include a certificate of service, reflecting service of a copy of the application and supporting documentation upon the U.S. Attorney for the _____ District of _____ at the following mailing address:

Office of the U.S. Attorney
[Court enters address here]

d. Proposed Order

Applicant must provide the court a proposed order in substantial conformance with the court's standard Order for Payment of Unclaimed Funds.

Note to court: This is an option for a court that requires a proposed order in conjunction with an application.

e. Filing the Application

The application, supporting documentation, certificate of service, and proposed order must be mailed to the court at the following address:

U.S. Bankruptcy Court

District of _____
[Court enters address here]

Note to court: Please identify any alternative means for filing (e.g., electronic filing with documents containing personal identifiers restricted from public access).

III. Post-Filing Process

Insert your court's procedure for processing an application here.

Suggested Practice: Any party objecting to the Claimant's request in the application shall, within twenty-one (21) days after service thereof, serve upon the Applicant and other appropriate parties and file with the court an objection to the application. If no objection is filed with the court within twenty-one (21) days after the filing of the application, the application and accompanying documents may be considered by the court without hearing. If the application is deficient, the Clerk's office may contact the Applicant for additional proof of identity or entitlement to the funds.

Note to court: The 21-day objection period is not required by statute or rule; however, various courts have implemented this negative notice practice by local procedure.

IV. Links

Application for Unclaimed Funds

Order for Payment of Unclaimed Funds

AO 213

W-9

W-8

AO 215

