A BRIEF GUIDE TO BUYING A RESIDENTIAL PROPERTY AT AUCTION
Stephen Firmin

Colchester
T 01206 574431
Stable 6 Stable Road Colchester Essex CO2 7GL
info@tsplegal.com
BUYING A RESIDENTIAL PROPERTY AT AUCTION

There can be no doubt that buying a residential property at auction has its advantages.

Bargains: Properties can be bought at auctions for very competitive prices

Speed: The auction process enables you to buy a property quickly, and avoid the often more drawn out process of a conventional private purchase.

BUT…. The auction process enables you to buy a property quickly, and avoid the often more drawn out process of a conventional private purchase.

To use auctions as an effective way of acquiring investment property you need to understand the process and the potential pitfalls. The advantages of the process can very quickly become disadvantages for a buyer who has not prepared well.

From a buyer’s perspective, the risks to consider and investigations to make before committing to bid for a property are exactly the same as for a private purchase. The key difference is that the terms for sale are fixed by the Auction Pack. There is no process of negotiation.

You therefore need to make sure you know exactly what is involved – or you could end up making a costly mistake.
WHAT SORT OF PROPERTY USUALLY BECOMES AVAILABLE AT AUCTION?

Certain types of properties may be particularly suited to auction sales, for example:

- Unusual properties that are difficult to value
- Properties that require a lot of renovation work
- Properties being sold following a repossession or insolvency
- Tenanted properties
- Properties that require planning consent for their use

Often Auction Houses will group similar types of properties together for the same auction (for example, repossession sales).

Of course there can be other reasons why a seller decides to put a property into auction. It may be that a quick sale is required and the seller sees a better chance of achieving that through the auction process; or that a higher price can be achieved because of the concentrated bidding process.

It will not always be obvious why a property is being sold at auction. However, it can be a good indicator of what information ought to be available in the Auction Pack – and perhaps raise concerns if those details are missing!
Auction Catalogue

This is prepared by the auctioneers and contains the particulars of each property (or “lot”) that will be offered for sale at the forthcoming auction. The information will usually include:

- The full address of the property and a photograph of it
- Whether the property is freehold or leasehold
- Brief details of any tenancy agreements, including the rent and remaining periods left to run on them
- Any arrangements for viewing the property
- A guide price (if there is one – note that this may be subject to change)
- The conditions of sale (see page 7)
- The contact details of the seller’s legal representatives and where the Legal Pack can be obtained (see page 7)

The Catalogue is usually available around 4 weeks prior to the date of the auction. It is worth obtaining the Catalogue as quickly as possible. There may be a number of things you will need to do, or should do, to make sure you have all relevant information to decide whether to bid for the property – and 4 weeks is not that long to deal with them!

Test the water: If you are thinking of buying a property at auction for the first time, go to a few auctions just to see how they work without bidding. It should make the process less daunting and help you to become more comfortable with the procedures. Order some Catalogues to get a better feel for guide prices in the area you want to buy.
SKELETONS IN THE CUPBOARD – PREPARING FOR THE AUCTION

If you have decided that you may want to bid for a property shown in the Catalogue, then there are several things you should do in preparation. As mentioned later on in these notes the principle of “let the buyer beware” applies equally to auction sales as it does to private sales – so the onus is on you to have satisfied yourself there are no significant problems from your own investigations and the details supplied in the Auction Pack.

Obtain the Legal Pack: Make arrangements to obtain the Legal Pack as soon as possible. This will contain the conditions for sale, title and other information about the property (see page 7). You should be arranging for your legal advisors to review that Pack whilst you are carrying out other checks. Don’t leave that to the last minute as queries may arise which you don’t then have time to resolve before the auction.

Bear in mind that there may be a fee payable to the auctioneers or the legal representatives for providing a copy of the Legal Pack to you. The Legal Pack won’t be set out in the Auction Catalogue.

Visit the property: Always make arrangements to view the property yourself or have your Managing Agents do so for you. Never rely solely on the description in the Auction Catalogue. Walking round the property and the neighbourhood can reveal things that would never have been evident from the particulars – not least whether the information in the particulars is correct! If it is clear the property needs renovating, then take your builder around with you to get a sense of the likely cost – so you can budget for it and take it into account when deciding what your maximum bid will be.

Arrange a survey: You should always have a survey when considering buying a property. Auction sales are no different. Generally the seller has no obligation to disclose structural or other problems with the condition of the property. It is down to you to satisfy yourself there are no issues of concern, which you will otherwise take on once you have bought the property.
A survey is still advisable even if the property is already rented out to residential tenants. By law the landlord retains responsibility for the structure, heating and water systems at the property with short-hold lettings, and cannot pass these obligations on to tenants.

The survey may also give some indication of the current market value of the property – which will be useful for bidding – and may indicate any electrical or gas testing which needs to be carried out (and which you may then need to budget for if you are intending to rent out the property after purchase).

