

D.N.J. LBR 6004-1**SALE OF ESTATE PROPERTY**

- (a) The trustee, debtor in possession, or an authorized representative shall attend and monitor the bidding process at all auctions of estate property.
- (b) In a Chapter 13 case, an [Information for Notice of Private Sale of Real Property](#) may include a request to pay at closing, the fees or commissions of a duly retained real estate broker or debtor's real estate attorney.
- (c) The Guidelines For Sale of Estate Property, set forth in the Appendix to this Rule, apply in Chapter 11 cases.

NEW JERSEY BOARD OF BANKRUPTCY JUDGES NOTES

1997 Comment: Formerly Local Rule 7(f).

2004 Comment: Subsection (b) is added in conjunction with the 2004 amendment to D.N.J. LBR 2016-1(j)(5) which allows, exclusively in a Chapter 13 case, a real estate broker or debtor's real estate attorney, retained pursuant to D.N.J. LBR 2014-1, to include a request for reasonable fees to be paid upon closing, in the debtor's Information for Notice of Private Sale. The notice of private sale pursuant to Fed. R. Bankr. P. 2002(a) will include the requested real estate broker's commission as a percentage of the sale price, and/or the debtor's real estate attorney's fee, as well as the date of the respective orders of appointment. A request for approval of a section 363(f) sale requires the filing of a motion (Fed. R. Bank. P. 6004(a)), in addition to the Information for Notice of Private Sale (2002(a)). Moreover, where debtor's counsel seeks entry of an order authorizing debtor to sell real property and pay certain professionals at closing, a motion will accompany the filing of the Information for Notice of Private Sale. The Court retains its discretion, on a case-by-case basis, to require the filing of an application for fees and expenses pursuant to D.N.J. LBR 2016-1, setting forth a statement of services rendered and itemization of expenses incurred by the real estate broker or debtor's closing attorney.

2011 Comment: The provisions of the appendix to subsection (c) were previously contained in the Court's General Order Adopting Guidelines for Sale of Estate Property. In September 2009, the Judicial Conference approved a set of Guidelines for Distinguishing Between Matters Appropriate for Standing Orders and Matters Appropriate for Local Rules. In response to these Guidelines, the Board of Bankruptcy Judges concluded that the provisions of the Court's General Order Adopting Guidelines for Sale of Estate Property should be addressed in an appendix to a local rule. As a result, on August 1, 2011, the Court amended D.N.J. LBR 6004-1 to add subsection (c) and incorporate the provisions of the General Order, with some minor changes, in an appendix to the rule. Pursuant to D.N.J. LBR 1001-1(b), the Court may modify the Guidelines and any related Forms in order to accommodate a specific case.

APPENDIX
GUIDELINES FOR SALE OF ESTATE PROPERTY

The following guidelines apply to the sale of property of the estate in chapter 11 cases.

- (a) Applicability of Guidelines. Except as otherwise provided in the Local Bankruptcy Rules, these Guidelines apply to motions to sell property of the estate under 11 U.S.C. § 363 (“Sale Motions”); motions seeking approval of sale, bid, or auction procedures in anticipation of an auction and a proposed sale (“Sale Procedures Motions”); and motions seeking approval of sale, bid, or auction procedures as part of a Sale Motion (“Sale and Procedures Motions”).
- (b) Definition of “Debtor.” Any reference to the term “debtor” in these Guidelines shall include any trustee appointed in the case.
- (c) Sale Motions. Except as otherwise provided in the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules, or an Order of the Court, all Sale Motions shall attach or include the following:
 - (i) Provisions to Be Addressed. The Sale Motion must address material terms of the proposed sale, including but not limited to the following:
 - (A) Terms of Sale. The Sale Motion must identify the property to be sold and the purchase price.
 - (B) Conditions of Sale. The Sale Motion must disclose and describe any conditions to the sale, including but not limited to whether the sale is conditioned on the consent of a bank or lending institution.
 - (C) Closing and Other Deadlines. The Sale Motion must identify any deadlines for the closing of the proposed sale or deadlines that are conditions to closing the proposed transaction.
 - (D) Good Faith Deposit. The Sale Motion must state whether the proposed purchaser has submitted or will be required to submit a good faith deposit and, if so, the conditions under which such deposit may be forfeited.
 - (E) Tax Exemption. The Sale Motion must (a) disclose any provision seeking under 11 U.S.C. § 1146(a) a declaration that the sale is exempt from taxes; and (b) disclose the type of tax for which the exemption is sought.
 - (F) Record Retention. If the debtor proposes to sell substantially all of its assets, the Sale Motion must address whether the debtor will retain, or have reasonable access to, its books and records to enable it to administer its bankruptcy case.
 - (G) Assumption and Assignment of Contracts and Leases. The Sale Motion must identify any executory contracts or unexpired leases which will be assumed and assigned in connection with the sale pursuant to 11 U.S.C. § 365.
 - (H) Credit Bid. The Sale Motion must disclose any provision by which the debtor seeks to allow credit bidding pursuant to 11 U.S.C. § 363(k).
 - (I) Broker Fee. The Sale Motion must address whether a broker or sales agent will receive a fee in connection with the sale.

