

NACCTT ACADEMY TOOLBOX
A QUICK REFERENCE GUIDE
to
Selling Property While in Chapter 13*

Beverly M. Burden, Chapter 13 Trustee, Lexington, KY

I. SUMMARY:

Before a consumer debtor in chapter 13 may sell any property - real or personal - s/he needs to:

- Review local rules and forms and consult with the local chapter 13 trustee about customary practices or preferred forms;
- If there are no local requirements or procedures, file a motion with the Bankruptcy Court;
- Describe in the motion the terms and conditions of the proposed sale;
- Give at least 21 days' notice of the sale to the trustee, all creditors, and the U.S. Trustee (or file a motion to shorten the notice period); and
- After the sale, file a report of sale.

All relevant Code and Rule provisions are summarized in the next section of this Guide. Often the procedure for selling property is governed by local rules, forms, or customary practice.

If the property to be sold is not encumbered by liens, the federal bankruptcy rules seem to require only a notice of a proposed sale of property, not necessarily a motion. However, if the debtor is selling property free and clear of liens with such liens to attach to and be satisfied by the proceeds of the sale, a motion is required. The better practice would be to always file a motion and get an order approving the sale (unless otherwise dictated by local rules or custom).

Service of a motion to sell property free and clear of liens and interests must be served on the lienholders or interested parties in the same manner as provided for service of summons and a complaint. That means if the debtor wants to sell property encumbered by a lien of an FDIC-insured financial institution, service on the financial institution must be made by certified mail addressed to an officer of the institution. Special rules for service must also be followed if the lienholder is the United States or an agency of the United States.

In some jurisdictions, the debtor may need to file an application to employ a realtor, auctioneer, or other professional person. In other jurisdictions, it is adequate if the identity of and compensation to be paid to the realtor or auctioneer are set forth in the motion to sell.

After completion of the sale, the debtor must file a report of sale setting forth the property sold, the name of the purchaser, and the price received. If real property is sold, a copy of the closing statement should be provided to the trustee and may need to be filed along with the report of sale.

II. QUICK REFERENCE TO ESSENTIAL STATUTES AND RULES:

11 U.S.C. § 1303: The debtor has, exclusive of the trustee, the rights and powers of a trustee under section 363(b) and (f) (and other subsections not discussed herein).

11 U.S.C. § 363(b): The trustee [read “debtor” in a chapter 13 case], after notice and a hearing, may sell property of the estate.

11 U.S.C. § 363(f): The trustee [read "debtor" in a chapter 13 case], may sell property under subsection (b) free and clear of liens and interests of any party other than the estate, if one of the conditions described in subsection (f) is satisfied.

* For purposes of this Guide it is assumed the debtor is not selling property in the ordinary course of business.

11 U.S.C. § 1306(a): Property of the estate includes property specified in section 541, and all property of the kind specified in section 541 that the debtor acquires post-petition.

11 U.S.C. § 1306(b): Except as provided in the plan or order confirming, the debtor remains in possession of property of the estate.

11 U.S.C. § 1327(b): Except as provided in the plan or order confirming, confirmation vests all property of the estate in the debtor.

Fed. R. Bankr. P. 6004(a): Notice of a proposed sale of property under section 363(b) must be given pursuant to Rule 2002(a)(2), (c)(1), and (k).

Fed. R. Bankr. P. 2002(a)(2): 21-days' notice of a proposed sale of property must be given to the trustee and all creditors, unless the court shortens the time (See Fed. R. Bankr. P. 9006(c)(1)).

Fed. R. Bankr. P. 2002(k): Notice must also be given to the U.S. Trustee.

Fed. R. Bankr. P. 2002(c)(1): The notice of a proposed sale must: describe the property to be sold; include the terms and conditions of any private sale; include the time and place of any public sale; and set a deadline for filing objections.

Fed. R. Bankr. P. 6004(c): A request to sell property free and clear of liens and other interests must be made by motion in accordance with Rule 9014 ("Contested Matters"). The notice requirements of Rule 6004(a) also apply.

