

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF ILLINOIS
235 U.S. COURTHOUSE
600 EAST MONROE STREET
SPRINGFIELD, ILLINOIS 62701

CHAMBERS OF
MARY P. GORMAN
JUDGE

TELEPHONE
(217) 492-4848

May 3, 2021

To: Chapter 7 Trustees
From: Mary P. Gorman, Bankruptcy Judge
Re: Chapter 7 Sale Procedures – Springfield and Urbana

Please see below for changes to and clarifications of required sale procedures in Chapter 7 cases.

Sales by Chapter 7 Trustees

Effective immediately, the practice of allowing Chapter 7 trustees to file a notice of intent to sell without a corresponding motion to sell is discontinued. Although Rule 6004(a) allows for such a procedure, the procedure is only compatible with simple private sales and public auctions. The insistence of several trustees in using the “notice only” process for complex transactions or to seek relief not directly part of the sale has caused confusion and resulted in extra work for our Clerk’s office staff.

The “notice only” process works well when all information about a sale can be included in a simple notice and when no relief other than authorization to sell is requested. Nevertheless, several trustees have created and sent notices that purport to set special sale procedures and qualifications for bidding without filing an underlying motion asking for the setting of sale procedures. Other trustees have added to the notice of intent other requests for relief such as the payment of administrative expense claims. There is no authority for the setting of sale procedures or allowance of the payment of administrative expense claims without the filing of an underlying motion or application.

Despite repeated discussions with the several trustees who persist in the misuse of the “notice only” process, that misuse has continued. This puts the Clerk’s office staff in the position of having to review notices for legal sufficiency and, in some cases, sending deficiency notices explaining the requirements of the Code and Rules to the trustee. In other words, the staff is assisting the trustees in their practice of law—something they are not authorized to do.

Trustees must now file motions to sell assets. Trustees must also prepare and file a notice of intent to sell. Trustees will be responsible for serving both the motion and the notice on the

entire matrix and all parties in interest. If a claims bar date has run, service need not be made on creditors who have not filed a claim unless a particular creditor who did not file a claim has an interest in the asset being sold.

In preparing your notices, please remember that you must give not less than 21 days' notice of a sale. Fed. R. Bankr. P. 2002(a)(2). And, you must give potential objectors not less than 7 days before the sale to object. Fed. R. Bankr. P. 6004(b). Thus, the actual sale date—whether private sale or auction—should always be at least 28 days after the date the notice is mailed. Further, an order authorizing a sale is automatically stayed for 14 days after entry unless ordered otherwise. Fed. R. Bankr.P. 6004(h). I will order otherwise and waive the 14-day stay period in the absence of objection, but only when I am specifically requested to do so. The reduction of any of these time periods may only be obtained by motion made in advance of the noticing.

The Clerk's office staff will continue to review motions and notices related to sales for standard issues such as proper captioning and docketing. I have directed staff, however, to stop reviewing for legal sufficiency and compliance with the Code and Rules. It is your job to file documents that comply with the Code and Rules and my job to review your compliance. My review comes, however, after the objection period has run. Thus, any failure to comply with the Code and Rules will be raised at a time that may preclude going forward with a sale as originally intended and scheduled. This practice complies with normal Court operations; most other parties do not get their documents reviewed for legal sufficiency upon filing. You are urged to review all provisions related to sales in the Code and Rules and update your forms and office procedures accordingly.

Online Auction Sales

For the last several years, many auction sales have been conducted online and, during the past year, almost all auctions have been online. Online auctions can easily comply with the requirements of the Code and Rules related to sales. We have had, however, numerous issues with the proper noticing of online auctions. Most of the issues have arisen due to the failure of several trustees to properly modify their notice of intent to sell form to address issues related to online auctions.

The most common error relates to the place of the auction. Despite the fact that an auction is being held exclusively online, some trustees have persisted in listing the street address of the auctioneer as the place of the auction. Only in the small print, elsewhere on the form, will there be a reference to the auction being online and a notation of the website address. In some cases, the mistake has been compounded by a reference that the auction is online but without providing any website address. Please be clear: if an auction is online, the place of the auction is the auctioneer's website. If the auction is online but there is also an opportunity to physically inspect the items at the auctioneer's place of business, that information should be provided separately and clearly to avoid confusion.

Another frequent error relates to the time of auction sales. Most auction sales are conducted over several days or several weeks. When that is the case, the time and date of both the start of the auction and the end of the auction must be provided. In particular, we have had several auctions for which only the end date and time has been provided. In those cases, generally, the trustee has scheduled the sale without leaving enough time to obtain authority to sell before the bidding begins and the objection date on the notice falls after the sale has started. The trustee, perhaps to camouflage that issue, posts only the end date of the auction on the notice, making it appear that proper notice has been given.

It does not violate the Code or Rules to start taking bids before obtaining a final order authorizing a sale. It is, however, a risky practice. If there is an objection, the sale may have to be cancelled or at least adjourned, and, depending on the objection, the terms of the sale may also change. Bidders may lose interest if a sale is started and then stopped or if the sale terms change. Trustees who file motions and notices of intent that do not allow enough time for objections to be filed and resolved, do so at their own risk. Regardless, the entire period of the sale must be in the motion and on the notice of intent to sell. Notices that do not disclose the full time period of an auction sale are inadequate, and orders will not be entered authorizing a sale based on such notices.

The final issue of concern is the description of the property being sold at the auction. Many notices contain such limited and cryptic descriptions that it is impossible to get an idea of what is being sold. A general description of the property to be sold is all that is technically required. Fed. R. Bankr. P. 2002(c)(1). But just describing property as “equipment” without saying whether it is farm equipment, manufacturing equipment, sports equipment, or something else is not helpful. If you are going to spend the time and money to send out a notice of a sale, why not put in enough of a description of the property to at least try to drum up some interest by potential bidders?

Again, the Clerk’s office staff will not be reviewing motion and notices for these substantive issues related to online auctions. You will be notified of problems only after an objection period has run in accordance with standard procedures. Please review your forms and update them so that clear notice of the date, time, and place of auction sales is provided.