

## Rule 2084-25: Sale of Property or Incurring New Debt

**(a) Pre-confirmation Sale or Incurring Motion to Incur New Debt.** If the court has not confirmed a plan, ~~a debtor must file a motion for approval to sell property or incur new debt.~~

### **(b) Post-Confirmation Sale or Incurring New Debt.**

~~(1) Vehicle Loans.~~ ~~If and~~ the case trustee endorses the order, ~~the court a debtor~~ may ~~approve file~~ an ex parte motion ~~by the debtor to finance the purchase of a motor vehicle for approval to incur new debt, or refinance an existing home loan.~~ The debtor's motion ~~and the case trustee's approval are their~~ must contain the following certification ~~to the court that:~~

~~(A)-1)~~ The debtor is current on plan payments;

~~(B)-2)~~ The debtor is not in default under the terms of the chapter 13 plan;

~~(C)-3)~~ Schedules I and J (whether original or amended) were filed within the prior 30 days, with income verification provided to the case trustee, and the such Schedules show that the debtor has the ability to pay all future plan payments and projected living and business expenses, as well as repay the new debt;

~~(D)-4)~~ The debt is for a reasonable amount; and

(5) Depending on the nature of the loan, that:

#### (A) Vehicle Loan:

(i) The new debt is a single loan to purchase a motor vehicle that is necessary for the maintenance or support of the debtor or a dependent of the debtor or, if the debtor is self employed or engaged in business, is necessary for the continuation, preservation, and operation of the debtor's business; and

~~(E)-ii)~~ The only security for the new debt will be the motor vehicle to be purchased by the debtor; and

~~(F)~~ The new debt is a reasonable amount.

~~(2) New Home Loans.~~ ~~If the case trustee consents, the court may approve an ex parte motion by the debtor to finance the purchase, or enter into a new lease, of residential real property. The debtor's motion and the case trustee's approval are their certification to the court that:~~

~~(A)~~ The debtor is current in plan payments;

~~(B) The debtor is not in default under the terms of the chapter 13 plan;~~

~~(C) Schedules I and J (whether original or amended) were filed within the prior 30 days, with income verification provided to the case trustee, and the Schedules show that the debtor has the ability to pay all future plan payments and projected living and business expenses, as well as repay the new debt;~~

~~(D)~~ (B) New Home Loan:

(i) The new debt is a single loan incurred to purchase a residence that is necessary for the maintenance or support of the debtor and debtor's family;

~~(E)~~ ii The only security for the new debt will be the residence to be purchased by the debtor; and

~~(F)~~ iii The monthly payment (the principal and interest payment on account of the new debt plus all impounds, taxes, insurance, association fees, and bonds and other assessments) will not exceed the ~~greater of the debtor's current such monthly purchase mortgage or rental payment;~~ or a reasonable amount; or

~~(3) **Refinance of Existing Home Loans.** If the case trustee endorses the order, the court may approve an ex parte motion by the debtor to refinance existing debt encumbering the debtor's residence. The debtor's motion and the case trustee's approval are their certification to the court that:~~

~~(A) The debtor is current in plan payments;~~

~~(B) The debtor is not in default under the terms of the chapter 13 plan;~~

~~(C) Schedules I and J (whether original or amended) were filed within the prior 30 days, with income verification provided to the case trustee, and the Schedules show that the debtor has the ability to pay all future plan payments and projected living and business expenses, as well as repay the new debt;~~

~~(D)~~ (C) Refinancing an Existing Home Loan:

(i) The new debt is a single loan incurred only to refinance existing debt encumbering the debtor's residence;

~~(E)~~ ii The only security for the new debt will be the debtor's existing residence;

~~(F)~~ iii All the creditors with liens and security interests encumbering the debtor's residence will be paid in full from the

proceeds of the new debt and in a manner consistent with the chapter 13 plan; and

~~(G)iv~~ The monthly payment (the principal and interest payment on account of the new debt plus all impounds, taxes, insurance, association fees, and bonds and other assessments) will not exceed the ~~greater of the debtor's current such monthly payments on the existing debts being paid, or a reasonable amount. The court will not approve ex parte motions to obtain secured credit pursuant to § 364(d); mortgage payment.~~

~~(4) (b) Pre-Confirmation Sale of Property.~~ If the ~~case~~ trustee endorses the order, the court may approve an ex-parte motion by the debtor to sell real or personal property with a value of ~~\$1,000~~\$2,500 or more other than in the ordinary course of business.

**(1) Required Certification.** The debtor's motion ~~and the case trustee's approval are their~~must contain the following certification ~~to~~by the ~~court that~~debtor:

- (A) The sale price represents a fair value for the subject property;
- (B) All creditors with liens and security ~~interest~~interests encumbering the subject property will be paid in full before or simultaneously with the transfer of title or possession to the buyer;
- (C) All costs of sale, such as escrow fees, title insurance, and broker's commissions, will be paid in full from the sale proceeds;
- (D) The sale price is all cash;
- (E) The debtor will not relinquish title to or possession of the subject property before payment in full of the purchase price; and
- (F) The sale is an arm's length transaction. "Trading in" a vehicle as part of the purchase price for a new vehicle complies with the requirements of ~~(d)~~(d) and ~~(e)~~(e) of this subparagraph.

~~(5) 2) Sales Over Objection.~~ The court will not approve ex-parte motions to sell property pursuant to Bankruptcy Code § 363(f).

**(c) Post-Confirmation Sale or Incurring New Debt.** In a confirmed case, in lieu of obtaining a court order, the debtor may request written authorization from the trustee by providing, in writing, all of the information required to be included in a Motion pursuant to subsections (a) & (b) of this Rule directly to the trustee.

**(d) Incurring Other New Debt and Transfers of Debt.** If the ~~case~~ trustee does not give the consent allowed by paragraphs ~~(b)(1) (4a) – (c)~~, or if the debtor wishes to incur new debt or transfer property on terms and conditions other than provided for in

paragraphs ~~(b)(1) – (4), a – (c)~~ the debtor may file a motion, serve it on the ~~case~~ trustee and those creditors who are entitled to notice, set the hearing on the court's calendar with the notice required by Rule 2002 and Local Rule 9014-1, and file a certificate of service within seven days.

---

Committee Notes ~~2009: Time deadlines have~~ 2015: This Rule has been amended/restructured to be consistent with amendments to clarify the Federal Rules of Bankruptcy Procedure, effective December 1, 2009.

Committee Notes ~~2007: This proposed Rule is new information required~~ applies in both pre-confirmation ex-parte motions by the debtor and not found in GO 95 post-confirmation requests for written authorization from the Trustee.