

## **BUYING A PROPERTY AT AUCTION**

The sale of real estate by auction concerns all types of real estate (land, flats, detached houses, villas, business premises, agricultural properties, castles, etc.) and can result from several situations:

- properties seized for the purpose of recovering a debt (seizure of property ;
- properties in joint ownership (sale by auction);
- real estate assets under judicial liquidation or personal recovery.

Any person wishing to purchase a property at the bar of a judicial court must appoint a lawyer registered at the bar of the court to represent him at the auction hearing. It is forbidden for a Lawyer to bid for the seized debtor (or any intermediary).

### **I. - FORMALITIES PRIOR TO THE AUCTION**

Your Lawyer needs to know your full identity and be able to identify the property you wish to acquire. You must also prove your solvency.

#### **A - Necessary advance information :**

In order for your Solicitor to be able to bid on your behalf and complete all subsequent formalities, he/she must have a written and signed mandate in his/her file which will set the maximum bid you wish to make.

In order to draw up this mandate, you should send the following elements:

- If a PRIVATE INDIVIDUAL is the bidder :

- o Proof of address,
- o Identity document,
- o If married: family record book
- o If single and in a civil partnership: date of the civil partnership
- o If more than one person is buying: share of each and proof for each

- If a LEGAL ENTITY is the bidder :

- o Certificate of incorporation
- o Articles of association of the company
- o Identity document of the legal representative
- o a document proving the powers of the person signing the deed if this person is not the legal representative of the company as designated on the KBIS extract.

Please note: no entity substitution is possible after the hearing.

If the acquisition is made as a property trader, this must be justified in advance.

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### **B – Proof of solvency :**

Before bidding, you must give your lawyer, against a receipt, an irrevocable bank guarantee or a bank cheque made out to the CARPA DU SUD OUEST designated in the conditions of sale, representing 10% of the amount of the upset price with a minimum of €3,000.

This provision is prescribed on pain of nullity of the auction raised ex officio. Consequently, without this cheque, your lawyer will not be able to raise the bid.

### **C- absence of au criminal sentence of a ban on bidding:**

In accordance with the provisions of Article R 322-41-1 of the Code of Civil Enforcement Procedures, the lawyer shall also be provided by his client with a statement on his honour indicating whether or not he/she has been sentenced to one of the penalties mentioned in Article L. 322-7-1 of the Code.



## **II- AUCTION PROCESS**

At the auction hearing, which takes place every Thursday at 3 p.m., the pursuing creditor requests the sale, and announces the costs of the procedure, pursuant to Articles R.322-40 of the Code of Civil Enforcement Procedures. Until the last moment, the sale may not take place.

Bids are placed by your lawyer within the limits of the written mandate you have given him.

The last bidder is declared the winner after the judge has verified the validity of the bids (bank cheque, certificate of non-conviction, etc.).



## **III – POST-AUCTION FORMALITIES**

If you are declared the successful bidder, your identity is communicated to the judge at the end of the hearing, for the purposes of drafting the adjudication judgement.

The auction judgement is notified by the office of the court to the successful bidder, the distrainee and the pursuing creditor. It is this judgement which constitutes the title deed and which is published at the Land Registry to be enforceable against third parties

### **A – overbidding deadline :**

If you are not declared the winner because another person has covered your last bid, the Lawyer will return the bank cheque you gave him.

If you are declared the successful bidder, the Lawyer keeps the bank cheque which will be cashed for the purpose of paying the costs of the procedure.

As from the auction hearing, a period of TEN days opens for a possible overbid (a third party proposing a resale at a minimum price of 1/10th higher than the acquisition price).

At the end of the ten-day overbidding period, as well as at the end of the various rights of pre-emption, the deadlines for which vary, you will be considered the definitive purchaser.

However, the property must be insured from the time of the auction hearing.

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## **B- Payment of the price and costs :**

A purchase at the bar of the Court is irrevocable and cannot be made under the suspensive condition of obtaining a loan.

You should therefore be certain of your financing before instructing your lawyer.

Schedule of payments to be made :

- one month after the auction: lawyers' fees and emoluments ;
- one month after the auction: registration fees 5.5% of the price + costs
- two months after the auction: auction price (After this period, the sale price is automatically increased by interest at the legal rate until the price is fully deposited)
- upon delivery of the enforceable copy of the judgement: publicity costs at the Land Registry (1/1000th of the price)

In addition, a provision of 500 € should be made for any bailiff's fees for notifying the seized person of the deeds.



## **IV – FEES :**

At the time of signing the mandate, you will also be sent the usual fee agreement setting out the conditions for the firm's intervention.

In addition to the fees and emoluments provided for in matters of sale on seizure, the client will pay the lawyer a fee calculated as follows

- o 2% (excl. VAT) of the auction price if he is declared the successful bidder with a minimum of 2 000.00 € (excl. VAT);
- o No fee is due if he is not declared the winner.

These fees will apply to the auction to be held and its aftermath until the cancellation of the mortgages:

- o lifting and publication of the judgment,
- o order procedure or price allocation.

Excluding any eviction or execution proceedings.

In the event of an overbid, a fee of €180 excluding VAT, i.e. €215.28 including VAT, for assistance and representation at the hearing will be due unless the winning bidder is ultimately successful. If the higher bid is contested, an additional fee may be requested after discussion with the client.

The said fees shall be payable once the auction has become final.

In addition to all the above-mentioned sums, your lawyer may be required to invoice additional acts related to the particular situation of the property: extract from the deed, requisition of mortgage status, land publicity, publication fees, notification to the co-ownership syndic. He will advise you if necessary

