

Foreword

This new publication revises and supersedes all previous editions of the *Expedited Forfeiture Settlement Policy for Mortgagees and Lienholders*, the *Guide to Sales of Property Prior to Forfeiture: The Stipulated and Interlocutory Sale*, and the *Guide to Interlocutory Sales and Expedited Settlement* (March 2003). It does not make any substantial revisions to the policies contained in the March 2003 *Guide*. However, the *Guide* has been revised to reflect the applicability of 28 U.S.C. §§ 2001, 2002, and 2004 to contested interlocutory sales, the provisions of the new Rule G (effective December 1, 2006), and the amendment to 28 U.S.C. § 2461(c) made by the USA Patriot Improvement and Reauthorization Act of 2005 (effective March 9, 2006). It contains the policies for expedited settlements and interlocutory sales and updated model forms. The forms are also available on Asset Forfeiture and Money Laundering Online (AFML Online).

These policies are being covered by a single publication because they address similar concerns, and because they frequently overlap in practice. For example, entities that enter into expedited settlements with the Government early in a forfeiture case may later request an interlocutory sale after loans have gone into default or the forfeiture process has been unduly delayed.

The policies contained in this publication address the legitimate concerns of the lending community while protecting the Government's interests as well. The expedited settlement policy seeks to avoid, insofar as possible, costly and unnecessary litigation between the Government and third-party lenders that have secured uncontested interests in forfeitable property. The interlocutory sale policy provides a means of protecting the interests of lenders and the Government, while preserving as much equity as possible for forfeiture, in cases where property owners default on their mortgages or other exigent circumstances arise.

I. *Expedited Forfeiture Settlement Policy for Mortgagees and Lienholders*

The policy set forth in this section is intended to avoid unnecessary litigation between the United States and innocent third parties holding perfected liens or mortgages against property that is subject to federal forfeiture. The policy is intended to provide consistency, predictability, and fairness in handling the claims of such parties. It applies to property that is restrained, arrested, seized, or alleged to be civilly or criminally forfeitable by the United States.

The Civil Asset Forfeiture Reform Act (CAFRA) of 2000 substantially changed civil forfeiture practice. Among other things, it limited the time between seizure and the provision of notice to interested parties, and the time between the filing of a claim and initiation of civil forfeiture. It provided for hardship releases of personal property. It made even clearer, consistent with *United States v. James Daniel Good Real Property*, 510 U.S. 43, 114 S. Ct. 492 (1993), that pretrial seizure of real estate is the exception, not the rule, in forfeiture cases. It also increased the Government's burden of proof at civil forfeiture trials, and provided for the payment of attorneys' fees to successful claimants in contested civil forfeitures.

On the one hand, by speeding up the forfeiture process and leaving real estate in the hands of the original owner until trial in most cases, CAFRA should reduce the likelihood of pretrial mortgage defaults and should also reduce the waiting period that mortgagees and lienholders will typically face before they receive final payments with respect to forfeited real properties. On the other hand, CAFRA

increases the risks to the Government of paying off mortgages or liens, other than by agreement of all parties, before properties are finally forfeited and sold.

The expedited settlement policy prior to the 2003 *Guide* often committed the Government to pay liens and mortgages before properties were sold. The present policy does not require such advance payments as a condition of any expedited settlement, and presumes that generally such payments will not be made, because the Department of Justice has determined that such advance payments are generally no longer warranted in light of the changes effected by CAFRA.

The objective of the expedited settlement policy is to encourage early settlements with legitimate mortgagees and lienholders. In those settlements, the Government will agree not to contest payment of the principal and accrued interest that are due and casualty insurance premiums paid by the lienholder from the net proceeds of the sale of the property to the fullest extent possible. Thus, by entering into an expedited settlement, mortgagees and lienholders will protect their interests in forfeitable property early in a forfeiture case, avoiding unnecessary litigation costs. They will receive payment after sale of the property, except in the rare circumstances discussed hereinafter, pursuant either to an approved interlocutory sale or a final order of forfeiture.

II. *A Guide to Interlocutory Sales in Forfeiture Cases*

Where a property owner has allowed a mortgage to go into default, and in certain other exigent circumstances, it is often advantageous and prudent to sell property seized or restrained for forfeiture before the conclusion of the forfeiture case. The proceeds of such an interlocutory sale are treated as a substitute for the original property (called the “substitute *res*” in a civil case) for purposes of jurisdiction and satisfaction of the final judgment.

The Attorney General’s Guidelines on Seized and Forfeited Property encourages the use of pre-forfeiture sales as a means of preserving forfeitable equity and reducing asset management expenses. Such interlocutory sales may be accomplished either by agreement of all parties with the court’s approval, or by court order on a contested motion.

The best, and least cumbersome, way to carry out an interlocutory sale is by agreement of all interested parties. In such a stipulated interlocutory sale, a proposed order setting forth the terms of the agreement is prepared and submitted to the court. If the court approves the order, the property is sold and the proceeds become the substitute *res*. Where all interested parties do not agree to the interlocutory sale, federal statutes, rules and case law provide means of obtaining the court’s approval for a contested sale, pursuant to complex and strict guidelines.

A Guide to Interlocutory Sales in Forfeiture Cases addresses both stipulated and contested interlocutory sales. It also provides guidance for determining whether or not an interlocutory sale of the property is warranted, and addresses the pros and cons of the two types of interlocutory sale.

This guide was drafted by a subcommittee of the AFMLS/EOUSA Working Group consisting of AUSA Francis Reddis (W.D. Missouri) (Chair); Assistant Chief Richard L. Hoffman (Legal Policy Unit, AFMLS); AUSA Leslie Westphal (D. Oregon); AUSA Anthony Hall (D. Idaho); and Acting Chief Eben Morales (Asset Forfeiture Office, U.S. Marshals Service).

Part I

Expedited Forfeiture Settlement Policy for Mortgagees and Lienholders

I. Purpose, Nature, and Scope of Policy

The intent of Congress, as reflected in applicable “innocent ownership” provisions, is to pay valid perfected liens and mortgages against forfeited property. The policy set forth here governs the settlement and payment of such liens and mortgages. Its purpose is to facilitate and encourage settlements at an early stage in the forfeiture proceedings to make it clear that the lienholder or mortgagee need not litigate with the Government to preserve its interest in forfeitable property. The policy applies only to property that is restrained, arrested, seized, or alleged to be forfeitable in civil or criminal forfeiture cases where the forfeiture statute has a statutory innocent owner provision or a provision for recognizing the rights of third parties in a judicial proceeding.

The mortgagee or lienholder may use the expedited settlement procedures to preserve its interest, against the Government, in the forfeited property. Payments pursuant to such expedited settlements will occur when the property has been sold, either pursuant to a final order of forfeiture entered after the United States has prevailed in the civil or criminal forfeiture case and any competing third-party claims have been resolved, or pursuant to a court-approved interlocutory sale where the court has authorized an earlier payment of an uncontested mortgage or lien.

This policy is not binding upon any party who decides not to settle. If an expedited settlement is not reached, a lienholder or mortgagee is not precluded from filing a petition for remission or mitigation of forfeiture and/or otherwise pursuing its interest in the judicial forfeiture action. The United States will, however, seek to stay or restrain any judicial or non-judicial foreclosure actions and any other similar attempts to litigate or otherwise resolve the interest of the lienholder or mortgagee in the forfeitable property in any court or forum outside of the federal forfeiture proceeding.

A. Definitions

An “expedited forfeiture settlement” (*hereinafter* expedited settlement) is an agreement not to contest valid liens or mortgages against property that is restrained, arrested, seized, or alleged to be forfeitable in civil or criminal forfeiture cases. The settlement is in lieu of:

- (1) Litigation, as between the Government and the secured party, of the lienholder or mortgagee’s civil forfeiture claim;

- (2) Litigation, as between the Government and the secured party, of a petition for an ancillary hearing in a criminal forfeiture proceeding; and
- (3) Submission by the secured party of a petition for remission or mitigation of the forfeiture.

“Action against the property” refers to restraining, arresting, or seizing property for forfeiture, naming property as the defendant in a civil forfeiture, or alleging, in any indictment, bill of particulars, or motion for order of forfeiture, that property is forfeitable in a criminal forfeiture case.

A “perfected” lien or mortgage is a perfected security interest in real or personal property as determined by the laws of the state, commonwealth, or territory where the property is located. A “secured party” is the holder of such a perfected lien or mortgage. Note that except as set forth in 18 U.S.C. § 983(i), all civil forfeiture claimants, including secured parties, are subject to the innocent owner provisions of 18 U.S.C. § 983(d), and all claimants in criminal forfeitures, including secured parties, are subject to the ancillary proceeding provisions of 21 U.S.C. § 853(n), made applicable to all criminal forfeiture actions by the amendment to 28 U.S.C. § 2461(c) in the USA Patriot Improvement and Reauthorization Act of 2005 effective March 9, 2006.

“Lienholder or mortgagee” applies to financial institutions, private individuals, and organizations.

“Interlocutory sale” means a sale pursuant to a court order occurring before entry of a final judgment or final order of forfeiture.

“Final judgment” or “final order of forfeiture” means a judgment or order that vests all right, title, and interest in the forfeited property in the United States, and as to which all appeals are exhausted and conclusive upon the matter.

“U.S. Attorney” means the government attorneys prosecuting the civil or criminal forfeiture.

B. Scope of This Policy

This policy does not create or confer any rights, privileges, or benefits on prospective or actual claimants, defendants, or petitioners throughout. Likewise, this policy is not intended to have the force of law.¹

This policy is not intended to create any right on the part of any party to a judicial hearing or judicial determination bearing upon a request for expedited settlement.

The expedited settlement does not constitute an offer in compromise subject to 28 C.F.R. Pt. O.

With respect to civil forfeiture cases, this policy applies to all civil forfeiture statutes as defined by 18 U.S.C. § 983(i) and to all other forfeiture statutes that have innocent owner provisions.

¹ See *United States v. Caceres*, 440 U.S. 471 (1979).

This policy applies only to liens and mortgages that have been perfected in accordance with the definition of “perfected” contained herein.

Expedited settlements are highly recommended, but are not mandatory. The use of expedited settlement procedures is within the discretion of the U.S. Attorney handling a forfeiture action.

The decision to enter into such a settlement should be made in consultation with the U.S. Marshals Service (USMS) or, in cases where USMS is not the property custodian, with the applicable agency or contractor. Among other factors, the U.S. Attorney contemplating an expedited settlement should consider whether payment of the mortgage or lien is likely to be possible from the anticipated proceeds of sale of the property, after payment of all anticipated expenses. To assist in making this determination in the case of real property or other property of uncertain value, a current appraisal should be obtained where none exists or where the existing appraisal is older than six months.

In most cases, the settlement agreement will provide for payment to be made only after the property has been sold, and the agreed payment will be limited to the net proceeds of the sale. In a rare case, however, forfeitable equity far exceeding the amount of the liens, together with other special circumstances, may lead the U.S. attorney and the Government’s property custodian to conclude that payment in advance of sale is warranted. Because such advance payments entail substantial risks for the Government, agreements calling for them should be the rare exception, and should be made only when both the U.S. attorney and the Government’s property custodian agree on that course of action after careful consideration.

II. Procedure and Terms

At any time after the commencement of a civil or criminal forfeiture action against property as defined herein, the U.S. Attorney may notify any individual or entity that appears to have a perfected lien or mortgage of record against the subject property of the opportunity to request an expedited settlement. This notice should be in addition to any statutory notice required to be provided to individuals or entities that have or may have an interest in forfeitable property.

The notice should include the information contained in sections A through F relating to expedited settlements.

A. Request for Expedited Settlement

A mortgagee or lienholder may request an expedited settlement of a claim arising from a perfected lien or mortgage following:

1. Notice of the forfeiture action and the timely filing by the mortgagee or lienholder of a claim and answer to a civil forfeiture complaint;
2. The return of a criminal indictment alleging that certain property will be forfeitable to the United States upon defendant's conviction; or
3. The filing of a bill of particulars or motion for order of forfeiture in a criminal case alleging that certain property is forfeitable to the United States.

An expedited settlement will be in lieu of further forfeiture litigation between the parties to the agreement, and in lieu of a petition by the secured party for remission or mitigation of the forfeiture. Although an expedited settlement may be reached at an early stage of a criminal case, the mortgagee or lienholder must still file a timely petition in the post-conviction ancillary hearing in the criminal case so that the settlement can become part of the final order of forfeiture.

B. Request Format

1. Either upon receiving notice of these procedures, or following the occurrence of any of the events listed in A1, 2, or 3, a mortgagee or lienholder may send a request for expedited settlement to the U.S. Attorney who initiated the action against the property. The request must include copies of documents and other evidence that establish the perfected lien or mortgage on the property and satisfy the U.S. Attorney of the status of the requesting individual or entity as an innocent owner in a civil case, or as a person entitled to recover in the ancillary proceeding in a criminal case. Individuals and entities that elect to request an expedited settlement are not relieved of any applicable discovery obligations imposed under the Federal Rules of Civil Procedure or applicable criminal rules. The U.S. Attorney will notify the requesting individual or entity of acceptance or rejection of the

expedited settlement request as soon as practicable after receipt of all supporting documents, including any additional documents requested by the U.S. Attorney.

2. A request for expedited settlement shall be set forth in a declaration and shall include the following information:
 - a. A complete description of the property;
 - b. Details regarding the perfected interest in the property of the lienholder or mortgagee, supported by copies of all documents pertaining to the loan, including but not limited to: the loan file, loan committee minutes, promissory notes, deeds of trust, mortgage instruments, appraisal reports, status of casualty insurance on the property, and such other evidence as may be requested by the U.S. Attorney; and
 - c. Satisfactory proof of facts and circumstances that justify payment of the lien or mortgage.
3. The foregoing declaration shall be signed by the requesting individual or, if the request is by an institution, by a responsible managing official of the institution, under the penalty of perjury, pursuant to 28 U.S.C. § 1746.

C. Settlement Preliminary Requirements

The U.S. Attorney may enter into an expedited settlement if the requesting individual or entity satisfactorily establishes the following:

1. A valid, good faith security interest in the property as lienholder or mortgagee;
2. Perfection of the lien or mortgage; and
3.
 - a. In civil forfeiture cases, qualification as an innocent owner, as defined by the applicable forfeiture statute and case law, or
 - b. In criminal forfeiture cases, qualification as a person or entity entitled to recover in the ancillary proceeding pursuant to 21 U.S.C. § 853(n).

D. Settlement Terms

1. If the requesting individual or entity satisfies the settlement preliminary requirements set forth in C above, the Government may agree not to contest payment to the individual or entity of the following sums up to the amount of the proceeds of sale of the subject property pursuant to an order of interlocutory sale or a final order or judgment of forfeiture, after payment of outstanding taxes and expenses of custody and sale:

- a. Unpaid principal due and owing under the promissory note;
 - b. Accrued interest at the base contractual rate (not the default rate) to the date of payment; and
 - c. All unpaid casualty insurance premiums for the subject property from [insert the date of the first forfeiture related action], the date of [describe the action taken, e.g., restraint, seizure, or arrest of the above-described property], to the date of payment. [Include only if the casualty insurance is required under the mortgage instrument].
2. Settlement under this policy precludes recovery of attorneys' fees pursuant to 28 U.S.C. § 2465.²
 3. The U.S. Attorney reserves the right to void the expedited settlement agreement if, before payment of the mortgage or lien, the U.S. Attorney obtains new information indicating that the mortgagee or lienholder is not an "innocent owner" or "bona fide purchaser" pursuant to the applicable forfeiture statutes. The U.S. Attorney also reserves the right, in its discretion, to terminate the civil or criminal forfeiture at any time and release the subject property. In either event, the Government shall promptly notify the mortgagee or lienholder of such action. A discretionary termination of forfeiture shall not be a basis for any award of fees under 28 U.S.C. § 2465.

E. Further Conditions of Settlement

1. In consideration of the United States' agreement not to contest the claim of the mortgagee or lienholder in the forfeiture proceeding, the mortgagee or lienholder shall not exercise any rights it may otherwise have had in the event of default by the property owner including, without limitation, any right to foreclose upon and sell the property and any right to assess additional interest or penalties.
2. At the appropriate time, the U.S. Attorney shall notify the USMS or other property custodian that payment can be made from the proceeds of the sale of the forfeited property, and where such payment should be sent.
3. The mortgagee or lienholder shall join in any motion by the U.S. Attorney for interlocutory sale of the property and, in cases involving real property that has been taken into government custody, any motions to remove occupants who fail to abide by the terms of an occupancy agreement. The mortgagee or lienholder shall endorse such government motions within ten days of receipt of the motion.
4. The mortgagee or lienholder shall notify the U.S. Attorney promptly if it learns of any condition that might make an interlocutory sale appropriate. Without limitation, the mortgagee or lienholder shall notify the U.S. Attorney and USMS at the end of the first payment cycle in which a payment is not

² The mortgagee or lienholder may be entitled to certain attorneys' fees pursuant to applicable contract law. If so, the issue of fees and the amount due should be negotiated, addressed, and resolved in the agreement.

made by the debtor under the terms specified in the note and/or failure of the debtor to maintain casualty insurance on the property or pay property taxes due thereon.

5. Unless otherwise agreed by the parties, at or before the closing of the sale of the property, the mortgagee or lienholder shall provide the United States, or the buyer designated by the United States, with a release of the lien or mortgage in recordable form.
6. The mortgagee or lienholder shall agree to release and hold harmless the United States, and any agents, servants, or employees of the United States (and any involved state or local law enforcement agencies and their agents, servants, or employees), in their individual or official capacities, from any and all claims by the mortgagee or lienholder and agents of the mortgagee or lienholder that currently exist or that may arise as a result of the forfeiture action against the property.

