

SELECTED TIPS AND BEST PRACTICE CONSIDERATIONS FOR PANEL TRUSTEES

A. DEBTOR'S PROOF OF IDENTITY AT 341 MEETING

1. Photo Identification

If a debtor presents an expired photo identification to establish identity, may the trustee accept it and conduct the meeting?

Yes. If a trustee believes that a government issued photo identification presented by a debtor is legitimate, and the only problem is that it is expired, a trustee may accept it and proceed with the meeting. If a trustee has concerns about the genuineness of the identification (regardless of whether it is expired), a trustee should exercise his or her discretion as to whether to conduct the meeting.

Credit cards (original or photocopy) should not be accepted to establish a debtor's identity.

2. Social Security Numbers

If a debtor is presenting a social security card for a trustee to confirm the number, as opposed to a W-2 Form, a trustee needs to see a debtor's original social security card. If a debtor only has a photocopy at the time of the meeting, a trustee may conduct the meeting and hold it open until the debtor appears at a continued date to present an original card.

3. A Caution Regarding Social Security Numbers

Trustees should be aware of the situation involving debtors who file using ITINs, but who report SSNs on their tax/payroll documents (whether or not the SSNs are disclosed in the bankruptcy). When trustees encounter cases filed with ITINs, they are urged to ask (i) whether the debtor has an SSN that he/she uses for employment purposes; (ii) what the number is; and (iii) for proof of the number. In such instances, trustees should refer the case to our office.

B. CASE LOGISTICS & REPORTING

1. If the reopened case was a no-asset case:

If a case is reopened due to the discovery of an asset, and an NDR was originally filed in the case, Handbook Section 4.C.2 requires that the trustee withdraw the originally filed NDR before filing an Initial Report of Assets.

2. *If the reopened case was an asset case:*

The trustee should not withdraw the previously filed Initial Report of Assets, TFR or TDR. An additional IRA is not required upon reopening. Rather, amended Final and Distribution reports must be filed at the appropriate times. When submitting amended reports to the UST, trustees should include “AFR” in the email subject line for Amended Final Reports and “ADR” for Amended Distribution Reports.

3. *If a case is converted to Chapter 13*

In order to trigger payment from the Clerk’s Office, a trustee must file a “Converted NDR” when a case converts to Chapter 13.

4. In cases involving the joint administration or substantive consolidation of estates, trustees need to file Initial Reports of Assets or “NDRs” in every case. Absent an IRA or NDR, the appropriate notice will not be sent to creditors.

5. When filing adversary proceedings, to make sure that the plaintiff’s name on the complaint matches the plaintiff’s name on the summons issued by the Clerk, you need to include the desired text in the “last name” field when filing. That is the only way to have the captions match. For instance:

First Name Field: Adam

Last Name Field: Brief, Assistant U.S. Trustee

Using the “Party Text” option will not result in matching captions. Also, do not create a new party record with each complaint. Use your existing record.

C. TFR & TDR REPORTING REQUIREMENTS

1. There is no procedure for an informal or non-traditional TFR or TDR, and those requirements may not be bypassed. In any asset case involving a distribution to creditors or payment to professionals, a TFR and TDR must be submitted to our Office, and such cases may not be closed by motion. Entry of a Court order authorizing and directing a trustee to make a distribution does not excuse compliance with these reporting requirements at the appropriate time. Going forward, the UST will object to motions that seek to bypass these requirements. Please continue to submit TFRs at ustp.region11.tfr@usdoj.gov and TDRs at ustp.region11.tdr@usdoj.gov.

2. Trustees do not need to notify the UST prior to making ordinary course disbursements in connection with the administration of an estate. However, such disbursements should be contrasted with interim distributions

to creditors or payments to professionals for fees (if not already approved by Court order), which remain subject to UST review.

D. INTERIM FEE APPLICATIONS

1. When seeking a Court order approving an interim fee application (whether trustee compensation or professional fees), please email a copy of the application to your supervising Trial Attorney at the time of filing. Absent extraordinary circumstances, interim applications should be accompanied by a distribution to creditors.

2. The UST will review the application prior to the hearing date, and will contact you to discuss if necessary. Absent such contact, or the filing of a written objection by the UST, you should proceed with the application and compliance with any resultant order in the ordinary course.

E. INTERIM DISTRIBUTIONS

1. In accordance with Bankruptcy Rule 3009, interim distributions to creditors on account of allowed claims should be made as soon as practicable.

2. Interim distributions must be reviewed by the UST in advance. When you seek review of an interim distribution, please submit an interim bank statement, Form 2, and a Claims Proposed Distribution Sheet that is signed and certified by the trustee to ustp.region11.tfr@usdoj.gov.

3. The email should have the following subject line Example: 5211612345 Jones ITR Smith. The UST will review the application, and will contact you with an approval or questions.

F. MINIMAL FUNDS CASES

1. In cases where a trustee elects not to administer an estate after receiving funds, the Minimum Funds NDR process must be followed. See Section 4-35 of the Chapter 7 Trustee Handbook.

2. The following steps should be taken:

- a. Send an email to the TFR mailbox (USTP.Region11.TFR@usdoj.gov) and “cc” your supervising attorney explaining why the funds are being returned, and indicating that the bank statements reflect a zero balance. Please attach Forms I and II and any bank statements and voided checks that are not available on a portal.