Fed. R. Bankr. P. 9014(b): A motion in a contested matter must be served in the manner provided for service of a summons and complaint by Rule 7004. [Note: Watch for special service requirements in 7004(b) and (h)].

Fed. R. Bankr. P. 6004(f)(1): An itemized statement of the property sold, the name of the purchaser, and the price received must be filed on completion of the sale.

Local Rules and Forms must also be reviewed.

III. OTHER POTENTIAL ISSUES:

Is the property being sold for a fair market value?

Is the property being sold to a friend, relative, or insider?

Will the sales price pay all liens and encumbrances in full?

After satisfaction of all liens and encumbrances and payment of the debtor's exemption, who gets the excess proceeds (debtor or trustee)?

Who will disburse proceeds, especially if the secured claims are being paid through the plan?

Is a plan modification required to cease disbursements to secured creditors whose claims are being paid from the sales proceeds?

Is the debtor prepared to deal with the tax consequences of the sale (Assuming the sale is a taxable event, it is attributable to the debtor, not the chapter 13 estate. The estate in a chapter 13 case is not a separate taxable entity).

IV. SAMPLE FORMS:

A few sample forms are attached. Check local rules and forms; ask the chapter 13 trustee if s/he has preferred forms or procedures.

| | |
|--|---|
| Attorney or Party Name, Address, Telephone & FAX Numbers, and California State Bar Number <input type="checkbox"/> Attorney for <input type="checkbox"/> Pro Se Debtor | FOR COURT USE ONLY |
| UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA | CHAPTER 13 CASE NUMBER |
| In re Debtor(s). | <div style="text-align: center;"> DEBTOR'S MOTION FOR AUTHORITY TO SELL REAL PROPERTY UNDER LBR 3015-1 (p) </div> <div style="text-align: center; margin-top: 20px;"> (No Hearing Required) </div> |

Debtor moves this Court for an order authorizing the debtor to sell the real property, described below, pursuant to the terms and conditions described herein.

1. Debtor's Chapter 13 Plan (the "Plan") was confirmed on: _____.
2. Debtor wishes to sell the real property (the "Property") located at:

The Property is more particularly described in Exhibit "A" attached hereto.

Debtor wishes to modify the Plan for early payment of the Plan as described in the *Motion to Modify Plan* submitted by Debtor concurrently with this Motion.

3. The sale price of the Property is \$_____. The following are all of the encumbrances of record against the Property:
 - a) _____
 - b) _____
 - c) _____
 - d) _____
 - e) _____

(Add additional page if necessary)

| | |
|------------|-------------|
| In re: | CHAPTER 13 |
| Debtor(s). | CASE NUMBER |

4. After payment of the foregoing encumbrances and all costs of sale:
- there will remain the approximate sum of \$_____; OR
 - no proceeds will remain.
5. (a) The Chapter 13 Trustee is hereby authorized to make demand upon escrow for sufficient funds to pay off the Plan with a:
- 100% dividend to unsecured creditors; OR
 - ____% dividend as indicated in the confirmed plan.

After escrow's payment of the encumbrances listed above, any remaining funds shall be paid directly to debtor.

OR

- (b) The Chapter 13 Trustee is hereby authorized to make demand upon escrow for the balance remaining after escrow's payment of the encumbrances listed above even though the amount is insufficient to pay off the Plan. The sale is for the fair market value of the Property.

6. The escrow is being processed by:

Escrow company name: _____
 Address: _____
 Telephone: _____
 Facsimile: _____
 Escrow officer: _____
 Escrow number: _____

7. Supporting documents attached to this Motion are:

- a) Exhibit "A" – Legal Description with street address
- b) Exhibit "B" – Escrow Instructions and Documents
- c) Exhibit "C" – Estimated Closing Statement
- d) Exhibit "D" – Schedules I and J of the bankruptcy petition

(Note – Debtor must provide a certified copy of the escrow closing statement within 14 days of the close of escrow.)