F. Failure to Settle

1. The U.S. Attorney will advise the requesting individual or entity in writing that an expedited settlement cannot be reached if either of the following events occurs:
 - a. The requesting individual or entity fails to produce documents and other evidence that satisfy the U.S. Attorney of the individual's or entity's qualification as an innocent owner in a civil case or as a person entitled to prevail in an ancillary proceeding in a criminal case, or of the perfection of the mortgage or lien interest in the property subject to forfeiture; or
 - b. The U.S. Attorney determines that the interest of the requesting individual or entity cannot be settled because the requesting individual or entity has failed to satisfy any of the settlement preliminary requirements set forth in section C above or for any other just cause.
2. Where a mortgagee or lienholder does not or cannot settle, it is the policy of the United States that the mortgagee or lienholder's interest must be litigated in the forfeiture proceeding. Among other things, the United States will move to stay or restrain any judicial or non-judicial foreclosure actions and any other similar attempts to litigate or otherwise resolve the interest of the mortgagee or lienholder in the forfeitable property in any court or forum outside of the federal forfeiture proceeding. *See* 18 U.S.C. § 983(j) and 21 U.S.C. § 853(e). *See, e.g., United States v. Phillips*, 185 F.3d 183, 187-88 (4th Cir. 1999) (*State foreclosure action was invalid as a result of 21 U.S.C. § 853(k); § 853(n) is the exclusive means for a third party to establish an interest in forfeited property*); *In re Newport Savings and Loan Association*, 928 F.2d 472, 479-80 (1st Cir. 1991); *United States v. MacInnes*, 2007 WL 295451 (9th Cir. Jan. 26, 2007) (*unpublished*) (*District Court has exclusive jurisdiction over property subsequent to the filing of an indictment or information*); *Bank One N.A. v. Everly*, 2002 WL 31056716 (N.D. Ill. 2002) (*Government removed state foreclosure action to federal court where criminal case was pending; moved to dismiss foreclosure complaint as barred by Section 853(k)*).

Appendix A

Statutory Authority

Title 28, section 524(c)(1)(D), provides that the Department of Justice Assets Forfeiture Fund is available to the Attorney General for:

the compromise and payment of valid liens and mortgages against property that has been forfeited pursuant to any law enforced or administered by the Department of Justice, subject to the discretion of the Attorney General to determine the validity of any such lien or mortgage and the amount of the payment to be made....

Title 19, section 1617, reads as follows:

Compromise of Government Claims by Secretary of Treasury

Upon a report by a customs officer, United States attorney, or any special attorney, having charge of any claim arising under the Customs laws, showing the facts upon which such claim is based, the probabilities of a recovery and the terms upon which the same may be compromised, the Secretary of the Treasury is authorized to compromise such claim, if such action shall be recommended by the General Counsel for the Department of the Treasury.

The provisions of 19 U.S.C. § 1617 are made applicable to civil forfeiture actions conducted by the Attorney General by specific forfeiture statutes.

Appendix B

Model Forms

1. Model Notice Letter

[INSERT DATE]

[NAME OF MORTGAGEE/LIENHOLDER]

[ADDRESS OF MORTGAGEE/LIENHOLDER]

Re: Notice of Opportunity for Expedited Settlement in [INSERT CASE CAPTION]

Dear [MORTGAGEE/LIENHOLDER]:

This letter serves as notice of a forfeiture action brought by the United States involving property in which you may have an interest, and explains the procedures to follow if you elect to pursue expedited settlement of your interest. Note that the applicable statutes and rules may require you to take certain steps to assert your interest in the property whether or not you elect to agree to an expedited settlement.

On [INSERT DATE], the following property was [SELECT APPROPRIATE ACTION: SEIZED, RESTRAINED, ARRESTED, CHARGED IN A CIVIL FORFEITURE COMPLAINT, AND/OR ALLEGED TO BE FORFEITABLE IN A CRIMINAL FORFEITURE CASE] pursuant to [CITE THE APPLICABLE FORFEITURE STATUTE]:

[DESCRIBE PROPERTY, E.G., DESCRIBE REAL PROPERTY BY STREET ADDRESS AND/OR LEGAL DESCRIPTION]

The asset identifier number [INSERT NUMBER] has been assigned to this property.

[INCLUDE THE NEXT TWO PARAGRAPHS IF A CIVIL FORFEITURE ACTION HAS BEEN OR WILL BE COMMENCED]

Once a complaint for forfeiture is filed against this property, you may choose to assert your interest by filing a claim to the property and answering the complaint. Pursuant to Title 18, United States Code, Section 983(a)(4) and Rule G(5)(a) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions:

Any person claiming an interest in property that is the subject of a civil forfeiture action *in rem* must file a claim no later than 35 days after notice of the action and a copy of the Government's complaint is sent or, as applicable, no later than 30 days after final publication of newspaper notice or legal notice, or no later than 60 days after first publication on the official government forfeiture website. The claimant must file an answer no later than 20 days after filing the claim.

If you file your claim and answer to the civil forfeiture complaint within these time limits, you may request that the United States consider an expedited settlement with regard to your interest in the property.

* * *

[INCLUDE THE NEXT THREE PARAGRAPHS IF A CRIMINAL FORFEITURE ACTION HAS BEEN COMMENCED]

Title 21, United States Code, Section 853(n), provides procedures for a third party to assert its interest in property that has been criminally forfeited. The third party must assert its interest within 30 days of the final publication of notice, or 30 days of receiving notice of the entry of an order of forfeiture against the property, whichever is earlier.

Your statutory right to petition the court for relief from criminal forfeiture does not arise until there is a criminal conviction of the defendant and the court orders forfeiture of the property. However, the Government is now giving you the opportunity to establish your legal interest in the property as between you and the Government in advance of a criminal conviction and forfeiture. You do not have to wait for the criminal case involving the property to proceed any further before requesting such an expedited settlement. You may follow the expedited settlement procedures set forth below at this time.

Use of the expedited settlement procedures does not constitute a waiver of any statutory filing deadlines applicable to criminal forfeiture actions. Thus, if your interest in the property is settled as between you and the Government through this expedited procedure, and the property ultimately is criminally forfeited, you will still need to file a timely petition with the court within the 30-day period described above. However, it will not be necessary for you to participate in any ancillary hearing or other forfeiture litigation with the Government involving this property. As between you and the Government, your interest in the property will be protected through a written settlement agreement that will be filed with the court.

* * *

If you decide to seek an expedited settlement of your secured interest in this property, you must send a request for expedited settlement to: **[INSERT NAME AND ADDRESS OF THE U.S. ATTORNEY WHO INITIATED THE ACTION AGAINST PROPERTY]**.

An outline of Department of Justice policy and procedures governing expedited settlement is enclosed. For your convenience, I have also enclosed sample forms for your use in filing your claim (civil) and/or petition for ancillary hearing (criminal) and in drafting your request for an expedited settlement.

Sincerely yours,

United States Attorney

Assistant United States Attorney

Enclosures

[Enclosure for Model Notice Letter]

Department of Justice Policy and Procedures Governing Expedited Settlement

A. Request for Expedited Settlement

A mortgagee or lienholder may request an expedited settlement of a claim arising from a perfected lien or mortgage following:

1. Notice of the forfeiture action and the timely filing by the mortgagee or lienholder of a claim and answer to a civil forfeiture complaint;
2. The return of a criminal indictment alleging that certain property will be forfeitable to the United States upon defendant's conviction; or
3. The filing of a bill of particulars or motion for order of forfeiture in a criminal case alleging that certain property is forfeitable to the United States.

An expedited settlement will be in lieu of further forfeiture litigation between the parties to the agreement, and in lieu of a petition by the secured party for remission or mitigation of the forfeiture. Although an expedited settlement may be reached at an early stage of a criminal case, the mortgagee or lienholder must still file a timely petition in the post-conviction ancillary hearing in the criminal case so that the settlement can become part of the final order of forfeiture.

B. Request Format

1. Either upon receiving notice of these procedures, or following the occurrence of any of the events listed in A1, 2, or 3, a mortgagee or lienholder may send a request for expedited settlement to the U.S. Attorney who initiated the action against the property. The request must include copies of documents and other evidence that establish the perfected lien or mortgage on the property and satisfy the U.S. Attorney of the status of the requesting individual or entity as an innocent owner in a civil case, or as a person entitled to recover in the ancillary proceeding in a criminal case. Individuals and entities that elect to request an expedited settlement are not relieved of any applicable discovery obligations imposed under the Federal Rules of Civil Procedure or applicable criminal rules. The U.S. Attorney will notify the requesting individual or entity of acceptance or rejection of the expedited settlement request as soon as practicable after receipt of all supporting documents, including any additional documents requested by the U.S. Attorney.
2. A request for expedited settlement shall be set forth in a declaration and shall include the following information:
 - a. A complete description of the property;

- b. Details regarding the perfected interest in the property of the lienholder or mortgagee, supported by copies of all documents pertaining to the loan, including but not limited to: the loan file, loan committee minutes, promissory notes, deeds of trust, mortgage instruments, appraisal reports, status of casualty insurance on the property, and such other evidence as may be requested by the U.S. Attorney; and
 - c. Satisfactory proof of facts and circumstances that justify payment of the lien or mortgage.
3. The foregoing declaration shall be signed by the requesting individual or, if the request is by an institution, by a responsible managing official of the institution, under the penalty of perjury, pursuant to 28 U.S.C. § 1746.

C. Settlement Preliminary Requirements

The U.S. Attorney may enter into an expedited settlement if the requesting individual or entity satisfactorily establishes the following:

1. A valid, good faith security interest in the property as lienholder or mortgagee;
2. Perfection of the lien or mortgage; and
3.
 - a. In civil forfeiture cases, qualification as an innocent owner, as defined by the applicable forfeiture statute and case law, or
 - b. In criminal forfeiture cases, qualification as a person or entity entitled to recover in the ancillary proceeding pursuant to 21 U.S.C. § 853(n).

D. Settlement Terms

1. If the requesting individual or entity satisfies the settlement preliminary requirements set forth in C above, the Government may agree not to contest payment to the individual or entity of the following sums up to the amount of the proceeds of the sale of the subject property pursuant to an order of interlocutory sale or a final order or judgment of forfeiture, after payment of outstanding taxes and expenses of custody and sale:
 - a. Unpaid principal due and owing under the promissory note;
 - b. Accrued interest at the base contractual rate (not the default rate) to the date of payment; and
 - c. All unpaid casualty insurance premiums for the subject property from **[insert the date of the first forfeiture related action]**, the date of **[describe the action taken, e.g., restraint, seizure, or arrest of the above-described property]**, to the date of payment. **[Include only if the casualty insurance is required under the mortgage instrument]**.

2. Settlement under this policy precludes recovery of attorneys' fees pursuant to 28 U.S.C. § 2465.
3. The U.S. Attorney reserves the right to void the expedited settlement agreement if, before payment of the mortgage or lien, the U.S. Attorney obtains new information indicating that the mortgagee or lienholder is not an "innocent owner" or "bona fide purchaser" pursuant to the applicable forfeiture statutes. The U.S. Attorney also reserves the right, in its discretion, to terminate the civil or criminal forfeiture at any time and release the subject property. In either event, the Government shall promptly notify the mortgagee or lienholder of such action. A discretionary termination of forfeiture shall not be a basis for any award of fees under 28 U.S.C. § 2465.

E. Further Conditions of Settlement

1. In consideration of the United States' agreement not to contest the claim of the mortgagee or lienholder in the forfeiture proceeding, the mortgagee or lienholder shall not exercise any rights it may otherwise have had in the event of default by the property owner including, without limitation, any right to foreclose upon and sell the property and any right to assess additional interest or penalties.
2. At the appropriate time, the U.S. Attorney shall notify the USMS or other property custodian that payment can be made from the proceeds of the sale of the forfeited property, and where such payment should be sent.
3. The mortgagee or lienholder shall join in any motion by the U.S. Attorney for interlocutory sale of the property and, in cases involving real property that has been taken into government custody, any motions to remove occupants who fail to abide by the terms of an occupancy agreement. The mortgagee or lienholder shall endorse such government motions within ten days of receipt of the motion.
4. The mortgagee or lienholder shall notify the U.S. Attorney promptly if it learns of any condition that might make an interlocutory sale appropriate. Without limitation, the mortgagee or lienholder shall notify the U.S. Attorney and USMS at the end of the first payment cycle in which a payment is not made by the debtor under the terms specified in the note and/or failure of the debtor to maintain casualty insurance on the property or pay property taxes due thereon.
5. Unless otherwise agreed by the parties, at or before the closing of the sale of the property, the mortgagee or lienholder shall provide the United States, or the buyer designated by the United States, with a release of the lien or mortgage in recordable form.
6. The mortgagee or lienholder shall agree to release and hold harmless the United States, and any agents, servants, or employees of the United States (and any involved state or local law enforcement agencies and their agents, servants, or employees), in their individual or official capacities, from any and all claims by the mortgagee or lienholder and agents of the mortgagee or lienholder that currently exist or that may arise as a result of the forfeiture action against the property.

F. Failure to Settle

1. The U.S. Attorney will advise the requesting individual or entity in writing that an expedited settlement cannot be reached if either of the following events occurs:
 - a. The requesting individual or entity fails to produce documents and other evidence that satisfy the U.S. Attorney of the individual's or entity's qualification as an innocent owner in a civil case or as a person entitled to prevail in an ancillary proceeding in a criminal case, or of the perfection of the mortgage or lien interest in the property subject to forfeiture; or
 - b. The U.S. Attorney determines that the interest of the requesting individual or entity cannot be settled because the requesting individual or entity has failed to satisfy any of the settlement preliminary requirements set forth in section C above or for any other just cause.
2. Where a mortgagee or lienholder does not or cannot settle, it is the policy of the United States that the mortgagee or lienholder's interest must be litigated in the forfeiture proceeding. Among other things, the United States will move to stay or restrain any judicial or non-judicial foreclosure actions and any other similar attempts to litigate or otherwise resolve the interest of the mortgagee or lienholder in the forfeitable property in any court or forum outside of the federal forfeiture proceeding. *See* 18 U.S.C. § 983(j) and 21 U.S.C. § 853(e). *See, e.g., United States v. Phillips*, 185 F.3d 183, 187-88 (4th Cir. 1999) (State foreclosure action was invalid as a result of 21 U.S.C. § 853(k); § 853(n) is the exclusive means for a third party to establish an interest in forfeited property; *In re Newport Savings and Loan Association*, 928 F.2d 472, 479-80 (1st Cir. 1991); *United States v. MacInnes*, 2007 WL 295451 (9th Cir. Jan. 26, 2007) (unpublished) (District Court has exclusive jurisdiction over property subsequent to the filing of an indictment or information); *Bank One N.A. v. Everly*, 2002 WL 31056716 (N.D. Ill. 2002) (Government removed state foreclosure action to federal court where criminal case was pending; moved to dismiss foreclosure complaint as barred by Section 853(k)).

2. Model Request Form

TO: [UNITED STATES ATTORNEY]

FROM: [MORTGAGEE/LIENHOLDER]
[TAXPAYER IDENTIFICATION NUMBER]

[MORTGAGEE/LIENHOLDER] requests an expedited settlement of its [MORTGAGE OR LIEN] interest in the property described as [DESCRIPTION]. The asset identifier number is [INSERT NUMBER]. On [DATE], this property was restrained, arrested, or seized for forfeiture by the [AGENCY], or alleged to be forfeitable to the United States in a civil or criminal forfeiture case pursuant to [STATUTE]. This request is based on: [DESCRIBE SECURED LEGAL INTEREST IN SUBJECT PROPERTY].

Attached to this request are copies of the following supporting documents:

[EXAMPLE: ALL DOCUMENTS PERTAINING TO THE LOAN INCLUDING, BUT NOT LIMITED TO: THE LOAN FILE, LOAN COMMITTEE MINUTES, PROMISSORY NOTES, DEEDS OF TRUST, OR MORTGAGE/LIEN INSTRUMENTS.]

Casualty Insurance Status

The terms of the [MORTGAGE/LIEN] require that casualty insurance in the amount of [AMOUNT] must be maintained on this property. The monthly premium for this insurance is [AMOUNT]. Casualty insurance premiums have been paid through [DATE].

Compliance with Filing Deadlines

[MORTGAGEE/LIENHOLDER] understands that this request for expedited settlement does not relieve it of compliance with any statutory filing deadline as a claimant in the civil forfeiture action or as a petitioner in the criminal case ancillary hearing.

DECLARATION

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

Executed on _____

Name of [MORTGAGEE/LIENHOLDER]
[AND IF MORTGAGEE/LIENHOLDER IS AN INSTITUTION,
TITLE/POSITION DECLARANT HOLDS WITH INSTITUTION]

[DESCRIBE HOW YOU CAME TO HOLD THE MORTGAGE/LIEN AND THE NAME AND ADDRESS OF THE INDIVIDUAL(S) WHO CONTACTED YOU OR YOUR INSTITUTION TO ACCEPT THE MORTGAGE/LIEN.]

6. Pursuant to Title 18, United States Code, § [Number] **[Insert as applicable: 18 U.S.C. § 983(d)(2) or (3)]** the claimant **[MORTGAGEE/LIENHOLDER]** is an innocent owner by virtue of the fact that **[insert basis for innocent owner defense in 18 U.S.C. § 983(d)(2) or (3)]**.

WHEREFORE, the claimant **[MORTGAGEE/LIENHOLDER]** requests relief in this action in the form of payment of the amounts due on its promissory note and deed of trust described herein.

Dated: [MONTH, DAY, AND YEAR]

Respectfully submitted,

Attorney
Attorney for [CLAIMANT'S NAME]

DECLARATION

[IF MORTGAGEE/LIENHOLDER IS AN INSTITUTION]

I, **[DECLARANT'S NAME]**, am the **[TITLE OF PERSON MAKING THE DECLARATION]** of **[NAME OF INSTITUTION]**, and I am authorized to make this declaration on its behalf.

I have read the foregoing claim of **[NAME OF INSTITUTION]** and know the contents thereof.

I am informed and believe that the matters stated are true and on that basis I declare under penalty of perjury that the foregoing is true and correct.

Executed on [MONTH, DAY, AND YEAR] at [CITY AND STATE IN WHICH SIGNATURE IS OBTAINED].

[DECLARANT'S NAME]

[IF MORTGAGEE/LIENHOLDER IS AN INDIVIDUAL]

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

Executed on [MONTH, DAY, AND YEAR] at [CITY AND STATE IN WHICH SIGNATURE IS OBTAINED].

[DECLARANT'S NAME]

5. Pursuant to the terms of the [MORTGAGE/LIEN], casualty insurance in the amount of [AMOUNT] must be maintained on the property. The [MORTGAGEE/LIENHOLDER] has paid casualty insurance premiums in the amount of [AMOUNT] through [DATE].
6. The circumstances under which [MORTGAGEE/LIENHOLDER] acquired its interest are as follows:

[DESCRIBE HOW YOU CAME TO HOLD THE MORTGAGE/LIEN AND THE NAME AND ADDRESS OF THE INDIVIDUAL(S) WHO CONTACTED YOU OR YOUR INSTITUTION TO ACCEPT THE MORTGAGE/LIEN.]

