

**Frequently Asked Questions**  
**Volume #4 – Dated March 1, 2006**

**Questions Related to Omnibus Objection #2.**

**What is Omnibus Objection #2?**

Omnibus Objection #1, which was filed approximately January 15<sup>th</sup>, objected to those claims where individuals had submitted duplicate claims or had claimed priority status when they were, in fact, unsecured.

Omnibus Objection #1 dealt only with unsecured claims. If an individual had a claim and categorized part of his or her claim as being secured and part as being unsecured, it was not treated in Omnibus #1. Further, if the amounts reflected in an individual's Proof of Claim differed from the amounts reflected on the Brasota Mortgage books (except that if it were clear on the face that the unsecured Investor were seeking interest), these claims were not included in Omnibus #1.

On the other hand, Omnibus #2 focuses strictly on those situations where an investor filed a Proof of Claim indicating that he had a secured interest in all or in part. If that Proof of Claim included both a secured and unsecured amount, it still is treated in Omnibus #2 as an objection to the entire claim.

The purpose of Omnibus Objection #1 was virtually "house cleaning", allowing us to clear the claims register up so that we could begin working on the claims processing and reconciliation process.

On the other hand, Omnibus #2 actually does challenge investors' claims and, as previously stated, if an investor reflected his claim as being secured on the Proof of Claim, that Proof of Claim is objected to in Omnibus #2. If the Court rules favorably on our objection or if an investor elects to become a member of the unsecured class, that investor will be given status as an unsecured creditor.

**Why aren't the claims of the one large investor and the people she represented included in Omnibus #2?**

This is really for three reasons:

1. That investor brought an action against Brasota Mortgage requiring that we respond to her action, and having brought that proceeding, we actually have the objection to her claim in process.

2. As importantly, there is an instance where that investor did, at some point, have a bonafide escrow agent holding the original notes from the Brasota borrower that was assigned to her (thereby having a better argument that they perfected their security interest).
3. That Investor objected to our Secured Claims Procedures and the judge exempted her and her clients in the Order Granting the Trustee's Secured Claims Procedures Motion. A copy of that Order is enclosed with the Second Omnibus Objection.

### **I have a note from Brasota and a recorded assignment – why and I not secured?**

While we can not give opinions of law, it is our opinion that the note from Brasota and the recorded assignment do not constitute adequate grounds for a secured interest in the underlying note and mortgage. In order to perfect that security interest, the individual must actually be holding the original note from the borrower to Brasota. In lieu of this, the individual may have had a separate arrangement with an escrow agent to hold that note for the benefit of the investor until such time as that note was paid.

Other than for the small group of investors represented by Ms. Balkany in the adversary proceeding, we are unaware of anyone who had an escrow agreement providing that the original note be held on their behalf. No investor to our knowledge had possession of the actual notes from Brasota's borrowers.

### **If I do not feel that your opinion is correct on the possession of the note issue, how would I go about proving otherwise?**

If you feel that you have a secured position, it is necessary for you to respond to Brasota using the response form attached in the package sent with the Second Omnibus Objection **WITHIN 30 DAYS OF RECEIPT**. Give the responses to the questions and pay particular attention to the request for the original note. Once that response is received by us, we in turn ask the Court to set a Court date for a hearing for the Court to determine whether you are entitled to a secured position. You should be aware that it will be necessary for you or your counsel to appear at that hearing and present your case.

### **What if I do not want to appear in Court?**

If you send the response back to us indicating secured status we will, again, schedule a Court hearing – whether you appear or not will be up to you, however, the absence of you or your counsel's presence at a hearing would virtually assure that you would be found to be unsecured.

### **I understand that some of the unsecureds are currently receiving partial distributions. Part of my claim was filed as being unsecured – why am I not included in that distribution?**

Under the Bankruptcy Code, distributions cannot be made until your claim is agreed to or adjudicated. In that your claim was not constituted by both a secured and unsecured portion, it is up

to the Court to adjudicate both portions. If you desire to have your secured claim relegated to unsecured status, simply fill in Page 2 of the response form and send it back to us. Upon receipt of that form, we will report to the Court that that claim has been settled, reduce your secured claim to an unsecured position, and make a payment similar to those made to other unsecured creditors for the entire amount of your claim or what was reflected in the records of Brasota whichever is less.

### **What if I fail to respond within 30 days?**

We will seek a "default" because you failed to respond and we will seek an order automatically re-classifying your claim(s) as an unsecured claim(s).

### **If I do elect to be treated as an unsecured creditor, how much will I receive?**

In that we will be doing a preliminary distribution, and certainly there are questions involved in that matter, please refer to the Questions and Answers for Preliminary Distribution in a separate attachment.

### **What about my interest?**

If the Court finds that you are, in fact, an unsecured claimant, the Bankruptcy Code specifically denies any request for interest. Please remember that virtually all creditors are in the same position regarding interest in that interest payments for all creditors were stopped on the same date, hence an accrual of interest on your loan would be the same of the accrual of interest on everyone else's loan, and accordingly, since we do not have 100% recovery, all investors will suffer pro rata losses of interest.

### **What about those claims where the amounts listed in the bankruptcy schedule differ from the amounts reflected in the Proof of Claim?**

These will be treated in two separate groups:

1. The first group appears to be those claims which requested interest. These claims will be included in an Omnibus Objection #3, objecting specifically to any interest on any claims. There are situations where the amounts claimed differ completely from what is reflected in the Brasota records. We are in the process of attempting to reconcile these, and will probably treat objections to these claims on a case-by-case basis. Generally, where the claims do differ and we cannot reconcile the differences, it will be necessary for the individual claimants to provide us with copies of canceled checks supporting their claims.

### **Question – what is the effect of my giving up my secured claim?**

If you do give up your secured claim, you will receive unsecured investor status, be entitled to preliminary distributions as they are made, and hopefully avoid the additional time and potential expense in proving your claim. As it now stands, if we are correct in our assumption that the

secured claimants do not have a secured status, it would appear that the dividend to be paid to the unsecureds may exceed \$.50 on the dollar. For this reason, it is not like you are giving up your claim but rather agreeing to receive the same as all other unsecured creditors. Obviously the more who agree, the higher the return to the unsecureds.