**Do your homework:** If you are not buying a property to live in. You are making an investment. Don’t buy a property in an area you know nothing about. Talk to your agents/surveyor to be clear on whether you are buying in an area with a strong track record in the renting market. Is the area already overrun with rental properties? Are there local amenities making the property attractive for renting? What are average rentals in the area?

**Arrange your mortgage:** If you will need a mortgage to buy the property, then you need to get your mortgage sorted out before the auction. You should consult your financial advisor/mortgage broker at an early stage. If your bid is successful at auction you will from the day of the auction be legally bound to buy the property in exactly the same way as if you had exchanged contracts. If you fail to complete you risk losing your deposit.

**Related sales:** If you are relying on the sale of an existing property you own to fund a purchase at auction, then remember that the sale must have exchanged and completed before the auction date, otherwise you cannot guarantee the funds to bid.

**Ownership and tax:** Be clear who is going to buy the property. Rental income from the property will need to be declared for income tax purposes. There may also be capital gains tax planning to consider. You need to think about these things prior to auction and take advice from your accountants and lawyers as appropriate, to make sure the correct party bids. Generally you will not be able to transfer the benefit of the contract for purchase after the auction and prior to completion.
There should be a pack of information for the property made up of sale conditions and supporting title and practical information about the property.

The general particulars for the property and also the general conditions for sale should be within the Auction Catalogue. Usually the general conditions of sale are based on a published set of conditions such as the RICS: Common Auction Conditions (Third Edition) (“CAC”). They are designed specifically for use in auction sales.

The CAC are divided into two sections:

1. **Auction conduct conditions**: These are standard to all lot sales and cannot be amended. They essentially govern how the auction procedure works on the day of the auction. The main practical points for the buyer are referred to further below.

2. **General conditions of sale**: These relate more to the legal contractual aspects of the sale. These can be amended or excluded by special conditions prepared by the seller’s legal advisors and which are specific to the property in question. Your lawyers will need to review these carefully before the auction so that you are aware of any potential issues of concern.

**Legal Pack**: A comprehensive Legal Pack should contain the following:

- The special conditions of sale and the sale memorandum (which you will be required to sign at the auction if your bid is successful)
- The title information for the property (copies of the land registry entries or copies of the title deeds where the property is unregistered)
- Current Energy Performance Certificate and Recommendation Report for the property
- Copies of any legal searches carried out by the seller (local authority, drainage, environmental searches etc.) – note that the special conditions may require you to reimburse the seller for the cost of these on completion
• Copies of any tenancy agreements already in place
• Replies to ‘standard’ property enquiries or property information forms

Not all Legal Packs will contain all of the aforementioned information, although the special conditions and title information must be included in all cases. In some cases, the seller will not have any practical knowledge of the property for legitimate reasons. For example, a mortgagee on repossession, or official receiver where the auction sale follows an insolvency.

However, where there is no obvious reason why the information has not been provided, this may point to the seller choosing not to provide details where further enquiries should be raised prior to auction.

Essentially you should be looking to have as much of the information referred to above as possible before the auction and in sufficient time to review it and decide whether there are any issues that need resolving. You should arrange for your lawyers to carry out the same legal searches as you would do for ‘normal’ purchase – to the extent these are not included within the Legal Pack (or are included but are out of date).

A timely review of the Legal Pack with your lawyers well in advance of the auction is essential. It is often a question of what is missing from the pack rather than what has been included, and whether the issues arising from that can be resolved through independent searches and enquiries. The review may also throw up matters that need to be checked by inspection or survey.

All usual matters should be covered including the following:
• Planning issues (authorisation of current use, extensions, alterations to the property etc.)
• Ensuring there are adequate and appropriate rights for the property (particularly if the seller will be retaining neighbouring or adjoining land, where there is private access or services etc.)
• Ensuring there are no onerous covenants or restrictions affecting the property, which could affect future marketability or mortgage finance
• Disputes with the owners/occupiers of neighbouring properties

• Actual or potential ransom strips (more likely to be of relevance to development sites)

• Any defective title insurance issues

• Where there are already tenancies in place:
  – Are there rent arrears or other disputes with the current tenants?
  – Do the special conditions require you to purchase the arrears from the seller?
  – Are there rent deposits in place – are these registered and transferable?
  – Are there any schedules of condition/lists of fixtures?
  – Are all up to date gas and electricity inspection certificates in place?
  – Are there any existing managing agent agreements the seller is requiring are taken over?

Other issues to cover from the special conditions of sale:

• Will you have to insure the property from the date of the auction? (The CAC provides for the seller to continue insuring but this is usually excluded)

• How will the deposit be held between the auction and completion? (Note that the auctioneer usually reserves the right to deduct his commission from the deposit regardless)

• When will completion take place? (Usually 20 working days (about four weeks) from the date of the auction)

• Are there any extra fees payable (for example a “buyer’s fee” for production of the completion documents, landlord fees (if relevant) etc.)
WHAT DOES THE SELLER HAVE TO DISCLOSE?