7. Pursuant to 21 U.S.C. § 853(n)(6), the petitioner [MORTGAGEE/LIENHOLDER] has a prior vested or superior interest in the property or is a bona fide purchaser for value of the right, title, or interest in the above-described property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture.
8. The petitioner seeks relief from this court’s preliminary order of forfeiture and hereby requests that this Honorable Court hold a hearing ancillary to the criminal conviction of [NAME OF CRIMINAL DEFENDANT] at which the petitioner may testify and present evidence and witnesses on its own behalf pursuant to 21 U.S.C. § 853(n)(5) and further that this court amend its preliminary order of forfeiture dated [DATE] to recognize fully the interest of [MORTGAGEE/LIENHOLDER] as it is set forth herein.

DATED: [MONTH, DAY AND YEAR]

Respectfully submitted,

[ATTORNEY’S NAME]

Attorney for Petitioner [MORTGAGEE/LIENHOLDER]

DECLARATION

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

Executed on [month, day, and year] at [city and state in which signature is obtained].

[Declarant’s Name]

[If mortgagee/lienholder is an individual]

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

Executed on **[Month, Day, and Year]** at **[City and State in Which Signature Is Obtained]**.

[Declarant's Name]

5. Model Expedited Settlement Agreement for Civil Forfeiture

UNITED STATES DISTRICT COURT
 _____ DISTRICT OF _____

UNITED STATES OF AMERICA, <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> [INSERT DESCRIPTION OF PROPERTY], <p style="text-align: center;">Defendant.</p>		Civil No. [NUMBER]
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EXPEDITED SETTLEMENT AGREEMENT

IT IS HEREBY STIPULATED by and between plaintiff United States of America and claimant [INSERT NAME OF MORTGAGEE/LIENHOLDER] to compromise and settle [ITS/HIS/HER] interest in the following described defendant property: [INSERT A FULL DESCRIPTION OF THE PROPERTY].

This settlement is entered into between the parties pursuant to the following terms:

1. The parties to this Agreement hereby stipulate that [CITE STATUTORY VIOLATIONS GIVING RISE TO FORFEITURE] involving the defendant property occurred [SELECT APPROPRIATE PHRASE] [e.g., without the knowledge of the [MORTGAGEE/LIENHOLDER] and/or upon learning of the conduct, the [MORTGAGEE/LIENHOLDER] did all that reasonably could be expected to terminate such use of the property (18 U.S.C. § 983(d)(2)) or is a bona fide purchaser for value and did not know and was reasonably without cause to believe the defendant property was subject to forfeiture (18 U.S.C. § 983(d)(3))].

2. Plaintiff agrees that upon interlocutory sale of the property pursuant to an order of the Court, or upon sale of the property pursuant to entry by the Court of a final order of forfeiture, Plaintiff will not contest payment to [MORTGAGEE/LIENHOLDER] from the proceeds of sale, after payment of outstanding taxes and expenses of custody and sale incurred by [THE U.S. MARSHALS SERVICE OR OTHER PROPERTY CUSTODIAN], the following:
 - a. All unpaid principal due to [MORTGAGEE/LIENHOLDER] in the amount of [\$_____] as of [DATE], pursuant to the [MORTGAGE/LIEN] instrument dated [DATE], which was secured by a deed of trust recorded [DATE], in the official records of [COUNTY AND STATE], at [RECORDING NUMBER];

- b. All unpaid interest at the base contractual rate (not the default rate) under the above [MORTGAGE/LIEN] instrument, that is [AMOUNT] as of [DATE] plus interest at the rate of [AMOUNT] per diem from [DATE] until the date of payment; and
 - c. All casualty insurance premiums paid by the [MORTGAGEE/LIENHOLDER] until the date of payment.
3. Payment to [MORTGAGEE/LIENHOLDER] is conditioned upon the United States prevailing against any competing claims, including any claims by the property owner.
4. The payment to [MORTGAGEE/LIENHOLDER] shall be in full settlement and satisfaction of all claims by [MORTGAGEE/LIENHOLDER] arising from and resulting from the seizure, detention, and forfeiture of the defendant property.
5. Upon payment, [MORTGAGEE/LIENHOLDER] agrees to assign and convey its security interest to the United States via recordable documents and to release and hold harmless the United States, and any agents, servants, and employees of the United States (and any involved state or local law enforcement agencies and their agents, servants, or employees), in their individual or official capacities, from any and all claims by [MORTGAGEE/LIENHOLDER] and [ITS/HIS/HERS] agents that currently exist or that may arise as a result of the Government's actions against and relating to the defendant property.
6. [MORTGAGEE/LIENHOLDER] agrees not to pursue any other rights [IT/HE/SHE] may have under the [MORTGAGE/LIEN] instrument, including but not limited to the right to foreclose upon and sell the property and any right to assess additional interest or penalties.
7. [MORTGAGEE/LIENHOLDER] agrees to waive all attorneys' fees under 28 U.S.C. § 2465.
8. [MORTGAGEE/LIENHOLDER] agrees to notify the U.S. Attorney promptly if it learns of any condition that might make an interlocutory sale appropriate. Without limitation, [MORTGAGEE/LIENHOLDER] shall notify the U.S. Attorney at the end of the first payment cycle in which a payment is not made by the debtor under the terms specified in the note or failure of the debtor to maintain casualty insurance on the property or pay property taxes due thereon. [MORTGAGEE/LIENHOLDER] further agrees to join in any motion by the U.S. Attorney for interlocutory sale of the property and any motions to remove occupants who fail to abide by the terms of an occupancy agreement. [MORTGAGEE/LIENHOLDER] shall endorse such government motions within ten days of receipt of the motion.
9. [MORTGAGEE/LIENHOLDER] understands and agrees that by entering into this expedited settlement of [ITS/HIS/HER] interests in the defendant property, [IT/HE/SHE] waives any rights to litigate further [ITS/HIS/HER] interest in the defendant property and to petition for remission or mitigation of the forfeiture. If this Agreement is approved by the Court, unless specifically directed by an order of the Court, [MORTGAGEE/LIENHOLDER] shall be excused and relieved from further participation in this

action. However, this expedited settlement does not relieve the claimant of any applicable discovery obligations imposed under the Federal Rules of Civil Procedure.

10. **[MORTGAGEE/LIENHOLDER]** understands and agrees that the United States reserves the right to void the expedited settlement agreement if, before payment of the mortgage or lien, the U.S. Attorney obtains new information indicating that the mortgagee or lienholder is not an “innocent owner” or “bona fide purchaser” pursuant to the applicable forfeiture statutes. The U.S. Attorney also reserves the right, in its discretion, to terminate the forfeiture at any time and release the defendant property. In either event, the Government shall promptly notify the mortgagee or lienholder of such action. A discretionary termination of forfeiture shall not be a basis for any award of fees under 28 U.S.C. § 2465.
11. **[MORTGAGEE/LIENHOLDER]** agrees to execute further documents, to the extent necessary, to convey clear title to the property to the United States and to implement further the terms of this settlement.
12. Each party agrees to bear its own costs and attorneys’ fees.
13. Payment to **[MORTGAGEE/LIENHOLDER]** pursuant to this settlement agreement is contingent upon a court-authorized interlocutory sale of the defendant property, the United States’ prevailing against any third-party claims, the court’s entry of a final judgment of forfeiture to the United States, and sale of the defendant property pursuant to the final judgment. The terms of this settlement agreement shall be subject to approval by the United States district court and any violation of any terms and conditions shall be construed as a violation of an order of the court.

Respectfully Submitted,
United States Attorney

DATED: _____
by **[NAME]**
Assistant United States Attorney
Attorney for United States of America

DATED: _____
[NAME]
Attorney for Claimant
[MORTGAGEE/LIENHOLDER]

DATED: _____
[NAME/TITLE CLAIMANT’S REPRESENTATIVE]
[MORTGAGEE/LIENHOLDER]

5(a). Order

UNITED STATES DISTRICT COURT
_____ DISTRICT OF _____

UNITED STATES OF AMERICA, Plaintiff, v. [INSERT DESCRIPTION OF PROPERTY], Defendant.	Civil No. [NUMBER]
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ORDER

The Expedited Settlement entered herein by plaintiff United States of America and claimant **[MORTGAGEE/LIENHOLDER]** is hereby APPROVED.

DATED this **[DATE]** day of **[MONTH, YEAR]**.

BY THE COURT:

[NAME OF JUDGE], Judge
United States District Court

6. Model Expedited Settlement Agreement for Criminal Forfeiture

UNITED STATES DISTRICT COURT
 _____ DISTRICT OF _____

UNITED STATES OF AMERICA, Plaintiff, v. [NAME OF CRIMINAL DEFENDANT], Defendant.	- - - - -	Criminal No. [NUMBER]
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EXPEDITED SETTLEMENT AGREEMENT

IT IS HEREBY STIPULATED by and between the United States of America and Petitioner [MORTGAGEE/LIENHOLDER] to compromise and settle [ITS/HIS/HER] interest in the following property:

[INSERT A FULL DESCRIPTION OF THE PROPERTY]

This settlement is entered into between the parties pursuant to the following terms:

1. The parties to this Agreement hereby stipulate that [MORTGAGEE/LIENHOLDER] had a prior vested or superior interest in the property or is a bona fide purchaser for value of the right, title, or interest in the property, and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture.

2. The United States agrees that upon interlocutory sale of the property pursuant to an order of the Court, or upon conviction of the captioned defendant and entry of a final order of forfeiture forfeiting the property to the United States and sale of the property pursuant to the final order of forfeiture, the United States will not contest payment to [MORTGAGEE/LIENHOLDER] from the proceeds of sale, after payment of outstanding taxes and the expenses of custody and sale incurred by [THE U.S. MARSHALS SERVICE OR OTHER PROPERTY CUSTODIAN] the following:
 - a. All unpaid principal due to [MORTGAGEE/LIENHOLDER] in the amount of [\$_____] as of [DATE], pursuant to the [MORTGAGE/LIEN] instrument dated [DATE], which was secured by a deed of trust recorded [DATE], in the official records of [COUNTY AND STATE], at [RECORDING NUMBER];

- b. All unpaid interest at the base contractual rate (not the default rate) under the above [MORTGAGE/LIEN] instrument, that is [\$ AMOUNT] as of [DATE] plus interest at the rate of [AMOUNT] per diem from [DATE] until the date of payment; and
 - c. All casualty insurance premiums paid by the [MORTGAGEE/LIENHOLDER] until the date of the payment.
3. Payment to [MORTGAGEE/LIENHOLDER] is conditioned upon the United States prevailing against the defendant and any other competing claims.
4. The payment to [MORTGAGEE/LIENHOLDER] shall be in full settlement and satisfaction of all claims by [MORTGAGEE/LIENHOLDER] arising from and relating to the seizure, detention, and forfeiture of the property.
5. Upon payment, [MORTGAGEE/LIENHOLDER] agrees to assign and convey its security interest to the United States via recordable documents and to release and hold harmless the United States, and any agents, servants, and employees of the United States (and any involved state or local law enforcement agencies and their agents, servants, or employees), in their individual or official capacities, from any and all claims by [MORTGAGEE/LIENHOLDER] and [ITS/HIS/HER] agents that currently exist or that may arise as a result of the Government's actions against and relating to the property.
6. [MORTGAGEE/LIENHOLDER] agrees not to pursue any other rights [IT/HE/SHE] may have under the [MORTGAGE/LIEN] instrument, including but not limited to the right to foreclose upon and sell the property and any right to assess additional interest or penalties.
7. [MORTGAGEE/LIENHOLDER] agrees to notify the U.S. Attorney promptly if it learns of any condition that might make an interlocutory sale appropriate. Without limitation, [MORTGAGEE/LIENHOLDER] shall notify the U.S. Attorney at the end of the first payment cycle in which a payment is not made by the debtor under the terms specified in the note or failure to pay property taxes or maintain casualty insurance. [MORTGAGEE/LIENHOLDER] further agrees to join in any motion by the U.S. Attorney for interlocutory sale of the property and any motions to remove occupants who fail to abide by the terms of an occupancy agreement. [MORTGAGEE/LIENHOLDER] shall endorse such government motions within ten days of receipt of the motion.
8. [MORTGAGEE/LIENHOLDER] understands and agrees that by entering into this expedited settlement of [ITS/HIS/HER] interest in the property, [IT/HE/SHE] waives any rights to litigate further [ITS/HIS/HER] interest in the property and to petition for remission or mitigation of the forfeiture. However, Petitioner understands that [IT/HE/SHE] must timely file a petition pursuant to Title 21, United States Code, Section 853(n). If this Agreement is approved by the Court, then unless specifically directed by an order of the Court, [MORTGAGEE/LIENHOLDER] shall be excused and relieved from further participation in this action. However, this expedited settlement does not relieve the petitioner of any applicable discovery obligations.

9. **[MORTGAGEE/LIENHOLDER]** understands and agrees that the United States reserves the right to void the expedited settlement agreement if, before payment of the mortgage or lien, the U.S. Attorney obtains new information indicating that the mortgagee or lienholder is not an “innocent owner” or “bona fide purchaser” pursuant to the applicable forfeiture statutes. The U.S. Attorney also reserves the right, in its discretion, to terminate the forfeiture at any time and release the property. In either event, the Government shall promptly notify the mortgagee or lienholder of such action. A discretionary termination of forfeiture shall not be a basis for any award of fees.
10. **[MORTGAGEE/LIENHOLDER]** agrees to execute further documents, to the extent necessary, to convey clear title to the property to the United States and to implement further the terms of this settlement.
11. Each party agrees to bear its own costs and attorneys’ fees.
12. Payment to **[MORTGAGEE/LIENHOLDER]** pursuant to this settlement agreement is contingent upon a court-authorized interlocutory sale of the property or the United States’ prevailing against the defendant and any third-party claims in an ancillary proceeding, the court’s entry of a final order of forfeiture to the United States, and sale of the property pursuant to the final order of forfeiture. The terms of this settlement agreement shall be subject to approval by the United States district court and any violation of any terms or conditions shall be construed as a violation of an order of the court.

Respectfully Submitted,
 United States Attorney

DATED: _____

 by **[NAME]**
 Assistant United States Attorney
 Attorney for United States of America

DATED: _____

[NAME]
 Attorney for Petitioner
[MORTGAGEE/LIENHOLDER]

DATED: _____

[NAME/TITLE PETITIONER’S REPRESENTATIVE]
[MORTGAGEE/LIENHOLDER]

7. Model Set of Interrogatories

UNITED STATES DISTRICT COURT
 _____ DISTRICT OF _____

UNITED STATES OF AMERICA, <div style="text-align: center;">Plaintiff,</div> <div style="text-align: center;">v.</div> [DESCRIPTION OF PROPERTY], <div style="text-align: center;">Defendant.</div>		Civil No. [NUMBER]
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PLAINTIFF UNITED STATES' FIRST SET OF INTERROGATORIES

TO: **[MORTGAGEE/LIENHOLDER]**

Pursuant to the provisions of Rule 33 of the Federal Rules of Civil Procedure (Fed. R. Civ. P.), the United States propounds the following interrogatories to be answered in writing, under oath, within 30 days of service.

These interrogatories are intended to be a continuing obligation upon you to furnish all information requested herein until final disposition of this case. Corrections and/or additions to answers provided are required as noted in Fed. R. Civ. P. 26(e). Should such additional information not be furnished, the Government may move to strike or preclude such information at time of trial.

Space has been provided for answering the interrogatories. Should a space be inadequate for your answer, you may attach additional sheet(s) of paper.

The person signing these interrogatories shall sign under oath, attesting to the fact that he/she: (1) has read the interrogatories and the answers and (2) believes the answers to be true and correct to the best of his/her knowledge.

INSTRUCTIONS FOR ANSWERING

In each of your answers to these interrogatories, you are requested to provide not only such information as is in your possession and control, but also all information as is reasonably available. In the event you are able to provide only part of the information required by any particular interrogatory, please provide as much

information as you are able to provide and state the reason for your inability to provide the remainder, as well as the effort expended to obtain the requested information. Information in the possession and control of claimants' businesses, associated organizations, related organizations, organizations under common control, predecessors in interest, spouses, relatives, friends, associates, employers, consultants, accountants, attorneys, investigators, agents, employees, or other representatives, whether past or present, shall also be provided.

In replying to any interrogatory do not merely refer to the attached records unless you have no independent recollection of the matters referred to in the interrogatory. If you have any independent recollection of the relevant events, describe it in detail.

For each interrogatory, separately identify:

- a. all sources of information and all documents and communications maintained by you, or by any other person, upon which you relied in making your response or which refer to any matter referenced in such response, and
- b. the person or persons most familiar with the facts requested as well as those with whom you consulted in preparing your response to such interrogatory.

If you object to, or otherwise decline to answer any portion of any interrogatory, please provide all information required by the portion of the interrogatory to which you do not object, or to which you do not decline to answer. If you do not answer an interrogatory or any portion thereof, please indicate each person or organization whom you believe has information regarding the subject of such interrogatory. If you object to any interrogatory on the ground that it is too broad (*i.e.*, that it calls for both information which is and is not relevant), please provide such information that is relevant. If you object to an interrogatory on the ground that providing an answer would constitute an undue burden, please provide the requested information you believe can be supplied without undertaking an undue burden.

For those portions of any interrogatory to which you object or otherwise decline to answer, state the reason for such objection or declination and identify any person having knowledge of the factual basis, if any, on which the privilege or other ground for objection is asserted. Additionally, please identify those responses supplied from information and belief rather than from actual knowledge and specifically describe or identify the sources of such information and belief.

INTERROGATORIES

INTERROGATORY NO. 1. Please provide the following information about yourself:

- a. Full name;
- b. Date of birth;
- c. Place of birth;
- d. Social security or tax identification number;
- e. Residence address;
- f. Business address; and
- g. Business and home telephone number.

ANSWER:

INTERROGATORY NO. 2. Provide the following information as to the borrower [**BORROWER'S NAME**]:

- a. Full name;
- b. Nickname(s)/alias(es);
- c. Date of birth;
- d. Place of birth;
- e. Social security or tax identification number;
- f. Driver's license number and state;
- g. Name of spouse;
- h. Number and name(s) of child(ren);
- i. Name(s) and address(es) of relative(s);
- j. Address of last known residence;
- k. Known infirmities or handicaps;
- l. Veteran or military status;
- m. Educational level and institution attended;
- n. Languages spoken; and
- o. Institutions admitted or committed to and purpose of admission or commitment.

ANSWER:

INTERROGATORY NO. 3. Fully describe your relationship with the borrower including how long you have known the borrower and whether you know the borrower socially, and describe those circumstances as well as the history and details regarding the borrower's business relationship with you.

