

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS
STANDING ORDER 08-4**

**STATEMENTS CREDITORS SHALL PROVIDE TO
CONSUMER DEBTORS WHO ARE DIRECTLY REPAYING
DEBT SECURED BY A MORTGAGE ON REAL PROPERTY
OR A LIEN ON PERSONAL PROPERTY THE DEBTOR
OCCUPIES AS THE DEBTOR'S PERSONAL RESIDENCE**

(a) Purpose

(1) The purpose of this Standing Order is to maintain, to the greatest degree possible, the routine flow of information from secured creditors to debtors with respect to secured loans constituting consumer debt (as that term is defined by [11 U.S.C. §101\(8\)](#)) where the debtor is retaining possession of the collateral and continuing to make the regular installment payments directly to the secured creditor during a bankruptcy case. It is the intent of the order to support the normal issuance of regular monthly statements typically issued by secured creditors to consumer borrowers who are not in bankruptcy and to provide consumer debtors with a creditor contact point so that a debtor can obtain specific information on the status of such loans, as needed.

(2) This order also makes clear that a creditor's good faith attempt to comply with this order in furnishing information to the consumer debtor shall not expose the secured creditor to claims of violating the automatic stay.

(3) This Standing Order applies in Chapters 7, 12 and 13; applies only to consumer loan relationships; and applies only as long as the debtor is in bankruptcy and protected by the automatic stay.

(b) Scope: Consumer Debts Secured by a Mortgage on Real Property, or Secured by Personal Property that the Debtor Occupies as the Debtor's Personal Residence.

(1) For purposes of this subsection, the term "Mortgage Creditor" shall include all creditors whose claims represent consumer debts secured in whole or in part by a mortgage

on real property, including a personal property interest in manufactured housing, the debtor occupies as the debtor's personal residence.

(2) Except as provided in paragraph (3) below, and except as provided in Standing Order 08-3*, if the Mortgage Creditor provided monthly statements to the consumer debtor pre-petition, the Mortgage Creditor shall provide monthly statements to all Chapter 12 and Chapter 13 consumer debtors who have indicated an intent to retain the Mortgage Creditor's collateral in their Chapter 12 or 13 plan, and to all Chapter 7 consumer debtors whose Statement of Intent indicates an intent to reaffirm the debt secured by the Mortgage Creditor's collateral. Such statements shall be provided unless and until the Mortgage Creditor has been granted relief from the automatic stay under 11 U.S.C. § 362(d). The monthly statements shall contain at least the following information concerning post-petition mortgage payments to be made outside the plan:

- (A) The date of the statement and the date the next payment is due;
- (B) The amount of the current monthly payment;
- (C) The portion of the payment attributable to escrow, if any;
- (D) The post-petition amount past due, if any, and from what date;
- (E) Any outstanding post-petition late charges;
- (F) The amount and date of receipt of all payments received since the date of the last statement;
- (G) A telephone number and contact information that the debtor or the debtor's attorney may use to obtain reasonably prompt information regarding the loan and recent transactions; and
- (H) The proper payment address.

* D. Kan. Bk S.O. 08-3 has been revised and the relevant provisions have been adopted in D. Kan. Bk S.O. 11-3.

(3) If pre-petition the Mortgage Creditor provided the debtor with “coupon books” or some other pre-printed, bundled evidence of payments due, the Mortgage Creditor shall not be required to provide monthly statements under subsection (2) of this Section. The Mortgage Creditor shall, however, be required to supply the debtor with additional coupon books as needed or requested in writing by the debtor.

(4) The Mortgage Creditor shall provide the following information to the debtor upon the reasonable written request of the debtor:

- (A) The principal balance of the loan;
- (B) The original maturity date;
- (C) The current interest rate;
- (D) The current escrow balance, if any;
- (E) The interest paid year to date; and
- (F) The property taxes paid year to date, if any.

(5) If the case is a Chapter 12 or 13 case where the secured consumer debt is not modified by or paid through the Plan, and the Mortgage Creditor believes the debtor to be in default, the Mortgage Creditor shall send a letter alleging such default to the debtor and debtor’s attorney upon any perceived or actual default by the debtor not less than 10 days before taking any steps to modify the automatic stay. Such written notice of default shall not be required in instances where the debtor has caused to be filed with the Court a plan or plan modification in which the debtor makes known their intent to abandon or surrender the property securing the Mortgage Creditor’s claim.

(c) Form of Communication; Issuance of Monthly Statements is not a Stay Violation; and Motions to Show Cause

(1) For the purposes of this Order, creditors shall be considered to have sent the requisite documents or monthly statements to the debtor when the creditor has placed the required document in any form of communication, which in the usual course would result in the debtor receiving the

document, to the address that the debtor last provided to the Court. The form of communication may include, but is not limited to, electronic communication; United States Postal Service; or use of a similar commercial communications carrier.

(2) Creditors who provide account information or monthly statements under subsections (b)(1-5) above shall not be found to have violated the automatic stay by doing so, and secured creditors may contact the debtor about the status of insurance coverage on property that is collateral for the creditor's claim, may respond to inquiries and requests for information about the account from the debtor and may send the debtor statements, payment coupons, or other correspondence that the creditor sends to its non-debtor customers, without violating the automatic stay. In order for communication to be protected under this provision, the communication must indicate it is provided for information purposes and does not constitute a demand for payment.

(3) As a result of creditor's alleged non-compliance with this Standing Order, a debtor may file a Motion for the Creditor to Show Cause no earlier than sixty days after the creditor's failure to comply with sections (b), (c), or (d). Before filing the motion, the debtor must make good faith attempts in writing to contact the creditor and to determine the cause of any omission, and must indicate in the Motion for the Creditor to Show Cause the good faith steps taken, together with a summary description of any response provided by the creditor.

(4) If a creditor's regular billing system can provide a statement to a debtor that substantially complies with this standing order, but does not fully conform to all of its requirements, the creditor may request that the debtor accept such statement. If a debtor declines to accept the non-conforming statement, a creditor may file a motion, on notice to the debtor and the debtor's attorney, seeking a declaration of the Court that cause exists to allow such

non-conforming statements to satisfy the creditor's obligations under this standing order. For good cause shown, the Court may grant a waiver for purposes of a single case or multiple cases, and for either a limited or unlimited period of time. No waiver will be granted, however, unless the proffered statement substantially complies with the Standing Order.

IT IS HEREBY ORDERED that this Standing Order rescinds D. Kan. Bk. S.O. 07-4 and shall become effective immediately, and shall remain in effect until further order of the Court.

Dated this 1st day of November, 2008.

s/ Robert E. Nugent
ROBERT E. NUGENT
Chief Judge

s/ Janice Miller Karlin
JANICE MILLER KARLIN
Judge

s/ Dale L. Somers
DALE L. SOMERS
Judge

s/ Robert D. Berger
ROBERT D. BERGER
Judge