

LBR 6005-1

EMPLOYMENT OF APPRAISERS AND AUCTIONEERS

(a) All applications for the appointment of an appraiser must be filed with the court for approval. Said applications shall contain at a minimum the following information:

- (1) A statement setting forth in what manner and by whom the costs of the appraisal will be paid, and if payment is to be made from assets of the estate, a statement that the estate has adequate funds with which to pay the appraisal fee;
- (2) The name and address of the appraiser and the maximum amount of the appraisal fee;
- (3) A statement to the effect that the appraiser does not hold an interest adverse to the estate, is a disinterested person, and a description of the appraiser's general qualifications;
- (4) A description of the item(s) to be appraised, their estimated value and the time required for the appraisal; and
- (5) If the appraiser sought to be appointed will incur travel expenses in connection with the appraisal, an explanation as to why a local appraiser is unavailable or unsuitable.

(b) All applications for allowance of appraiser's fees for services rendered or reimbursement of expenses totaling \$500.00 or more, shall, in addition to the requirements set forth in the Bankruptcy Code and Fed. R. Bankr. P. 2016(a), contain the following information:

- (1) The date of the order of appointment;
- (2) In concise form, a general narrative statement of the nature of the services provided; and
- (3) A statement, based upon records prepared contemporaneously with the services rendered, indicating:
 - a. The dates the services were rendered;
 - b. The identity of the person or persons rendering such services; and

c. The total compensation sought by each person providing the services.

(c) Unless otherwise provided by the order of the court, sections (d) through (m) of this Rule shall apply to the employment of all auctioneers and the conduct of auctions.

(d) The employment of an auctioneer shall be submitted to the court for approval upon application setting forth:

- (1) The need for an auctioneer's services;
- (2) A description of the property to be sold, its estimated value, and the location thereof;
- (3) How the auctioneer is to be paid, and, if payment is to be made from assets of the estate, whether the estate will have adequate funds with which to pay the auctioneer's fee;
- (4) If the items to be auctioned constitute collateral, entirely or in part, whether or not the party claiming a security interest in such collateral has agreed to pay any or all of the auctioneer's expenses;
- (5) How many assistants, if any, will be required to help the auctioneer and why such assistance is required, a statement by the trustee in support of the number required and the expense to be incurred for each assistant, based upon an hourly fee; and
- (6) A statement that the auctioneer is enrolled on the list of qualified auctioneers as approved by the court, or a statement pursuant to subsection (e) of this rule.

(e) No auctioneer shall have his or her name enrolled upon the list of qualified auctioneers unless he or she shall file with the clerk a verified application for approval as an auctioneer, which application shall contain:

- (1) Facts as to the applicant's qualifications and previous experience as an auctioneer;
- (2) A description of the business in which he or she has been engaged within the past ten (10) years;
- (3) Banking references;

- (4) A statement whether he or she has ever been convicted of any criminal offense, other than motor vehicle violations;
- (5) A statement whether he or she has been liable in any litigation for the repayment or return of any money or property held by him or her in a fiduciary capacity;
- (6) Three (3) letters of recommendation as to the applicant's character, ability, and experience to act as an auctioneer; and
- (7) A statement whether he or she has ever been denied coverage under a corporate surety bond.

(f) An auctioneer employed with court approval shall not act until he or she gives in each estate, at his or her own expense, a surety bond in favor of the United States of America, to be approved by and in such sum as may be fixed by the court, conditioned upon:

- (1) The faithful and prompt accounting for all monies and property which may come into his or her possession as auctioneer;
- (2) Compliance with all rules, orders, and decrees of the court; and
- (3) The faithful performance of his or her duties in all respects.

Said bond shall contain a provision that it may not be canceled or terminated without sixty (60) days notice being given to the clerk and the United States Trustee. In lieu of a bond in each case, an auctioneer may be permitted to file a blanket bond covering all cases in which he or she may act. Such blanket bond shall be in favor of the United States of America, shall be in the sum of one million dollars (\$1,000,000.00), and shall be conditioned for each estate on the same terms as bonds in separate estates.

(g) The name of any auctioneer may be removed from the list of qualified auctioneers at any time by the court, in its sole discretion. Notice of such removal shall be sent forthwith to such auctioneer and to his or her bonding or surety company.

(h) In the event that the employment of a particular auctioneer, other than an auctioneer on the list of qualified auctioneers, is required, an application for such employment shall specify the reasons and necessity for such employment. Such auctioneer, before such employment, shall qualify by filing a bond in such amount as is set by the court, unless excused by the court.

(i) Compensation and Expenses:

(1) An auctioneer appointed by the court may be allowed, as compensation on the sale of personal property, a sum equivalent to 10% of the first \$50,000.00; 8% of the next \$25,000.00; 6% of the next \$25,000.00; 4% of the next \$50,000.00 and 2% of all amounts over \$150,000.00. On real property, an auctioneer may be allowed up to 5% commission on the sale price of the property. Any allowance of compensation and reimbursement of expenses to an auctioneer shall be paid only upon proper application and subject to the approval of the court.

(2) An auctioneer shall be reimbursed for reasonable and necessary expenses directly related to the sale, including printing, advertising, insurance, and bond costs. Where the auctioneer has a blanket bond, the auctioneer may be reimbursed a proportionate amount of the costs, based upon the value of the assets sold by the auctioneer in the particular estate. When directed by the trustee to transport goods, the auctioneer shall be reimbursed for expenditures related thereto. No travel expenses shall be allowed except as ordered by the court. The auctioneer may be reimbursed for his or her expenses only if the application for reimbursement is supported by a sworn affidavit, setting forth the specific expenses incurred and the necessity for such. Vouchers, invoices, receipts, or other appropriate supporting documentation shall accompany the application. Where disbursements were made for advertising, copies of the actual advertisements shall be attached to the affidavit.

(j) A person shall not at any time, directly or indirectly, designate or refer to himself or herself as "Official United States Auctioneer," or as "Official Bankruptcy Auctioneer," or use any similar title or designation which states expressly or by implication that such person is an officer of the United States District Court or Bankruptcy Court, or that such person holds any permanent designation by the court as an auctioneer.

(k) Every auctioneer acting hereunder shall at all times keep proper records of all transactions and shall submit a report of each sale which shall include the following information:

(1) The time and place of sale;

(2) The gross amount of the sale and when property is sold in lots, the items in each lot and the amount received for each lot, with the name of the purchaser, as well as any bulk bid;

(3) An itemized statement of the expenditures, disbursements, and commissions allowable under this Rule, together with appropriate vouchers as described in paragraph (i)(2) above; and

(4) Whenever articles are sold free and clear of liens, with the liens to attach to the proceeds, the articles and liens shall be itemized separately.

(l) The trustee shall not delegate any of his or her fiduciary responsibilities to an auctioneer.

(m) The sanctions that may be imposed for violation of this Rule, include, but are not limited to, the disqualification of the person from future employment on behalf of bankruptcy estates.