

REAL ESTATE AUCTION LAW IN MICHIGAN



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- Real Estate Auction law in Michigan is overseen by multiple governmental regulations:
 - The Real Estate Occupational Code of the State of Michigan
 - Department of Consumer and Industry Services
 - Board of Real Estate Brokers and Salespersons
 - Many Auctioneers feel they are exempt from occupational code. However, that is debatable
 - Any and all reputable auction firms that sell real estate must be licensed

- All auction events, whether real estate or personal property, are under the governance of the uniform commercial code. Article 2 section 328 Sale by Auction. Many states have auctioneer license laws, but not Michigan.
- The Michigan Occupational Code is state law. The UCC is national, but also held by each state.
 - 48 states are governed by the UCC, except for Alabama and California
- The laws and regulations of real estate conduct also apply to real estate auction
 - sellers disclosure
 - agency disclosure
 - lead based paint disclosure
 - the statute of frauds
 - “point of sale” well and septic conformance

CODE OF ETHICS

- NAR, MAR, and area associations all subscribe to a very strict code of ethics
- NAA and MAA also subscribe to a very strict code of ethics
- Grievance process in both associations

STANDARD OF CONDUCT

- Auctioneer and Realtors will work well together
- Auctioneers should not be the enemy of Realtors, and Realtors should not be the enemy of Auctioneers.
- Auctioneers should never approach sellers that are under contract with the Realtors
- Realtors are always welcome to “co-broke”
- All real estate auctions should be entered into the Multiple Listing Service.

COMMISSION DISTRIBUTION

- Auctioneers should compensate the Realtor for referrals
- Realtors should expose auction listings to their buyers, so long as there is compensation offered by auctioneers

AUCTION METHODOLOGY

- Auction definition: the method of sale of personal property or real estate to the highest bidder by competitive bidding in a specific timed event
- Two types of auctions
 - Auction with reserve: subject to seller confirmation
 - Absolute auction: seller has no right to submit a bid, auctioneer cannot bid on behalf of the seller
 - absolute auctions typically will produce more interest and have more registered bidders.
 - absolute auctions have led to a majority of law suits concerning real estate auction sales.
 - In absolute auctions, many times the auctioneer will cancel the opening of the auction if they do not think they have enough bidders. That will open the bidding at an acceptable level or higher. i.e. the sellers reserve

AUCTION DYNAMICS

CASH NO CONTINGENCIES

- Caveat Emptor: “let all buyers beware”
 - all buyers must be given the chance to evaluate the property for defects
 - “as is where is” is often connected with auction properties
- Agency- Who does the auctioneer represent?
 - auctioneer and auction firm always represent the seller
 - agency disclosure is a must
 - on listing agreement, purchase and sales agreement, and in auction terms and conditions

- Agency buyers sometimes feel like the auction company is representing them during an auction
- auctioneers and auction firms owe all of their loyalty to their client (seller).
- Buyer's Premium: a percentage added to the purchase price (hammer price) paid by the buyer. The buyer's premium does not change the agency's responsibility of the auction company to the seller

AUCTION CONTRACTS

- Closing Event- conducted by the title company
 - not always a live closing, sometimes by mail or wire transfer
 - auction company and/or sellers broker reviews for accuracy
 - complete and accurate accounting of advertising

EVALUATING A POTENTIAL AUCTION CANDIDATE

- First Call- auction company must decide if it is worth taking a look at. Why is the seller selling? Is there are mortgage balance?
- Auction company must determine if there is the correct amount of motivation from the seller
- Site visit: auctioneer must go look at the property
- Order a Pre-Title commitment
 - check for mortgage pay off requirements
 - mineral and hunting right reservations
 - type of deed seller has (warranty, covenant, sheriff, lady bird, etc.)
 - check for all P.A. 116 contracts and lien pay offs, also P.A. 260
 - is the name on the deed (title) the same as the potential seller? Is it a trust, LLC, or Corp?
 - Is the name on the title deceased or divorced?

AUCTION CONTRACTS

- Auction Contracts (listing contracts must contain)
 - advertising budget- all auctions must be advertised. Can be either paid by the seller at contract signing, or at the closing. Advertising costs can also be included in commission
 - commission
 - reserve price, or seller confirmation
 - the date, time, and location of the auction
 - if there will be a buyer's premium, and what the % will be
 - all other standard real estate tenants
 - how taxes and assessments will be handled
 - possession date
 - down payment (EMD) required and who handles it
 - when closing will take place

PURCHASE AND SALE AGREEMENT


- cash no contingencies
- note all important conditions of the sale that will be assumed by the buyer
 - deed restrictions
 - association fees
 - easements for ingress and egress
 - mineral right reservations
 - shared water well or septic/drain fields
- earnest money- handled by the auction company or the title company

SECOND MEETING

- present budget for advertising
- discuss value. no sale fee if necessary
- present the seller with the Pre-Title commitment and discuss problems if there are any.
- if seller passes the evaluation, present contract for signing

AUCTION DAY PROTOCOL


- Have purchase agreement prepared in advance. P&S agreements have terms and conditions of auction attached
- Auctioneer opens with opening remarks
 - auctioneer reads the terms and conditions verbatim while being recorded
- Auctioneer begins the bidding by asking for opening bids
- When opening bids are submitted, the auction process begins with the auctioneer calling for successfully higher bid increments
- When the bidding slows down and no more bids are coming in, the auctioneer puts the audience on notice that he is ready to declare the auction closed

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- If the auction is subject to seller confirmation (reserve), the auctioneer or bid assistants check with the seller for confirmation of the sale
 - If the seller is satisfied with the bid received and confirms the sale, the auctioneer lets the crowd know that the sale is confirmed and checks with the bidders to see if any more bids are coming in. If not, the auctioneer declares the property SOLD.
 - When the property is declared SOLD, this is a verbal contract that is in force until the contracts are signed

- Auction company stays in touch with the buyer to convey pertinent information such as
 - receipt of EMD
 - updated title information
 - schedule of closing date
 - what buyers and sellers need to bring to closing
 - any expenses which will be deducted from the seller at closing

SUMMARY

- Auctions are firm and time defined
- Auctions are cash with no contingencies
- Auctions are “as is where is” (caveat emptor)
- Auctions must adhere to ALL Federal and State Disclosure, Discrimination, and Environmental requirements
- Auction contracts and closing documents are the same as conventional brokerage documents
 - the difference is auctions have an end date, where listings have a listing period
- Main difference between auctions and listings
 - conventional listings set the price and negotiate the terms
 - auction listings set the terms and negotiate the price



GO FORTH, CONTACT AN AUCTIONEER AND
CONDUCT A
REAL ESTATE AUCTION!