

Overbid procedure (if any): (See the attached Notice)

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:

November 12, 2014, 11:00 a.m.

United States Bankruptcy Court

Courtroom "303"

3420 Twelfth Street

Riverside, CA 92501

Contact person for potential bidders (include name, address, telephone, fax and/or email address):

Steven J. Schwartz

Danning, Gill, Diamond & Kollitz, LLP

1900 Avenue of the Stars, 11th Floor

Los Angeles, CA 90067

Telephone: (310) 277-0077

Facsimile: (310) 277-5735

Email: sschwartz@dgdk.com

Date: 10/21/2014

1 STEVEN J. SCHWARTZ (State Bar No. 200586)
sschwartz@dgdk.com
2 DANNING, GILL, DIAMOND & KOLLITZ, LLP
1900 Avenue of the Stars, 11th Floor
3 Los Angeles, California 90067-4402
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5 Attorneys for Howard Grobstein, Chapter 7
Trustee
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8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **RIVERSIDE DIVISION**

11 In re
12 LARRY JACK AND SHERILYN DENISE
WADSWORTH,
13
14 Debtors.

Case No. 6:13-bk-25919-MH

Chapter 7

**NOTICE OF HEARING ON TRUSTEE'S
MOTION: (1) TO SELL REAL
PROPERTY COMMONLY KNOWN AS
889 VISTA DRIVE, MCKINLEYVILLE,
CALIFORNIA FREE AND CLEAR OF
LIENS AND INTERESTS; AND (2) TO
PAY REAL ESTATE BROKER
COMMISSIONS AND CERTAIN
EXPENSES**

Date: November 12, 2014
Time: 11:00 a.m.
Place: Courtroom "303"
3420 Twelfth Street
Riverside, CA 92501

21 **TO THE HONORABLE MARK M. HOULE, UNITED STATES BANKRUPTCY**
22 **JUDGE, THE UNITED STATES TRUSTEE, THE DEBTORS, ALL CREDITORS AND**
23 **INTERESTED PARTIES:**

24 **NOTICE IS GIVEN** that on **November 12, 2014, at 11:00 a.m.**, in the above-referenced
25 courtroom, Howard B. Grobstein, Chapter 7 Trustee (the "Trustee") of the estate of Larry Jack and
26 Sherilyn Denise Wadsworth (the "Debtors"), will and hereby does move the Court (the "Motion"),
27 under 11 U.S.C. § 363 and Local Bankruptcy Rules 6004-1(c) and 9013-1, for an order confirming
28 the sale by the Trustee of the parcel of real property commonly known as 889 Vista Drive,

1 McKinleyville, California 95519 (the "Property"), to Toni Collenberg Revocable Trust, or its
2 assignee (the "Buyer"), for \$575,000, less a credit of \$3,750 for the tenant security deposit (the
3 "Motion"). The sale is to be "as is" and "where is," with no warranty or recourse whatsoever. The
4 Court may entertain higher and better bids at the time of the hearing on the Motion. A copy of the
5 Purchase and Sale Agreement ("Agreement") is attached as Exhibit "1" to the Declaration of
6 Howard B. Grobstein.

7 Pursuant to Local Bankruptcy Rule 6004-1(c), the Trustee provides the following
8 information:

9 A. The date, time and place of the hearing on the Motion are set forth above.

10 B. The buyer is Toni Collenberg Revocable Trust.

11 C. The property to be sold consists of the Trustee's right, title, and interest in the
12 Property, "as is" and "where is." As detailed in the attached memorandum, the Property includes a
13 single-family residence and a separate unit, both of which have tenants in place pursuant to
14 Residential Lease Agreements which expire on or about June 30, 2016. The Trustee is not
15 proposing to assume or assign the tenant leases, which have been rejected effective as of the
16 petition date. However, the tenants have opted to exercise their rights to continued occupancy
17 pursuant to 11 U.S.C. 365(h)(1)(A)(ii) and applicable state law. Accordingly, the Buyer has agreed
18 that the tenants shall remain in possession and the Property is being sold subject to the rights of the
19 existing tenants.

