

LBR 6004-1. SALE, USE, OR LEASE OF ESTATE PROPERTY

- (a) **General.** The requirements of LBR 9013-1 through LBR 9013-4 apply to a motion for an order establishing procedures for the sale of estate assets and a motion seeking authorization to sell, use or lease estate property, except as provided by this rule.
- (b) **Motion for Order Establishing Procedures for the Sale of Estate Property.**
- (1) **Timing of Hearing.** A hearing on a Motion to Establish Procedures for the Sale of the Estate's Assets ("Sale Procedure Motion") may be scheduled on not less than 7 days notice to applicable parties, unless an order setting hearing on shortened notice is obtained under LBR 9075-1(b).
 - (2) **Contents of Notice.** The notice must describe the proposed bidding procedures and include a copy of the proposed purchase agreement. If the purchase agreement is not available, the moving party must describe the terms of the sale proposed, when a copy of the actual agreement will be filed with the court, and from whom it may be obtained. The notice must describe the marketing efforts undertaken and the anticipated marketing plan, or explain why no marketing is required. The notice must provide that opposition is due on or before 1 day prior to the hearing, unless otherwise ordered by the court.
 - (3) **Service of the Notice and Motion.** The moving party must serve the motion and notice of the motion and hearing by personal delivery, messenger, telephone, fax, or email to the parties to whom notice of the motion is required to be given by the FRBP or by these rules, any other party that is likely to be adversely affected by the granting of the motion, and the United States trustee. The notice of hearing must state that any response in opposition to the motion must be filed and served at least 1 day prior to the hearing, unless otherwise ordered by the court.
 - (4) **Opposition.** Any opposition and accompanying memorandum of points and authorities and declarations must be filed and served at least 1 day prior to the hearing, unless otherwise ordered by the court. Documents filed in opposition to the motion must be served by personal delivery, messenger, fax, or email. A judge's copy of the opposition must be served on the judge in chambers in accordance with LBR 5005-2(d).
 - (5) **Scheduling Hearing on the Sale.** A date and time for a hearing on the motion to approve the sale itself may be obtained at or prior to the hearing on the Sale Procedure Motion. The hearing must be scheduled, if practicable, no more than 30 days following the hearing on the Sale Procedure Motion.
 - (6) **Break-up Fees.** If a break-up fee or other form of overbid protection is requested in the Sale Procedure Motion, the request must be supported by evidence establishing:
 - (A) That such a fee is likely to enhance the ultimate sale price; and

(B) The reasonableness of the fee.

(c) **Motion for Order Authorizing the Sale of Estate Property.**

(1) General. Unless otherwise ordered by the court and subject to FRBP 6003(b), an order authorizing the sale of estate property other than in the ordinary course of business may be obtained upon motion of the trustee or debtor in possession in a chapter 7, 11, or 12 case after notice and a hearing pursuant to LBR 9013-1(d) or after notice of opportunity for hearing under LBR 9013-1(o), *except* the following which must be set for hearing pursuant to LBR 9013-1(d):

(A) A sale of all or substantially all of the debtor's assets in a case under chapter 11 or 12; or

(B) A sale of property that is either subject to overbid or concerning which the trustee or debtor in possession has been contacted by potential overbidders.

(2) Motion.

(A) A motion for an order authorizing the sale of estate property, other than in the ordinary course of business, must be supported by a declaration of the movant establishing the value of the property and that the terms and conditions of the proposed sale, including the price and all contingencies, are in the best interest of the estate.

(B) If the proposed sale is not subject to overbid, the declaration must include a certification that the movant has not been contacted by any potential overbidder and that, in the movant's business judgment, there are no viable alternative purchasers.

(C) A memorandum of points and authorities is not required but may be filed in support of the motion.

(3) Notice of Hearing. If the motion is set for hearing pursuant to LBR 9013-1(d), the notice must state:

(A) The date, time, and place of the hearing on the proposed sale;

(B) The name and address of the proposed buyer;

(C) A description of the property to be sold;

(D) The terms and conditions of the proposed sale, including the price and all contingencies;

(E) Whether the proposed sale is free and clear of liens, claims or interests, or subject to them, and a description of all such liens, claims, or interests;

- (F) Whether the proposed sale is subject to higher and better bids;
 - (G) The consideration to be received by the estate, including estimated commissions, fees, and other costs of sale;
 - (H) If authorization is sought to pay a commission, the identity of the auctioneer, broker, or sales agent and the amount or percentage of the proposed commission to be paid;
 - (I) A description of the estimated or possible tax consequences to the estate, if known, and how any tax liability generated by the sale of the property will be paid; and
 - (J) The date by which an objection must be filed and served.
- (4) **Notice of Opportunity for Hearing.** If authorization is sought pursuant to LBR 9013-1(o), the provisions of LBR 9013-1(o) must be complied with, and the notice also must include the information required by subsection (c)(3)(B) through (I) of this rule and state:
- (A) That a written objection to the proposed sale, together with a request for hearing, must be filed and served pursuant to LBR 9013-1(o) not later than 14 days from the date of service of the notice, unless the notice period is shortened by order of the court; and
 - (B) That in the absence of an objection, an order may be entered authorizing the sale of the property without further notice or hearing.
- (d) **Notice of Intent to Sell, Use, or Lease Estate Property (Optional Procedure).**
- (1) **Scope of Rule.** A trustee or debtor in possession may sell, use or lease property of the estate in a chapter 7, 11, or 12 case, other than in the ordinary course of business, under 11 U.S.C. § 363(b)(1) upon notice, *except* the following which must be brought by motion and set for hearing pursuant to LBR 9013-1(d):
 - (A) A sale of all or substantially all of the debtor's assets in a case under chapter 11 or 12; or
 - (B) A sale of property that is either subject to overbid or concerning which the trustee or debtor in possession has been contacted by potential overbidders.
 - (2) **Notice.**
 - (A) The trustee or debtor in possession must give not less than 14 days written notice by mail to creditors and interested parties who are entitled to notice, unless the court for cause shown sets a hearing on shortened notice or otherwise modifies or limits notice pursuant to a motion under LBR 9075-1.