ANSWER:

INTERROGATORY NO. 4. State with particularity your current interest in the defendant property and the full circumstances under which it arose.

ANSWER:

INTERROGATORY NO. 5. State with particularity whether or not any or all of your financial interest in the defendant property has been satisfied.

ANSWER:

INTERROGATORY NO. 6. Identify the type of lien, mortgage, or indebtedness which you hold on the defendant property, and as to the lien, mortgage, or indebtedness, please provide the following:

- a. The name and address of each person who incurred the lien, mortgage, or indebtedness;
- b. The original amount of the lien, mortgage, or indebtedness;
- c. The current outstanding amount of the lien, mortgage, or indebtedness;
- d. The date(s) the lien, mortgage, or indebtedness was incurred;
- e. The length of time and payment provisions of the lien, mortgage, or indebtedness;
- f. The name(s) and address(es) of any person(s) who have paid any portion of the lien, mortgage, or indebtedness;
- g. How you came to hold the lien, mortgage, or indebtedness, and by whom you were contacted to accept the lien, mortgage, or indebtedness;
- h. How and where the lien, mortgage, or indebtedness was recorded; and
- i. The date the lien, mortgage, or indebtedness was recorded.

ANSWER:

INTERROGATORY NO. 7. Do you have any records or documents which reflect or are relevant to your interest in the defendant property or your claim to the defendant property?

ANSWER:

INTERROGATORY NO. 8. If your answer to the proceeding interrogatory is in the affirmative, please identify the records or documents you have which reflect or are relevant to your sale, disposal, and/or interest in the defendant property, and identify by name, address, and telephone number the person having custody of the records and documents.

ANSWER:

INTERROGATORY NO. 9. Are you willing to request the individual having custody of the above identified records to provide legible copies to the United States?

ANSWER:

Respectfully submitted,

UNITED STATES ATTORNEY

Assistant United States Attorney

Signed by Attorney of Record as to Objections Only

DECLARATION

I, [**DECLARANT’S NAME**], declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that I am a claimant in the above entitled action, that I have read the foregoing interrogatories and answers thereto, and that, based on the information provided to me and information of which I am personally knowledgeable, the answers are true and correct.

Executed this _____ day of _____, _____.

[NAME AND TITLE OF DECLARANT]

8. Model Request Form for Production of Documents

UNITED STATES DISTRICT COURT
 _____ DISTRICT OF _____

UNITED STATES OF AMERICA, <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> [DESCRIPTION OF PROPERTY], Defendant.		Civil No. [NUMBER]
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**PLAINTIFF UNITED STATES’ FIRST REQUEST
 FOR PRODUCTION OF DOCUMENTS**

TO: [MORTGAGEE/LIENHOLDER]

Plaintiff, United States of America, in accordance with Rule 34 of the Federal Rules of Civil Procedure, requests that within 30 days, you produce to the undersigned attorney for the United States the following designated records and documents for inspection and copying.

As used in this request, the terms “records” and “documents” include any book, pamphlet, periodical, letter, report, memorandum, log, notation, message, telegram, cable, record, study, working paper, chart, graph, photograph, videotape, computer disk, index, tape, rerecorded tape, minutes, contract, lease, invoice, record of purchase or sale, correspondence, electronic or other transcription or taping of telephone or personal conversations or conferences, and any and all other written, printed, typed, punched, taped, filmed, computerized, or graphic material, however produced or reproduced, including electronically stored information.

REQUEST FOR PRODUCTION NO. 1. All records and documents reflecting, stating, or relating, in whole or in part, to the indebtedness of [NAME OF BORROWER(S)] to you as the claimant to the defendant property, including but not limited to the following:

- a. Promissory notes;
- b. Deeds of trust;
- c. Mortgage or lien instruments;
- d. Complete loan file;

- e. Proof of disbursement of the loan proceeds, including the front and back of the loan proceeds disbursement check(s) and/or proof of the wire transfer(s);
- f. Any and all loan applications submitted by the borrower(s);
- g. Any and all financial statements, federal and state tax returns (including all schedules thereto), balance sheets, profit and loss statements, and collateral appraisals submitted by the borrower(s);
- h. Any and all credit reports and other documents considered in making the loan;
- i. Any and all loan presentation summaries and loan status reports prepared by any agents, employees, or officers of **[MORTGAGEE/LIENHOLDER]**;
- j. Any and all committee minutes or comparable memoranda of the deliberations of **[MORTGAGEE/LIENHOLDER]** and/or of your predecessor in interest, if any, with respect to the loan;
- k. Any and all internal and external audit reports of the loan;
- l. Any and all loan payment history cards and computer printouts; and
- m. Any and all correspondence and memoranda of telephone calls with the borrower(s).

RESPONSE:

Part II

A Guide to Interlocutory Sales in Forfeiture Cases

I. Introduction

Forfeiture litigation may take years to complete, and situations may arise in which it is necessary or desirable to liquidate the property to preserve its value prior to a final order or judgment of forfeiture. Such sales, called “interlocutory” because they occur during the pendency of litigation, may be held pursuant to a court-approved stipulation of all parties. In the absence of an agreement, the court may order an interlocutory sale when certain criteria are met. The sale proceeds (called the “substitute *res*” in a civil case) are substituted for the original property and used to satisfy the judgment whether for the United States or the opposing party. Interlocutory sales may be held in both civil and criminal forfeiture cases.

II. Situations Where Interlocutory Sales May Be Appropriate

Interlocutory sales are appropriate where: (1) property is perishable or subject to depreciation, decay, or injury; (2) the expense of maintaining the property is excessive or disproportionate to the property’s value; (3) a stay, lengthy pretrial proceedings, or some other factor delays the litigation; or (4) other exigent circumstances arise. The following are some examples:

- vacant real property that is subject to vandalism or that poses a particular danger to the community
- real property with delinquent mortgage payments, especially where a mortgagee is threatening or attempting to foreclose on the property
- real property that is deteriorating or in need of extensive repair work
- real property with growing crops that need constant attention
- livestock that must be fed and cared for
- perishable items that will lose their value if not sold immediately
- cars, planes, or boats that are expensive to store and maintain in relation to their value
- inherently dangerous materials such as explosives
- chemicals and pharmaceuticals with limited shelf life
- businesses operating under state or local licenses which may be revoked
- cases that have been stayed or otherwise delayed
- personal property subject to rapid, significant depreciation or loss in equity (*e.g.*, business interests; securities; and equipment, vessels, aircraft, and automobiles subject to lease or financing arrangements)

Courts have ordered interlocutory sales in these circumstances. *See, e.g., United States v. Real Property Located at 22 Santa Barbara Drive*, 264 F.3d 860, 866-67 (9th Cir. 2001) (stipulated sale paid off mortgage); *United States v. Pelullo*, 178 F.3d 196, 198-99 (3d Cir. 1999) (interlocutory sale approved over criminal defendant's objections where equity was being depleted by accruing taxes and interest on mortgagee's foreclosure judgment); *United States v. One Parcel of Real Property Described as Lot 41, Berryhill Farm Estates*, 128 F.3d 1386, 1389-90 (10th Cir. 1997) (because property was subject to deterioration and decay, district court granted Government's unopposed motion for interlocutory sale and confirmed sale despite claimant's subsequent motion to block it); *United States v. 2540 Chadwick Way, Mundelein, Illinois*, 2005 WL 2124539 (N.D. Ill. May 12, 2005) (despite wife's opposition, court granted Government's motion for an interlocutory sale based on mortgage being in default and possible foreclosure); *United States v. \$82,685.53, More or Less in Proceeds from the Interlocutory Sale of 218 Cattle*, 2000 WL 828080 (S.D. Ala. May 31, 2000) (livestock sold); *Aguilar v. United States*, 1999 WL 1067841 *5 (D. Conn. Nov. 8, 1999) (despite claimant's opposition, interlocutory sale was warranted because properties were abandoned and subject to "vandalism, deterioration and depreciation" and mortgage payments were several months in arrears); *United States v. One 1979 Peterbilt*, 1994 WL 99540 *2 (E.D. La. Mar. 18, 1994) (granting unopposed motion for interlocutory sale because of depreciating value of vehicle); *cf. United States v. Real Property Known As 2916 Forest Glen Court*, 162 F. Supp. 2d 909, 917 (S.D. Ohio 2001) (court denied claimant's motion for interlocutory sale of seized, and nearly expired, pharmaceuticals because, *inter alia*, claimant failed to show likelihood of success on the merits and it was not in public interest to require Government to incur significant expense for tests to determine whether expiration date could be extended).

The proceeds of an interlocutory sale are substituted for the forfeitable property (as the substitute *res* in a civil case) and are held by the U.S. Marshals Service (USMS) or other custodial agency in a Seized Assets Deposit Fund or, if the court so orders, in the registry of the court or an interest-bearing escrow account, until the forfeiture is concluded. *See Berryhill Farm Estates*, 128 F.3d at 1390 (court ordered USMS to hold real property sale proceeds in Marshals' escrow account as substitute *res*). *See also Isbrandtsen Marine Services, Inc. v. M/V Inagua Tania*, 93 F.3d 728, 734 (11th Cir. 1996) (proceeds deposited in court registry); *Bowman v. United States*, 35 Fed. Cl. 397, 399 (Cl. Ct. 1996) (proceeds substituted as *res* and held in escrow); *United States v. Real Property Located at 40 Clark Road et al.*, 52 F. Supp. 2d 254, 257 n.1 (D. Mass. 1999) (same); *United States v. Premises Known as 1625 S. Delaware Avenue*, 1989 WL 156346 *1 (E.D. Pa. 1989) (same).

The primary consideration in deciding to seek an interlocutory sale is whether prompt sale is necessary to preserve the value of the property for forfeiture. Other factors may also weigh on the decision, such as whether the property has special evidentiary value, whether the property in its present condition poses a danger to the community or is fit to be sold to the public, and, in some cases, whether the most appropriate final disposition of the property is for official or public use rather than sale.

III. Statutory Authority

A. Civil Forfeitures

The following statutory provisions authorize courts to order (or permit) interlocutory sales in civil forfeiture cases.

1. Rule G of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions.

Rule G(7) of the Supplemental Rules, which became effective December 1, 2006, governs interlocutory sales in civil forfeiture actions. It replaces all of the existing provisions, including Rule E(9)(b), and fills in the gaps in the case law regarding the method of selling forfeitable property pending a final order of forfeiture.

Rule (G)7 provides:

- (a) Preserving and Preventing Criminal Use of Property. When the government does not have actual possession of the defendant property the court, on motion or on its own, may enter any order necessary to preserve the property, to prevent its removal or encumbrance, or to prevent its use in a criminal offense.
- (b) Interlocutory Sale or Delivery.
 - (i) Order to Sell. On motion by a party or person having custody of the property, the court may order all or part of the property sold if:
 - (A) the property is perishable or at risk of deterioration, decay, or injury by being detained in custody pending the action;
 - (B) the expense of keeping the property is excessive or is disproportionate to its fair market value;
 - (C) the property is subject to a mortgage or to taxes on which the owner is in default; or
 - (D) the court finds other good cause.
 - (ii) Who Makes the Sale. A sale must be made by a United States agency that has authority to sell the property, by the agency's contractor, or by any person the court designates.
 - (iii) Sale Procedures. The sale is governed by 28 U.S.C. §§ 2001, 2002, and 2004, unless all parties, with the court's approval, agree to the sale, aspects of the sale, or

different procedures.

- (iv) Sale Proceeds. Sale proceeds are a substitute res subject to forfeiture in place of the property that was sold. The proceeds must be held in an interest-bearing account maintained by the United States pending the conclusion of the forfeiture action.
- (v) Delivery on a Claimant's Motion. The court may order that the property be delivered to the claimant pending the conclusion of the action if the claimant shows circumstances that would permit sale under Rule G(7)(b)(i) and gives security under these rules.
- (c) Disposing of Forfeited Property. Upon entry of a forfeiture judgment, the property or proceeds from selling the property must be disposed of as provided by law.

Rule G(7) clarifies that the requirements of 28 U.S.C. §§ 2001, 2002, and 2004 govern the sale unless all parties, with the court's approval, agree to the sale, aspects of the sale, or different procedures.

2. Applicable Supplemental Rules for Certain Admiralty and Maritime Claims prior to December 1, 2006

For cases arising prior to December 1, 2006, it is clear that the existing Supplemental Rules for Certain Admiralty and Maritime Claims generally apply to civil *in rem* forfeitures. See 28 U.S.C. § 2461(b); *United States v. \$506,231 in United States Currency*, 125 F.3d 442, 449 n.5 (7th Cir. 1997) (“the Supplemental Rules are applicable to civil forfeiture proceedings pursuant to 28 U.S.C. § 2461(b)”).

In addition, Supplemental Rule A states that:

These rules also apply to the procedure in statutory condemnation proceedings analogous to maritime actions *in rem*, whether within the admiralty and maritime jurisdiction or not. Except as otherwise provided, references in these Supplemental Rules to actions *in rem* include such analogous statutory condemnation proceedings.

Civil forfeiture actions are such “analogous statutory condemnation proceedings” covered by the Supplemental Rules. See *United States v. All Right, Title and Interest et al.*, 1996 WL 695671 *5 (S.D.N.Y. Dec. 5, 1996) (“civil forfeiture proceeding is a type of *in rem* action within the meaning of ‘statutory condemnation proceedings analogous to maritime actions *in rem*’ as set forth in Supplemental Rule A”); see also *United States v. U.S. Currency in the Amount of \$2,857*, 754 F.2d 208, 210 n.2 (7th Cir. 1984).

Supplemental Rule E(9)(b) provides:

(I) On application of a party, the marshal, or other person having custody of the property, the court may order all or part of the property sold—with the sales proceeds, or as much of them as will satisfy the judgment, paid into court to await further orders of the court—if:

(A) the attached or arrested property is perishable, or liable to deterioration, decay, or injury by being detained in custody pending the action;

(B) the expense of keeping the property is excessive or disproportionate; or

(C) there is an unreasonable delay in securing release of the property.

See Berryhill Farm Estates, 128 F.3d at 1389-90 (motion for interlocutory sale filed under Supp. R. E(9)(b)); *United States v. 8 Princess Court*, 970 F.2d 1156, 1160 (2d Cir. 1992) (Supp. R. E(9)(b) authorized interlocutory sale).

3. Customs Laws

Other statutory authority for interlocutory sales is found in the customs statute, 19 U.S.C. § 1612(a). Section 1612(a) is incorporated with other pertinent customs statutes by 21 U.S.C. § 881(d), 18 U.S.C. § 981(d), and 18 U.S.C. § 2254(d) to the extent it is “applicable and not inconsistent” with those civil forfeiture provisions. *See United States v. One Parcel of Property Located at 414 Kings Highway*, 128 F.3d 125, 127 n.2 (2d Cir. 1997) (19 U.S.C. § 1612 applies to forfeitures under 21 U.S.C. § 881). Section 1612(a), which is similar to old Rule E(9)(b), also authorizes interlocutory sale when property’s value is diminishing:

Whenever it appears to the Customs Service that any vessel, vehicle, aircraft, merchandise, or baggage seized under the customs laws is liable to perish or to waste or to be greatly reduced in value by keeping, or that the expense of keeping the same is disproportionate to the value thereof, and such [property] . . . has not been delivered under bond . . . [and is not subject to administrative forfeiture], the Customs Service shall forthwith transmit its report of the seizure to the United States attorney, who shall petition the court to order an immediate sale of such vessel, vehicle, aircraft, merchandise, or baggage, and if the ends of justice require it the court shall order such immediate sale, the proceeds thereof to be deposited with the court to await the final determination of the condemnation proceedings

19 U.S.C. § 1612(a); *cf. United States v. 8.4 Acres of Land Located in Little River Township*, 823 F.2d 546, 1987 WL 38057 *2 (4th Cir. May 20, 1987) (Table) (interlocutory sale stayed upon posting of bond).

4. Civil Asset Forfeiture Reform Act of 2000

In addition to the explicit provisions above, 18 U.S.C. § 983(j), enacted as part of the Civil Asset Forfeiture Reform Act of 2000, also provides general authority for interlocutory sales. Section 983(j) enables courts to take any “action to . . . preserve the availability of property subject to civil forfeiture.” 18 U.S.C.

§ 983(j)(1). Interlocutory sales are intended for that very purpose—to preserve the forfeitable value of property.

B. Criminal Forfeitures

1. Protective Orders

Statutory authority for interlocutory sales in criminal forfeiture cases can be found in the general provision for forfeiture protective orders, 21 U.S.C. § 853(e), which states:

Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of the property . . . for forfeiture

21 U.S.C. § 853(e)(1). Section 853(e) applies directly to Title 21 criminal forfeitures and is also applicable to all criminal forfeitures pursuant to 28 U.S.C. § 2461(c) (amended on March 9, 2006, by the USA Patriot Improvement and Reauthorization Act of 2005, Pub. L. No. 109-177, Title IV, § 410, 120 Stat. 246). Certain criminal forfeiture statutes also specifically incorporate the procedures of 21 U.S.C. § 853 (with the exception of subsections (a) and (d)): 18 U.S.C. § 2253(b) and 18 U.S.C. § 1467(b) (amended by the Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587, effective July 27, 2006) and 18 U.S.C. § 982(b)(1). If the interlocutory sale is being pursued after the entry of a preliminary order of forfeiture, Section 853(g) provides similar authority including the authority for the court to “take any . . . action to protect the interest of the United States in the property order forfeited.”

2. Incorporation of Customs Laws

Title 21 U.S.C. § 853(j), which is also made applicable to all criminal forfeitures by 28 U.S.C. § 2461(c) and specifically incorporated in criminal forfeiture statutes as indicated above, incorporates civil forfeiture procedures, including the customs laws, as follows:

(j) Applicability of civil forfeiture provisions

Except to the extent that they are inconsistent with the provisions of this section, the provisions of section 881(d) of this title shall apply to a criminal forfeiture under this section.

As noted above, the civil forfeiture provision 21 U.S.C. § 881(d) incorporates the customs law authorizing interlocutory sales. Accordingly, the customs law permitting or requiring interlocutory sales can be used with equal force in most criminal forfeitures.

