

**Rule 6004-1**

**SALES OF PROPERTY, APPRAISALS, AND AUCTIONS - Amended [December 1, 2009]**

(a) *Notice.* The trustee may sell property of the estate that the trustee reasonably believes has an aggregate gross value of no more than \$10,000 by public or private sale on seven days' written notice to any party with an interest in such property, the landlord of the premises on which the property is located, and such other parties as the Court may direct. The notice of any proposed sale of property of the estate having an aggregate gross value of at least \$2,500 shall include the time and place of the proposed sale, whether the sale will be public or private, and the terms and conditions of the proposed sale.

(b) *Appraisals.* Unless the Court orders otherwise, if an appraiser has been employed, the property to be appraised shall not be sold until after the appraisal has been filed.

(1) *Caption.* All appraisals filed with the Court shall have a cover sheet bearing the caption of the case in compliance with Local Bankruptcy [Rule 9004-2](#) and the date, if any, of the proposed sale.

(2) *Filing and Access.* Unless the Court orders otherwise, any appraiser employed pursuant to § 327(a) of the Bankruptcy Code shall file with the Court and the United States Trustee each appraisal made of property of the estate not later than 12:00 noon on the day prior to the scheduled sale of the property. Each appraisal shall be kept under seal upon filing and treated as confidential by the Court and the United States Trustee. Access to the appraisal may be had only by the Court, the United States Trustee, and such other parties as the Court may direct, and neither they nor the appraiser shall disclose any of the contents thereof until after the conclusion of the bidding at any sale of the appraised property, at which time the Court may order the appraisal to be unsealed. Unless the Court orders otherwise, the appraisal shall be unsealed six months from the date on which the appraisal is filed.

(3) *Conformity with Auctioneer's Catalogue of Sale.* If property is to be appraised and sold at auction, upon request, the auctioneer promptly shall deliver the catalogue of sale to the appraiser. The appraisal shall conform to the catalogue to the greatest extent possible.

(c) *Manner of Display and Conduct of Auction.* Unless the Court orders otherwise, the auction shall be conducted in the following manner:

1) the property shall be on public display for a reasonable period of time prior to the sale;

(2) prior to receiving bids, the auctioneer shall announce the terms of sale;

(3) where practicable, the property shall be offered for sale first in bulk and then in lots; and

(4) any property that is not to be included in the sale shall be set apart and conspicuously marked "not included in the sale," and such fact shall be announced by the auctioneer before the sale.

(d) *Joint Sales*

(1) If the trustee and a secured party, or other third party having an interest in the property, desire to conduct a joint auction sale, or if the joint sale of property in more than one bankruptcy estate is anticipated to be more cost effective or beneficial for all the bankruptcy estates, the Court shall enter an order prior to the sale fixing the method of allocating the commissions and expenses of sale.

(2) The commissions and expenses incurred on behalf of one bankruptcy estate in a joint auction sale shall not be charged to any other estate unless the motion requesting the joint auction reveals the identity and number of any other estate participants in the joint auction sale, and how such commissions and expenses shall be apportioned among them.

(3) Nothing in this rule shall prevent the trustee from participating in a joint sale with a non-debtor, provided it is in the best interest of the debtor's estate and its creditors.

(e) *Proceeds of Sale.* Upon receipt of the proceeds of sale, the auctioneer immediately shall deposit the proceeds in a separate account that the auctioneer maintains for each estate in accordance with the requirements of § 345(a) of the Bankruptcy Code. Unless the Court orders otherwise, payment of the gross proceeds of the sale, less the auctioneer's reimbursable expenses, shall be made promptly by the auctioneer to the trustee or debtor in possession, but in no event later than 14 days after the date on which the proceeds are received with respect to each item or lot sold.

(f) *Report of Sale.* Unless the Court orders otherwise, (i) within 21 days after the last date of the auction, the auctioneer shall file a report with the Court and transmit a copy of the report to the United States Trustee, and (ii) if all proceeds of the auction have not been received by such date, the auctioneer shall file a supplemental report within 14 days after all proceeds have been received. The report shall set forth:

(1) the time, date, and place of the sale;

(2) the gross dollar amount of the sale;

(3) if property was sold in lots, a description of the items in each lot, the quantity in each lot, the dollar amount received for each lot, and any bulk bid(s) received;

(4) an itemized statement of expenditures, disbursements, and commissions allowable under Local Bankruptcy [Rule 6005-1](#), including the name and address of the payee, together with the original receipts or canceled checks, or true copies thereof, for the expenditures or disbursements. Where labor charges are included, the report shall specify the days worked and the number of hours worked each day by each person and the last four digits of the person's social security number. If the canceled checks are not available at the time the report is filed, the report shall so state, and the canceled checks shall be filed as soon as they become available;

(5) where the auctioneer has a blanket insurance policy covering all sales conducted by the auctioneer, for which original receipts and canceled checks are not available, an explanation of how the insurance expense charged to the estate was computed;

(6) if any articles were withdrawn from the sale because of a third party claim of an interest therein, a separate itemized statement of the articles reflecting the names of such third parties;

(7) the names and addresses of all purchasers;

(8) the sign-in sheet, if any; otherwise, the approximate number of people attending the sale;

(9) the items for which there were no bids and the disposition of those items;

(10) the terms and conditions of sale that were read to the audience immediately prior to the commencement of the sale;

(11) a statement of the manner and extent of advertising of the sale;

(12) a statement of the manner and extent of the availability of the items for inspection; and

(13) any other information that the United States Trustee may request.

