



## **LIST OF CHANGES AND UPDATES TO THE HANDBOOK FOR CHAPTER 7 TRUSTEES**

**October 2021**

### Handbook Chapter 4, Duties of a Trustee in the Administration of a Case

#### C.3.e Further Considerations in Determining Whether to Administer Assets: Abandonment of Estate Property (Pages 4-5 to 4-6)

Revised to read as follows:

“Immediate consideration must be given to property of no value to the estate which may be hazardous to the health or safety of the general public. Such property shall be abandoned after consultation with appropriate federal, state, and local authorities, or if practicable and appropriate, the trustee may sell such property in certain limited circumstances. See Handbook Chapter 4.C.3.g & 4.C.9.d. [Language amended October 15, 2021.]”

#### C.3.g Further Considerations in Determining Whether to Administer Assets: Environmental Issues (Page 4-7)

Revised to read as follows:

“The trustee should take reasonable steps to abate or prevent environmental contamination by or to estate property. If property of the estate has no value and may be hazardous to the health or safety of the general public, the trustee should give immediate consideration to abandoning the property under section 554(a). Before abandoning the property, however, the trustee must take all precautions possible in light of the available assets of the estate, consult with appropriate federal, state and local authorities, and document the actions taken. 11 U.S.C. § 704. The trustee also may consider whether a sale may be appropriate, such as blighted property in a community undergoing revitalization. [Language amended October 15, 2021.]”

#### C.9.a Sale of Assets: General Standards (Page 4-14)

Revised to read as follows:

“A trustee may sell assets only if the sale will result in a meaningful distribution to creditors or provides some other significant benefit. In evaluating whether an asset has equity, the trustee must determine whether there are valid liens against the asset and whether the value of the asset exceeds the liens. The trustee may seek a “carve-out” from a secured creditor and sell the property at issue if the “carve-out” will result in a meaningful distribution to creditors. The trustee must also consider whether the cost of administration or tax consequences of any sale would significantly erode or exhaust the estate’s equity interest in the asset. If the sale or carve-out will not result in a meaningful distribution to creditors, the trustee must abandon the asset. See Handbook Chapter 4.C.3.e regarding abandonments. However, there may be instances wherein a sale of such property would be appropriate to alleviate potential liability even if such property is fully encumbered. [Language amended October 15, 2021.]”

#### C.9.d Sale of Assets: Sale of Encumbered Property (Page 4-16)

Revised to read as follows:

“Generally, a trustee should not sell property subject to a security interest unless the sale generates funds for the benefit of unsecured creditors. A secured creditor can protect its own interests in the collateral subject to the security interest. Trustees should not only consider the commission earned on a sale of estate property in relation to the anticipated distribution to unsecured creditors but also take into account all expenses incurred by the estate such as professional fees, even tax liabilities associated with a sale because professional fees are an unsecured creditor priority claim. The distribution to creditors should be meaningful. [Language amended October 15, 2021.]

In certain limited circumstances, however, a trustee may properly sell encumbered property that would generate no proceeds for the benefit of unsecured creditors (“fully encumbered property”). For example:

- 1) A trustee may be able to satisfy in full a blanket security interest on multiple units of property by selling only one unit.
- 2) A trustee may be able to obtain a higher price from an aggregate sale of assets than from selling the assets individually.
- 3) In a case with other funds available for unsecured creditors, a trustee also may sell fully encumbered property to eliminate a deficiency, if the secured creditor agrees to waive any unsecured claim for a deficiency in the event the sale does not fully satisfy the security interest.
- 4) In a case wherein selling encumbered assets aids in the sale of other estate assets to the benefit of the estate.

- 5) A trustee may attempt to sell or transfer blighted property in order to protect other assets of the estate from liability.
- 6) In a case wherein a sale of property would result in full payment of all priority creditors.

[Language amended October 15, 2021]

When selling fully encumbered property, the trustee must administer the sale to avoid a diminution of funds otherwise available for unsecured creditors. 11 U.S.C. § 704, 28 U.S.C. § 586. The trustee should obtain an agreement in writing from the secured creditor to recover the costs of sale from the collateral pursuant to section 506(c). The trustee must disclose the terms of any agreement between the trustee and the secured creditor and notify the United States Trustee at the outset, for example, in the notice of proposed sale, and in the trustee's final report and request for compensation and reimbursement of expenses. 11 U.S.C. § 363, Fed. R. Bankr. P. 6004. The sale motion should disclose whether the sale will result in any meaningful distribution to creditors and explain the reasons why the trustee is selling the encumbered property if the sale will not result in a meaningful distribution to creditors. Any sums recovered from the collateral under section 506(c) are property of the estate and must be deposited in the estate account. [Language amended October 15, 2021]"

#### C.11 Compensation and Expenses of Trustees (Pages 4-24 to 4-25)

"The United States Trustee will not object to a full commission except in rare and unusual circumstances. Examples of rare and unusual circumstances may include cases where it appears that the trustee has delegated a substantial portion of case administration, i.e., trustee duties, to an attorney or where the trustee's case administration fell below acceptable standards, including cases in which the trustee has administered fully encumbered property primarily for the benefit of the trustee and the trustee's professionals, and not for the reasons identified in section C.9.d above, and with no meaningful distribution to creditors. Section 330 also allows the recovery of actual, necessary expenses. Overhead expenses of a trustee are not reimbursable from the estate. [Language amended October 15, 2021]"

#### E. Investigate the Financial Affairs of the Debtor, 11 U.S.C § 704(a)(4) (Page 4-27)

Revised to read as follows:

"The trustee must investigate the debtor's financial affairs by reviewing the debtor's petition, schedules, statements, payment advices, and other initial paperwork for consistency and completeness, which the debtor must file pursuant to section 521 and Fed. R. Bankr. P. 1007, and by examining the debtor at the meeting of creditors. [Language amended October 15, 2021.]

Although the trustee has no duty to independently verify the factual accuracy of the debtor's documents, the trustee should exercise sound business judgment when

evaluating the accuracy of the debtor's documents. The trustee must also verify the initial paperwork is complete and internally consistent. [Language added October 15, 2021.]

In an effort to control the cost of bankruptcy without interfering with a trustee's obligation to investigate the financial affairs of the debtor or modifying the debtor's duty to cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties, the Best Practices for Document Production Requests by Trustees in Consumer Bankruptcy Cases, which provides sound guiding principles for document-production requests, is incorporated as policy into this Handbook. A copy of the Best Practices may be found in the Supplementary Materials. [Language added October 15, 2021.]

The trustee must also conduct such other investigation as necessary, such as following up on credible tips about unscheduled assets.”

Note: A new performance review criterion was added to the United States Trustee Program Chapter 7 Trustee Performance Review to incorporate this Handbook change. See Factor 13 – Conduct of Trustee.