

## **AUCTIONEERS**

### **(1) General Standards**

The trustee may employ auctioneers as professional persons pursuant to sections 327(a) and 328(a) to sell property of the estate. All auction sales require notice pursuant to Fed. R. Bankr. P. 6004(a).

The trustee must actively supervise the activities of the auctioneers to ensure that estate property is protected against loss, that property is sold for reasonable prices to independent buyers, that auction proceeds are promptly and fully remitted, that auctioneers timely submit accurate sale reports, and that auctioneer expenses are actual and necessary and paid in accordance with legal requirements. 28 U.S.C. § 586, 28 C.F.R. § 58.6(a)(7).

Methods by which a trustee can supervise auctioneers include personally attending auction sales, sending an assistant or staff person to attend auction sales, thoroughly reviewing auctioneer reports, and independently verifying reported information. When the auctioneer assumes control over estate property for a period of time prior to sale, the trustee should keep an inventory of the items stored and periodically verify that the assets still exist and are in good condition.

The trustee must immediately advise the United States Trustee of concerns with respect to auctioneers and must immediately report situations which could result in a loss to the estate. Failure to appropriately supervise auctioneers may result in claims against the trustee individually. 28 U.S.C. § 586, 28 C.F.R. § 58.6(a)(7).

A representative of the United States Trustee may attend auctions.

### **(2) Compensation**

An auctioneer's compensation must be approved by order of the court. 11 U.S.C. § 328, Fed. R. Bankr. P. 6005. Any buyer's premium must be fully disclosed in the employment application and considered in determining the reasonableness of the total compensation.

Although auctioneers, outside of a bankruptcy context, usually deduct their commissions and expenses from the sales proceeds and remit a net amount to the seller, this practice may not be employed with regard to bankruptcy estate funds, unless it is specifically authorized by order of the court. The order authorizing the employment must specify the percentage fee to be charged by the auctioneer and may authorize the deduction of the commission and the costs of sale from the sales proceeds, with the effect of the auctioneer remitting the net sales proceeds to the trustee.

### **(3) Bonding and Insurance**

The trustee must ensure that auctioneers are adequately bonded, prior to auction or taking possession of estate property, in an amount that is sufficient to cover all receipts from the sale. 11 U.S.C. § 704(a)(2), 28 U.S.C. § 586. The bond must be in

favor of the United States of America and is distinct from any other auctioneer's bond required under state law. All original bonds must be forwarded to the United States Trustee.

The trustee needs to verify that the auctioneer maintains insurance for lost or stolen property in the event that the trustee decides to make a claim against the insurer in the event of such losses. Insurance claims for lost or stolen property must be made promptly, and the trustee must immediately inform the United States Trustee of such claims. 11 U.S.C. § 704(a)(2), 28 U.S.C. § 586.

#### (4) Turnover of Proceeds

As a general rule, the auctioneer should immediately turn over auction proceeds to the trustee. In any event, all proceeds must be turned over within thirty days of the auction. The United States Trustee may have additional requirements. 11 U.S.C. § 704(a)(2), 28 U.S.C. § 586.

If an auctioneer fails to account for or to turnover auction proceeds within thirty days, the trustee must promptly notify the United States Trustee and take immediate action to recover the funds, including initiating a proceeding against the auctioneer's bond 11 U.S.C. § 704(a)(2), 28 U.S.C. § 586.

If the trustee discovers that the auctioneer has commingled estate auction proceeds with business operating or personal accounts, the trustee must immediately notify the United States Trustee. 11 U.S.C. § 704(a)(2), 28 U.S.C. § 586.

#### (5) Auctioneer's Report of Sale

The auctioneer must submit to the trustee, the United States Trustee and must also file with the court an itemized statement of the property sold, the name of each purchaser, and the price received for each item, lot, or for the property as a whole if sold in bulk. Fed. R. Bankr. P. 6004(f). In all cases, the auctioneer must present an affidavit or declaration listing all costs and expenses incurred with the report of sale.

The trustee must ensure that the auctioneer files the report promptly upon completion of the auction. 28 U.S.C. § 586. If the report has not been provided within thirty days after the auction, the trustee must request a copy and ensure that it has been filed with the court and United States Trustee, or as otherwise provided by local rules and practices. 28 U.S.C. § 586.

The trustee must compare the auctioneer's report of sale to the initial inventory and obtain an explanation for any discrepancies. 11 U.S.C. § 704(a)(2), 28 U.S.C. § 586. The trustee also should scrutinize items marked "stolen" or "missing." As noted earlier, the trustee should attempt to recover the value of lost or stolen items by filing a claim with the auctioneer's insurer or by initiating a proceeding against the auctioneer's bond, as appropriate.