- (ii) Special Provisions. The Sale Motion must include, in addition to the material terms of the sale listed in section (c)(i) above, a section entitled “Special Provisions,” which must list any and all of the terms of the type set forth below, and must (a) state whether the proposed form of sale order and/or the underlying purchase agreement effectuates a sale or contains any provision of the type set forth below, (b) identify the location of any such provision in the proposed form of order or purchase agreement, and (c) state the justification for the inclusion of such provision.
- (A) Sale to Insider. If the proposed sale is to an insider, as defined in the 11 U.S.C. § 101(31), the Sale Motion must (a) identify the insider, (b) describe the insider’s relationship to the debtor, and (c) set forth any measures taken to ensure the fairness of the sale process and the proposed transaction.
 - (B) Agreements with Management. If a proposed buyer has discussed or entered into any agreements with management or key employees regarding compensation or future employment, the Sale Motion must (a) disclose and describe the material terms of any such agreements, (b) state whether such terms comply with 11 U.S.C. § 503(c), if applicable, and (c) disclose and describe what measures have been taken to ensure the fairness of the sale and the proposed transaction.
 - (C) Releases. The Sale Motion must disclose any provisions pursuant to which an entity is being released or claims against any entity are being waived or otherwise satisfied.
 - (D) Private Sale/No Competitive Bidding. The Sale Motion must state whether an auction is contemplated, and disclose and describe any provision pursuant to which the debtor has agreed not to solicit competing offers for the property subject to the Sale Motion or to otherwise limit shopping of the property.
 - (E) Interim Agreements with Proposed Buyer. The Sale Motion must disclose and describe any provision providing for an interim agreement between the debtor and the proposed purchaser, such as an interim management arrangement (which, if out of the ordinary course, also must be subject to notice and a hearing under 11 U.S.C. § 363(b)), and the terms of such agreements.
 - (F) Use of Proceeds. The Sale Motion must disclose any provision pursuant to which the debtor proposes to release sale proceeds on or after the closing without further Court order, or to provide for a definitive allocation of sale proceeds between or among various sellers.
 - (G) Sale of Avoidance Actions. The Sale Motion must disclose and describe any provision pursuant to which the debtor seeks to sell or otherwise limit its rights to pursue avoidance claims under chapter 5 of the Bankruptcy Code.
 - (H) Requested Findings as to Successor Liability. The Sale Motion must disclose and describe any provision limiting the proposed purchaser’s successor liability.
 - (I) Sale Free and Clear of Unexpired Leases. The Sale Motion must disclose and describe any provision by which the debtor seeks to sell property free and clear of a possessory leasehold interest, license or other right.
 - (J) Relief from Bankruptcy Rule 6004(h). The Sale Motion must disclose any provision whereby the debtor seeks relief from the 14 day stay imposed by Fed.R.Bankr.P. 6004(h).