- (B) The notice must comply with subsection (c)(3)(B) through (I) of this rule and include a certification that the trustee or debtor in possession has not been contacted by any potential overbidder and that, in the trustee's or debtor in possession's business judgment, there are no viable alternative purchasers.
 - (C) The notice must state that any objection and request for hearing must be filed and served not more than 14 days after service of the notice, unless the notice specifies a longer period or unless otherwise ordered by the court, and that in the absence of an objection the property may be sold without further notice.
 - (D) If an objection and request for hearing is not filed and served timely, the trustee or debtor in possession may take the proposed action on the date specified in the notice of intent. An order is not required nor will an order be entered under this subsection.
- (3) Objection and Request for Hearing. If a timely objection and request for hearing is filed and served, the trustee or debtor in possession must comply with LBR 9013-1(o)(4).
- (e) Sale of Publicly Traded Assets. If the property consists of assets sold in public markets whose prices are published on national or regional exchanges (e.g., securities, bonds, commodities, or precious metals), the trustee or debtor in possession may sell such assets in a market transaction after providing not less than 14 days written notice by mail to such creditors and interested parties who are entitled to notice, unless the court for cause sets a hearing on shortened notice or otherwise modifies or limits notice pursuant to a motion under LBR 9075-1.
- (1) The notice must identify the asset, the market through which the asset is to be sold, and the published price on the date of the notice.
 - (2) If a commission is to be paid to a sales agent, the notice must disclose the name and address of the sales agent and the amount of the commission to be paid on account of the sale.
 - (3) The notice must also state that any objection and request for hearing must be filed and served not more than 14 days after service of the notice, unless the notice specifies a longer period or unless otherwise ordered by the court, and that in the absence of an objection the property may be sold without further notice.
 - (4) If an objection and request for hearing is not filed and served timely, the trustee or debtor in possession may proceed with the sale in accordance with the notice. An order is not required nor will an order be entered under this subsection.
 - (5) If a timely objection and request for hearing is filed and served, the trustee or debtor in possession must comply with LBR 9013-1(o)(4).

- (6) The trustee or debtor in possession need not file an employment application on behalf of a sales agent registered with the Security Investors Protection Corporation, but the sales agent must execute a declaration of disinterestedness which must be filed by the trustee or debtor in possession with the notice.
- (f) **Publication of Notice of Sale of Estate Property.** Whenever the trustee or debtor in possession is required to give notice of a sale or of a motion to sell property of the estate pursuant to FRBP 6004 and 2002(c), an additional copy of the notice and court-approved form [F 6004-2.NOTICE.SALE](#), Notice of Sale of Estate Property must be submitted to the clerk at the time of filing for purposes of publication by the clerk on the court's website.
- (g) **Report of Sale.** Unless otherwise ordered by the court, the report of sale required by FRBP 6004(f)(1) must be filed and served not later than 21 days after the date of the sale of any property not in the ordinary course of business.
- (h) **Disbursement of Sale Proceeds.** Unless otherwise ordered by the court, all proceeds of a sale must be paid directly to any appointed trustee or the debtor in possession. A disbursement of proceeds must not be made without a specific order of the court authorizing the disbursement, except for payment to secured creditors, payment to a debtor of exempt proceeds, and payment for expenses of sale. Proceeds may be disbursed to pay auctioneer's fees and brokers' commissions without additional order of the court if payment is consistent with the terms of the order approving the sale or authorizing the employment of the auctioneer or broker.
- (i) **Chapter 13 Cases.** A motion to sell or refinance property in a chapter 13 case must be filed pursuant to LBR 3015-1(p).

LBR 6007-1. ABANDONMENT

- (a) **Notice of Intent to Abandon.** A trustee or debtor in possession who desires to abandon property of the estate may seek to do so by a notice of intent to abandon, without the necessity for filing a motion to abandon.
- (b) **Motion to Compel Abandonment.** An order compelling the case trustee or debtor in possession to abandon property of the estate may be obtained upon motion of a party in interest after notice of opportunity to request a hearing pursuant to LBR 9013-1(o).
- (c) **Notice.**
- (1) **Content.** Notice of either an intent to abandon or motion to compel abandonment must (a) describe the property to be abandoned, including the address of the property, if applicable; (b) state the basis upon which the party seeking abandonment concludes that the property is burdensome to the estate or that it is of inconsequential value or benefit to the estate; and (c) state that any objection and request for hearing must be filed and served not more than 14 days after service of the notice, unless the notice specifies a longer period or unless otherwise ordered by the court.

(2) Parties to Be Served. The notice must be served on those listed in FRBP 6007(a).

(d) Absence of Objection and Request for Hearing.

(1) If no timely objection and request for hearing is filed and served, the property is deemed abandoned without further order of the court.

(2) If an entity desires an order of the court authorizing or directing, and confirming, the case trustee's or debtor in possession's abandonment of the property, that entity may lodge a proposed form of order with the court in accordance with the procedure set forth in LBR 9013-1(o)(3).

(e) Objection and Request for Hearing. If a timely objection and request for hearing is filed and served, the party requesting the abandonment must, within 21 days from the date of service of such objection, obtain a hearing date and furnish not less than 14 days notice of the hearing to each objecting party and to the United States trustee.