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Property auctions are going, going & going stronger than ever
By Curtis Seltzer

BLUE GRASS, Va.—While large American newspapers are losing readers, cutting staff and scraping by on fewer advertising dollars, they're expanding in one area--notices of property sales.

These fruits of foreclosures hang heavy in the back pages.

Distressed properties -- the growth sector of a troubled economy -- are often sold at auction.

Almost \$60 billion of property was auctioned last year, and the National Association of Realtors predicts about 30 percent of all real estate will be auctioned in 2010.

Individual states regulate auctions and auctioneers, but standards vary. About half have enacted auction and auctioneer licensing statutes, according to Steven L. Good, author and Chairman and CEO of Sheldon Good & Company.

The National Auctioneers Association has posted its Code of Ethics at www.auctioneers.org.

Auctioneers are generally considered to be agents for sellers. Auctions are set up to produce what a friend calls, "the toppest price in that market at that moment."

Buyers need to do all of their property research before bidding. Here are a few basics to keep in mind.

Three types: Absolute, with reserve and minimum bid. An *absolute* auction sells property to the highest bidder, no matter how little is bid. A seller cannot bid for his own property at an absolute auction.

An *auction with reserve* (or *reserve auction*) lets an owner decline the high bid without explanation. Unless an auction is advertised as absolute, assume it is an auction with reserve.

A *minimum-bid auction* is one where the seller has established a minimum sale price: If the top bid falls short, the property does not sell.

The auction's advertising will state the type of auction. Announcements just before bidding begins, however, are the final rules.

A class-action lawsuit was filed on June 12th in California against auctions where sales are subject to lender confirmation. The suit alleges, among other things, that “many modern real estate auctions are nothing more than a bait-and-switch scheme to lure hopeful buyers to submit offers that can later be accepted or rejected by the lenders/sellers....” Several auction companies were named as defendants, including Real Estate Disposition Corp. (US HomeAuction.com), which projects \$3 billion in 2008 sales. Countrywide Home Loans Inc. and GMAC Mortgage LLC are also defendants.

Absolute sales, auctioneers believe, coax out the best price, because buyers are motivated by the knowledge that the property will be sold, regardless of the amount. These auctions pose the highest risk to the seller.

Auctioneers in my experience prefer absolute auctions because they always produce a sale and a commission, even if both are disappointing. I’ve seen auctioneers refuse to handle a property unless the seller agreed to sell absolute.

“**As is.**” Property auctioned “as is” means the seller offers no warranty as to condition, and the seller will do nothing to fix any problem. It can mean in practice that all known defects are not disclosed, though it shouldn’t.

Bidders should understand the risk involved in property auctioned with language something like this: “The Collateral [property] will be offered and sold by the Trustee without recourse, representations, or covenants, express or implied, being made by the Trustee with respect to the Collateral (except as to title to the Collateral) or with respect to any other information then in the Trustee’s possession, including without limitation any Offering Circular or other financial information.” Sentences like this are intended to get the seller off the disclosure hook. The buyer gets whatever is there, good and bad, and whatever isn’t there. Talk this over with your lawyer.

No contingencies. Winning bidders are not allowed to insert contingencies or change the terms of the purchase contract they sign at auction’s end. Financing must be in place, and be available within the 15 to 30 days typically set aside for closing. Some auctions have lenders available on site to finance the purchase.

This means a bidder must know everything there is to know about a property before bidding. Backing out of a signed contract will cost a bidder his deposit -- typically ten percent or more of the sales price -- and maybe more.

Buyer’s premium. A buyer’s premium inflates a winning bid. It typically adds from three to ten percent onto the bid amount.

Understand the rules. Just before the auctioneer begins, the auction's rules will be announced. These statements trump information given previously in any form. Auctions are usually videotaped to create a legal record.

Bidders are allowed to ask questions before the bidding begins. You can ask whether the auctioneer, his associates or the owner will be bidding. If so, ask the auctioneer to identify such persons. Ask whether the seller knows of any defects in the property that would negatively affect a buyer's use, possession or enjoyment. Ask if the seller guarantees the title is free of defect.

If you don't want to draw attention to yourself, have a friend do the asking.

Combination bidding. Auctioneers often encourage sellers to market a large property as a division. First, they auction each parcel, then bidders are allowed to combine parcels however they want, and finally the property is bid as an entirety. Whichever formula nets the most wins.

The auctioneer hopes to boost the final price by encouraging bidders to keep fighting it out over different arrangements, each time charging an ante to do so.

Combination bidding can be both confusing and cutthroat. I've seen it work to the seller's advantage; I've also seen bidders sit on their hands after the parcels were sold individually.

Prepare a bid sheet in advance. Bidders should write out a bid sheet showing the final cost -- including buyer's premium, if any -- of escalating bids.

This is necessary when land is bid by the acre, not as "one money" for the entirety.

With by-the-acre bidding, the sheet must multiply the fixed acreage number by various per-acre prices, onto which the buyer's premium is added to get the total cost of likely bid prices.

The bidder should circle in blood-red ink his top price. That number reflects what the property is worth to you, given its assets and liabilities in light of your resources and plans. Your red price is arrived at coolly and rationally, not in the heat of the auction's furnace.

Bring a friend. Bidders need to concentrate on the price action as it is cried out while maintaining eye contact with an auction associate. A friend can observe other bidders and gauge the intensity of their interest.

Etiquette. Auctioneers should play by the rules. They should not recognize bids from phantom bidders, use shills in absolute auctions or play favorites.

Buyers should play straight too—don't collude with other bidders to rig a low price and don't interfere with another's right to bid. Breaches of etiquette and law are not unknown.

Sometimes auctions produce a win for the buyer and a win for the seller too. But my experience is that one or the other wins more often than both.

Inexperienced bidders need to be careful. Auctions are intended to excite the crowd, to focus as much on beating out the competition as the object being sold. Speed creates momentum. An auctioneer's gibberish chant can confuse first-time bidders...or make them think they've wandered into the Town of Babel where the mayor is speaking in tongues. And then there are the hyperactive ring persons who manufacture competitive frenzy by yipping up each bid.

An auction's outcome is never predictable. I've seen different properties fetch prices that were way too high, ruinously low and about right.

Auctions are run to benefit sellers, not buyers—though buyers may get a good deal. The keys to buyer survival are the 3 Rs: Research, red price and rationality.

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