

From: [Anderson, Jonas V. \(USTP\)](#)
To: [REDACTED]
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Subject: Guidance Re: Short Sale Negotiators
Date: Thursday, May 18, 2017 10:46:00 AM

Dear Trustees,

The United States Trustee has been monitoring and reviewing the Oregon panel trustees' use of short sale negotiators ("SS Negotiator") for real property sales. The following represents the United States Trustee position regarding SS Negotiations. Hopefully it will assist stakeholders to have this guidance.

1. **Employment.** If a SS Negotiator provides services to the estate in connection with the sale of real property, the trustee must seek to employ the SS Negotiator consistent with the requirements of 11 U.S.C. § 327 and Fed. R. Bankr. P. 2014, regardless of whether the estate or the buyer is responsible for paying the SS Negotiator's fee. In addition to the information required in a typical employment application, the applications to employ SS Negotiators should include the following information:
 - a. The necessity of the SS Negotiator's services, including whether such services duplicate those of the estate's real estate broker;
 - b. Prior negotiation efforts with the lender, if any; and
 - c. The effect that a SS Negotiator fee imposed on a buyer may have on the property's marketability, including whether additional cash requirements may limit the pool of potential buyers.
2. **Licensing/registration and other state requirements.** SS Negotiators must comply with all licensing, registration, and other applicable state law requirements. For example, in Oregon, SS Negotiators must be registered consistent with the Oregon Debt Management Service Provider ("DMSP") Act. *See* Or. Rev. Stat. § 697.612. The website for the Oregon Division of Financial Regulation has a searchable database to verify DMSP licenses (<http://dfr.oregon.gov>).
3. **Fees.** The fee charged by the SS Negotiator must be reasonable and not exceed what is allowed by law. For example, in Oregon, trustees should consider the Oregon DMSP Act in determining the appropriateness and reasonableness of SS Negotiator fees. The Oregon DMSP Act limits such fees to 7.5% of the difference between the principal amount of the secured debt and the amount the consumer ultimately pays the creditor to settle the debt. Or. Rev. Stat. § 697.692(e).

The United States Trustee will review applications to employ SS Negotiators and motions to approve short sales and may object to any proposed fees to be paid to a SS Negotiator, particularly if it appears that the SS Negotiator did not provide meaningful value, the fees paid to the SS Negotiator appear excessive when viewed in connection with the fees paid to realtors, or if the total fees being paid to professionals in connection with the sale appear unreasonable or excessive.

Please let me know if you have any questions or comments or would like to discuss this (or any other) matter.

Jonas V. Anderson

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