20 D. Without limiting or altering the terms detailed in the Agreement, those terms are
21 summarized as follows: The purchase price for the Property is \$575,000, less a credit of \$3,750 for
22 the tenant security deposit, all cash. The Property is being sold "as is" and "where is," with no
23 warranty or recourse whatsoever, subject to higher and better bids. There are no contingencies,
24 other than Court approval.

25 E. The sale will be free and clear of all liens and interests against the Property (other
26 than the interests of the tenants, as discussed above), which will be removed from the Property,
27 including, but without limitation, the following:

28 ///

1 1. A tax lien in favor of the United States of America, the treatment of which is
2 set forth in the Stipulation between the Trustee and the United States of America and its agency,
3 the Internal Revenue Service (the “IRS”) re: (1) fixing the amount of the IRS claim against the
4 Debtors’ estate (the “Estate”); (2) the IRS’ consent to the sale of certain properties; and (3) division
5 of the sale proceeds, which Stipulation was approved by the Court on or about August 27, 2014.

6 2. The Trustee proposes to pay through escrow all allowable assessments and
7 real property taxes due on the Property, which amounts shall be prorated through the closing date
8 pursuant to the terms of the Agreement.

9 3. The Trustee proposes to pay through escrow the amount necessary to pay off
10 the indebtedness secured by a Deed of Trust recorded in favor of assignee Wells Fargo Bank, N.A.,
11 successor by merger to Wachovia Bank, N.A., Recorded June 10, 2014 as Instrument No. 2014-
12 010156-2. The Trustee is informed that this mortgage is being serviced by PNC Mortgage, a
13 Division of PNC Bank, N.A. (“PNC Mortgage”).

14 G. The proposed sale is subject to overbids. The Trustee shall recommend that the
15 Court adopt the following overbid procedures: any party wishing to tender an overbid should
16 deliver to the Trustee a cashier’s check in the sum of \$10,000.00 payable to “Howard B. Grobstein,
17 Trustee” and a written overbid on a form attached to the Declaration of Steven J. Schwartz in the
18 Motion as Exhibit “5” not less than two (2) business days prior to the hearing on the Motion to
19 approve the sale. The initial overbid increment shall be \$5,000, with subsequent overbids at
20 \$1,000. The deposit shall be nonrefundable in the event that the Court confirms the sale to that
21 party but, for any reason whatsoever, the party fails to close the sale timely. The overbidding party
22 will be bound by all of the terms of the Sale Agreement proposed for confirmation except as to
23 price, without contingencies, including any financing contingency, and shall close the escrow no
24 more than thirty (30) calendar days after the entry of an order approving the Motion.

25 The Trustee also proposes that the Court confirm a back-up buyer so that, in the event that
26 the successful overbidder does not close within 30 days after the entry of an order approving the
27 Motion, the Trustee may retain the deposit of the original buyer as liquidated damages and sell the
28 Property to the back-up buyer for the amount of such back-up buyer’s last bid. The back-up

1 buyer's deposit shall be nonrefundable in the event that the Court confirms the sale to that party
2 but, for any reason whatsoever, the party fails to close the sale timely. The back-up buyer will be
3 bound by all of the terms of the Sale Agreement proposed for confirmation except as to price,
4 without contingencies, including any financing contingency, and shall close the escrow within
5 thirty (30) calendar days after written notice from the Trustee that the confirmed buyer has
6 defaulted. The Trustee holds sole discretion in accepting and rejecting all overbids.

7 H. The estate will receive the purchase price, net of payment of the real property taxes
8 and costs of sale (including broker's commission described in greater detail below).

9 I. The Motion also seeks authority to pay an aggregate real estate broker commission
10 of 5% of the gross sales price through escrow, as follows: 2.5% to be split between Elite Properties
11 Realty and Ming Tree Realty of McKinleyville, as the Trustee's brokers in this sale, and 2.5% to
12 Bella Vista Realty as the Buyer's broker in this sale. If a sale of the Property is confirmed as a
13 result of a higher and better offer to overbidder(s) represented by different broker(s), then the
14 proposed commission for the Property of 5% of the gross sales price will be split 2.5% to the
15 Trustee's brokers and 2.5% to the broker(s) of the successful overbidder(s).