IV. Obtaining Court Approval for an Interlocutory Sale

A. Stipulated Motion and Order

Interlocutory sales require court approval. This is most easily obtained when all interested parties agree to the sale. It is thus advisable to seek the consent of all parties *first* before filing a motion. Where there is a significant risk that property will lose value before the case is concluded, it will generally be in the best interests of all parties to agree to an interlocutory sale as the best way to preserve the property's value. See *United States v. One 1984 Kawasaki Ninja Motorcycle*, 790 F. Supp. 697, 701 (W.D. Tex. 1992) (observing that “many circumstances could arise in which a claimant would want to be able to pursue [an interlocutory sale]”).

If all interested parties consent to the sale, the parties may simply enter into a stipulation agreeing to sell the property, setting forth the terms of the proposed interlocutory sale, the process by which the sale will be conducted, and the agreed disposition of the proceeds pending conclusion of the case. See *United States v. Real Property located at 22 Santa Barbara Drive* (stipulated sale paid off mortgage); *United States v. BCCI Holdings (Luxembourg), S.A.*, 69 F. Supp. 2d 36, 44-45 (D.D.C. 1999) (describing uncontested interlocutory liquidation of assets in criminal case to mitigate storage and maintenance costs); *United States v. Real Property and Residence at 3097 S.W. 111th Avenue*, 699 F. Supp. 287, 288 (S.D. Fla. 1988) (noting that parties had agreed to interlocutory sale). The stipulation should be signed by all interested parties known to the Government, including all claimants in a civil case, the defendant and all petitioners in a criminal case, all lienholders of record, and all other persons known to have or to assert an ownership interest in the property. The signed stipulation is then submitted to the court to be “so ordered,” or if required by local rule and practice, is submitted with a motion and proposed order for interlocutory sale.

B. Contested Motion and Order

If the parties do not agree to an interlocutory sale of the property or to the sale terms, a court order authorizing the sale must be obtained by motion served on all interested parties. See *United States v. Steel Tank Barge H 1651*, 272 F. Supp. 658, 662-63 (E.D. La. 1967) (vacating interlocutory sale order because barge's owner had not received actual notice of the proposed sale). The court may order that such a sale take place over a party's objection. See *Pelullo*, 178 F.3d at 198-99 (interlocutory sale approved over criminal defendant's objections where equity was being depleted by accruing taxes and interest on mortgagee's foreclosure judgment); *Aguilar*, 1999 WL 1067841 *4-6 (explaining that interlocutory sale opposed by claimant was warranted because properties were abandoned and subject to “vandalism, deterioration and depreciation” and mortgage payments were several months in arrears). In the order, the court must articulate the reasons justifying the interlocutory sale. See *8 Princess Court*, 970 F.2d at 1160 (noting absence of findings by district court to justify sale and remanding case for further proceedings).

When a court orders an interlocutory sale over the objection of any interested party, such a sale must comply with the provisions of 28 U.S.C. §§ 2001, 2002, and/or 2004. These statutes provide procedural safeguards to ensure that court-ordered sales are made on terms that best preserve the parties' interests. Section 2001(a) authorizes public sales of real property and sales by court-appointed receivers. Section 2001(b) permits private sales of real property after a hearing with notice to all interested parties and after the court finds that the best interests of the estate will be conserved thereby. Contested interlocutory sales of personal property must be conducted in the same manner as real property sales, “unless the court orders otherwise.” 28 U.S.C. § 2004.

Before confirming a private sale, the court must obtain three appraisals. No private sale can be confirmed for less than two-thirds of the appraised value. The proposed sale terms must be published before confirmation. The sale cannot be confirmed if a bona fide offer is made to buy the property for at least ten percent more than the proposed sale price. 28 U.S.C. § 2001(b).

A public sale of real or personal property must take place at the courthouse of the county, parish, or city in which the greater part of the property is located, or upon the premises or some parcel thereof located therein, as the court directs. 28 U.S.C. § 2001(a). The terms and conditions of the sale are directed by the court. *Id.* A public sale shall not take place unless notice of the sale is published once a week for at least four weeks prior to the sale in at least one newspaper regularly issued and of general circulation in the county, state, or judicial district wherein the property is located. If the property is situated in more than one county, state, district or circuit, the notice shall be published in one or more of the counties, states, or districts where the property is located, as directed by the court. Notice of the sale must be substantially in the form and contain a description of the property as approved by the court.

These provisions apply to civil as well as criminal forfeitures. *See United States v. Macia*, 157 F. Supp. 2d 1369, 1371 (S.D. Fla. 2001) (applying section 2001 to interlocutory sale in criminal forfeiture); *1984 Kawasaki Ninja Motorcycle*, 790 F. Supp. at 701 (noting that property subject to 21 U.S.C. § 881 forfeiture may be sold pursuant to 28 U.S.C. §§ 2001-2004 “to the extent...not inconsistent with the relevant portions of the Drug Control Act”).

The case law does not explicitly address whether a court is bound by these provisions when all interested parties agree to an interlocutory sale and to the specific terms of sale.¹ Section 2004 does expressly allow courts to alter the procedures for sales of personal property, but sections 2001 and 2002 do not contain such language. However, the new Supplemental Rule G(7)(b)(iii) confirms, for purposes of civil forfeiture actions, that those statutes are only applicable when the sale is contested not when “all parties . . . agree to the sale, aspects of the sale, or different procedures.” This rule may serve as a guide on what should be acceptable for criminal forfeitures. The apparent purpose of these provisions is to protect the rights of the parties in situations where the court orders an interlocutory sale over a party’s objection. Once proper notice of the intended interlocutory sale has been given to all interested parties (including, for example, lienholders and unindicted co-owners in criminal forfeitures) and all interested parties have agreed on the terms of sale, the concerns that might otherwise have justified costly protective measures such as publishing the terms and obtaining three appraisals prior to a private sale are no longer present. The parties’ consent indicates that the terms of the sale are acceptable to them. Accordingly, courts routinely approve stipulated interlocutory sales without reference to 28 U.S.C. §§ 2001 *et seq.* *See BCCI Holdings*, 69 F. Supp. 2d at 44-45 (describing uncontested interlocutory liquidation of assets in criminal case); *see also 22 Santa Barbara Drive*, 264 F.3d at 866-67 (describing stipulated sale without citation of section 2001 *et seq.*); *United States v. 4118 West 178th Street*, 1995 WL 758436 (N.D. Ill. Dec. 21, 1995) (same).

¹ *Macia*’s scope is questionable. Although the decision purports to address the broad question “Does 28 U.S.C. § 2001 apply to the sale of forfeited property?” (157 F. Supp. 2d at 1371), other statements in the opinion indicate that the court was faced with the narrower issues presented by an interlocutory sale to which the claimant had objected. *See id.* at 1370.

V. Practical Considerations

Interlocutory sales should be undertaken only after consultation with the USMS or, in cases where USMS is not the property custodian, with the applicable agency or contractor. The USMS is authorized to carry out such sales under 28 U.S.C. § 566. The Secretary of the Treasury is authorized to retain contract services to do so. *See* 31 U.S.C. § 9703(a); Directive No. 27, October 1, 1995, “Processing Interlocutory Sales,” issued by the Treasury Executive Office for Asset Forfeiture. *See* Appendix A.

The proposed order should set out the terms and conditions of the interlocutory sale explicitly, with references to any applicable statutes and rules. It should include clear instructions to the USMS or the other agency or contractor conducting the sale. The order should also make specific provision for payment of taxes, any uncontested liens or mortgages, and all costs associated with the sale, and for the disposition of the net proceeds of the sale pending the conclusion of the case.

Assistant U.S. Attorneys (AUSAs) negotiating an interlocutory sale agreement or proposed order that will involve paying off a third-party claimant’s mortgage or lien should include language to the effect that the parties will bear their own costs and attorneys’ fees in the matter, unless the parties have agreed otherwise, such as where contract law requires the payment of costs and fees pursuant to the terms of the mortgage or lien and the Government has agreed to pay reasonable or negotiated costs and fees as part of the settlement agreement. Payment of costs and attorneys’ fees should be rare in cases where the Government has promptly agreed not to contest a third party’s claim. In all settlements it is appropriate for AUSAs to seek a waiver of any non-contractual claim for attorneys’ fees under 28 U.S.C. § 2465(b).

Appendix A

Directive No. 27, “Processing Interlocutory Sales,” October 1, 1995, Treasury Executive Office of Asset Forfeiture

Department of the Treasury
Executive Office for Asset Forfeiture
Directive No: 27

DATE: October 1, 1995
SUBJECT: **Processing Interlocutory Sales**

BACKGROUND

The administrators of the Treasury Forfeiture Fund are responsible for the disposition of seized and forfeited property. The national seized property contractor routinely sells properties that have been forfeited. In some instances, the court orders that seized property be sold prior to forfeiture and that the net monies received from that sale be considered *substitute res* for the seized property. This is accomplished by an Interlocutory Sale order from the court.

This Directive provides policy guidance to Treasury law enforcement agencies, and the national seized property contractor.

PROCEDURES

A. Treasury Law Enforcement Agencies

1. The seizing agency shall ensure that all lien, mortgage, and 3rd party claims are presented to the Assistant United States Attorney (AUSA); and that the distribution(s) which are lawfully due from, or as a result of, the sale of the property are clearly spelled out in the court order.
2. Upon receipt of an Interlocutory Sale order from the AUSA, the seizing agency's representative will promptly arrange for a Disposition Order for the sale of the subject property(ies). The Disposition Order along with a copy of the Interlocutory Sale order will be provided to the national seized property contractor, through the United States Customs Service Seized Property Custodian/Seized Property Specialist. A copy of the Interlocutory Sale order and the Disposition Order should also be sent to the Executive Office for Asset Forfeiture by the seizing agency..

3. After the completion of the interlocutory sale, the Treasury law enforcement agency shall update its internal property tracking system to reflect the amount of the substitute res as the amount representing the seized and/or forfeitable value of the seizure.

B. National Seized Property Contractor

1. The national seized property contractor shall arrange for the sale of the property in accordance with the Statement of Work and the Interlocutory Sale order.
2. If there is a deposit posted for the subject property, the national seized property contractor shall transmit the deposit to the U.S. Customs Accounting Services Division (ASD), formally the NFC, in accordance with established procedures. The transmittal will clearly identify the deposit as an amount from an Interlocutory Sale and instruct the ASD to deposit it in the suspense account.
3. At the closing, the closing agent will accept the full payment for the property, deducting any payments for approved liens, taxes, mortgages, costs and legal fees associated with the closing, in accordance with the Interlocutory Sale order, and provide the national seized property contractor with the *net* balance to be forwarded to the ASD.
4. The total dollar amount of the deposit plus the net amount derived from the sale shall be identified as the substitute res for the subject seizure.
5. The national seized property contractor, upon receipt of the total *net* balance of the sale, shall notify the appropriate seizing agency office of the total *net* amount, now identifiable as the substitute res, in order that the Treasury law enforcement agency can update their internal seized property tracking system.

Appendix B

Model Forms

1. Motion for Interlocutory Private Judicial Sale (Contested)

Comment: This motion is intended for use in civil or criminal forfeitures where the interlocutory sale of either real or personal property is contested. In accordance with case law and the new Rule G(7)(b)(iii) the sale must comply with the requirements of 28 U.S.C. §§ 2001, 2002, and 2004. In the majority of cases the Government would move for a private sale pursuant to 28 U.S.C. § 2001(b) so that the United States Marshals Service or other custodial agency or contractor can sell the property in the most commercially feasible manner considering the type of property, rather than the public sale required under § 2001(a). If the Government decides it wants to pursue a public sale, the motion for interlocutory sale must comply with the requirements of 28 U.S.C. §§ 2001(a) and 2002.

UNITED STATES DISTRICT COURT
 _____ DISTRICT OF _____

)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. _____
)	
)	
Defendant.)	
)	

PLAINTIFF’S MOTION FOR AN INTERLOCUTORY PRIVATE JUDICIAL SALE

Plaintiff, United States of America, by and through the United States Attorney for the District of _____, moves the court to order an interlocutory private judicial sale of the following **[DEFENDANT REAL/PERSONAL PROPERTY, THE REAL/PERSONAL PROPERTY IDENTIFIED IN THE INDICTMENT]** for the reasons set forth herein and in the attached Declaration of **[DEPUTY UNITED STATES MARSHAL/OTHER CUSTODIAN]**:

[DESCRIBE PROPERTY]

I. PROCEDURAL HISTORY

1. On _____ a[n] Indictment/Complaint for Forfeiture in Rem was filed with this Court against the [DEFENDANT _____/DEFENDANT PROPERTY] [DESCRIBE INDICTMENT OR COMPLAINT FOR FORFEITURE IN REM INCLUDING THE BASIS FOR FORFEITURE OF THE PROPERTY].

2. [SET FORTH IN ONE OR MORE PARAGRAPHS THE CURRENT STATUS OF THE CRIMINAL ACTION OR THE CIVIL FORFEITURE ACTION; INDICATE THAT ALL KNOWN POTENTIAL CLAIMANTS RECEIVED NOTICE OF THE ACTION, PUBLICATION OF THE ACTION, THAT THE TIME TO FILE CLAIMS/PETITIONS HAS EXPIRED, AND IDENTIFY THE CLAIMANTS/PETITIONERS WHO FILED TIMELY CLAIMS/PETITIONS AND, THEREFORE, ARE THE ONLY ONES WHO NEED TO CONSENT TO THE SALE].

II. ARGUMENT

A. Statutory Authority

When certain conditions are present, the court has authority under the following statutory provisions to order an interlocutory sale of property that is subject to civil/criminal forfeiture prior to a final adjudication on the Government’s forfeiture action.

1. The Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions

The Supplemental Rules generally apply to civil *in rem* forfeitures. *See* 28 U.S.C. § 2461(b); *United States v. \$506,231 in United States Currency*, 125 F.3d 442, 449 n.5 (7th Cir. 1997) (“The Supplemental Rules are applicable to civil forfeiture proceedings pursuant to 28 U.S.C. § 2461(b)”).

Supplemental Rule E(9)(b) [FOR ACTIONS PRIOR TO DECEMBER 1, 2006] provides:

(i) On application of a party, the marshal, or other person having custody of the property, the court may order all or part of the property sold—with the sales proceeds, or as much of them as will satisfy the judgment, paid into court to await further orders of the court—if:

(A) the attached or arrested property is perishable, or liable to deterioration, decay or injury by being detained in custody pending the action;

(B) the expense of keeping the property is excessive or disproportionate; or

(C) there is an unreasonable delay in securing release of the property.

See United States v. One Parcel of Real Property described as Lot 41, Berryhill Farm Estates, 128 F.3d 1386, 1389-90 (10th Cir. 1997) (motion for interlocutory sale filed under Supp. R. E(9)(b)); *United States v. 8 Princess Court*, 970 F.2d 1156, 1160 (2d Cir. 1992) (Supp. R. E(9)(b) authorized interlocutory sale).

Supplemental Rule G(7) provides:

- (a) Preserving and Preventing Criminal Use of Property. When the government does not have the actual possession of the defendant property the court, on motion or on its own, may enter any order necessary to preserve the property, to prevent its removal or encumbrance, or to prevent its use in a criminal offense.
- (b) Interlocutory Sale or Delivery
- (i) Order to Sell. On motion by a party or a person having custody of the property, the court may order all or part of the property sold if:
- (A) the property is perishable or at risk of deterioration, decay, or injury by being detained in custody pending the action;
 - (B) the expense of keeping the property is excessive or is disproportionate to its fair market value;
 - (C) the property is subject to a mortgage or to taxes on which the owner is in default; or
 - (D) the court finds other good cause.
- (ii) Who Makes the Sale. A sale must be made by a United States agency that has authority to sell the property, by the agency's contractor, or by any person the court designates.
- (iii) Sale Procedures. The sale is governed by 28 U.S.C. §§ 2001, 2002, and 2004, unless all parties, with the court's approval, agree to the sale, aspects of the sale, or different procedures.
- (iv) Sale Proceeds. Sale proceeds are a substitute res subject to forfeiture in place of the property that was sold. The proceeds must be held in an interest-bearing account maintained by the United States pending the conclusion of the forfeiture action.
- (v) Delivery on a Claimant's Motion. The court may order that the property be delivered to the claimant pending the conclusion of the action if the claimant shows circumstances that would permit sale under Rule G(7)(b)(i) and gives security under these rules.
- (c) Disposing of Forfeited Property. Upon entry of a forfeiture judgment, the property or proceeds from selling the property must be disposed of as provided by law.

2. Customs Laws

Further authority is found in the customs statute, 19 U.S.C. § 1612(a),² which provides that -

Whenever it appears to the Customs Service that any vessel, vehicle, aircraft, merchandise, or baggage seized under the customs laws is liable to perish or to waste or to be greatly reduced in value by keeping, or that the expense of keeping the same is disproportionate to the value thereof, and . . . such [property] is not subject to section 1607 of this title [administrative forfeiture], the Customs Service shall forthwith transmit its report of the seizure to the United States attorney, who shall petition the court to order an immediate sale of such [property], and if the ends of justice require it the court shall order such immediate sale, the proceeds thereof to be deposited with the court to await the final determination of the condemnation proceedings. Whether such sale be made by the Customs Service or by order of the court, the proceeds thereof shall be held subject to claims of parties in interest to the same extent as the [property] so sold would have been subject to such claim.

3. Civil Asset Forfeiture Provisions

In addition to the explicit provisions above, 18 U.S.C. § 983(j), enacted as part of the Civil Asset Forfeiture Reform Act of 2000, also provides general authority for interlocutory sales. Section 983(j) enables courts to take any “action to . . . preserve the availability of property subject to civil forfeiture.” 18 U.S.C. § 983(j)(1). Interlocutory sales are intended for that very purpose—to preserve the value of property that is subject to forfeiture.

4. Criminal Forfeiture Provisions³

Section 853(e)(1) provides that -

Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of [the] property . . . for forfeiture

or

² Section 1612(a) is incorporated with other pertinent customs statutes by 21 U.S.C. § 881(d), 18 U.S.C. § 981(d), and 18 U.S.C. § 2254(d) to the extent it is “applicable and not inconsistent” with those civil forfeiture provisions. *See United States v. One Parcel of Property Located at 414 Kings Highway*, 128 F.3d 125, 127 n.2 (2d Cir. 1997) (19 U.S.C. § 1612 applies to forfeitures under 21 U.S.C. § 881). [The customs laws are applicable to this criminal forfeiture action pursuant to 21 U.S.C. § 853(j) which has been made applicable to all criminal forfeitures by 28 U.S.C. § 2461(c). Section 853(j) incorporates the provisions of 21 U.S.C. § 881(d), which in turn incorporates the customs laws.]

