

# SELLING BY AUCTION

Sarah Quy discusses the ins and outs of selling property at an auction

**A**ny property can be sold at auction, but the method particularly suits certain sorts of property and certain parties. Speculative investors with an appetite for risk are often among the bidders. While the parties may be attracted by what they perceive as a less bureaucratic process than a conventional property sale, there is more to an auction than raising a hand and keeping a poker face.

## When should a seller consider a sale by auction?

Auction might be the right selling technique where the property needs refurbishment or has niche appeal (such as being subject to secure tenants). Alternatively, if the property is hard to value using comparables methodology, the auctioneer can assess the market value by allowing bidders to compete with each other in open forum. This kind of sale can also be appropriate where a quick sale is required or where the seller needs to demonstrate that he has achieved the best price reasonably obtainable for the property.

## Why sell by auction?

The benefits of an auction sale might include:

- Speed – the auction pack typically contains the relevant searches and replies to enquiries along with a contract. This minimises the time taken by buyer due diligence or contract negotiations. Before attending the auction, the buyer has to familiarise himself with the information provided, carry out any necessary additional enquiries and arrange finance.
- Fixed terms – the terms of the contract

are usually non-negotiable so tend to be more seller-friendly than a sale by private treaty.

- Best price – properties sold at auction will have been advertised for around four weeks preceding the sale. A for-sale board will probably have been erected at the property, and the auctioneers may have approached potential special buyers, such as adjoining occupiers or tenants, to ask whether they would like to make an offer prior to the auction date. The atmosphere of an auction room can be extremely exciting, and an interested party will as a result sometimes bid more than intended.

- Assessing the market – the traditional four-week marketing period prior to the auction day gives a good opportunity to evaluate the strength of the market:

- sometimes offers are made and price indications are given by potential bidders;
- the numbers of requests made to the seller's solicitors for documents is a helpful measure of buyer interest; and
- the auctioneer can stay in touch with people who have registered their interest and can use the information so gleaned to determine the reserve price.

## Why buy at auction?

Buyers often perceive that a sale at auction might result in a lower price than one sold by private tender, particularly for unusual or dilapidated properties. Unless the property is subject to a reserve price, the auctioneer will sell to the highest bidder.

The streamlined due diligence process is also a potential incentive. The buyer is given a sales pack which, if it has been put together well, can save the buyer much time and trouble. The auctioneer's website

will indicate the details of a viewing slot for interested parties and the auctioneers will make the property available to bidders' surveyors.

## How does the auction process work?

The sequence of events usually unfolds as follows:

### Lead up to the auction date

Owners instruct the auctioneers to sell their property. The property is inspected by a surveyor and photographs are taken for the catalogue. Sales particulars are prepared and approved.

### Six weeks before the auction date

This is the closing date for the list of entries for an auction. The seller's solicitors are given a set of the auctioneers' general conditions of sale to enable the preparation of the special conditions of sale dealing with legal matters specific to each lot.

### Four weeks before the auction date

The catalogue is put together and distributed to buyers on the auctioneer's mailing lists and details are often posted on real estate websites.

### Between then and the auction date

The agents carry out detailed research to determine the likely price of each lot. For commercial properties, estimated rental values are assessed and clients are advised accordingly. The auction house can then compile guide prices and reserve prices, which are usually treated as confidential.

The auctioneers note the names of all interested parties.

Applicants can access the sale pack,



usually online. Before the auction they must instruct solicitors, inspect the property via the auctioneer, obtain a survey and any additional searches they require, arrange finance and get ready to insure from the auction day.

#### The day of the auction

The seller's solicitors are sometimes present to deal with legal enquiries, although some auctioneers prefer to avoid dealing with questions in this way in case it deters buyers.

If the description of the property is altered then there should be an addendum available at the auction.

Buyers can bid in person, online or on the phone. Sometimes the auction house will agree to bid on the buyer's behalf up to an agreed limit on certain terms.

When the hammer falls, the successful buyer has to:

- sign the contract;
- pay a deposit and an administration fee; and
- provide evidence of identity.

If a property does not sell in the auction, a sale can sometimes be concluded immediately afterwards either in the auction room or by contacting parties who registered interest in that property prior to the auction.

#### The day after the auction

All deposit cheques are cleared and the buyer's part of the contract is sent to the seller's solicitors.

#### Twenty working days after the auction

Completion normally takes place 20 working days after exchange of contracts.

#### How does the contract work?

The contract for sale is prepared by the seller's solicitor in conjunction with the auctioneer and usually incorporates:

- a set of general conditions of sale – sometimes the Standard Conditions of Sale, but usually the RICS Common

Auction Conditions (3rd edition) or the auction house's own conditions, which are usually based on this set;

- any extra conditions prepared by the auctioneer;
- any special conditions prepared by the seller's solicitors to deal with complexities specific to that property; and
- any addenda made available at the auction.

In terms of understanding the sale as a legal process, it is generally thought that the auctioneer does not offer the property for sale but makes an invitation to treat. The bidders at auction make offers to buy, which the auctioneer is free to accept or reject. Each bid lapses when a higher bid is made, and the auctioneer is free to withdraw the lot at any time. The fall of the auctioneer's hammer signifies the acceptance of an offer and a contract exists from that moment. Section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 does not apply to contracts made at public auctions, so there is no need to worry about whether the sale contract is in writing, incorporates all the terms of the agreement in one document and contains signatures by or on behalf of each party.

The buyer will usually sign a memorandum of sale and pay the deposit before leaving the auction room. If this does not happen, the auctioneer can in theory either sign the sale memorandum on the buyer's behalf (as the memorandum is simply a record of the contract made on the fall of the hammer) and pursue the tenant for the deposit, or treat the bidder's failure to do so as a repudiation of the contract and proceed to resell the property.

Auctions can be exciting for the buyer and efficient for the seller, but both parties need to understand how the process works.

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## WHY THIS MATTERS

A property sold at auction will be widely advertised and the sales pack will usually be freely available online, so this sales method may not suit parties who value confidentiality.

If necessary, the buyer's solicitor should contact the seller's solicitor before the auction to request to view the title deeds and make further enquiries. If the search results in the sales pack are more than two months old, the buyer's solicitor should check whether the contract permits the buyer to rescind the contract if adverse results are obtained after the auction and, if not, advise the buyer as to the possible consequences of buying on this basis; and/or to consider carrying out personal searches. The buyer should also be advised of any terms that are unusually pro-seller, such as restrictions on sub-sales or an obligation to reimburse the seller's legal costs.

When putting together the sales documentation the seller's solicitor should bear in mind that at a public auction some bidders are likely to be consumers. For a consumer contract to be deemed "fair" and in accordance with the Unfair Terms in Consumer Contracts Regulations 1999, it must be possible to read it in plain, intelligible English. Also, any misleading or false statements or a decision not to disclose something that is possibly material to a buyer's decision to bid on the property could lead to a claim for misrepresentation and/or breach of the Consumer Protection from Unfair Trading Regulations 2008.

Sellers and buyers should be aware of what the auction conditions say. Those familiar with the Standard Conditions of Sale and/or the Standard Commercial Property Conditions need to remember that the RICS Common Auction Conditions (3rd edition) differ from these standards.

When bidders attend the auction they need to have all arrangements made to buy the property. The contract itself is not negotiable on the day, so both parties need to be comfortable with it beforehand.

## FURTHER READING

**Conveyancing Handbook**, chapter B20, Frances Silverman, (Law Society)

**Chitty on Contracts** (32nd ed), chapter 2.019, (Sweet & Maxwell)

**A solicitor's guide to the RICS Common Auction Conditions** (RICS)