16 J. The Trustee also seeks a Court ruling that the party to whom the Court confirms the
17 sale and any back-up buyers are good faith purchasers for purposes of 11 U.S.C. § 363(m).

18 K. The Trustee does not know at this time what the possible tax consequences of the
19 sale are to the estate, but is in the process of investigating the same. Any taxes that may be owed
20 from the sale of the Property will be paid out of the net proceeds of the sale.

21 The Motion is based upon this Notice of Hearing, the Motion, the attached Memorandum of
22 Points and Authorities, Declarations of Howard B. Grobstein, Dean Wilson and Steven J. Schwartz,
23 and the Request for Judicial Notice attached to the Motion, and such further evidence as may be
24 submitted at or prior to the time of the hearing on the Motion.

25 **NOTICE IS ALSO GIVEN** that pursuant to Local Bankruptcy Rule 9013-1(f), each
26 interested party opposing, joining, or responding to the Motion must, not later than 14 days before
27 the date of the hearing referenced above, file with the Clerk of the Bankruptcy Court and serve
28 upon (1) the Trustee's counsel, Steven J. Schwartz, Danning, Gill, Diamond & Kollitz, LLP, 1900

1 Avenue of the Stars, Eleventh Floor, Los Angeles, California 90067-4402; (2) the Office of the
2 United States Trustee, 3801 University Ave #720, Riverside, CA 92501; and (3) all other parties in
3 interest who are entitled to notice of this matter: (i) a complete written statement of all reasons in
4 opposition thereto or in support or joinder thereof, declarations and copies of all photographs and
5 documentary evidence on which the responding party intends to rely, and (ii) any responding
6 memorandum of points and authorities. Pursuant to Local Bankruptcy Rule 9013-1(h), oppositions
7 not filed and served in accordance with the foregoing notice may be deemed waived. If you do not
8 oppose the relief requested in this Motion, you need not take any further action.

9
10 DATED: October 21, 2014

DANNING, GILL, DIAMOND & KOLLITZ, LLP

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12
13 /s/ Steven J. Schwartz
14 STEVEN J. SCHWARTZ
15 Attorneys for Howard Grobstein, Chapter 7 Trustee
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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
1900 Avenue of the Stars, 11th Floor
Los Angeles, CA 90067

A true and correct copy of the foregoing document entitled: **NOTICE OF SALE OF ESTATE PROPERTY** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On *(date)* 10/22/2014, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On *(date)* 10/22/2014, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on *(date)* _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

10/22/2014
Date

Cheryl Caldwell
Printed Name

/s/ Cheryl Caldwell
Signature

ADDITIONAL SERVICE INFORMATION (if needed):

1. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (“NEF”)

Richard K Diamond on behalf of Trustee Howard B Grobstein (TR)
rdiamond@dgd.com, DanningGill@gmail.com;rdiamond@ecf.inforuptcy.com

Howard B Grobstein (TR)
hbgtrustee@gtfas.com, C135@ecfcbis.com

John S Lopez on behalf of Creditor Redwood Capital Bank
jlopez@harlandlaw.com, jslopezlaw@gmail.com

Keith F Rouse on behalf of Debtor Larry Jack Wadsworth
rouselaw@hotmail.com, kfrousecalendaring@gmail.com

Keith F Rouse on behalf of Joint Debtor Sherilyn Denise Wadsworth
rouselaw@hotmail.com, kfrousecalendaring@gmail.com

Steven J Schwartz on behalf of Trustee Howard B Grobstein (TR)
sschwartz@dgd.com, DanningGill@gmail.com;sschwartz@ecf.inforuptcy.com

United States Trustee (RS)
ustpregion16.rs.ecf@usdoj.gov

Gilbert B Weisman, II on behalf of Creditor American Express Bank FSB
notices@becket-lee.com

Kristin A Zilberstein on behalf of Creditor Wells Fargo Bank, N.A. Successor by merger to Wachovia Bank, N.A.
bknotice@mccarthyholthus.com, kzilberstein@mccarthyholthus.com

2. SERVED BY U.S. MAIL

Presiding Judge
The Honorable Mark M. Houle
U.S. Bankruptcy Court
3420 Twelfth Street, Suite 365
Riverside, CA 92501-3819