

SALE PROCEDURES

The Court is fairly flexible with respect to sale procedures and will entertain suggestions and requests from the moving party as to how best to handle the sale.

1. Approval Process. If the gross fair market value of the property (the property's fair market value determined without regard to any encumbrances against it) to be sold exceeds \$2 million, bidding procedures should be established prior to sale through a separate motion.
2. Auction Location. The Court has a slight preference for conducting the auction in open court where there are only two or three bidders and the property's gross fair market value is \$2 million or less. Auctions involving more than three bidders may be conducted in the hallway outside the court. The Court will entertain suggestions to hold the auction off-site entirely. A transcript of the auction in the case of an off-site auction is optional.
3. Conduct of Bidding. Qualified bidders can continue to escalate their bids in their discretion so long as they satisfy minimum bidding increments. A person who drops out of bidding may resume bidding in his or her discretion.
4. Minimum Bidding Increments. There are two evils to be avoided in this area: bidding increments so small that the auction goes on for an overly long period of time, and bidding increments so large that bidding is chilled. In an auction of residential real property worth about \$900,000, a \$1,000 or \$2,000 bidding increment is too small and a \$20,000 bidding increment is too large. A \$5,000 to \$10,000 increment would seem to be in the right range.
5. Break-Up Fees and Expense Reimbursements. A stalking horse buyer performs a service for the estate and may be entitled to compensation where the cost of providing such service is more than *de minimis*. If the asset being sold is a going business, due diligence costs typically associated with the purchase of a business strongly argue in favor of a break-up fee and/or expense reimbursement. On the other hand, a stalking horse buyer's participation in a sale of a single family residence would not justify a break-up fee or expense reimbursement except in extraordinary circumstances. If a break-up fee is warranted, permissible break-up fees generally would be in the 1 percent or 2 percent range. In any event, Court approval of the break-up fee and expense reimbursement is required before the fee can be paid and the expense reimbursement made.
6. Backup Bidders. The Court generally will approve a backup bidder. An approved backup bidder need not return to the Court for approval of the sale if the successful bidder fails to close.
7. Good Faith Findings. Filed declarations from the movant and the successful bidder that there has been no collusion in connection with the sale and that there exist no written or oral or non-oral (a wink and a nod) understandings between the movant and the successful bidder that have not been disclosed to the Court in a filed pleading generally will suffice to establish good faith.
8. Rule 6004(h). The Court generally will waive the 14 day stay if there are no unresolved objections to the sale.