(g) *Affidavit to Accompany Report of Sale.* The auctioneer shall submit with the report of sale an affidavit stating: (i) that the auctioneer is a duly licensed auctioneer; (ii) the auctioneer's license number and place of business; (iii) the authority pursuant to which the auctioneer conducted the auction; (iv) the date and place of the auction; (v) that the labor and other expenses incurred on behalf of the estate as listed in the report of sale were reasonable and necessary; and (vi) that the gross proceeds of sale, exclusive of expenses, were remitted to the trustee or debtor in possession and the date of the remittance.

(h) *Advertisement and Publication of Notice of Sale.* An advertisement or publication of notice of a sale by auction or otherwise may be made without Court approval if it is sufficient to provide adequate notice of the sale and is advertised or published at least once in a newspaper of general circulation in the city or county in which the property is located. The advertisement or publication shall include: (i) the date, time, and place of the sale; (ii) a description of the property to be sold including, with respect to real property, the approximate acreage of any real estate outside the limits of any town or city, the street, lot, and block number of any real estate within any town or city, and a general statement of the character of any improvements upon the property; (iii) the terms and conditions of the sale; and (iv) the name, address, and telephone number of the trustee or debtor in possession. The Court may fix the manner and extent of advertising and publication at any time.

(i) *No Order Needed to Confirm Sale.* Unless a timely objection is made, no order of the Court shall be required to confirm a sale of property pursuant to this rule. The trustee, debtor, or debtor in possession may execute any documents and instruments that are necessary to complete the sale and shall file with the Court and transmit to the United States Trustee a report of the sale as required by Local Bankruptcy Rule 6004-1(f) when the sale is completed. On request, the Clerk shall issue a certificate stating that a notice of a proposed action, with proof of service, has been filed with the Court pursuant to Local Bankruptcy [Rule 2002-2](#) and that no timely objection has been filed.

(j) *Compliance with Guidelines of the Court and of the United States Trustee's Guidelines.* In addition to the foregoing requirements, parties conducting a sale of property of the estate, including trustees and auctioneers, shall comply with the requirements contained in any guidelines for the conduct of asset sales contained in any applicable standing order issued by the Court and with any guidelines promulgated by the United States Trustee.

### **Comment**

Subdivision (a) of this rule was added in 1996. Subdivision (b) of this rule is derived from Former Local Bankruptcy Rule 40. Subdivisions (c), (d), (e), (f), and (g) of this rule are derived from Former Local Bankruptcy Rule 41. Subdivision (h) of this rule is derived from Former Local Bankruptcy Rule 42. Subdivision (i) of this rule is derived from Former Local Bankruptcy Rule 45(g).

Subdivision (d) of this rule was amended in 2004 to provide for joint sales of property from more than one estate. Subdivision (e) makes clear that the proceeds of an auction shall be turned over within the time specified, even if the auction has not yet concluded. Unlike subdivision (e), which requires the turnover of proceeds with respect to each lot or item of property, subdivision (f) contemplates the filing of a report within the time specified after the auction has been concluded and the supplementing of such report when the proceeds are received thereafter. Due to privacy concerns, subdivision (f) of this rule was amended in 2004 to delete the requirement that an auctioneer include in its report the social security numbers of people being paid labor charges.

The contents of a notice of a proposed sale are governed by Bankruptcy Rule 2002(c)(1).

In 2009, subdivision (a) of this rule was amended to change the time period from five to seven days, and subdivision (b) of this rule was amended to change the time period from 10 to 14 days. The purpose of these amendments was to conform the time periods in this rule to the 2009 time-related amendments to the Federal Rules of Bankruptcy Procedure. Throughout the Bankruptcy Rules, as well as the Local Bankruptcy Rules, most time periods that are shorter than 30 days were changed so that the number of days are in multiples of seven, thereby reducing the likelihood that time periods will end on a Saturday or Sunday.

The business day deadline in subdivision (b)(2) of this rule was also amended in 2009 to delete the reference to "business" so that the time period will be consistent with the 2009 amendments to Bankruptcy Rule 9006(a).

Guidelines for the conduct of asset sales are governed by General Order [M-383](#) and any amendments or supplemental standing orders of the Court. Copies of General Order M-383, as well as any amendments or subsequent standing orders on this subject, may be obtained from the Clerk and are available on the Court's website at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov).