

## PROPERTY AUCTIONS IN FRANCE : HOW DOES IT WORK ?

Anyone wishing to buy real estate a real estate property at a French public auction of a High Court must contact a lawyer registered at the local Bar Association to represent him at the hearing auction.

### I. - FORMALITIES PRIOR TO AUCTION

We need to know your full identity and be able to identify the property you want to acquire. You must also prove your creditworthiness.

#### A - General Information

For that your lawyer can make a bidder declaration in your favour, it must have on file a regular term (Article 73 of Decree 2006-936 of 27 July 2006), signed by you and including the following information:

1- The date of the auction

2. The designation of the property you are considering buying: it is preferable that you hand to your Lawyer the publication announcing the sale, containing useful information for the drafting of deeds.

If necessary, your lawyer will contact the Lawyer acting on behalf of the creditor of the sale for items that may be missing.

3. The amount of the maximum bid you want to call.

4- The full identity of the legal person who shall be declared successful bidder. If more than one people want to buy into ownership, the documents must be provided for each undivided purchaser.

#### a - Individuals

You must provide your lawyer a copy of your identity card or any other document showing exactly your identity (driver's license, passport, etc.).

You must have the legal capacity to buy and do not therefore be subject to any protective procedure under Articles 488 and following of the Civil Code (like guardianship).

You must not be subject to bankruptcy. If this is the case, the purchase is only possible if the legal guardian is involved with you.

You must also provide your lawyer with various information and supporting documents, namely:

- Full name (maiden name if applicable)
- Nationality,
- Occupation (if you are buying as a professional, you must provide a recent BIS K extract from the Commercial Register)
- full address,
- Marital status (single, married, widowed, divorced, "PACS").

Warning: If you are married, you must indicate your marital regime and document :

- If you are separated from property, you must specify whether the purchase is intended for you alone or for both spouses in undivided taken. In this case, both spouses must give the same information to the attorney and sign all the power for the purpose of being declared successful bidders.
- If you are married under a regime other than separate property, the auction is expected to be made on behalf of the community and in this case, the lawyer is required to possess the full identity of spouses and their signatures.

If you are civil partners must be distinguished:

- The conclusion of the PACS prior to 1 January 2007, and without agreement: the auction will benefit both partners (undivided property unless expressly provided).

We must therefore give your lawyer the full identity of the two partners, who will both sign the warrant for the reported bidders beings. In the event of a purchase by one partner, the other partner will be duly informed.

- The conclusion of the PACS is after 1 January 2007, without agreement: So you're under a property separation regime and you must specify whether the purchase is intended for you alone or the two taken undivided. In this event, the two partners will provide the same information to the lawyer and both sign the warrant for being declared successful bidders.

#### b - Corporations

You must provide:

- A copy of the articles of association,
- Recent KBIS extract from the Commercial Register,
- A document showing the authority of the person signing the document if that person is not the legal representative of the company as designated on the KBIS extract.

You will also need to justify the purchase of a property is well within the remit of the reporting entity.

#### c - property dealers Professionals

If you are a person or company you must first provide the information above; moreover you must provide a copy of statement of existence of merchant goods with the tax administration.

All such information is essential both to the tax authorities for the payment of transfer duty, but also for the mortgage and/or the publication of your title.

It is therefore recommended that you pay special attention to all the information that you give to your lawyer about this.

#### B - Proof of solvency

Before going to the auction, counsel shall ask his client and receive from him an irrevocable bank guarantee or a bank check made out to the receiver or consignee designated in the contract's terms of sale, representing 10% of amount of the reserve price (Article 74 of Decree 2006-936 of 27 July 2006).

This provision is prescribed under penalty of nullity of the auction raised ex officio (Article 81 of Decree 2006-936 of 27 July 2006).

Furthermore, it is common that the contract's terms and conditions may impose a higher deposit, corresponding to the charges announced before the opening auction, the emoluments due to Lawyers according to fixed tariffs, the stamp duties to be paid for the registration of the purchase, and finally the potential mortgage fees and court fees.