- (iii) A copy of a proposed form of sale order; and
 - (iv) A request, if necessary, for the appointment of a consumer privacy ombudsman under 11 U.S.C. § 332.
- (d) Sale Procedures Motions/Sale and Procedures Motions. The debtor may, by the filing of a Sale Procedures Motion, request entry of an order (a “Sale Procedures Order”) approving bidding and auction procedures in anticipation of an auction and a proposed sale, or may, by the filing of a Sale and Procedures Motion, request entry of an order (a “Sale and Procedures Order”) approving bidding and auction procedures as part of a Sale Motion.
- (i) Provisions to Be Addressed. A Sale Procedures Motion or a Sale and Procedures Motion must address material provisions of any Sale Procedures Order or Sale and Procedures Order. The title of a material provision in such a Motion must appear in **boldface type**. Material provisions include, but they are not limited to, the following:
 - (A) Provisions Governing Qualification of Bidders. Any provision governing the qualification of an entity as a qualified bidder, including but not limited to an entity’s obligation to:
 - (1) Deliver financial information by a stated deadline to the debtor and other key parties (ordinarily excluding other bidders).
 - (2) Demonstrate its financial ability to consummate a sale.
 - (3) Maintain the confidentiality of information obtained from the debtor or other parties or execute a non-disclosure agreement.
 - (4) Make a non-binding expression of interest or execute a binding agreement.
 - (B) Provisions Governing Qualified Bids. Any provision governing the qualification of a bid as a qualified bid, including but not limited to:
 - (1) Any deadlines for submitting a bid and the ability of a bidder to modify a bid not deemed a qualified bid.
 - (2) Any requirements regarding the form of a bid, including whether a qualified bid must (a) be marked against the form of a stalking horse agreement or a template of the debtor’s preferred sale terms, showing amendments and other modifications (including price and other terms), (b) be for all of the same assets or may be for less than all of the assets proposed to be acquired by an initial, or stalking horse, bidder or (c) remain open for a specified period of time.
 - (3) Any requirements that a bid include a good faith deposit, the amount of that deposit and the conditions under which the good faith deposit is not refundable.
 - (4) Any other conditions that the debtor requires for a bid to be considered a qualified bid or to permit a qualified bidder to bid at an auction.
 - (C) Provisions Providing Bid Protections to “Stalking Horse” or Initial Bidder. Any provisions providing an initial or “stalking horse” bidder a form of bid protection, including but not limited to the following:

- (1) No-Shop or No-Solicitation Provisions. Any limitations on the debtor's ability or right to solicit higher or otherwise better bids.
 - (2) Break-Up/Topping Fees and Expense Reimbursement. Any agreement to provide or seek an order authorizing break-up or topping fees and/or expense reimbursement, and the terms and conditions under which any such fees or expense reimbursement would be paid.
 - (3) Bidding Increments. Any provision establishing the amount of the initial overbid and any successive bidding increments.
 - (4) Treatment of Break-Up and Topping Fees and Expense Reimbursement at Auction. Any requirement that the stalking horse bidder, when bidding at the auction, receive a "credit" equal to the breakup or topping fee and or expense reimbursement, and in such case, whether the stalking horse, upon submitting a higher or otherwise better bid than its initial bid at the auction, is deemed to have waived any such fee and expense.
- (D) Modification of Bidding and Auction Procedures. Any provision that would authorize the debtor, without further order of the Court, to modify any procedures regarding bidding or conducting an auction.
- (E) Closing with Alternative Backup Bidders. Any provision that would authorize the debtor to accept and close on alternative qualified bids received at an auction in the event that the bidder selected as the successful bidder at the conclusion of the auction fails to close the transaction within a specified period.
- (ii) Required Provisions Governing the Auction. Unless otherwise ordered by the Court, the Sale Procedures Order or the Sale and Procedures Order shall:
- (A) Specify the date, time and place at which the auction will be conducted and the method for providing notice to parties of such terms and any changes thereto.
 - (B) Provide that each bidder participating at the auction will be required to confirm that it has not engaged in any bad faith or collusion with respect to the bidding or the sale.
 - (C) State that the auction will be conducted openly and that all parties in interest will be permitted to attend.
 - (D) Provide that bidding at the auction will be documented, recorded or videotaped.
 - (E) Specify pursuant to [D.N.J. LBR 2014-1](#) the terms of retention and compensation of any auctioneer or liquidator.
 - (F) Specify the date on which the Court will consider whether to confirm the results of the auction and whether to approve the sale.