³ Section 853(e) applies directly to Title 21 criminal forfeitures and is also applicable to all criminal forfeitures pursuant to 28 U.S.C. § 2461(c). Certain criminal forfeiture statutes also specifically incorporate the procedures of 21 U.S.C. § 853 (with the exception of subsections (a) and (d)). *See* 18 U.S.C. § 2253(b), 18 U.S.C. § 1467(b), and 18 U.S.C. § 982(b)(1).

Because this request comes after the entry of the Preliminary Order of Forfeiture, the authority for the Government's motion is 21 U.S.C. § 853(g). Section 853(g) provides that -

Following the entry of [a preliminary order of forfeiture] . . . , the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds . . . or take any other action to protect the interest of the United States in the property ordered forfeited. . . .

B. Courts have ordered interlocutory sales over the objection of a defendant or claimant.

Courts have also ordered interlocutory sales of forfeitable property over the objection of a defendant or claimant where the equity was being depleted by accruing taxes and interest on a mortgage, where mortgage payments were several months in arrears, and where the properties were abandoned and subject to vandalism, deterioration, and depreciation. *See United States v. Pelullo*, 178 F.3d 196, 198-99 (3d Cir. 1999); *Berryhill Farm Estates*, 128 F. 3d at 1389-90; *Aguilar v. United States*, 1999 WL 1067841, 4-6 (D. Conn. Nov 8, 1999); *United States v. 2540 Chadwick Way Mundelein, Illinois* 2005 WL 2124539 (N.D. Ill. May 12, 2005).

C. The Conditions for an Interlocutory Sale Are Present

The Government believes a court-ordered interlocutory private judicial sale of the subject property, pursuant to the provisions cited above, is justified because [GIVE DETAILS REGARDING BASIS FOR INTERLOCUTORY SALE, AND ATTACH A SUPPORTING DECLARATION, e.g., PROPERTY SUBJECT TO DETERIORATION, DEPRECIATION, VANDALISM, NON-PAYMENT OF MORTGAGE, WHETHER THERE HAS BEEN A STAY OF THE PROCEEDINGS, ETC.]. *See* Declaration of [**DEPUTY UNITED STATES MARSHAL/OTHER CUSTODIAN**]. These factors demonstrate the need for an interlocutory sale to preserve the value of the property pending a determination of the Government's forfeiture claims.

III. Judicial Sales Procedure

If a court orders an interlocutory sale of property over the objection of any interested party, the sale must comply with the provisions of 28 U.S.C. §§ 2001 and 2002. While sections 2001 and 2002 apply to the sale of real property, section 2004 makes those procedures applicable to the sale of personal property. These statutes provide procedural safeguards to ensure that court-ordered sales are made on terms that best preserve the parties' interests. Section 2001(a) authorizes public sales of property and sales by court-appointed receivers. Section 2001(b) permits private sales of property for cash or other consideration after a hearing of which notice to all interested parties shall be given by publication, or as otherwise directed by the court, and after the court finds that the best interests of the estate will be conserved thereby.

Before confirming a private sale, the court must appoint three disinterested persons to appraise the property. No private sale may be confirmed for less than two-thirds of the appraised value. The proposed sale terms must be published in a newspaper(s) of general circulation as the court directs at least 10 days before confirmation. The sale may not be confirmed if a bona fide offer is made to buy the property for at least ten percent more than the proposed sale price.

By this motion, the United States is requesting authorization to proceed with a private sale of the above-listed properties. Based upon the reasons set forth herein, the United States believes that a prompt sale of the property by the [USMS/OTHER AGENCY] affords the best protection to all concerned. The United States believes a private sale versus a public sale will allow the [USMS/OTHER AGENCY] the discretion to sell the properties in the most commercially feasible manner. Normally, the [USMS/OTHER AGENCY] sells properties through a local real estate agent instead of a public auction. However, it also has utilized other sales methods such as internet sales.

As required by section 2001(b) notice of the Government's motion for an interlocutory private judicial sale and the hearing on the motion must be given by publication or otherwise as the court directs. The only claimants/petitioners who have filed a timely claim alleging an interest in the property(ies) are _____. Accordingly, notice should be given to those [CLAIMANTS/PETITIONERS].⁴

Pursuant to section 2001(b), the court must appoint three disinterested persons to appraise the properties. In order to facilitate that appointment, the United States has consulted with the [USMS/OTHER AGENCY] AND [THE _____ BANK] and suggests the following three appraisers:

[IDENTIFY THREE APPRAISERS]

Once a contract for sale has been obtained and prior to the Government's request for the Court's confirmation of the sale, the terms of the sale must be published in a newspaper or newspapers of general circulation as the court directs at least 10 days before confirmation. After publication of the terms of the sale, the United States must submit a motion for confirmation which may be approved unless another offer guarantees at least a 10 percent increase over the price offered in the private sale. In order to expedite the sale, the United States suggests that notice of the sale, prior to confirmation, be published in the following newspaper:

[IDENTIFY NEWSPAPER IN AREA WHERE PROPERTY IS LOCATED]

IV. CONCLUSION

For the reasons stated above, the United States respectfully requests that the court order the sale of the property described herein on the terms and conditions set forth in the proposed order submitted herewith.

Respectfully submitted,

⁴ Depending on when the motion is filed, publication of the motion and notice of the hearing may or may not be necessary. If publication of the forfeiture action has already been completed and the time for claims/petitions has expired, we believe notice to the claimants/petitioners should be the only notice required.

United States Attorney

Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing motion and proposed order were mailed this _____ day of _____, _____, to:

Assistant United States Attorney

2. Declaration by United States Marshals Service or other Custodial Agency

A motion for an interlocutory sale of property, either private or public, that is contested will require a supporting declaration by the United States Marshals Service or other custodial agency setting forth the facts supporting the motion, e.g., expenses, failure to pay taxes, failure to pay mortgage, vandalism, etc.

UNITED STATES DISTRICT COURT
_____ DISTRICT OF _____

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) NO. _____
)
Defendant.)

**DECLARATION UNDER PENALTY OF PERJURY PURSUANT TO 28 U.S.C. § 1746
IN SUPPORT OF MOTION FOR INTERLOCUTORY SALE**

I, _____, depose and state as follows:

1. I am a Deputy United States Marshal for the _____ District of _____. [OR DESCRIBE THE POSITION OF ANOTHER CUSTODIAL AGENCY].

2. I am familiar with the civil/criminal forfeiture action titled _____ United States v. _____, No. _____, in which the following property was seized/arrested/restrained for forfeiture on _____ pursuant to [STATUTORY AUTHORITY FOR SEIZURE/ARREST/RESTRAINT]⁵: [DESCRIBE PROPERTY].

3. The property has been appraised at \$ _____ by [SOURCE OF APPRAISED VALUE].

4. [If there is a mortgage on the property, complete the following] [MORTGAGEE/LIENHOLDER] may have/has an interest in the above-described property by virtue of a promissory note dated _____

⁵ There may also be situations where a motion for interlocutory sale is filed for property not in the custody or control of the United States. However, if the defendant or others are not making mortgage payments, paying taxes, or maintaining the property, an interlocutory sale may be justified.

_____ and executed by _____ in the original principal amount of _____ and secured by a deed of trust recorded at volume _____, page _____ of the [COUNTY] land records.

- 5. The monthly payment due on the note is [AMOUNT]. _____ has failed to make the monthly payment since [DATE]. As a result, [CLAIMANT/DEFENDANT] is currently in default. As of [DATE], the principal amount due on the note was _____ and the accrued interest was _____. The interest will continue to accrue at a per diem rate of [AMOUNT].
- 6. On _____, I contacted the _____ County Treasurer and was advised that the following amounts are due for past-due real property taxes as of [DATE]: **[INSERT AMOUNTS FOR EACH YEAR]**.
- 7. Expenses for custody and maintenance of the property since [DATE], the date of seizure/arrest, total \$_____.
- 8. **[THE DEFENDANT PROPERTY IS DETERIORATING; HAS BEEN BURGLARIZED OR VANDALIZED; OR ANY OTHER SPECIAL REASONS WHY THE PROPERTY SHOULD BE SOLD]**.
- 9. In my opinion the property will require the following maintenance and custodial expenses each month:

Repairs	\$
Property Manager	\$
Utilities	\$
Lawn mowing (seasonal)	\$
Security alarm service	\$

Total monthly expenses	\$
------------------------	----

- 10. In my opinion, the interests of all parties concerned will be promoted by the interlocutory sale of the property.

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

Executed on _____ day of _____, _____.

 Deputy United States Marshal
 or other custodial agency representative

3. Order to Notice a Hearing on Motion for Interlocutory Private Judicial Sale (Contested)

UNITED STATES DISTRICT COURT
_____ DISTRICT OF _____

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) NO. _____
)
)
)
Defendant.)

ORDER TO NOTICE A HEARING FOR AN
INTERLOCUTORY PRIVATE JUDICIAL SALE

Plaintiff, United States of America, has moved for an interlocutory sale pursuant to [cite statutory authority for sale, Supplemental Rule G(7) and 28 U.S.C. § 2001(b)], of the following property:

Based upon the motion of the Plaintiff and the requirements of 28 U.S.C. § 2001(b), it is hereby ORDERED -

1. That the [UNITED STATES MARSHAL OR OTHER AGENCY] give notice by certified mail of a hearing on _____ at _____ a.m./p.m., Courtroom _____, _____ Courthouse, [ADDRESS], on the Government’s motion for an interlocutory private sale of the above-described property to all known claimants including the following: [NAME AND ADDRESS OF DEFENDANT/CLAIMANT/PETITIONER].

2. [IF THE COURT ALSO ORDERS THAT THE NOTICE SHALL BE ADVERTISED, THEN ADD THE FOLLOWING]:

That the [UNITED STATES MARSHAL OR OTHER AGENCY] give notice of the hearing by publication in the _____, a newspaper of general circulation in _____ County, _____.

This _____ day of _____, _____.

United States District Judge

4. Notice of Hearing on Motion for Interlocutory Private Judicial Sale (Contested)

UNITED STATES DISTRICT COURT
_____ DISTRICT OF _____

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) NO. _____
)
)
)
Defendant.)

NOTICE OF HEARING ON MOTION OF UNITED STATES
FOR AN INTERLOCUTORY PRIVATE JUDICIAL SALE

Notice is hereby given that on the ____ day of _____, _____, at _____ a.m./p.m., at Courtroom _____, _____ Courthouse, [ADDRESS], a hearing will be held on the motion of the United States for an interlocutory private judicial sale of the following property, which has been alleged to be subject to forfeiture to the United States in United States v. _____, Case No. _____, pursuant to [CITE APPLICABLE FORFEITURE STATUTE]:

[IDENTIFY PROPERTY]

United States Marshal

Dated: _____

By _____

5. Order for Interlocutory Private Judicial Sale (Contested)

IN THE UNITED STATES DISTRICT COURT FOR THE
_____ DISTRICT OF _____

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) NO. _____
)
)
)
Defendant.)

ORDER FOR INTERLOCUTORY PRIVATE JUDICIAL SALE OF PROPERTY

Plaintiff, United States of America, has moved this Court, pursuant to [CITE APPLICABLE AUTHORITY IN FORFEITURE STATUTE, e.g., 18 U.S.C. § 983(j); 21 U.S.C. § 853(e); 21 U.S.C. § 853(g); RULE G(7); 19 U.S.C. § 1612(a) (MADE APPLICABLE TO THIS CIVIL FORFEITURE ACTION BY 21 U.S.C. § 881(d)/18 U.S.C. § 981(d)/18 U.S.C. § 2254(d); MADE APPLICABLE TO THIS CRIMINAL FORFEITURE ACTION BY 21 U.S.C. § 853(j), WHICH INCORPORATES 18 U.S.C. § 881(d)) AND 28 U.S.C. § 2001(b)], for an order directing the [UNITED STATES MARSHALS SERVICE (USMS)/OTHER AGENCY] to execute an interlocutory private judicial sale of the following property:

[DESCRIBE PROPERTY]

The motion of the United States was served upon the defendant(s) and _____, the only claimants/petitioners who have alleged an interest in the property: [ADD PUBLICATION OF THE MOTION IF NECESSARY AND WHETHER ANY OBJECTIONS WERE FILED].

Based upon the Government’s motion and the evidence presented at the hearing held on _____, the Court finds that -

- 1. Payments on the mortgage to [MORTGAGEE/LIENHOLDER], secured by a deed of trust on the subject property, have not been paid since _____, thereby resulting in past due payments of approximately \$ _____. Accordingly, [DEFENDANT/CLAIMANT/PETITIONER] is currently in default. As of [DATE], the principal amount due on the note was [AMOUNT] and the accrued interest was [AMOUNT]. The interest will continue to accrue at a per diem rate of [AMOUNT]. As a result of

[DEFENDANT'S/CLAIMANT'S/PETITIONER'S] default on the note, the equity in the property is being reduced to the detriment of all the interested parties.

2. By failing to make the payments on the mortgage due on the property, the [DEFENDANT/CLAIMANT/PETITIONER] has waived any right he/she might otherwise have had to claim a right to continue possession of the property or for damages for loss of the use of the property. If not for the pendency of the Government's forfeiture action, [MORTGAGEE/LIENHOLDER] could have pursued foreclosure of the property.

3. [LIST ADDITIONAL REASONS FOR MOTION FOR INTERLOCUTORY SALE, E.G., FAILURE TO PAY TAXES, VANDALISM, EXPENSES OF MAINTAINING PROPERTY, AND LIKELIHOOD OF DETERIORATION, DECAY OR INJURY DURING PENDENCY OF PROCEEDING.]

As a result of these findings, it is hereby ORDERED -

1. The following described property shall be sold by the United States in the most commercially feasible manner and pursuant to the terms of 28 U.S.C. § 2001(b):

[DESCRIBE PROPERTY].

2. The [USMS/OTHER AGENCY] is authorized to retain a licensed, certified real estate broker, who shall be paid the usual and customary commission and/or fees from the proceeds of the sale, or use any other commercially feasible method to sell the property.

3. The following three disinterested appraisers are hereby appointed by the Court to appraise the fair market value of the property: [NAMES OF THREE APPRAISERS].

4. No sale of the property will be confirmed at a price less than two-thirds of the appraised value of the property, as determined by the Court at the time of the Government's motion for confirmation of the sale.

5. The terms and conditions of the sale shall be as follows:

a. The sale shall be for cash or other consideration.

b. The properties shall be sold in their entirety, free and clear of all right, title, claim, liens, and interest of any and all persons or parties whatsoever existing in said properties.

c. The sales price may not be less than two-thirds of the appraised value.

d. At the time of the closing of the sale of the property, the [USMS/OTHER AGENCY] shall pay to [MORTGAGEE/LIENHOLDER] the principal and interest amount due on the mortgage and any other costs due [MORTGAGEE/LIENHOLDER] pursuant to the settlement agreement between the United States and [MORTGAGEE/LIENHOLDER]. If the net proceeds of the sale are insufficient to pay the amounts due on the note, this order shall not affect any rights [MORTGAGEE/LIENHOLDER] may have

to seek a deficiency judgment against [ITS/HIS/HER] obligor. No deficiency resulting from a sale pursuant to this order shall be a basis for action or recovery against the United States.

e. At the time of the closing of the sale of the property, the [USMS/OTHER AGENCY] shall pay any taxes due on the property.

f. At the time of the closing of the sale of the property, the [USMS/OTHER AGENCY] shall deduct from the proceeds of the sale any real estate commission, closing costs, and other selling expenses; all costs incurred by the United States relating to the custody and maintenance of the property since the time of seizure through the date of the sale; and the costs to obtain the three appraisals of the property.

6. The [USMS/OTHER AGENCY] shall publish the terms of the highest and best contract of sale offered for the property in the _____, a newspaper of general circulation, at least 10 days before confirmation of the sale.

7. Any sale shall not be confirmed if a bona fide offer is made after publication which guarantees at least 10 percent over the price offered in the private sale.

8. The sale of the property shall not be confirmed if the net proceeds of the sale fail to equal or exceed any expenses of the sale and other expenses as enumerated herein.

9. Any bona fide offer that guarantees at least a 10 percent increase over the price offered in the private sale, as published in the newspaper, must be made pursuant to the same terms and conditions as ordered by the Court herein. Such overbid shall be reported by the [USMS/OTHER AGENCY] as the sales price without the need of further publication or confirmation by the Court.

10. Thereafter, the [USMS/OTHER AGENCY] shall file its report of sale, along with the report of the three appraisers. The report of sale shall include a statement of the highest and best offer of contract of sale, and the highest and best overbid, if any, for consideration by the Court.

11. Upon confirmation by the Court of the private sale, the [USMS/OTHER AGENCY] shall execute the contract of sale on the terms ordered by the Court and proceed to consummate the sale including issuing the appropriate deed or bill of sale to the buyer at such private sale.

12. The net proceeds of the sale shall be deposited in the [DEPARTMENT OF JUSTICE SEIZED ASSET DEPOSIT FUND/TREASURY FUND] and shall be substituted as the property in this action.

United States District Judge

Dated: _____

6. Notice of Interlocutory Private Judicial Sale (Contested)

UNITED STATES DISTRICT COURT
_____ DISTRICT OF _____

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) NO. _____
)
)
)
Defendant.)

**NOTICE OF INTERLOCUTORY PRIVATE JUDICIAL SALE PURSUANT
TO TITLE 28, UNITED STATES CODE, § 2001(b)**

By the Order for an Interlocutory Private Judicial Sale of Property entered on _____ in United States v. _____, No. _____, in the federal district court for the District of _____, I, _____, [UNITED STATES MARSHAL/OTHER AGENCY CUSTODIAN], was ordered to sell the following property at a private sale as provided by 28 U.S.C. § 2001(b) and as further ordered by the Court:

[DESCRIBE PROPERTY].

The terms, provisions, and conditions, of said order are:

1. The terms of any such private sale shall be cash or other consideration;
2. The property shall be sold in its entirety, free and clear of all right, title, claim, liens, and interest of any and all persons or parties whatsoever existing in said property.

3. The [UNITED STATES MARSHAL/OTHER CUSTODIAN] shall publish the terms of the highest and best contract of sale offered for the property in _____, a newspaper of general circulation, at least ten (10) days before confirmation of the sale. Such private sale shall not be confirmed if a bona fide offer is made which guarantees at least a ten (10) per cent increase over the price offered in the private sale. Thereafter, the [UNITED STATES MARSHAL/OTHER CUSTODIAN] shall file his/her report of sale and the reports of three appraisers with the Court. The report of sale shall include a statement of the highest and best offer of contract of sale at private sale, and the highest and best bona fide offer (overbid), if any, made which guarantees at least a ten (10) per cent increase over the price offered in the private sale, for consideration by the Court for confirmation.