Dated: _____

 Attorney for Debtor(s)

I declare under penalty of perjury that the foregoing is true and correct.

Dated: _____

 Debtor

Dated: _____

 Joint Debtor

| | |
|------------|-------------|
| In re: | CHAPTER 13 |
| Debtor(s). | CASE NUMBER |

NOTE: When using this form to indicate service of a proposed order, **DO NOT** list any person or entity in Category I. Proposed orders do not generate an NEF because only orders that have been entered are placed on a CM/ECF docket.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

A true and correct copy of the foregoing document described as _____ will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d), and **(b)** in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (“NEF”) - Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) (“LBR”), the foregoing document will be served by the court via NEF and hyperlink to the document. On _____ I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email addressed indicated below:

_ Service information continued on attached page

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served):
 On _____ I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follow. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on _____ I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method) by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

| | | |
|------|-----------|-----------|
| Date | Type Name | Signature |
|------|-----------|-----------|

2012
FILE AT COURT

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

IN RE: : CASE NO.
: CHAPTER 13
: JUDGE
DEBTOR(S) : MOTION FOR AUTHORITY TO SELL
: REAL PROPERTY AND TO DISTRIBUTE
: PROCEEDS

Now come(s) the debtor(s) herein, _____ and represent(s) to the Court that the petition for Adjustment of Debts under Chapter 13 Title 11 U.S.C., was filed on _____, 200__, and the plan was confirmed on _____, 200__.

MEMORANDUM

Debtor(s)' further state(s) that the plan provided that the indebtedness on the _____ mortgage on the property located at _____ was/were to be paid outside the plan, and that the other debts were to be paid by the Trustee inside the plan. The Debtors ask the Court for permission to sell the property.

Pursuant to LBR 6004-1(d), the following information is supplied:

- A. whether the debtor(s) plan has been confirmed;
- B. the address of the property;
- C. whether the property is the debtor(s) residence;
- D. the sale price;
- E. the valuation of the property as set forth in the schedules;
- F. the name of each mortgagee or lienholder;
- G. the estimated amount of sale proceeds to be retained by the debtor;
- H. the approximate amount of sale proceeds to be paid to the plan;
- I. whether the plan provided for the sale, and, if the confirmed plan did not provide for the sale, that the plan has been modified to provide for the sale, and whether the time for objection to the modification has expired; and
- J. any relationship of the buyer to the debtor.

See LBR 6004-1(d) & (e)

Any creditor receiving funds at the closing must immediately file an

Amended Claim with the Clerk's office and serve a copy upon the Trustee. (This paragraph is only necessary if plan does not pay out.)

A preliminary copy of the closing statement should be sent to the Trustee and debtor(s)' Counsel one (1) day before the closing.

Closing Procedures. The closing agent shall coordinate with the Trustee in making the arrangements for the closing and shall obtain the Trustee's approval before proceeding with the closing. The Trustee is authorized to permit the closing agent to make direct disbursements on behalf of the trustee at closing on any claims so provided for by the plan or court order in which event it will not be necessary for the Trustee to attend the closing. Any of these disbursements shall be considered as if made by the Trustee for the purposes of the trustee collecting the percentage fee fixed pursuant to 28 U.S.C. 583(e)(1)(B).

Proceeds and Closing Statement. If the Trustee does not attend the closing, the closing agent shall cause to be delivered to the Trustee within three (3) working days after closing, the net proceeds of the closing and a copy of the signed closing statement. The preliminary closing statement must still be sent one (1) day before closing to the Trustee and debtor(s)' Counsel.

Such statement shall show:

- (A) the amount paid to each lienholder;
- (B) the amount of any real estate taxes paid;
- (C) the name of and amount paid to any realtor;
- (D) any deductions from the sale proceeds with an explanation therefore;
- (E) any closing costs; and
- (F) the calculation of the total deductions from the sale proceeds and the amount of sale proceeds being paid to the plan.

