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Corporate & Legal Consultants

Auction Realm

Buying a fixed asset from an auction is becoming increasingly common and it has now become a practical reality in Cyprus. Despite auctions being put on hold due to the pandemic, they have commenced speedily hence providing an opportunity for prospective buyers to acquire assets. Being well versed from a practical aspect in this field is essential and saves many pitfalls for investors. Especially, being a foreigner in Cyprus and buying via auction for the first time may be daunting, but with guidance and practical advice, common mistakes can be avoided.



The Auction Process

One can participate in an auction either in person or through an online platform for which he needs to register before the date of the auction. Whether it's online or in-person vests solely with the banking institution that publishes that.

If the person is a Cypriot national, then he needs to create an online account on the government's online platform Ariadne. If the person is not a Cypriot national, then he can participate in an auction by registering with his details which will be provided in a pdf format. If either of these steps is satisfied, the potential bidders need to log in and select the auction they wish to participate in. The process is easy and straightforward.

For one to be able to participate in an auction, he needs to pay a reservation fee which frequently varies between 10%-20%. The persons who are not the winning bidders will be debited into their account the amount they have paid. The debit will be instant and will be returned within the days.

we recommend that the client gives himself ample time before auction to see whether he has the required documents. Many real estate transactions have been compromised due to the banks' inability to cope in time and review clients' sources of funds. This is where legal advice and guidance may assist in tackling the problems early on or preventing them from happening in the first place. Banking institutions are by far the weakest link in any potential investment in Cyprus.

Furthermore, the Cypriot banks have been very stringent in accepting funds from overseas clients purchasing assets from an auction and as an office, we have noticed that more and more clients are not prepared to thoroughly present their source of funds within the set timeframe and be able to finalise the project. This is a clear and practical requirement that all the banks need to proceed with the purchasing of the asset. This means that prospective buyers might need legal assistance in providing this documentation, and we advise that a short meeting is held so we may discuss and raise the issues with the banks. The key is to prepare beforehand and have all required documents readily available.

Buying via auction assures and guarantees the purchaser; that no overdue amounts burden the asset he will be buying. The auction process guarantees the end-user i.e., the new purchaser buys the asset without the burdens of past obligations of the previous owner like any mortgages/ court decisions or any other encumbrances. Overdue bills like electricity, water or municipal taxes are cleared via the process of transfer to the Land Registry. The process itself guarantees a clear title, but all potential purchasers should still conduct thorough due diligence prior to purchasing the asset, since third party rights vested in a title deed may affect the property and its marketability. There are instances when the auction process will not clear all burdens or past fees due. For example, an asset purchase with an architect's outstanding fees that need to be covered if any further development of the asset is required. All these fees need to be paid.

When the "hammer" falls down the auction is finished, and the person with the highest bid is obliged to buy the asset as a binding contract has been formed between him and the seller of the asset. This is the law in Cyprus, and the client commits to purchase the asset.

The winning bidder needs to pay the balance within 20 days. Also, he cannot change his mind and not buy the asset, as the contract formed does not incorporate a clause where he can get away from it. This is governed by section 64 of the Sale of Goods Act Chapter 267. If the remaining amount though is not paid within the 20-day timeframe, then the purchaser loses his deposit. Therefore the client needs to prepare and plan ahead.

In order to pay the remaining sum of the asset's purchased price, the purchaser needs to provide a clear source of funds. The Source of funds is now a major concern hurdle that the new purchaser may encounter. This is not related to whether the client has or has not had requisite funds, but due to the approach of Cyprus's banks in dealing and understanding what the client may provide them. Due to the Cyprus banks' prevailing bureaucracy, there are considerable delays in accepting the funds into Cyprus, therefore



Issues to be aware of before bidding Tenants:

A prospective buyer can face some complications when buying an asset from an auction that he needs to be aware of beforehand. This might include the buyer buying a residential asset (house or apartment) and having to deal with tenants. This means, that the previous owner had had a lease agreement with these tenants, and it is partly the purchaser's decision on what to do with them. Having a good return from a property can be a blessing but sometimes it can be a curse if the tenant is unwilling to co-operate. The client needs to see whether he can stomach these factors and be prepared to deal with them.

Among the options, he might have is to either draft a new lease agreement if the tenant agrees or choose to renew the already existing one. The previous agreement will be effectively terminated when the asset is sold to the new purchaser unless the property falls under the umbrella of the Tenant's Protection Act meaning the purchased property is a protected tenancy, with few options on how to deal with the tenant. If the tenant is a protected one, he might be paying a low rent which indicates he will continue paying such low rent. These are facts that need to be investigated by the potential purchaser and thorough due diligence would need to be undertaken before purchasing. Banks or real estate funds that provide the assets are not forthcoming with such information as they are unaware of the existence of any tenants or even most of the time what they are selling.

