



CORPORATE OFFICE ☉ 6363 COLLEGE BLVD., SUITE 100 • OVERLAND PARK, KS 66211-1542 • [P] 913.663.7600 • [F] 913.663.7899

ST. LOUIS OFFICE ☉ 800 MARKET ST., SUITE 1660 • ST. LOUIS, MO 63101-2506 • [P] 314.655.7001 • [F] 314.655.7004

WICHITA OFFICE ☉ 245 N. WACO ST., SUITE 400 • WICHITA, KS 67202-1117 • [P] 316.684.7733 • [F] 316.684.7766

SOUTH & ASSOCIATES, P.C.

## MEMORANDUM

**To:** Kansas Loan Servicers

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

**Date:** March 21, 2008

**Subject:** More Changes in KS Bankruptcy Courts

---

Get ready servicers! The gavel is falling again in the Kansas Bankruptcy Courts, and this time it is an amendment to the Confirmation Order entered in all chapter 13 cases and another Standing Order.

Concerned with debtors successfully completing their chapter 13 plans, only to emerge owing thousands of dollars in fees and charges assessed to the debtors' mortgage accounts while the debtors were in their cases, Kansas bankruptcy judges and trustees have insisted on the following new provision amended to all Confirmation Orders:

*No real estate creditor shall ever assess, charge or collect, from either the debtor or the real estate collateral, any assessments, fees, costs, expenses or any other monetary amounts, exclusive of principal, interest, taxes and insurance, that arose from the date of the filing of the bankruptcy petition to the entry of the Order of Discharge except as may be allowed by court order or an allowed proof of claim.*

This new provision in Confirmation Orders mandates the disclosure of all post-petition fees and charges BEFORE those fees and charges are assessed to a debtor's mortgage account. These amounts must be approved by the Court by either specific order or amended proof of claim before assessment to a debtor's account. While arguably this provision may impermissibly modify the terms of the Security Instrument that allows assessment to the borrower's account for advances made to protect the lender's interest; such a requirement is binding until challenged.

In light of this changing climate, attorneys from South & Associates, P.C., met with the Assistant United States Trustee for the region and all three chapter 13 trustees to discuss their specific concerns with the assessment of post-petition fees to debtors' accounts. Reacting to recent published cases, the trustees adamantly stated their

intention to make an example where post-petition fees and charges had been assessed to a debtor's account absent Court approval.

In furtherance of this push to keep tabs on post-petition accounting of debtors' mortgage loans, the Kansas bankruptcy judges recently circulated a proposed Standing Order to the Kansas bar instituting conduit mortgage payments for the three Kansas divisions. The Standing Order may be effective as early as July 1, 2008; thus, servicers should prepare now for new obligations accompanying the conduit provisions. Such requirements include:

- Servicers must file a Proof of Claim before the trustee will disburse post-petition conduit payments;
- Servicers must notify the trustee, debtor and debtor's counsel 60 days prior to the effective date of any change in post-petition payment amount;
- Servicers must notify the trustee, debtor and debtor's counsel at least 60 days prior to a change in servicer name or address;
- Servicers must notify the trustee, debtor and debtor's counsel within 30 days after any post-petition advance, fee or charge is incurred BEFORE that charge is assessed;
- Servicers must submit to the trustee, debtor and debtor's counsel on or before the 10<sup>th</sup> day of January of every year during the pendency of debtor's chapter 13 a 12-month transaction history of loan;
- Servicers must mail the trustee a copy of ALL correspondence, notices, statements, payment coupons, escrow notices, etc concerning any change in the payment amount;
- Servicers must submit to the trustee, debtor and debtor's counsel an escrow analysis of the debtor's loan within 30 days of the date of debtor's chapter 13 petition filing.

Although not exhaustive, these are just some of the requirements included in the new proposed Kansas Standing Order. This Order will only apply to debtors with a pre-petition default in payments when the chapter 13 case was filed. In addition, this Order will only apply to servicers on the debtor's principal residence.

More information will follow as the Standing Order review process continues. Questions or comments may be directed to Chelsea Herring, Associate Attorney at South & Associates, P.C., at (913) 663-7676 or [Chelsea.Herring@southlaw.com](mailto:Chelsea.Herring@southlaw.com).