4. Upon the confirmation by the Court of the private sale, the [UNITED STATES MARSHAL/OTHER CUSTODIAN] shall execute the contract of the sale upon the terms ordered by the Court, proceed to consummate the sale, and shall issue a [DEED/BILL OF SALE, ETC.] to the buyer at such private sale and place the buyer in possession.

5. No private sale shall be confirmed at a price less than two-thirds (2/3) of the appraised value of the property, as determined by the Court.

I have been tendered a contract of sale offering to purchase the property described above for the purchase price of \$_____, and said offer of contract is the highest and best contract of sale offered.

Now, therefore, notice is given that such offer of contract of sale as to the above-described property shall be reported to the Court and submitted for confirmation upon the expiration of ten (10) days from the date of publication of this notice, unless a bona fide offer is received by me, which guarantees at least ten (10) per cent increase over the price offered in the private sale.

United States Marshal/other agency

By _____

Deputy United States Marshal/other agency custodian
(Address)
(Telephone)

7. Report of Interlocutory Private Judicial Sale (Contested)

UNITED STATES DISTRICT COURT
_____ DISTRICT OF _____

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
v.) NO. _____
)
)
)
 Defendant.)

REPORT OF SALE OF PROPERTY

1. On _____, the Court entered an Order for Interlocutory Private Judicial Sale ordering me to sell at private sale, as provided by 28 U.S.C. § 2001(b), the property described as follows:

2. The highest and best offer for the property was submitted by _____ hereinafter called the buyers. The buyers' bid was \$ _____.

3. Notice of the terms and conditions of the offer of contract by the buyers was published on _____ in the _____, a newspaper of general circulation, as ordered by the Court. More than 10 days have expired since the date of publication of such notice. No bona fide offer, nor any offer whatsoever, has been made that guarantees a 10 per cent increase over the price offered by the buyers for the property.

4. Attached are three appraisals of _____. The offer by the buyers is approximately _____ per cent of the highest appraised value of \$ _____ as appraised by _____ and, therefore, the offer exceeds the 2/3 (two-thirds) minimum requirement for confirmation of the sale of the property.

Respectfully submitted,

Deputy United States Marshal

8. Motion for an Order Confirming the Interlocutory Private Judicial Sale (Contested)

UNITED STATES DISTRICT COURT
_____ DISTRICT OF _____

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) NO. _____
)
)
Defendant.)

MOTION FOR CONFIRMATION OF INTERLOCUTORY PRIVATE JUDICIAL SALE

____ Plaintiff, United States of America, moves this Court for an order confirming the interlocutory sale of [DESCRIBE PROPERTY] as directed by its Order entered on _____.

On _____, the [UNITED STATES MARSHALS SERVICE/OTHER AGENCY] entered into a contract for the sale of the property, subject to the court’s approval, for a price of _____ and other terms as required by the court and set forth in the contract, attached hereto as Exhibit A. The [UNITED STATES MARSHAL/OTHER AGENCY] published notice of the sale on [DATE] in _____, a newspaper of general circulation in _____ County, _____, including the sales price and other details of the sale. A Report of Sale of the property was filed by the [UNITED STATES MARSHAL/OTHER AGENCY] on _____.

The sales price is _____, _____ per cent of the highest appraised value and, therefore, satisfies the requirement of 28 U.S.C. § 2001(b) that the sales price must not be less than two-thirds of the appraised value. Furthermore, no bona fide offer of 10 per cent over the sales price has been received.

Accordingly, the United States respectfully requests the Court to confirm the sale of the property to _____ for the price of _____.

Plaintiff has attached an Order Confirming Interlocutory Private Judicial Sale to this motion.

Respectfully submitted,

United States Attorney

Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Motion for Confirmation of Interlocutory Private Judicial Sale and the proposed order were mailed, postage prepaid, this _____ day of _____, _____, to:

Assistant United States Attorney

9. Order Confirming Interlocutory Private Judicial Sale (Contested)

UNITED STATES DISTRICT COURT
_____ DISTRICT OF _____

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) NO. _____
)
)
)
Defendant.)

ORDER CONFIRMING INTERLOCUTORY PRIVATE JUDICIAL SALE

Upon motion of the United States and it appearing to the Court that the [UNITED STATES MARSHALS SERVICE/OTHER AGENCY] has complied with the terms, provisions, and conditions of the Order for an Interlocutory Private Judicial Sale entered on _____.

It is hereby ORDERED that:

1. The sale of the property to _____ for a sales price of _____ submitted by the [UNITED STATES MARSHALS SERVICE/OTHER AGENCY] is approved and confirmed.

2. The [UNITED STATES MARSHAL/OTHER AGENCY] shall execute the Contract of Sale or other necessary documents, and proceed with consummation of the sale as further provided in the Order for an Interlocutory Private Judicial Sale.

3. The net proceeds of said sale shall be substituted for the property in this civil/criminal forfeiture action and shall be deposited by the [UNITED STATES MARSHAL SERVICE/OTHER AGENCY] in the [DEPARTMENT OF JUSTICE SEIZED ASSETS DEPOSIT FUND/TREASURY FUND] pending this forfeiture action, and subject to further orders of this Court.

Dated: _____

United States District Judge

10. Motion for Interlocutory Public Judicial Sale (Contested)

Comment: This motion is intended for use in civil or criminal forfeitures where the Government decides to pursue a public sale, of either real or personal property, rather than a private sale, and the sale is contested by the claimant/defendant/petitioner. A public sale must comply with the requirements of 28 U.S.C. §§ 2001(a) and 2002. Most practitioners believe a private sale is preferable to a public sale because it allows the USMS or other agency the discretion to sell the property in the most commercially feasible manner, which could include a commercial broker or real estate agent, internet sale, or a public auction. If you proceed with a public sale, the USMS or other agency will be bound to sell the property “on the courthouse steps” which may not result in the best price for the property. Although the procedural requirements of a public sale in Section 2002 are not as onerous as a private sale under 2001(b), a private sale is recommended because it allows more discretion for the method of sale.

UNITED STATES DISTRICT COURT
 _____ DISTRICT OF _____

)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. _____
)	
)	
Defendant.)	
)	

PLAINTIFF’S MOTION FOR AN INTERLOCUTORY PUBLIC JUDICIAL SALE

Plaintiff, United States of America, by and through the United States Attorney for the District of _____, moves the court to order an interlocutory public judicial sale of the following [DEFENDANT REAL/PERSONAL PROPERTY, THE REAL/PERSONAL PROPERTY IDENTIFIED IN THE INDICTMENT] for the reasons set forth herein and in the attached Declaration of [DEPUTY UNITED STATES MARSHAL/OTHER CUSTODIAN]:

[DESCRIBE PROPERTY]

I. PROCEDURAL HISTORY

1. On _____ a[n] Indictment/Complaint for Forfeiture in Rem was filed with this Court against the [DEFENDANT ____/DEFENDANT PROPERTY] [DESCRIBE INDICTMENT OR COMPLAINT FOR FORFEITURE IN REM INCLUDING THE BASIS FOR FORFEITURE OF THE PROPERTY].

2. [SET FORTH IN ONE OR MORE PARAGRAPHS THE CURRENT STATUS OF THE CRIMINAL ACTION OR THE CIVIL FORFEITURE ACTION; INDICATE THAT ALL KNOWN POTENTIAL CLAIMANTS RECEIVED NOTICE OF THE ACTION, PUBLICATION OF THE ACTION, THAT THE TIME TO FILE CLAIMS/PETITIONS HAS EXPIRED, AND IDENTIFY THE CLAIMANTS/PETITIONERS WHO FILED TIMELY CLAIMS/PETITIONS AND, THEREFORE, ARE THE ONLY ONES WHO NEED TO CONSENT TO THE SALE].

II. ARGUMENT

A. Statutory Authority

When certain conditions are present, the court has authority under the following statutory provisions to order an interlocutory sale of property that is subject to civil/criminal forfeiture prior to a final adjudication on the Government’s forfeiture action.

1. The Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions

The Supplemental Rules generally apply to civil *in rem* forfeitures. *See* 28 U.S.C. § 2461(b); *United States v. \$506,231 in United States Currency*, 125 F.3d 442, 449 n.5 (7th Cir. 1997) (“The Supplemental Rules are applicable to civil forfeiture proceedings pursuant to 28 U.S.C. § 2461(b)”).

Supplemental Rule E(9)(b) [for actions prior to December 1, 2006] provides:

(i) On application of a party, the marshal, or other person having custody of the property, the court may order all or part of the property sold—with the sales proceeds, or as much of them as will satisfy the judgment, paid into court to await further orders of the court—if:

(A) the attached or arrested property is perishable, or liable to deterioration, decay or injury by being detained in custody pending the action;

(B) the expense of keeping the property is excessive or disproportionate; or

(C) there is an unreasonable delay in securing release of the property.

See United States v. One Parcel of Real Property described as Lot 41, Berryhill Farm Estates, 128 F.3d 1386, 1389-90 (10th Cir. 1997) (motion for interlocutory sale filed under Supp. R. E(9)(b)); *United States v. 8 Princess Court*, 970 F.2d 1156, 1160 (2d Cir. 1992) (Supp. R. E(9)(b) authorized interlocutory sale).

Supplemental Rule G(7) provides:

(a) Preserving and Preventing Criminal Use of Property. When the government does not have the actual possession of the defendant property the court, on motion or on its own, may enter any order

necessary to preserve the property, to prevent its removal or encumbrance, or to prevent its use in a criminal offense.

(b) Interlocutory Sale or Delivery

(i) Order to Sell. On motion by a party or a person having custody of the property, the court may order all or part of the property sold if:

(A) the property is perishable or at risk of deterioration, decay, or injury by being detained in custody pending the action;

(B) the expense of keeping the property is excessive or is disproportionate to its fair market value;

(C) the property is subject to a mortgage or to taxes on which the owner is in default; or

(D) the court finds other good cause.

(ii) Who Makes the Sale. A sale must be made by a United States agency that has authority to sell the property, by the agency's contractor, or by any person the court designates.

(iii) Sale Procedures. The sale is governed by 28 U.S.C. §§ 2001, 2002, and 2004, unless all parties, with the court's approval, agree to the sale, aspects of the sale, or different procedures.

(iv) Sale Proceeds. Sale proceeds are a substitute res subject to forfeiture in place of the property that was sold. The proceeds must be held in an interest-bearing account maintained by the United States pending the conclusion of the forfeiture action.

(v) Delivery on a Claimant's Motion. The court may order that the property be delivered to the claimant pending the conclusion of the action if the claimant shows circumstances that would permit sale under Rule G(7)(b)(i) and gives security under these rules.

(c) Disposing of Forfeited Property. Upon entry of a forfeiture judgment, the property or proceeds from selling the property must be disposed of as provided by law.

2. Customs Laws

Further authority is found in the customs statute, 19 U.S.C. § 1612(a),⁶ which provides that -

⁶ Section 1612(a) is incorporated with other pertinent customs statutes by 21 U.S.C. § 881(d), 18 U.S.C. § 981(d), and 18 U.S.C. § 2254(d) to the extent it is "applicable and not inconsistent" with those civil forfeiture provisions. *See United States v. One Parcel of Property Located at 414 Kings Highway*, 128 F.3d 125, 127 n.2 (2d Cir. 1997) (19 U.S.C. § 1612 applies to forfeitures under 21 U.S.C. § 881). [The customs laws are applicable to this criminal

Whenever it appears to the Customs Service that any vessel, vehicle, aircraft, merchandise, or baggage seized under the customs laws is liable to perish or to waste or to be greatly reduced in value by keeping, or that the expense of keeping the same is disproportionate to the value thereof, and . . . such [property] is not subject to section 1607 of this title [administrative forfeiture], the Customs Service shall forthwith transmit its report of the seizure to the United States attorney, who shall petition the court to order an immediate sale of such [property], and if the ends of justice require it the court shall order such immediate sale, the proceeds thereof to be deposited with the court to await the final determination of the condemnation proceedings. Whether such sale be made by the Customs Service or by order of the court, the proceeds thereof shall be held subject to claims of parties in interest to the same extent as the [property] so sold would have been subject to such claim.

3. Civil Asset Forfeiture Provisions

In addition to the explicit provisions above, 18 U.S.C. § 983(j), enacted as part of the Civil Asset Forfeiture Reform Act of 2000, also provides general authority for interlocutory sales. Section 983(j) enables courts to take any “action to . . . preserve the availability of property subject to civil forfeiture.” 18 U.S.C. § 983(j)(1). Interlocutory sales are intended for that very purpose—to preserve the value of property that is subject to forfeiture.

4. Criminal Forfeiture Provisions⁷

Section 853(e)(1) provides that -

Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of [the] property . . . for forfeiture

or

Because this request comes after the entry of the Preliminary Order of Forfeiture, the authority for the Government’s motion is 21 U.S.C. § 853(g). Section 853(g) provides that -

Following the entry of [a preliminary order of forfeiture] . . . , the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of

forfeiture action pursuant to 21 U.S.C. § 853(j) which has been made applicable to all criminal forfeitures by 28 U.S.C. § 2461(c). Section 853(j) incorporates the provisions of 21 U.S.C. § 881(d), which in turn incorporates the customs laws.]

⁷ Section 853(e) applies directly to Title 21 criminal forfeitures and is also applicable to all criminal forfeitures pursuant to 28 U.S.C. § 2461(c). Certain criminal forfeiture statutes also specifically incorporate the procedures of 21 U.S.C. § 853 (with the exception of subsections (a) and (d)). *See* 18 U.S.C. § 2253(b), 18 U.S.C. § 1467(b), and 18 U.S.C. § 982(b)(1).

satisfactory performance bonds . . . or take any other action to protect the interest of the United States in the property ordered forfeited. . . .

B. Courts have ordered interlocutory sales over the objection of a defendant or claimant.

Courts have also ordered interlocutory sales of forfeitable property over the objection of a defendant or claimant where the equity was being depleted by accruing taxes and interest on a mortgage, where mortgage payments were several months in arrears, and where the properties were abandoned and subject to vandalism, deterioration, and depreciation. See *United States v. Pelullo*, 178 F.3d 196, 198-99 (3d Cir. 1999); *Berryhill Farm Estates*, 128 F. 3d at 1389-90; *Aguilar v. United States*, 1999 WL 1067841, 4-6 (D. Conn. Nov 8, 1999); *United States v. 2540 Chadwick Way Mundelein, Illinois* 2005 WL 2124539 (N.D. Ill. May 12, 2005).

C. The Conditions for an Interlocutory Sale Are Present

The Government believes a court-ordered interlocutory public judicial sale of the subject property, pursuant to the provisions cited above, is justified because [GIVE DETAILS REGARDING BASIS FOR INTERLOCUTORY SALE, AND ATTACH A SUPPORTING DECLARATION, e.g., PROPERTY SUBJECT TO DETERIORATION, DEPRECIATION, VANDALISM, NON-PAYMENT OF MORTGAGE, WHETHER THERE HAS BEEN A STAY OF THE PROCEEDINGS, ETC.]. See Declaration of [DEPUTY UNITED STATES MARSHAL/OTHER CUSTODIAN]. These factors demonstrate the need for an interlocutory sale to preserve the value of the property pending a determination of the Government's forfeiture claims.

III. Judicial Sales Procedure

If a court orders an interlocutory sale of property over the objection of any interested party, the sale must comply with the provisions of 28 U.S.C. §§ 2001 and 2002. While sections 2001 and 2002 apply to the sale of real property, section 2004 makes those procedures applicable to the sale of personal property. These statutes provide procedural safeguards to ensure that court-ordered sales are made on terms that best preserve the parties' interests. Section 2001(a) authorizes public sales of property and sales by court-appointed receivers. Section 2001(b) permits private sales of property for cash or other consideration after a hearing of which notice to all interested parties shall be given by publication, or as otherwise directed by the court, and after the court finds that the best interests of the estate will be conserved thereby.

By this motion, the United States is requesting authorization to proceed with a public sale of the above-listed properties. Based upon the reasons set forth herein, the United States believes that a prompt sale of the property by the [USMS/OTHER AGENCY] affords the best protection to all concerned. Section 2001(a) provides that a public sale of property ordered by any court of the United States shall be sold as a whole or in separate parcels at the courthouse of the county, parish, or city in which the greater part of the property is located, or upon the premises or some parcel thereof located therein. Such sale shall be upon such terms and conditions as the court directs.

Notice of the public sale must be published once a week for at least four weeks prior to the sale in at least one newspaper regularly issued and of general circulation in the county, state or judicial district wherein the

realty is situated. 28 U.S.C. § 2002. If the property is situated in more than one county, state, district, or circuit, the notice must be published in one or more of the counties, states, or districts wherein it is situated, as the court directs. The notice shall contain a description of the property by referent or otherwise and be substantially in such form as the court approves. *Id.*

The Government requests the Court to order that the property described herein be sold at _____ Courthouse, [ADDRESS] [COUNTY/PARISH/CITY], [STATE], as the property or the greater part of the property is located in [COUNTY/PARISH/CITY], [STATE] [OR STATE WHERE PERSONAL PROPERTY IS LOCATED].

As required by section 2002, the Government has attached to this motion a proposed Notice of Interlocutory Public Judicial Sale Pursuant to Title 28, United States Code, § 2002, which it suggests be published in _____, a newspaper regularly issued and of general circulation in [COUNTY/STATE/JUDICIAL DISTRICT], [STATE]. The notice contains a description of the property and the terms and conditions of the sale. The Government hereby requests the Court to approve the attached notice and that it be published in the above-referenced newspaper.

IV. CONCLUSION

For the reasons stated above, the United States respectfully requests that the court order the sale of the property described herein on the terms and conditions set forth in the proposed order submitted herewith.

Respectfully submitted,

United States Attorney

Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing motion and proposed order were mailed this _____ day of _____, _____, to:

Assistant United States Attorney

11. Order for Interlocutory Public Judicial Sale (Contested)

IN THE UNITED STATES DISTRICT COURT FOR THE
_____ DISTRICT OF _____

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
v.) NO. _____
)
)
)
 Defendant.)