Any funds due to the Chapter 13 Trustee according to the plan must be sent within three (3) days of closing. Any mortgage amounts due, and real estate liens including arrearages, should be paid at the closing. If any figures change at the closing, a revised closing statement should be sent to the Chapter 13 Trustee.

WHEREFORE, debtor(s) ask(s) the Court for authority to sell the property and pay the mortgagee, lienholder, if any, and Chapter 13 Trustee out of the proceeds.

Respectfully submitted,

/s/ _____
Attorney for Debtor(s)
Attorney Reg. No. OH
Address
Phone Number
Facsimile Number
E-Mail Address

NOTICE

If the relief sought in this Motion is opposed, a written response to the Motion must be filed within twenty-one (21) days of the date of service as set forth in the certificate of service. The Court is authorized to grant the relief requested without a further notice should a timely response not be filed.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Sell Real Property and Distribute Proceeds was served on the parties listed below by ordinary U.S. Mail or served electronically through the Court's ECF System at the e-mail address registered with the Court on this ____ day of ____, 2012.

/s/ _____
Attorney for Debtor(s)

Margaret A. Burks, Esq.
Chapter 13 Trustee
600 Vine Street
Suite 2200
Cincinnati, Ohio 45202

U.S. Trustee
36 East 7th Street
Suite 2030
Cincinnati, Ohio 45202

Debtor(s)
Address

Creditors
Addresses

2012

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

IN RE: : CASE NO.
CHAPTER 13
:
JUDGE
DEBTOR(S) : ORDER GRANTING MOTION FOR
AUTHORITY TO SELL REAL
PROPERTY AND TO DISTRIBUTE PROCEEDS

This matter is before the Court pursuant to a Motion for Authority to Sell Real Property and to distribute proceeds. (Doc. ____). The debtor(s) herein has/have received an offer to purchase real property at _____, for \$_____, an amount sufficient to pay the mortgage holder(s) in full. The Court finds that debtor(s) have duly served a copy of the motion for authority to sell and that appropriate notice has been given to all parties and that no timely objections have been filed. The Court hereby approves the sale.

Debtor(s) are ordered to pay the mortgage holder(s) and lien holder(s) in full and use any and all net proceeds received, less the allowed exemption under the Ohio Revised Code, to pay the Chapter 13 Trustee toward the balance of the

debtor(s) Chapter 13 Plan.

Any creditor receiving funds at the closing must immediately file an Amended Claim with the Clerk's office and serve a copy upon the Trustee. (This paragraph is only necessary if plan does not pay out.)

A copy of the closing statement should be sent to the Trustee and debtor(s)' Counsel one (1) day before the closing. Any funds due to the Chapter 13 Trustee according to the plan must be sent within three (3) days of closing. Any mortgage amounts due and real estate liens, including arrearages, should be paid at the closing. If any figures change at the closing, a revised closing statement should be sent to the Chapter 13 Trustee.

The closing Statement should include the Chapter 13 payoff amount. The Chapter 13 payoff amount must be obtained by calling the Chapter 13 Office, not from the printout.

Closing Procedures. The closing agent shall coordinate with the Trustee in making the arrangements for the closing and shall obtain the Trustee's approval before proceeding with the closing. The Trustee is authorized to permit the closing agent to make direct disbursements on behalf of the Trustee at closing on any claims so provided for by the plan or court order in which event it will not be necessary for the Trustee to attend the closing. Any of these disbursements shall be considered as if made by the Trustee for the purposes of the Trustee collecting the percentage fee fixed pursuant to 28 U.S.C. section 583(e) (1) (B).

Proceeds and Closing Statement. If the Trustee does not attend the closing, the closing agent shall cause to be delivered to the Trustee within three (3) working days after closing, the net proceeds of the closing and a copy of the signed closing statement. The preliminary closing statement must still be sent one (1) day before closing to the Trustee and debtor(s)' Counsel.

