

Commission Position 21 – Auctioning Real Property

(Recodification adoption June 7, 2022: CP-26 Commission Position on Auctioning recodified to CP 21 - Auctioning Real Property)

While the sale of real estate by auction has been traditionally associated with distressed residential property, auction sales can be an effective tool to help various types of sellers sell property in Colorado. To increase efficiency and broaden the reach of advertising, sellers and their representatives have also utilized new online technologies to aid in auction sales.

The license law requires that real estate auctions be conducted by a Broker and defines the activity as “. . . offering, attempting, or agreeing to auction real estate, or interest therein, or improvements affixed thereon.” (*see* C.R.S. § 12-10-201(6)(a)(VI)).

Brokers engaged in the sale of real estate by auction need to be aware that auction sales represent special and unique challenges. The Commission does not publish a Listing Contract contemplating auction sales. Accordingly, Brokers working with sellers should obtain an appropriate Standard Form as set forth in Rules 7.1.B. - E. Further, Brokers should ensure proper use of the Commission-Approved Brokerage Duties Disclosure to Seller (REO and Non-CREC Approved Listing Agreements).

Competency and Basic Understanding of Auctions:

Additionally, Brokers engaged in auction sales should ensure competence and a basic understanding of the mechanics of an auction sale, including consideration of certain key questions and terms. (*see* Rule 6.2.). Such questions, for example, can include:

- Is there a minimum bid?
- How are pre-auction showings addressed?
- How are marketing expenses dealt with?
- What Standard Form of the buy-sell contract will be used?
- How are buyer contingencies handled?

Such an understanding might include whether an auction is “absolute” or “without reserve” where the seller is the offeror, and a conditional contract may be formed with each bid. By contrast, in an auction that is “conditional” or “with reserve”, the bidders are the offerors permitting sellers to accept, reject, or withdraw the property from auction. This distinction is important because it may determine a listing Broker’s duties to the seller, including without limitations the presentation of offers to the seller, among other duties. Performance of a listing Broker’s duties sometimes require special care in addressing these and other issues.

Brokers working with buyers on the purchase of real estate through auctions should also ensure competency with auction mechanics, negotiations, and use of appropriate Standard Forms.

Unlicensed Auctioneers:

An unlicensed auctioneer may “cry” the bid at a real estate auction in the presence of a Broker or seller. However, the control of the sale, including listing, advertising, showing the property and writing contracts must remain with the Broker or the auctioneer will be violating the law. Based on the license law and Attorney General’s opinion, the following guidelines are established for unlicensed persons involved in the auction process:

1. Auctioneers should never hold themselves out as providing Real Estate Brokerage Services to the public (*e.g.*, listing, advertising, negotiating, contracting, legal document preparation);
2. Inquiries from sellers should be referred to a Broker or licensed attorney;
3. Inquiries from buyers should be referred to the seller, listing Broker or seller's attorney;
4. Only auctioning services should be advertised to buyers and sellers;
5. A potential buyer may be chauffeured to a property, so long as the property is shown by the seller or a Broker;
6. Information on listed properties may be distributed when such information has been prepared by a Broker;
7. Auctioneers may "cry" the sale, but may not engage in subsequent negotiations, document drafting and the handling of earnest money; and
8. Payment should be based on auctioning services performed regardless of the success of a sale.