

## **D.N.J. LBR 2014-1, EMPLOYMENT OF PROFESSIONALS AND LIQUIDATORS**

(a) *General Requirements.* In addition to the requirements of Fed. R. Bankr. P. 2014, an application for an order approving employment of a professional person shall be served upon the debtor, the trustee, the secured creditors, the official committees, and parties requesting notice of all proceedings. Except to the extent that relief is otherwise governed by Fed. R. Bankr.P. 6003, any objection to such application shall be filed and served within 7 days of the filing of the application. A hearing may be conducted on the objection in the Court's discretion.

(b) *Auctioneers and Liquidators.*

- (1) Auctioneers shall include all professionals who conduct public sales of estate property and who are disinterested within the meaning of 11 U.S.C. §101(14) of the Bankruptcy Code.
- (2) Liquidators shall include all persons who liquidate estate property through public or private sale and who (a) are not disinterested or (b) are deemed to be liquidators because the court has determined that to do so would be in the best interest of the estate.

(c) *Auctioneer Requirements.*

- (1) An application for employment of an auctioneer shall contain the following:
  - (A) The applicant's qualifications and prior experience in connection with the liquidation or sale of similar or comparable property.
  - (B) A description of the property to be sold and its location.
  - (C) The proposed method of calculation of the applicant's compensation, including rates and formulas to be employed.
  - (D) An estimate of all costs and expenses to be reimbursed to the applicant from the proceeds of the sale including labor, security, advertising, delivery, mailing, and insurance.
  - (E) A statement as to whether the auctioneer or any of its principals have been convicted of any criminal offense, other than a motor vehicle violation.
  - (F) A surety bond in favor of such party as the court may direct in an amount at least equal to the estimated gross proceeds of sale, or proof of the existence of an adequate blanket bond. The surety bond shall be conditioned upon the faithful and prompt performance of the auctioneer's duties and the accounting for all monies and property which may come into the auctioneer's possession, control or custody and for compliance with rules, orders and judgments of the Court. The auctioneer shall certify that the bond is presently in effect, and will remain in effect through turnover of the auction proceeds.
- (2) On the request of the applicant, the court, in its discretion, may waive the requirement that an application for compensation and reimbursement of expenses be filed under **D.N.J. LBR 2016-1**. An application for compensation must be filed under **D.N.J. LBR 2016-1** if the actual compensation or expenses exceed the estimate in the application for employment.

- (3) The auctioneer shall file a report of the results within 21 days of the conclusion of the sale.

*(d) Liquidator Requirements.*

- (1) In addition to the requirements of **2014-1(c)(1)(A) through (E)**, an application to utilize the services of a liquidator to sell or liquidate assets of the estate pursuant to 11 U.S.C. § 363, or otherwise, shall contain the following:
- (A) A full and complete disclosure of all agreements between the liquidator, its affiliates, the debtor and others, including the terms of any financing to be provided, the acquisition of an interest in property to be sold or an interest in estate property, indemnification provisions and release of claims.
  - (B) Compliance with **D.N.J. LBR 2014-1(c)(1)(F)**, unless otherwise directed by the Court.
  - (C) If the liquidator intends to conduct a Going Out of Business sale, the means by which the liquidator will address state and local regulations impacting upon the sale. The application shall also address any impact upon the debtor's leasehold agreements.
- (2) Unless otherwise ordered, the liquidator shall file a report of the results within 21 days of the conclusion of the sale. The court may require additional reports during the course of the liquidation.

1997 Comment: Subpart (a) is former Local Rule 6; subpart (b) (1) and (2) is former Local Rule 7(a) and (b).

2008 Comment: Subpart (a) is amended to conform with the requirements of Fed. R. Bankr.P. 6003 which limits the granting of certain forms of relief, including the employment of professional persons, during the first 20 days after commencement of a case, unless granting of relief is necessary to avoid immediate and irreparable harm.

2009 Comment: The amendments to Local Rules **2014-1(b)** and **2016-1(g)** are intended to create an increased focus on the requirements for auctioneer retention while simultaneously simplifying the rule on auctioneer compensation. The auctioneer retention application must now contain a detailed estimation of fees and expenses. The application may include a request to waive the requirement of a fee application, and if the request is expressly approved by the Court, no separate application for fees needs to be filed. In such cases, pursuant to **D.N.J. LBR 2016-1(g)**, an applicant must file an Information for Notice of Auctioneer Compensation pursuant to Fed. R. Bankr.P. 2002(a)(6) at least 20 days prior to any remittance of auctioneer compensation. However, a fee application must be filed if the actual fees and expenses sought exceed the estimate in the retention application, or if the Court so directs. Previously, compensation under **D.N.J. LBR 2016-1(g)** was fixed at a declining scale commission structure. The changes allow for the approval of more flexible auctioneer compensation methods and facilitate the prompt payment of auctioneers.

Proposed **2014-1(d)** is new and contains certain disclosure requirements for non-auctioneer liquidators. Modern practice with respect to the sale of estate assets often involves "interested" persons who cannot be retained as auctioneers under 11 U.S.C. §327, and are therefore typically engaged as "agents" or "liquidators" pursuant to

Sections 363, 364 and 105 of the Bankruptcy Code. These sale arrangements can involve the liquidator taking an ownership interest in the assets to be sold, financing the debtor's operations during the conduct of the sale, or entering into a joint venture or partnering arrangement with the debtor with respect to sharing upside proceeds arising from the sale. While the proposed rule change is intended neither to encourage nor discourage these types of arrangements, it is intended to require disclosure of the specific items enumerated in **2014-1 (d)** when any such arrangement is proposed.

Dec., 2009 Comment

This Rule is amended to conform with the March 26, 2009, Supreme Court approval of changes to Bankruptcy Rule 9006 which addresses the method by which time is calculated. On May 7, 2009, the Statutory Time Period Technical Amendments Act of 2009 was enacted (Pub. L. No. 111-06). The law adjusts the time period in 28 statutes, including nine sections of the Bankruptcy Code, which are impacted by the federal rule changes. Both the statutory and rules changes take effect on the same day, December 1, 2009. Deadlines of less than 30 days have been changed to multiples of seven days so that the expiration of the deadline ordinarily would occur on a weekday. Under the revised rules: 5 day deadlines become 7 days; 10 and 15 day deadlines become 14 days; 20 day deadlines become 21 days; and 25 day deadlines become 28 days. Effective, December 1, 2009 conforming amendments to the Court's Local Rules, including the one set forth herein, have been approved by the Board of Bankruptcy Judges. Additional information concerning time computation amendments to the national rules, local rules, general orders and forms may be accessed at [www.uscourts.gov/rules](http://www.uscourts.gov/rules) and [www.njb.uscourts.gov](http://www.njb.uscourts.gov).