



SOUTH & ASSOCIATES, P.C.

## MEMORANDUM

**To:** All Western District of Missouri Loan Servicers

**From:** South & Associates, P.C.

**Date:** October 14, 2008

**Subject:** Conduit Payment Local Rule Effective October 1, 2008

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The Western District of Missouri has now followed the District of Kansas in implementing a mandatory conduit payment local rule effective October 1, 2008. Some of the most important requirements for Servicers are as follows:

1. The Local Rule applies to *ALL* real estate loans, regardless if the property is a debtor's principal residence.
2. The Local Rule applies when a debtor is past due on payments or charges when he files his case, other than only the payment due in the month of filing.
3. Servicers **must** file a Proof of Claim before the trustee will disburse post-petition conduit payments. Servicers must also attach an addendum that conforms to the "Addendum to Proof of Claim For Real Estate Claims," a copy of which is attached to this Press Release.
4. The trustee will only disburse FULL monthly conduit payments; he will not disburse partial payments to Servicers.
5. The trustee will begin disbursement immediately upon the filing of a Proof of Claim in the form of Pre-Conformation Adequate Protection Payments, **ONLY** if the debtor's plan provides for an Equal Monthly Amount (EMA).
  - Servicers must carefully review the plan and object as necessary if no EMA is listed
6. The trustee will pay the amount of a monthly payment as listed on Proof of Claim Addendum if listed differently in a debtor's plan.



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7. After a case is filed, the trustee will treat the first two monthly post-petition payments plus a late charge equal to 5% for each payment as a separate payee record known as the "Initial Post-Petition Arrearage."
  - No separate Proof of Claim is necessary
8. Servicers may object to the Initial Post-Petition Arrearage Claim within 30 days of plan confirmation.
9. Servicers may NOT assess late charges to a debtor's loan if that debtor is current on his plan payments to the trustee.
10. Servicers must **file with the court** and serve the trustee, debtor and debtor's counsel **60 days** prior to the effective date of any change to a post-petition payment amount, a "Notice of Payment Change," a copy of which is attached to this Press Release.
  - A party in interest has 30 days to file an objection
  - If a Notice of Payment Change is filed less than 60 days, Servicers must file a separate Proof of Claim for the difference without assessing a late charge
11. Servicers must audit these loans annually, and **file with the court** and serve the trustee, debtor, and debtor's counsel a "Notice of Fees and Costs Incurred," a copy of which is attached to this Press Release, no later than one year after charges are incurred.
  - A party in interest has 30 days to file an objection
  - Failure to file a Notice of Fees and Costs Incurred is deemed a waiver of such charges
12. Upon completion of a debtor's plan, the trustee will file a "Notice of Completion" to deem the debtor's mortgage loan current including all fees, costs and charges.
  - Servicers have 30 days to file an objection

Below is a Comparison of Conduit Payment Rules in Western District of Missouri and District of Kansas.



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<b>Issues</b>	<b>Western District of Missouri Local Rule 3094-1</b>	<b>District of Kansas Standing Order 08-3 (formally 08-1)</b>
<b>When does rule apply?</b>	ALL real estate loans where debtor was in "default" when he filed	Only on principal residence when debtor was in "default" when he filed
<b>Definition of "Default" to trigger rule</b>	Past due payments OR charges	Just past due on principal & interest payments
<b>Does a Proof of Claim ("POC") need to be filed to receive conduit payments?</b>	Yes	Yes
<b>How many post payments are included in the Initial Post-Petition Arrearage Claim?</b>	2 plus late charges	2 plus late charges
<b>Are these Initial Post-Petition Arrearage payments required to be listed in POC?</b>	No	No
<b>When will trustee begin disbursing?</b>	Upon filing of POC AND debtor must list Equal Monthly Amount ("EMA") in plan in order for trustee to disburse pre-confirmation conduit payments	Upon filing of POC. Trustee authorized to disburse pre-confirmation conduit payments
<b>Plan or POC controls amount of monthly payment?</b>	POC	POC
<b>Assess late charges?</b>	Not as long as debtor current on plan payments to trustee	Not clear from language of Rule
<b>Notice of Servicer Change?</b>	No time restriction	45 days before effective servicer name/address change
<b>Notice of Payment Change?</b>	60 days before effective payment change	45 days before effective payment change
<b>FILE WITH COURT Notice of Payment Change?</b>	Yes, and mail copies to parties	No, just mail copies to parties
<b>Notice of Fees and Costs?</b>	No later than 1 year after charges incurred	W/in 30 days after charge incurred
<b>FILE WITH COURT Notice of Fees and Costs?</b>	Yes, but ONLY 1 time annually	No
<b>Loan Transaction History?</b>	No	Submit to parties a 12-mon history on or before 10 <sup>th</sup> of Jan every year during case
<b>Deem Current at Plan Completion?</b>	Yes, 30 days to object	Yes, but objection period not clear from language of Rule



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Please direct all questions or comments to Steven Crouch, Managing Bankruptcy Attorney at South & Associates, P.C. at (913) 663-7633 or [Steven.Crouch@SouthLaw.com](mailto:Steven.Crouch@SouthLaw.com).

Sincerely,

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