

# **COLORADO GUIDELINES FOR TRUSTEE EMPLOYMENT OF LIQUIDATION PROFESSIONALS**

October 1, 2012

## **I. Statement of Purpose**

This document sets forth United States Trustee guidelines on the employment and compensation of liquidation professionals and the responsibilities of trustees in this area.

## **II. Guidelines**

### **A. Sales Methods**

Trustees should choose a method of sale likely to maximize the return to the estate. Due consideration should be given to the difficulty of sale, the effectiveness of advertising, the costs of any necessary professional and any other appropriate factor. The notice of proposed sale required under F.R.B.P. 6004(a) must specify, in as much detail as practicable, the specific items of property to be sold.

### **B. Qualifications of Liquidation Professionals**

1. Trustees should employ qualified and experienced liquidation professionals.
2. If a liquidation professional is permitted to retain estate funds beyond the day of the sale, the trustee must ensure that the liquidation professional is bonded in an amount sufficient to cover all receipts from the sale. A blanket bond of at least \$50,000 is recommended for any liquidation professional employed by a trustee. If the anticipated auction proceeds exceed the amount of the blanket bond, a separate surety bond in an amount at least equal to the anticipated auction proceeds must be obtained. Costs of any blanket bonds should be considered an item of overhead and not included in the liquidation professional's reimbursable expenses. The reasonable cost of a separate bond may be included in the request for expense reimbursement.

Original bonds of liquidation professionals must be filed with the U.S. Trustee. The bonds must designate the United States of America as obligee. The form of bond and corporate surety must be acceptable to the U.S. Trustee.

3. While a trustee may act as his own auctioneer, liquidator, or sales agent, the trustee should not receive compensation for these efforts in addition to the compensation specified in 11 U.S.C. §326(b).

C. Applications to Employ Liquidation Professionals

Applications to employ liquidation professionals should contain:

1. The name, expertise and professional affiliations of the applicant.
2. The type of service which the applicant will perform.
3. The anticipated compensation and a reasonably detailed estimate of expenses of the applicant and the method of their determination (e.g. percentage of gross sales, including any buyer's premium; hourly rates; actual costs for expenses; etc.)
4. The statement required by F.R.B.P. 2014(a), including a statement of any affiliation with any employee of the Office of the U.S. Trustee.
5. A certification that the liquidation professional has a blanket bond (and the amount of such bond) or that any separate bond necessary will be filed with the U.S. Trustee's office prior to the sale.
6. A statement that the proposed liquidation professional has any license(s), permit(s), insurance and/or bond(s) which may be required by applicable law.

D. Liquidation Professional Accountability

1. Handling Proceeds.
  - a. If the liquidation professional cannot deliver the proceeds of the sale when received, and the proceeds of the property are \$50,000 or more, the liquidation professional, in addition to being bonded, must open a segregated escrow or imprest account in a federally insured depository for deposit of the sale proceeds. The account must require the co-signature of the trustee for any withdrawals. All sale proceeds are to be deposited in the account immediately upon receipt and such deposit verified by the trustee. If the proceeds exceed \$250,000, the FDIC insurance limit, the trustee must ensure that the depository complies with 11 U.S.C. §345(b). As soon as the last check has cleared, or the last deposit is made, but in no event later than 30 days after the date of the auction, all funds are to be transferred to the trustee's estate account.
  - b. If the proceeds from the sale are less than \$50,000, and the liquidation professional is adequately bonded, the proceeds may be deposited in the liquidation professional's trust or client fund

account until all checks clear or the last deposit is made. At that time, all proceeds are to be remitted to the trustee.

2. Report of Sale.

As soon as practicable after the sale, but in no event later than 30 days after the sale, liquidation professionals should file the report of sale required by F.R.B.P. 6004(f)(1) with the Court and furnish copies to the trustee and the U.S. Trustee. The report of sale shall include:

- a. The date, place and time of the sale.
- b. The price obtained for each item sold together with the name of each purchaser in the case of an auction or cash register tapes or appropriate documentation in the case of other types of sales.
- c. The total amount of funds received and the amount transferred to the trustee.
- d. The compensation and expenses sought by the liquidation professional. Where appropriate, expense requests should be documented by receipts or explanations.
- e. A statement that the liquidation professional did not directly or indirectly acquire an interest in any of the estate property sold.
- f. A sample of advertising efforts.
- g. A list of any items not sold by the auctioneer (e.g., no bid over reserve amount, no bids, items missing or stolen, etc.)

E. Liquidation Professional Compensation

1. Liquidation professionals may be compensated only after notice and court order. The notice of sale may also serve as the notice of proposed compensation, if appropriate.
2. Buyer's premiums, if any, will be considered to be part of the auctioneer's compensation in evaluating whether compensation and expenses are reasonable. Buyer's premiums are generally considered inappropriate and will be objected to by the United States Trustee unless it is clearly demonstrated that they are standard industry practice for the type of property which is to be sold. If the auctioneer proposes to charge a buyer's premium, it **MUST** be disclosed at the time the application for employment is filed (see section II.C.3, above).

3. Liquidation professionals must remit gross proceeds, not net proceeds, to the trustee unless the Court order authorizing employment specifically permits the liquidation professional to deduct commission and expenses from the proceeds prior to remitting them to the trustee. The foregoing notwithstanding, the U.S. Trustee recommends that trustees require the liquidation professional to remit the gross proceeds of the sale and that compensation and expenses be paid only after the trustee has reviewed and approved the report of sale. Only the auction proceeds turned over directly to the trustee may be included in the calculation of the trustee's maximum compensation.
4. If the actual expenses significantly exceed the estimated expenses, a separate application for the additional expenses should be filed.

F. Trustee Accountability

1. Insurance.

Trustees should ensure that estate property turned over to liquidation professionals is appropriately insured.

2. Taxes

Trustees should ensure that appropriate provisions have been made for the collection and remittance of applicable sales taxes.

3. Liquidation Professional Review.

- a. Trustees should not employ liquidation professionals who do not comply with these guidelines.
- b. Trustees should take reasonable steps to independently verify that their trust of liquidation professionals is well founded. Such steps should include attendance at all auctions of estate property, and careful review of all reports of sale.
- c. In reviewing the report of sale, trustees should verify that all property turned over to the auctioneer is accounted for. Further inquiry should be made if any items are listed as lost or stolen, to determine whether negligence was involved and if the loss is covered by insurance. The list of purchasers should be reviewed to ensure that no sales were made to the debtor, insiders of the debtor, officers of the Court, or any other prohibited or inappropriate parties.
- d. If the trustee becomes aware of any indications of sales to insiders

or of collusion in the bidding, the sale should immediately be stopped, and the matter reported to the U.S. Trustee.

- G. Non-compliance with these guidelines may result in an objection by the U.S. Trustee to the employment and/or compensation and expenses of the liquidation professional.