A receiver or consignee is designated in the contract terms and conditions. If in doubt, the payment may be made to the CARPA.

Your lawyer may also require a certificate of non-indebtedness or personal recovery.

#### C - The signing of the mandate for the purpose of being declared successful bidder

Your lawyer will ask you to you sign, prior to the auction hearing, a mandate for the purpose of being awarded the purchase in accordance with the information you have given him.

## II. - FORMALITIES SUBSEQUENT TO AUCTION

A -In the event that you are not awarded the purchase because someone else has made a higher bid, the lawyer renders you the documents you have entrusted to it, and the cashier's check, certified check or bank guarantee that you have given him. The lawyer has the right to ask for a fee.

**If you are declared successful bidder, the Lawyer shall keep the documents you entrusted, as well as evidence of your creditworthiness. He must wait for a period of ten days during which interested parties may make a higher bid for an amount 10% higher than yours.**

If a higher bid is made, your lawyer keeps the documents you gave him until the bidding is validated. In this case, you are no longer considered as purchaser and you can ask your lawyer to return all documents and materials that you gave him and the check or bank guarantee.

However, if you are in one of the three following cases:

- No higher bid is filed within ten days your purchase,
- The higher bid was cancelled,
- You have followed the higher bid

Then you are declared valid purchaser of the property.

B - You are awarded the purchase

In this case you must pay the following amounts:

1- The principal amount of the purchase

This is the bid which amounts to the price your lawyer as pushed for on your behalf and which was upheld by the Court.

2- Interest

The deposit of the full purchase price pursuant to Article 2212 of the Civil Code must be made within two months from the final award date.

After this period, the sale price is increased by right of statutory interest until the full deposit of the price is made (Article 83 of Decree 2006-936 of 27 July 2006).

The legal rate of interest is increased by five points four months after the pronouncement of the sale (Article L. 313-3 of the Monetary and Financial Code).

Your lawyer can usefully advise you on this.

The main purchased price and any interest shall be paid by check payable to the same order as your deposit check, unless legal exceptions apply to particular types of sale.

3- prior charges

Once the sale is final as regards of you, and immediately, you must pay the fees prior to the sale.

These fees, a variable amount, represent fixed costs and fees incurred by the Lawyer in charge of the sale on behalf of the creditor (including advertising costs, bailiff fees, mortgage research costs, etc.).

Taxes and further expenses are paid by the successful bidder by priority in addition to the price. This has provided proof to the Registry before the expiry of two months from the final award date, barely reiteration of the auction. Any contrary stipulation shall be disregarded (Article 86 of Decree 2006-936 of 27 July 2006).

In case of implementation of pre-emptive rights exercised successfully, the amounts paid will be refunded.

#### 4. Transfer of taxes and duties

You must pay fees and duties which are variables according to :

- Quality or not as a realtor;
- The nature of the building;
- The date of completion.

Your Lawyer will inform of the transfer taxes you will owe.

In case of surplus value and subject otherwise stated in the conditions of sale, the costs resulting from the designation of Accredited Representative and all taxes and levies pertaining to the specific tax position of the seller having his fiscal domicile or headquarters outside France, which would be due by the latter on the occasion of the transfer will be paid by the successful bidder and will be deducted from the deposit of the price and interest.

#### 5- Emoluments

The emoluments of the sale are calculated on the basis of the tariffs of notaries. They remain below the negotiated sale of notaries fees. Finally, they are exclusive of real estate agency fees, unless separate contractual stipulations. **In fact, to call your lawyer and the Court replaces the intervention of the notary and real estate agent.**

#### 6. Fees

In addition to the fees, we will agree the amount of fees that you will be our firm.

#### 7. Miscellaneous

In addition to all the above are, your lawyer can ask the payment of various sums, in particular : pleading entitled statement excerpt form, requisition status, land registration fee of publication, notification to the trustee of the condominium (Article 20 of the law of 20 July 1965), etc ...

**Our firm can make you a price estimate of what it will cost your property purchase for a given auction price.**