Such statement shall show:

- (A) the amount paid to each lienholder;
- (B) the amount of any real estate taxes paid;
- (C) the name of and amount paid to any realtor;
- (D) any deductions from the sale proceeds with an explanation therefore;
- (E) any closing costs; and
- (F) the calculation of the total deductions from the sale proceeds and the amount of sale proceeds being paid to the plan.

SO ORDERED

Copies to:

Default List

Mortgagee
Address

All Affected Creditors
Addresses

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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY
_____ DIVISION**

IN RE:

CASE NO: _____

DEBTOR(S)

MOTION TO SELL REAL PROPERTY

Come the Debtor(s), through counsel, and pursuant to 11 U.S.C. 363(b)(1) and 11 U.S.C. 1303, respectfully request the Court to permit the Debtor(s) to sell certain real property as described below, and under the terms indicated:

1. The Debtor(s) propose to sell certain real property commonly known as _____ (“Property”) [and as further described on the legal description attached hereto].

2. The proposed sale price is \$_____.

3. The buyer(s) is/are _____. The buyer(s) [are/are not] related to the Debtor(s) by blood, marriage or business association.

4. The following sales cost, liens of record, homestead exemption and other charges and expenses related to the sale, are to be paid out of the sale proceeds [at the time of closing] in the estimated amounts as indicated:

(a) \$_____ as a realtor commission payable to

_____;

(b) Recorded liens of record in the amounts as indicated:

(1) \$_____ to _____

(2) \$_____ to _____

(3) \$_____ to _____

(4) \$_____ to _____

(5) \$ _____ to _____

(6) \$ _____ to _____

(c) Other charges and expenses in the amounts as indicated:

(1) \$ _____ to _____

(2) \$ _____ to _____

(3) \$ _____ to _____;

and

(c) \$ _____ as a homestead exemption payable to the Debtor(s); and

5. The net sale proceeds, after payment of the actual amounts charged to the items set forth in paragraph 4 above [and payment of other liens of record, taxes, and other costs and fees at closing], shall be paid to the Trustee in addition to the plan payments and shall not alter or reduce the periodic payments due under the plan, nor shall the duration of the plan be shortened, except to the extent such net sale proceeds would result in payment in full to all creditors and administrative costs.

6. The amount received by the Trustee shall be disbursed as follows:

(a) First, to administrative claimants and costs whose efforts and actions resulted in the sale benefiting the estate;

(b) Second, to unsecured and under-secured creditors pro-rata pursuant to the priorities set forth in 11 U.S.C. Sec 726;

(c) Third, to the secured creditors, pro-rata; and

(d) Fourth, after payment of all remaining claims, administrative costs and expenses of the estate, the balance shall be refunded to the Debtor(s).

7. The Debtor(s) attaches herewith copy of the sales contract or other agreement of sale setting forth the terms of the sale.

NOTICE OF HEARING

Notice is hereby given to the Chapter 13 Trustee and all parties in interest pursuant to B.R. 2002(a) of this Motion to Sell Real Property. Unless a Response and Request for Hearing stating grounds for opposing this Motion is filed within twenty-one (21) days of service, an Order will be tendered sustaining this Motion and the matter will be submitted to the Court for decision. No hearing will be held unless a timely request for hearing is filed. Notice is further given that the attached order sustaining this Motion is being tendered herewith.

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY
_____ DIVISION**

IN RE:

CASE NO: _____

DEBTOR(S)

ORDER PERMITTING SALE OF REAL PROPERTY

Notice and Opportunity having been given to all parties in interest, the court being otherwise sufficiently advised, and there being no objections to the Motion to Sell Real Property,

IT IS HEREBY ORDERED that the Motion to Sell Real Property is
SUSTAINED.

"Pursuant to Local Rule 9022-1(c), _____, Counsel for Debtor(s), shall cause a copy of this order to be served on each of the parties designated to receive this order pursuant to Local Rule 9022-1(a) and shall file with the court a certificate of service of the order upon such parties within fourteen (14) days hereof."