

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA**

HONORABLE MARILYN MORGAN

GUIDELINES FOR THE PREPARATION OF SALE ORDERS UNDER § 363

The following guidelines are promulgated as a result of the increasing number of questions regarding the propriety of various provisions in sale orders submitted under § 363 of the Bankruptcy Code.

PROVISIONS THAT MAY BE INCLUDED IN A STANDARD-FORM SALE ORDER

1. That the debtor (or trustee) has authority under § 363(b) to engage in the sale of the property in question.
2. That the property is conveyed free and clear of the claims, liens, and interests of specifically identified parties assuming the provisions of § 363(f) of the Code and Bankruptcy Local Rule 6004-1 have been complied with.
3. Upon a proper showing that the property has been actively marketed, and that there was no collusion in the sale, that the purchase is in good faith.
4. That no party in interest raised any objection to the sale (or) that the objections to the sale are overruled on the basis that the sale is in the best interest of the estate.
5. In chapter 11 cases in which the debtor or trustee represents that a plan will be filed and that a sale is in furtherance of that plan, and where the relevant taxing authorities have been served, that a “stamp tax or similar tax” referred to in § 346(c) may be held in escrow pending confirmation of a plan, and will be paid to the taxing authorities if a plan is not confirmed.

PROVISIONS THAT MAY NOT BE INCLUDED IN SALE ORDERS

6. Any general provisions regarding successor liability. The purchaser receives whatever protection from successor liability that is available under state or federal law.
7. Any provision for injunctive or declaratory relief. Such relief requires an adversary proceeding served upon the parties to be bound.
8. Any findings not necessary to the granting of the motion under § 363(b) or (f).

9. Unnecessary conclusions of law that state the obvious, paraphrase a statute, or include statutes that are inapplicable (e.g., § 105).
10. Redundant provisions.
11. Provisions that purport to excuse compliance or relieve obligations under state or federal laws.
12. Provisions that “direct” the debtor to act.
13. Provisions that grant blanket administrative priority for “any amounts that become payable by the debtor pursuant to the asset purchase agreement...”
14. Provisions that direct that the sale is free of a “stamp tax or similar tax” pursuant to § 346(c) where a plan is not.
15. Provisions that incorporate by reference into the order all the terms of the asset purchase agreement. The purpose of the order is limited to authorizing the debtor (or trustee) to act and the terms of a purchase-sale agreement executed under such authority are not a part of the order of the court. The order may reference the agreement for the purpose of identifying the transaction that the court has approved.

EXECUTORY CONTRACTS

16. To the extent that a sale requires the assumption and assignment of executory contracts, the debtor (or trustee) will have to satisfy all the procedural and substantive requirements for such assignment. If the debtor (or trustee) wants the sale order to provide for the assumption and assignment of contracts, then the non-debtor parties to those contracts must be afforded a reasonable opportunity to be heard regarding all issues related to assumption and assignment before the sale order goes into effect.

OBTAINING A SIGNED SALE ORDER

17. Where the parties would like to obtain an order approving the sale at the conclusion of the hearing, the proposed form of order must be submitted to chambers two business days prior to the hearing.