ORDER FOR INTERLOCUTORY PUBLIC JUDICIAL SALE OF PROPERTY

Plaintiff, United States of America, has moved this Court, pursuant to [CITE APPLICABLE AUTHORITY IN FORFEITURE STATUTE, e.g., 18 U.S.C. § 983(j); 21 U.S.C. § 853(e); 21 U.S.C. § 853(g); RULE G(7); 19 U.S.C. § 1612(a) (MADE APPLICABLE TO THIS CIVIL FORFEITURE ACTION BY 21 U.S.C. § 881(d)/18 U.S.C. § 981(d)/18 U.S.C. § 2254(d); MADE APPLICABLE TO THIS CRIMINAL FORFEITURE ACTION BY 21 U.S.C. § 853(j), WHICH INCORPORATES 18 U.S.C. § 881(d)), AND 28 U.S.C. § 2001(a) AND 2002, FOR AN ORDER DIRECTING THE [UNITED STATES MARSHALS SERVICE (USMS)/OTHER AGENCY] to execute an interlocutory public judicial sale of the following property:

[DESCRIBE PROPERTY]

The motion of the United States was served upon the defendant(s) and _____, the only claimants/petitioners who have alleged an interest in the property: [ADD WHETHER ANY OBJECTIONS WERE FILED].

Based upon the Government’s motion and for good cause shown, the Court finds that -

1. Payments on the mortgage to [MORTGAGEE/LIENHOLDER], secured by a deed of trust on the subject property, have not been paid since _____, thereby resulting in past due payments of approximately \$_____. Accordingly, [DEFENDANT/CLAIMANT/PETITIONER] is currently in default. As of [DATE], the principal amount due on the note was [AMOUNT] and the accrued interest was [AMOUNT]. The interest will continue to accrue at a per diem rate of [AMOUNT]. As a result of [DEFENDANT’S/CLAIMANT’S/PETITIONER’S] default on the note, the equity in the property is being reduced to the detriment of all the interested parties.

2. By failing to make the payments on the mortgage due on the property, the [DEFENDANT/CLAIMANT/PETITIONER] has waived any right he/she might otherwise have had to claim a right to continue possession of the property or for damages for loss of the use of the property. If not for the pendency of the Government's forfeiture action, [MORTGAGEE/LIENHOLDER] could have pursued foreclosure of the property.

3. [LIST ADDITIONAL REASONS FOR MOTION FOR INTERLOCUTORY SALE, (E.G., FAILURE TO PAY TAXES; VANDALISM; EXPENSES OF MAINTAINING PROPERTY;) AND LIKELIHOOD OF DETERIORATION, DECAY OR INJURY DURING PENDENCY OF PROCEEDING; AND ANY RESPONSE TO OBJECTIONS FILED BY DEFENDANT/CLAIMANT/PETITIONER].

As a result of these findings, it is hereby ORDERED -

1. The following described property shall be sold by the United States at the _____ Courthouse, [ADDRESS] [COUNTY, PARISH, CITY], [STATE], because the property or a greater part of the property is located in [COUNTY/PARISH/CITY] [OR STATE WHERE THE PERSONAL PROPERTY IS LOCATED]:

[DESCRIBE PROPERTY].

2. Notice of the sale of the property shall be published once a week for at least four weeks prior to the sale in _____, a newspaper regularly issued and of general circulation in [COUNTY/STATE/JUDICIAL DISTRICT], [STATE].

3. [28 U.S.C. §§ 2001(a) AND 2002 SET FORTH NO REQUIRED TERMS AND CONDITIONS OF SALE. HOWEVER, IT WOULD BE IN THE BEST INTEREST OF THE GOVERNMENT TO INCLUDE SOME TERMS AND CONDITIONS SO THAT THE PROPERTY CANNOT BE SOLD AT LESS THAN ITS FAIR MARKET VALUE. ACCORDINGLY, YOU MAY WISH TO INCLUDE SOME OF THE FOLLOWING PARAGRAPHS].

4. The [USMS/OTHER AGENCY] shall obtain an appraisal of the property to determine the fair market value of the property.

5. The terms and conditions of the sale shall be as follows:

a. The sale shall be for cash or other consideration.

b. The properties shall be sold [AS A WHOLE/IN SEPARATE PARCELS] in their entirety, free and clear of all right, title, claim, liens, and interest of any and all persons or parties whatsoever existing in said properties.

c. The sales price may not be less than two-thirds of the appraised value.

- d. At the time of the closing of the sale of the property, the **[USMS/OTHER AGENCY]** shall pay to **[MORTGAGEE/LIENHOLDER]** the principal and interest amount due on the mortgage and any other costs due **[MORTGAGEE/LIENHOLDER]** pursuant to the settlement agreement between the United States and **[MORTGAGEE/LIENHOLDER]**. If the net proceeds of the sale are insufficient to pay the amounts due on the note, this order shall not affect any rights **[MORTGAGEE/LIENHOLDER]** may have to seek a deficiency judgment against **[ITS/HIS/HER]** obligor. No deficiency resulting from a sale pursuant to this order shall be a basis for action or recovery against the United States.
- e. At the time of the closing of the sale of the property, the **[USMS/OTHER AGENCY]** shall pay any taxes due on the property.
- f. At the time of the closing of the sale of the property, the **[USMS/OTHER AGENCY]** shall deduct from the proceeds of the sale any real estate commission, closing costs, and other selling expenses; all costs incurred by the United States relating to the custody and maintenance of the property since the time of seizure through the date of the sale; and the costs to obtain an appraisal of the property.
6. The **[USMS/OTHER AGENCY]** shall not sell the property if the net proceeds of the sale will not equal or exceed the expenses of the sale and other expenses as enumerated herein.
7. The net proceeds of the sale shall be deposited in the **[DEPARTMENT OF JUSTICE SEIZED ASSET DEPOSIT FUND/TREASURY FUND]** and shall be substituted as the property in this action.

United States District Judge

Dated: _____

12. Notice of Sale for Publication (Contested Public Sale)

UNITED STATES DISTRICT COURT
_____ DISTRICT OF _____

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) NO. _____
)
)
)
Defendant.)

**NOTICE OF INTERLOCUTORY PUBLIC JUDICIAL SALE PURSUANT
TO TITLE 28, UNITED STATES CODE, §§ 2001(a) and 2002**

By the Order for Interlocutory Public Judicial Sale of Property entered on _____ in United States v. _____, No. _____, in the federal district court for the District of _____, I, _____, [UNITED STATES MARSHAL/OTHER AGENCY CUSTODIAN], was ordered to sell the following property at a public sale as provided by 28 U.S.C. §§ 2001(a) and 2002 and as further ordered by the Court:

[DESCRIBE PROPERTY].

The terms, provisions, and conditions, of said order [OTHER THAN BEING SOLD AT THE COURTHOUSE AND GIVING NOTICE FOR FOUR WEEKS, THE OTHER TERMS ARE OPTIONAL, BUT MAY BE IN THE BEST INTERESTS OF THE GOVERNMENT] are:

1. The property will be sold on [DATE], beginning at [TIME] a.m./p.m., at the _____ Courthouse, [ADDRESS], [COUNTY/PARISH/CITY], [STATE].
2. The terms of the sale shall be cash or other consideration;
3. The property shall be sold [AS A WHOLE/IN SEPARATE PARCELS] in its entirety, free and clear of all right, title, claim, liens, and interest of any and all persons or parties whatsoever existing in said property.

4. The [UNITED STATES MARSHAL/OTHER CUSTODIAN] shall execute the contract of the sale upon the terms ordered by the Court, proceed to consummate the sale, and shall issue a [DEED/BILL OF SALE, ETC.] to the buyer at such public sale and place the buyer in possession.
5. The sales price may not be less than two-thirds (2/3) of the appraised value of the property, as determined by the [UNITED STATES MARSHAL/OTHER CUSTODIAN].
6. [ADD ANY OTHER CONDITIONS THE GOVERNMENT MIGHT WANT AFTER CONSULTATION WITH THE USMS/OTHER AGENCY.]

United States Marshal

By _____
Deputy United States Marshal
(Address)
(Telephone)

13. Joint Motion for Interlocutory Sale of Property (Uncontested)

Comment: This joint motion for interlocutory sale is intended to use in civil and criminal forfeitures where the interlocutory sale has been agreed to by all claimants in a civil case and the defendant and all petitioners in a criminal case. Courts have routinely approved stipulated interlocutory sales without reference to 28 U.S.C. §§ 2001 *et seq.* See BCCI Holdings, 69 F. Supp. 2d at 44-45 (describing uncontested interlocutory liquidation of assets in criminal case); See also 22 Santa Barbara Drive, 264 F. 3d at 866-67 (describing stipulated sale without citation of section 2001 *et seq.*); United States v. 4118 West 178th Street, 1995 WL 758436 (N.D. Ill. Dec. 21, 1995) (same). Supplemental Rule G(7)(b)(iii) also clarifies that the procedures required by 28 U.S.C. §§ 2001, 2002, and 2004 do not apply if all parties agree to the sale, aspects of the sale, or different procedures.

UNITED STATES DISTRICT COURT
 _____ DISTRICT OF _____

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	
v.)	No. _____
)	
)	
Defendant.)	

JOINT MOTION FOR INTERLOCUTORY SALE OF PROPERTY

The United States of America, by its attorney, _____, United States Attorney for the _____ District of _____, and [DEFENDANT/PETITIONER/CLAIMANT] _____ by his/her attorney, _____, hereby move that the Court enter an order authorizing the immediate interlocutory sale, pursuant to the terms set forth herein, for the following described property: [LEGAL DESCRIPTION/PROPERTY ADDRESS/LIST OF PERSONAL PROPERTY]. A proposed order is attached.

1. **[BRIEFLY DESCRIBE THE PROCEEDINGS SUCH AS:]**

On _____, a grand jury in this district indicted Defendant _____ (hereafter, “Defendant”), charging him with, among other offenses, money laundering, in violation of 18 U.S.C. § 1956. The indictment alleged further, that upon Defendant’s conviction, certain property would be forfeitable to the United States, including the following: [DESCRIBE PROPERTY]. On the United States’ motion, this Court on _____ entered a restraining order preventing, among other things, any transfer or further encumbrance of the Property during the pendency of this criminal case.

On _____, the United States filed a complaint alleging that the defendant property was subject to forfeiture pursuant to [CITE STATUTE].

2. **[DESCRIBE THE PROCEEDINGS TO SHOW THAT ALL KNOWN POTENTIAL CLAIMANTS RECEIVED NOTICE OF THE ACTION, PUBLICATION OF THE ACTION, THAT THE TIME TO FILE CLAIMS/PETITIONS HAS EXPIRED, AND IDENTIFY THE CLAIMANTS/PETITIONERS WHO FILED TIMELY CLAIMS/PETITIONS AND, THEREFORE, ARE THE ONLY ONES WHO NEED TO CONSENT TO THE SALE, SUCH AS:]**

On [DATE] plaintiff served notice upon all persons and entities believed to have an interest in the property by [PROVIDE DETAILS OF NOTICE] and notice of the action was published on [DATE] in [NEWSPAPER OF GENERAL CIRCULATION]. On [DATES] _____, filed a [CLAIM TO THE DEFENDANT PROPERTY, AND AN ANSWER TO THE COMPLAINT/A PETITION ASSERTING AN INTEREST IN THE PROPERTY]. No other person or entity has filed a claim to the property and the time to do so has expired.

3. **[DESCRIBE THE REASONS FOR THE SALE, SUCH AS:]**

The [MORTGAGEE/LIENHOLDER] filed a [CLAIM/PETITION] on _____ asserting an interest in the above-described property by virtue of a promissory note dated _____ and executed by _____ in the original principal amount of _____ and secured by a deed of trust recorded at volume _____ page _____ of the [COUNTY] land records. The [DEFENDANT/CLAIMANT/PETITIONER] has not made any payments on the note since [DATE]. Accordingly, the note is in default. As of [DATE], the principal amount due on the note was [AMOUNT] and the accrued interest was [AMOUNT]. The interest will continue to accrue at a per diem rate of [AMOUNT].

4. On _____, the United States and [MORTGAGEE/LIENHOLDER] entered into a settlement agreement, approved by this Court on [DATE], pursuant to which the United States agreed to pay [MORTGAGEE/LIENHOLDER] the unpaid principal balance, all unpaid accrued interest, and any unpaid casualty insurance premiums upon [ENTRY OF A FINAL ORDER OF FORFEITURE AND SALE OF THE PROPERTY OR AT THE TIME OF AN INTERLOCUTORY SALE APPROVED BY THE COURT PRIOR TO A FINAL ORDER OF FORFEITURE.] The [MORTGAGEE/LIENHOLDER] agreed to join any motions for interlocutory sale of the property.

5. The real property taxes due on the property have not been paid since [DATE] and the following amounts are due as of [DATE]:

[INSERT AMOUNTS FOR EACH YEAR].

6. Since the entry of the restraining order, (a) the tenants have vacated the property and ceased paying rent or (b) in light of the restraining order, it has not been possible for the defendant to enter into a new lease with respect to the property.

7. The parties agree that the above-identified property will be sold by the **[UNITED STATES MARSHALS SERVICE/OTHER AGENCY]** pursuant to the following terms:
 - a. **[THE USMS/OTHER AGENCY]** will sell the property in the most commercially feasible manner.
 - b. In furtherance of the interlocutory sale, the **[USMS/OTHER AGENCY]** will retain a licensed, certified real estate appraiser to perform an appraisal of the property. **[DEFENDANT/CLAIMANT/PETITIONER]** agrees that **[IT/HE/SHE]** and **[ITS/HIS/HER]** agents will fully cooperate with the **[USMS/OTHER AGENCY]** for purposes of the appraisal, in that they will do the following:
 - 1) Allow the appraiser full access to the property;
 - 2) **[If property has rental income]** Immediately provide the rent roll (the list of renters and the amount of rent paid by each) for the property.
 - 3) **[If property has rental income]** Immediately provide the last three years of operating expense records for the property.
 - c. After the above-referenced appraisal has been completed, the Government will promptly forward a copy to the **[DEFENDANT/CLAIMANT/PETITIONER]** through **[ITS/HIS/HER]** attorney of record. If the **[DEFENDANT/CLAIMANT/PETITIONER]** disagrees with the value of the property determined by the appraiser retained by the **[USMS/OTHER AGENCY]**, said **[DEFENDANT/CLAIMANT/PETITIONER]** shall have the right, at **[ITS/HIS/HER]** own expense, to have the property appraised by a licensed certified real estate appraiser of **[ITS/HIS/HER]** choosing. If the parties thereafter are unable to agree on a sales price for the property, the **[PROPERTY SHALL BE LISTED FOR AN AMOUNT AT LEAST ONE-HALF OF THE DIFFERENCE BETWEEN THE TWO APPRAISALS/OR THE PARTIES AGREE THAT THE HONORABLE _____, UNITED STATES [DISTRICT/MAGISTRATE] JUDGE SHALL DETERMINE THE OFFERING PRICE OF THE PROPERTY.]**
 - d. The property will be sold at a price no less than ___ percent of the agreed upon appraised value of the property, unless a sale at less than ___ percent is presented and approved by the **[DEFENDANT/CLAIMANT/PETITIONER]**.
 - e. The **[USMS/OTHER AGENCY]** may, in its sole discretion, reject any offer to purchase the property where it determines that the offer is being made by, or on behalf of, a person involved in the criminal activity alleged as the basis for forfeiture.
 - f. The purchase price of the property will be a cash price.

g. The net proceeds of the sale of the property will be deposited in the [DEPARTMENT OF JUSTICE SEIZED ASSET DEPOSIT FUND/TREASURY FUND] and substituted as the property in this action pending a final judgment in this case.

h. The net proceeds from the sale of the property will include all money realized from the sale of the property, less the following:

1. Real estate commissions, if any;
2. The amounts due to [MORTGAGEE/LIENHOLDER] pursuant to the settlement agreement executed on ____ between the United States and the [MORTGAGEE/LIENHOLDER];
3. Amounts due the holder of any other valid lien which was recorded at the ____ prior to the time plaintiff's Notice of *Lis Pendens* was recorded;
4. Real estate property taxes which are due and owing;
5. Insurance costs, if any;
6. All costs incurred by the [USMS/OTHER AGENCY] in connection with the maintenance, repair, marketing and sale of the property;
7. Escrow fees;
8. Document recording fees not paid by the buyer;
9. Title fees; and
10. County transfer taxes.

8. In furtherance of the Interlocutory Sale, [DEFENDANT/CLAIMANT/PETITIONER] ____ agrees to execute promptly any documents which may be required to complete the interlocutory sale of the property.

9. [IF MORTGAGE PAYMENTS ARE IN ARREARS]: [DEFENDANT/CLAIMANT/PETITIONER] agrees that [IT/HE/SHE] will bring current the [MORTGAGE/DEED OF TRUST] held by [MORTGAGEE/LIENHOLDER] which is currently in arrears, and will further keep all payments current until the interlocutory sale is completed and the [MORTGAGE/DEED OF TRUST] held by [MORTGAGEE/LIENHOLDER] has been paid in full from the net proceeds of the sale of the property.

10. The parties agree that the [DEFENDANT/CLAIMANT/PETITIONER] will retain custody, control, and responsibility for the property until the interlocutory sale has been completed. [DEFENDANT/CLAIMANT/PETITIONER] further agrees that [IT/HE/SHE] will retain existing insurance on the property until the interlocutory sale has been completed.

11. The signature pages of this stipulation may be executed in one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.

WHEREFORE, the United States and the [DEFENDANT/CLAIMANT/PETITIONER] move that the Court enter an Order granting their joint motion for an interlocutory sale as proposed by the parties.

Respectfully submitted,

Dated: _____
United States Attorney

By: _____
Assistant U.S. Attorney
Address

Dated: _____
Attorney for Defendant/Claimant/Petitioner

Dated: _____
Defendant/Claimant/Petitioner

14. Order for Interlocutory Sale (Uncontested)

UNITED STATES DISTRICT COURT
_____ DISTRICT OF _____

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	
v.)	No. _____
)	
)	
Defendant.)	

ORDER FOR INTERLOCUTORY SALE

Based upon the joint motion of the Plaintiff, United States of America, and [DEFENDANT/CLAIMANT/PETITIONER] _____, and for good cause shown,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. The Joint Motion for Interlocutory Sale of Property is granted.
2. The property described as follows:

[INSERT LEGAL DESCRIPTION/LIST OF PERSONAL PROPERTY]

will be sold pursuant to the terms set forth in the Joint Motion for Interlocutory Sale of Property.

3. The net proceeds of the sale of the property will be substituted for the above-described property and held by the [UNITED STATES MARSHALS SERVICE OR OTHER APPLICABLE AGENCY] pending a final judgment in this action.

Dated: _____

United States District Judge