
From: [REDACTED] (USTP)
Sent: Thursday, October 31, 2019 1:27 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: U.S. Trustee Guidance Re Short Sale Chapter 7 Cases

Dear Trustees,

I am writing to follow up on my October 28th email containing excerpts from Director White's comments to the NABT regarding short sale cases. I have been asked for further guidance and I have consulted with the Acting U.S. Trustee. Our further guidance follows.

I direct your attention to *Jubber v. Bird (In re Bird)*, 577 B.R. 365 (10th Cir. BAP 2017). In this case, the BAP noted that the sale of a fully encumbered asset is generally prohibited. The BAP found: (1) The Trustee's and the estate's counsel's services negotiating carve-outs and marketing debtors' homestead parcels were not necessary to administration of the estate; (2) the services were not reasonably likely to benefit the estate at the time they were performed; and (3) the bankruptcy court could deny, in their entirety, fee applications filed by the Trustee and the estate's counsel for failing to abandon fully encumbered homestead property, negotiating a carve-out, and engaging in a sale that *primarily* benefited the Trustee and the estate's counsel. While *Bird* had some unique facts, such as the Trustee's objection to the homestead exemption and harming the debtors by "shifting" assets away from the IRS, I think the BAP is saying that where a carve-out benefits the Trustee and estate's professionals more than the unsecured creditors, compensation can be denied. In *Bird*, the unsecureds would only be paid \$10,000 while the Trustee and attorney sought tens of thousands of dollars. The \$10,000 were nominal when compared to the amount of unsecured claims.

In short, the Salt Lake City U.S. Trustee's Office will follow *Bird* and take a very close look at cases where the Trustee and the estate's professionals' combined total compensation exceeds the amounts distributed to creditors or where a meaningful distribution is not made to general unsecured creditors. Going forward, please consult with our office before administering a short sale case.

I recognize that there may be some unusual facts where an encumbered asset must be administered even though there will be a negligible benefit to the unsecured creditors. One example might be where an estate includes environmentally contaminated real property and Governmental environmental agencies have objected to a Trustee's motion to abandon the property. We had a case like that in Montana where the U.S. Trustee supported the Trustee's application for compensation. The Trustee worked with the environmental agencies, carved out sales proceeds to pay for the Trustee and the estate's professionals' fees along with some priority tax claims, and sold the property to an entity which would clean the property. Cases where the only proceeds comes from a carve-out should be the exception and not the norm.

Thank you for your dedicated service.

Respectfully,

[REDACTED]
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