Left fittings at the bought property? Who is their rightful owner?

An incremental issue that the buyers might face when buying an asset from an auction (especially a house or apartment) is dealing with the movable assets of the previous owner. This is a rather problematic issue as these movable assets belong to the previous owner. The purchaser by law buys the asset but not the fittings. Proper legal advice is required as to how to deal with these fittings, as it may cause legal issues for the new owner.

If the purchaser assumes that the fittings found on the asset he purchased, belong to him as the new rightful owner of the property, the former owner might commence legal proceedings against him on various grounds like theft or conversion. The civil offence of conversion will be committed when the new owner takes ownership of the fittings found in the property he purchased, making use of them without obtaining the consent of the rightful owner. In other words, the new owner possesses and uses fittings that do not belong to him.

This is a reality that most new owners do not understand, and it is important to tackle this once the property is acquired. The purchaser might raise various defences and put forward various arguments, but their success cannot be guaranteed. Arguing that the purchaser honestly thought that the fittings left behind were abandoned is not an adequate response to defeat conversion. Besides conversion is classified as a strict liability offence therefore even if the purchaser did not intend to retain ownership or use the fittings that did not belong to him this cannot be used as an adequate excuse.

Once possession of the premises is acquired, and the new owner uses the fittings without taking any steps to ensure that the rightful owner regains possession of his asset, then he can be found liable for an offence. Of course, there are cases where the previous owner might not seek to recover his belongings and this is a major possibility that the new owner should consider, but he should always be ready for the worst-case legal scenario, that being that the previous owner will lay claim to his belongings.



Measures that will avoid legal proceedings

We suggest that one of the primary steps a purchaser needs to undertake when entering the property is ensuring whether there are fittings left behind from the previous rightful owner. If the new rightful owner discovers the existence of such property, then he immediately needs to try to contact the former owner of the property and inform them of their existence. If the new owner discovers left items, he should not consider that they were deliberately left or abandoned by the previous owner, irrespective of their monetary value. The purchaser needs to undertake all the necessary measures to communicate with him either by phone or if he has no contact details, he may publish in local newspapers. This is mostly the best option. Publishing via a local newspaper shows proper steps to locate the previous owner and guarantees a defence in the case the previous owner lays claim. In other words, the purchaser needs to utilise any adequate method in informing the former owner. When the former owner communicates with the purchaser to regain possession of his belongings, the previous owner must prove ownership of the fittings. If such ownership has been proved the purchaser can either hand them back to the rightful owner or pay him an amount of money and buy the fittings from him. This is a method of agreement that can be reached between the new and the former owner.

There is of course the most common scenario where the new owner undertakes all the relevant measures to inform the former owner but receives no reply. This is clear evidence of the previous owner abandoning his assets, hence he may get ownership of them. The new purchaser is thus protected from any claims in the future.

In this way, he will prevent the commencement of any legal proceedings against him, as the former owner will not have any legal grounds to argue that there has been the utilisation of his property from the new owner. Also, in this way even if the previous owner either left the movable assets deliberately or if he forgot their existence, the new owner would take any measures on his behalf to ensure the former owner has been informed of the existence of the fittings in the bought property. It is imperative that no opportunity is given to the old owner to commence either criminal or civil proceedings against the new owner for retaining ownership of his fittings that may belong to them. When the new owner takes positive and proactive steps, he prevents the narrative and the occurrence of unexpected legal results.



What will the purchaser pay?

When buying a property, transfer fees are paid to the Land Registry and vary based on the asset's value.

Asset's Value (€)	Percentage to be paid (%)
Up to 85.000	3%
Up to 170.000	5%
Over 170.000	8%

The purchaser might be entitled to a 50% reduction of the transfer fees provided the property is not VAT subjected.

For every, purchaser though buying an asset from an auction that is less than €350.000, no transfer fees need to be paid to the Land Registry. This is the law and refers only to assets sold via Auction.

Example: There are 3 purchasers buying an asset from an auction amounting to €1.050.000. Each of them will pay €350.000, therefore no transfer fees will be paid to the Land Registry for completing the action.

If the purchaser wishes to resell the purchased asset to a third party, then that person is going to pay 100% of the transfer fees. This is something that not a lot of investors are aware of and needs to be clarified at the stage of due diligence.

Example: A bought an asset for €400,000 from an auction. B is going to buy the asset from A for the same amount.

B will pay 8% of the price on transfer fees and is not allowed a 50% deduction.

Buying a property at an auction makes commercial sense, as properties are offered at discount. Due diligence is the key before the purchase of an asset, as well as consideration of the previously mentioned factors about taxes or the legal status of the property. Making sure that the client is adequately prepared to make payment on time is a very important factor, considering the banking realities and delays in Cyprus. Alas, the key to a successful real estate transaction is seeking proper legal advice.