- b. When submitting your email, please use the following standardized naming convention in the subject line: case number, space, case name, space, NDR MF, space, trustee last name. For example, 5211513832 Ott NDR MF Smith.
- c. Once our review is complete, your supervising attorney will notify you of our concurrence or the need for additional information.

G. CHANGE IN BANK ACCOUNTS

1. If you intend on moving your estate accounts to a new bank, please contact Andrew Hunt, Bankruptcy Auditor at (312) 886-7481 or at andrew.hund2@usdoj.gov in advance to confirm that the prospective bank is an authorized depository and is properly collateralized.

H. DELEGATION OF TRUSTEE DUTIES

1. Trustee duties as described in 11 U.S.C. § 704(a) should not be delegated to attorneys, and absent unique circumstances, should not be billed by attorneys.

I. PAYMENT OF EXEMPTION CLAIMS

1. Please pay exemption claims as soon as the funds are on hand. Exempt funds do not constitute property of the estate and should not be retained until the end of a case. The TFR form does not include a line item for payment of exemption claims, and TFRs that contain the payment of such claims will be returned to the trustee so that the exemption claim can be paid and the TFR amended to remove the exempt funds.

J. MOTIONS TO REOPEN

1. Proposed orders granting Motions to Reopen should not include a provision reappointing a particular trustee. Rather, such orders should only include a provision authorizing the U.S. Trustee to appoint a trustee. Once the order has been entered, the U.S. Trustee will appoint a trustee.

K. SECTION 506(c) CARVE-OUTS

1. Section 506(c) carve-outs are estate property and are intended to benefit unsecured creditors. Section 506 is not a compensation statute, and should not be cited as authority to allow either trustee compensation under Sections 326 or professional fees under Sections 328 or 330.

2. When a trustee files a motion for approval of a Section 506(c) carve-out, the trustee should not seek approval of trustee compensation or professional fees at that time. Instead, approval should be limited to approving a carve-out for the benefit of the estate, subject to distribution in accordance with the Bankruptcy Code's priority scheme.

3. Trustee compensation and professional fees would be fixed by subsequent Court order on the appropriate applications. Further, carve-outs *solely* for the benefit of professional fees are objectionable.

L. THIRD PARTY SOLICITATIONS FOR THE SALE OF ESTATE PROPERTY

1. From time to time, third party entities approach trustees with an offer to market and/or and sell estate property for the trustees.

2. In determining whether such transactions would represent the sound exercise of a trustee's business judgment, trustees should consider the following factors, among others:

- a. Would this provide a certain and meaningful return for unsecured creditors, above the trustee's commission and administrative claims?
- b. Is the proposed action practicable?
- c. Are there tax ramifications for the estate?
- d. Are there exemption issues?
- e. Would you be exposed to possible liability? (e.g., slip-and-fall liability while a property is being sold)
- f. Is the proposed action unfair or potentially harmful to the debtors or other parties-in-interest? (e.g., in the case of a mortgage on the homestead, has the debtor defaulted?)
- g. Could you, as trustee, locate and administer the asset in question without the aid of the third party?

M. REPORTS OF SALE

1. Reports of Sale required by Bankruptcy Rule 6004(f)(1) apply to all asset sales, regardless of whether by auction or private sale.

N. OBJECTING TO ALLOWED SECURED CLAIMS RELATING TO UNADMINISTERED ASSETS

1. From time to time trustees face the question of whether to object to allowed secured claims relating to property that is not administered in a bankruptcy case. Underlying the query is the fact that by operation of Bankruptcy Code Sections 502(a) and 506(a), secured creditors' claims are bifurcated. They are treated as secured up to the value of the collateral, and unsecured as to the balance, if any. Under Section 726(a)(2), all allowed unsecured claims are entitled to a distribution. Ordinarily trustees do not make distributions on account of the unsecured portion of such claims, but also do not obtain Court orders authorizing that course of action.

2. Some years ago, former UST Trial Attorney Richard Friedman issued a memo to the panel entitled *Secured Claims on Unadministered Property Should Not Be Ignored*. Therein, Attorney Friedman opined on behalf of the USTP that to avoid personal liability for not paying an allowed unsecured claim, trustees should either object to secured claims relating to unadministered property or move for a valuation of the collateral under Fed. R. Bankr. P. 3012(a).

3. That position remains the current position of the USTP. More specifically, (i) under Section 502(a), a properly filed proof of claim is deemed allowed absent an objection, and (ii) under Section 506(a), an allowed secured claim is secured only up to the value of the collateral and the balance of the claim is treated as an allowed unsecured claim. Further, Rule 3012(a) enables a court to determine the amount of a secured claim under Section 506(a) by way of a valuation hearing.

4. In a case where a creditor files a secured proof of claim, and the trustee does not administer the collateral, there is no sale process to value the property. In turn, there is no way to apply Section 506(a), absent a valuation under Rule 3012(a) or an objection to the claim. Since Section 726(a)(2) requires trustees to pay *all* allowed unsecured claims, it follows that trustees must address such claims to properly exercise their duties under the Bankruptcy Code, and to avoid potential liability for the non-payment of allowed claims. An exception may exist where an allowed proof of claim affirmatively states that there is no unsecured portion.