

Memorandum
Office of the United States Trustee
Region 16



REVISED SUPERVISORY INSTRUCTION #10

TO: All Panel & Non Panel Trustees

SUBJECT: Employment of Auctioneers

Once a Chapter 7 Trustee or a Chapter 11 Case Trustee (hereinafter "trustee") determines that an auctioneer should be employed by an estate being administered by that trustee, the trustee shall adhere to the following procedural steps:

1. Prepare and submit to your local Office of the United States Trustee for approval prior to filing with the court an application to employ the auctioneer. Check with your local office for the specific procedures to be used in submitting the application for UST review.
2. With all applications include the following information:
 - (a) a declaration of disinterestedness;
 - (b) a statement by the auctioneer that he or she has a current blanket bond in favor of the United States of America in the amount of \$25,000 (the "Blanket Bond"); and
 - (c) a statement that either (1) the total value of auction assets in all bankruptcy estates in which this auctioneer is involved in this district does not exceed the Blanket Bond, including auctions already conducted in which funds have not yet been disbursed by the auctioneer to a trustee and pre-auction estimated values of estate assets in the custody and control of the auctioneer; or, (2) an individual bond in an amount sufficient to protect the value of the assets to be auctioned (the "Individual Bond") has been obtained to conduct this auction. The Individual Bond is to be issued specifically in the case name and number and in at least the amount of the estimated value of the property to be sold, in favor of the trustee as trustee for the estate involved, with the cost of the Individual Bond being a cost of sale.
3. As part of the published Notice of Sale and any application seeking Court authorization to conduct the auction, the trustee shall include the terms of the auctioneer's compensation, including without limitation buyer's premiums, commissions, and costs. To the extent that the trustee is seeking authorization as part of the sale motion to compensate the auctioneer,

the trustee shall ensure that the application is noticed to creditors consistent with Federal Rule of Bankruptcy Procedure 2002(a)(6).

The trustee also shall:

- (a) verify that the auctioneer has filed the Blanket Bond with the Clerk of the Bankruptcy Court (Los Angeles Division);
- (b) verify that a copy of the Blanket Bond has been sent to the United States Trustee;
- (c) establish an appraised value for the items to be sold (the "Appraised Value") by using: the value of the property as scheduled by the debtor, and appraisal of the items by a licensed appraiser, or an alternative method of valuation recommended by the auctioneer and approved by the trustee; and
- (d) determine whether an Individual Bond is required either because the value of all property to be sold in the auction exceeds the minimum amount set forth in Paragraph 4 below or the total value of all property being sold concurrently by auctioneer, including the auction property in the proposed auction, exceeds the Blanket Bond amount;

The trustee should also ascertain that the auctioneer maintains insurance for lost or stolen property.

4. An Individual Bond must be obtained for auctions with an Appraised Value exceeding \$25,000.
5. No later than 7 days after an auction sale of any estate property, the auctioneer shall turnover any and all proceeds from the auction to the trustee.
6. No later than 21 days after the auction, auctioneer must submit to the trustee a Report of Auctioneer (the "Auction Report"), which must include at a minimum: the date of the sale, each item sold, the sale price and the name, address, and telephone number of the purchaser - in the case of lots, a brief description of each lot sold as well as the sale price and purchaser thereof - the gross proceeds of sale, a statement that the gross proceeds have been turned over to the trustee, and a descriptive list of the items that were not sold but which were returned to the trustee.
7. Within 7 days of receipt of the Auction Report, the trustee shall file the Auction Report with the Court together with a brief declaration (the "Trustee's Declaration") stating that: the trustee has compared the Auction Report to the list of items/lots sold, the Auction Report is satisfactory, the gross funds have been turned over to the trustee, and the auctioneer has been

compensated pursuant to the terms previously approved by the Court or will be compensated in the future consistent with the terms of a duly noticed application for compensation. In the event that an Individual Bond has been obtained for the auction, the trustee shall also apply to the Court for authorization to exonerate the bond.

8. Provided that the trustee has obtained Court authorization to pay the auctioneer as part of a duly noticed application, the trustee shall compensate the auctioneer for the Court-approved fees and expenses within 7 calendar days of the filing with the Court of the Auction Report and the Trustee's Declaration.
9. The trustee must obtain a written waiver from the United States Trustee when proposing any procedure which deviates from steps 1-7 outlined above. Without limiting the circumstances in which a waiver may be sought, the United States Trustee will consider whether compliance with the procedures will impose undue costs and burdens on the estate in situations involving the auction sale of assets in small estates.
10. Under no circumstances may an auction go forward without a Court order: (1) approving a sale of assets by auction; and (2) the employment of the auctioneer.

Trustees should refer to the Handbook for Chapter 7 Trustees dated July 1, 2002, Pages 8-26 through 8-28, for further information regarding auctioneers, Bond Monitoring Program Requirements revised December 2011, and shall familiarize themselves and comply with all requirements of Bankruptcy Code Sections 363, 327-328, and 330, FRBP 6004, and Local Bankruptcy Rule 6004-1.