

## **APPLICATIONS TO SELL PROPERTY**

1. Read and follow the rules set forth in SC LBR 6004-1. Use the Court's local form for your application – fill in all the information requested – do not say “to be determined” or “unknown”.
  - a. An estimate of the date (“60 days from the entry of this order”) of when the sale is going to take place is fine.
2. The property being sold must be disclosed on Schedule A and B. If the debtor is to retain funds from the sale pursuant to an exemption, the exemption must have been claimed on Schedule C.
3. If there is a 2<sup>nd</sup> mortgage and it was valued at \$0 the motion should state whether the 2<sup>nd</sup> mortgage is to be paid or discharged through the plan.
4. If there is a judgment lien that was avoided in the plan, the motion should state whether you want to pay it or discharge it through the plan.
5. A waiver of the automatic 14-day stay provisions of Fed. R. Bankr. P. 6004(g) may require a hearing, and good cause shown.
6. There is no trustee compensation in chapter 13, so under “Estimated Trustee’s Compensation” put “N/A.”
7. Explain any unusual circumstances at the end of the motion: i.e. are there multiple owners? Is there a non-filing spouse? Is it heir’s property?

## **PROPOSED ORDER**

Use the Court's local form as the starting point for your proposed order.

1. Use “debtor” not “debtor in possession.”
2. If you are selling the property free and clear, you need to specify the code section that is authorizing the sale. If you are paying off a secured creditor with the proceeds of the sale, the motion and order should not state it is free and clear. It should state that all liens will be paid at closing.
3. Add the following information to the body of the form order:
  - a. Name of the buyer (in first sentence of body).
  - b. Sale Price (in first sentence of body).
  - c. Name of the lien holder(s) to be paid and the amount(s) of the lien(s) (approximate amount if you don't know exactly). If 2<sup>nd</sup> mortgage lien has been valued at \$0 state name of 2<sup>nd</sup> mortgage holder and say it will be paid \$0. It is a good idea to add “and any other lien holder of record” will be paid at closing.
  - d. State the approximate closing costs or actual costs if you know them.

- e. What happens with balance – to debtor pursuant to his/her exemption or to trustee to be added or applied to the debtor’s base depending on whether the funds have already been accounted for in the bankruptcy payments.
4. Add the following information to the appropriate places in the relief portion of the form order:
    - a. The debtor’s attorney is to serve a copy of the order on the closing attorney.
    - b. State that all liens will be paid at closing.
    - c. The closing attorney is directed to send a copy of the HUD1 closing statement and any remaining proceeds from the sale to the trustee, (name) at (address). **This must be in the order regardless of whether proceeds are coming to the trustee.**
    - d. A report of sale shall be filed within fourteen (14) days after the closing of the sale.
    - e. State that the closing must take place within 60 days after the entry of the order.
  5. Remove any language providing for the Fed. R. Bankr. P. 6004(h) waiver unless the parties intend to go to hearing to request the waiver.

#### **CREDITOR OBJECTIONS AND RESPONSES TO APPLICATIONS TO SELL**

1. Any creditor objection or response will result in the application being set for hearing unless the response and objection is resolved with a new consent order.
2. The consent order should specify that the creditor responded or objected, and that both parties now consent to the relief requested. The trustee should be included as a consenting party and needs to review the order.

#### **REPORT OF SALE**

1. See the Court’s local form. A link to the form is included within SC LBR 6004-1.
2. This Report is due to be filed within 14 days of the closing.
3. A report of the sale or “no sale” must be filed – therefore, if the closing doesn’t occur file a report stating there was no closing.

## SAMPLE ORDER SALE OF REAL PROPERTY

This proceeding comes before the Court on the application of the (debtor's name) for authority to sell [ *if applicable* free and clear of liens pursuant to 363(specify subsection) ] the estate's interest in real property located at (property address).

This Court has been informed that all parties in interest have been notified of the intention to sell said property to (Buyer) for the sum of (purchase price). (No objection to the proposed sale has been received/x party objected/response and the parties now consent to the relief requested). The debtor has represented to the Court that such sale is in the best interest of the creditors of the estate. The debtor has also informed the Court that the following liens against said property shall be paid by the closing attorney upon sale of the property: (Creditor name) with a mortgage with an approximate balance of (\$x); and (Second mortgage holder), whose mortgage was valued at \$0 in the plan and will be paid \$0; and any other lienholder of record. Closing costs of approximately (\$x) and property taxes of (\$x) shall also be paid at closing. The balance of approximately (\$x) shall be paid to the debtor pursuant to his real estate exemption. (No funds/\$x) will be paid to the trustee. It is therefore,

ORDERED, ADJUDGED, AND DECREED, that the debtor is authorized to sell and to convey the estate's interest in the above described property. All liens shall be satisfied upon the sale of the property. Further, it is Ordered that the debtor's attorney shall serve a copy of this order upon the closing attorney. The closing attorney is directed to send a copy of the HUD1 closing statement and any net proceeds from the sale after payment of the liens, closing costs and debtor's exemption to the trustee, Dawn M. Hardesty, P.O. Box 613419, Memphis, TN, 38101-3419. A report of sale shall be filed within fourteen (14) days of the closing. The closing must take place within 60 days after entry of the order.