

THE WHY'S, HOW'S AND WHEN'S OF AUCTIONEERING

Alan Levy is an attorney at Alan Levy Attorneys who specialise in Property Law specifically Landlord/Tenant Law, Evictions, Rental Recoupment, Auctions of Immovable Properties and taking properties to Auctions on behalf of creditors – www.alattorneys.co.za.

Let's begin by asking a few questions!

Why would one take an immovable property to auction?

How would one take it to auction?

Where would the auction be held?

What happens at an auction?

Contemplate the following scenarios:

An elderly man dies tragically at age 85 bequeathing that all of his 100 properties be sold and the proceeds paid to his heirs.

A middle-aged couple in debt are not able to meet their monthly repayments on their home and beach apartment. The bank forecloses on the properties. The couple have the High Court enter judgment against them for payment of the arrear instalments and for an order that the properties be sold to realise the outstanding amounts.

A previously successful property ownership company are served with an application for its liquidation by its largest creditor, the Municipality, to whom it is indebted, for hundreds of thousands of Rands, in respect of outstanding rates and taxes and consumption charges. The company have no option but to succumb is placed in liquidation.

In all of these cases, the properties can be sold by way of the auction process.

Tel: (011) 786 2192/7953. Fax: (011) 786 2119. Fax to Email: 086 502 9521. Email: enquiries@alattorneys.co.za.
The Chambers, 1 The Avenue (Cnr Henrietta Road), Norwood, JHB. P O Box 28840, Sandringham, 2131. Docex 6 Highlands North.

Alan Paul Levy B. Proc - (Attorney), Stephen Karnavos B Com Law & LLB - (Candidate Attorney),
Joshua Apfel B A Law & LLB - (Candidate Attorney), Gavriel Sacks LLB - (Candidate Attorney).

Confidentiality Caution: If you have received this communication in error, please note that it is intended for the addressee only, is privileged and confidential and dissemination or copying is prohibited. Please notify us immediately by telephone and return to original to the addressee as appears above at our cost.

THE “WHY AUCTION QUESTION?”

In the above scenarios, either the executor of the deceased estate, the liquidator of the company, or the banks attorneys who foreclosed, would need to sell the properties as soon as possible.

The party charged to sell, being the executor, liquidator or attorney could attempt to sell the properties via private treaty, meaning by procuring purchasers and entering into a private sales with the purchasers to sell the properties.

Such party may however normally not be located in close proximity to the properties concerned, may not be familiar with property prices in such area, may not have relevant contacts and resources to procure purchasers and may not wish to become engaged in the “ups and downs” of attempting to sell the properties.

These properties can quite simply be sold by way of an auction which would normally take place in proximity to where the properties are situated. Well-advertised, such auction would normally attract interested purchasers bent on growing their ownership portfolio’s and picking up a bargain.

THE “HOW AND WHERE QUESTION?”

In certain circumstances especially where an auction takes place following upon a court order, the Sheriff of the Court (each area in South Africa has one) would normally auction the properties concerned. Where the properties are being sold as part of a deceased estate or where a liquidator is charged with selling the properties, a private auctioneering company would normally be approached to auction the properties.

Such auctioneering company would advertise the properties ordinarily through several means and an auction would then be held either on site at the properties or at the auctioneer’s premises.

The auctioneer who sells the property must be a registered Estate Agent in terms of the Estate Agency Affairs Act and be possessed of a valid Fidelity Fund Certificate.

Purchasers would be strongly advised to visit and inspect the properties before the auction is held and any bid raised by them. Many auctioneers have inspection days for such purposes.

THE “WHAT HAPPENS AT AN AUCTION QUESTION?”

An important point to know when buying properties via an auction is that one cannot buy subject to conditions i.e. that the purchaser would be able to obtain a mortgage bond (like one normally could when buying a property on the open market).

In addition, a deposit of normally between 10% to 15% needs to be paid after the bid is accepted. These days the deposit is normally required to be effected via EFT.

It is therefore strongly recommended that before bidding, a purchaser ensures, if a bond is required, that he qualifies for the amount of the required bond.



All potential bidders will be required to register as bidders and to receive a bidder's number prior to the auction commencing.

If a purchaser's bid succeeds, the 'conditions of sale' (a document setting out the terms of purchase) are then presented to the purchaser for signature and the deposit paid.

A LITTLE BIT OF THE LAW!

There is no specific Act that deals specifically with Auctions.

The Consumer Protection Act effective from 1 April 2011 allocates a specific section to the topic of auctions.

The section specifically provides that the sale of an auction is complete when the auctioneer announces its completion by the "fall of the hammer". Until that announcement is made, any offer may be retracted.

The Consumer Protection Act further provides that the Minister of Trade and Industry may prescribe requirements to be complied with by auctioneers in respect of the conduct of an auction.

Further, records are to be maintained for the respective properties placed on auctions and the sale of any properties by auction.

The Minister has prescribed certain regulations in regards to auctions.

For example, the auction must be advertised at least 5 (five) days before the auction takes place in a manner that the general public has a reasonable opportunity to become aware of the auction.

The contents of this article should not be construed as legal advice. Should legal advice be required a suitably qualified attorney should be consulted with.

Contact Alan Levy on enquiries@alattorneys.co.za

