

D.N.J. LBR 6004-1. Motion to Sell Property

(a) General requirements. A motion to sell property under § 363 of the Code must include:

- (1) a copy of the proposed sale agreement, or a form of agreement substantially similar to the form that will be executed in connection with the proposed sale;
- (2) a copy of the proposed order approving the sale;
- (3) the material terms of the proposed sale, including:
 - (A) a description of the property to be sold;
 - (B) the date, time, and place of sale;
 - (C) the purchase price;
 - (D) a condition of the sale;
 - (E) a deadline for the approval or closing of the sale;
 - (F) a deposit requirement and the conditions under which the deposit may be forfeited;
 - (G) a request for a tax determination under § 1146(b) of the Code;
 - (H) an identification of the entity that will retain or have access to the debtor's books and records, if the proposed sale is of substantially all of the debtor's assets;
 - (I) an identification of any executory contract or unexpired lease to be assumed and assigned under § 365 of the Code;
 - (J) a provision regarding credit bidding under § 363(k) of the Code; and
 - (K) a broker or sales agent's anticipated fee or commission; and
- (4) a request for the appointment of a consumer privacy ombudsman under § 332 of the Code, if applicable.

(b) Special provisions. The motion must identify the location of any of the following provisions in the sale agreement and proposed order:

- (1) identification of any insider to which property is being sold; description of the insider's relationship to the debtor; and description of any measures taken to ensure the fairness of the sale process and the proposed transaction;
- (2) description of the material terms of any agreement with management or key employees regarding compensation or future employment; statement as to whether the terms comply with § 503(c) of the Code; and a description of the measures taken to ensure the fairness of the sale and the agreement;

- (3) a waiver, release, or satisfaction of any claim;
- (4) an agreement to limit marketing of the property or to not solicit competing offers;
- (5) an interim agreement with the proposed purchaser;
- (6) a release of sale proceeds on or after the closing, or allocation of sale proceeds between or among sellers, without further court order;
- (7) a sale or limitation of the right to pursue avoidance claims under chapter 5 of the Code;
- (8) a limitation of the proposed purchaser's successor liability;
- (9) a provision to sell property free and clear of a leasehold interest, license, or other right;
and
- (10) a provision to waive the stay of an order imposed by Bankruptcy Rule 6004(h) or 6006(d).

(c) Notice of sale. Except where the motion is heard on shortened time, a motion to sell property must be accompanied by Local Form *Notice of Proposed Private Sale* or *Notice of Proposed Public Sale*.

2015 Comment

This Rule now incorporates a portion of the Guidelines for Sale of Estate Property in Chapter 11 cases, which were formerly in the Appendix to the Rule.

Local Bankruptcy Rule [6004-2](#) addresses bidding and auction procedures.

Subdivision (c) provides the procedure for a party seeking approval of a proposed sale to supply information to the court to satisfy the clerk's responsibility to send notice under Bankruptcy Rule 2002(a)(2).

2016 Comment

This rule is amended to clarify that Local Form *Notice of Proposed Private* or *Public Sale* need not be filed with a motion to sell property when the motion will be heard on shortened time. The motion should be served as directed by the Order Shortening Time.