The seller is only obliged to disclose a defect in his title to the property which cannot be remedied, and which could not be discovered by a buyer from a reasonable inspection of the property. For example, a right of way over the property, which is not apparent from an inspection.

The seller is not obliged to disclose problems relating to physical aspects of the property. As long as the seller has not made any statements in the Auction Pack which are misleading in relation to a matter, then if the buyer could have found out the situation from his own searches, inspection or survey the buyer takes the property “warts and all”.

This is the usual position for sales of properties, but many buyers incorrectly assume it does not also apply to auction sales – and that they can pursue investigations after buying the property at auction.

Let the buyer beware applies – so do make sure you have carried out the correct investigations before auction otherwise you will have acted in haste and be repenting at leisure!
AT THE AUCTION

There are some issues you should bear in mind during the final days prior to the auction and in relation to how the process will work on the day.

Addendum: This is a document which may be used to correct particulars in the Auction Catalogue which have arisen since publication, to correct information in the Legal Pack, or to provide additional information about the property.

If there is an Addendum, the document will be available to potential buyers at the auction. You should check prior to the auction whether one has been issued, and again on the day – although any Addendum is usually announced before the bidding starts on the relevant lot(s).

Some auctioneers require the seller’s legal advisor to attend the auction in person to deal with any queries that arise on the day from this. Other auctioneers provide their own legal advisor to do this.

Check the property is still in the auction: Don’t assume that all properties listed in the Auction Catalogue will be offered on the day of the auction. Some may be withdrawn or sold prior to auction.

Role of the Auctioneer: Remember that the auctioneer can accept or decline a bid. He does not have to give a reason. If the seller has reserved the right to bid for the property (which should be clear in the general conditions of sale) then he can bid (or have someone bid on his behalf) in order to try and push up bids for the property – but only where the seller has set a minimum price which the auctioneer must achieve to sell the property (called a “reserve price”). That may not be set until shortly before bidding commences.

Fix your maximum price and stick to it: Make sure that you go into the auction knowing the highest price you will be willing to pay and don’t get sucked into exceeding it!

The Hammer Falls! If your bid is successful you are bound to purchase the property from the moment the auctioneer’s hammer falls. Usually, the property will be at your risk from that moment and so you need to make sure buildings insurance can be placed on risk that day.
Deposit and ID: You will have to pay a deposit of 10% of the price on the day, so make sure you have your cheque book and any relevant bank details available. You will also usually need to take two forms of ID with you.

Memorandum of Agreement: You will be required to sign the memorandum of agreement and provide the contact details for your legal advisors. Note that if you leave the auction without doing this, the auctioneer can treat the purchase as terminated and offer the property for sale again or sign the memorandum on your behalf.

Reserve price: Remember that if the property does not reach any stated reserve price in the bidding, then the lot will not be sold. However, this does not mean that the seller may not be willing to arrange a private sale afterwards at below the reserve price, so it is worth leaving your details with the auctioneer for this purpose if you wish to.
**AFTER THE AUCTION**

The auctioneers will send the signed memorandum of sale to the seller’s legal advisor, who should contact your lawyers to confirm the completion date and arrangements for completion

- Completion is usually 20 working days (around 4 weeks) from the auction date, but the special conditions may shorten the period

- The auctioneers will arrange for the deposit to be transferred to the seller’s legal advisors (usually less the auctioneers’ fees)

- You will need to arrange for the balance of funds to be paid over to your lawyers in time for completion, including any sums that you need to provide to cover any stamp duty land tax and land registry fees in the normal way

- Remember that you have a legal contract committing you to complete on the relevant completion day. If you fail to do so, all the usual remedies are available to the seller as with a private sale – including forfeiture of the deposit and claims for compensation
SUMMARY OF THE MAIN POINTS TO REMEMBER

• Test the water – do a trial run if you are not familiar with the auction process

• Get the Auction Catalogue and the Legal Pack quickly and review these with your professional advisors in good time before the auction

• Arrange for any further legal searches or enquiries which may be necessary

• Visit the property

• Arrange a survey

• Do your research on the property and the area – make sure you involve your managing agents/surveyors to help you with this

• Make sure your finances are in order – arrange any required mortgage finance before the auction and make sure you have a 10% deposit ready

• Where appropriate, make arrangements to put buildings insurance on risk for the property from the date of the auction if your bid is successful

• Most important of all – have a maximum price and stick to it!
THE THOMPSON SMITH AND PUXON RESIDENTIAL PROPERTY TEAM

The TSP team will guide you through each step of the buying and selling process as well as providing the practical and professional advice you need in order to ensure your transaction goes through smoothly and quickly.

Our service draws on the experience of specialists and support staff, using state-of-the-art technology to minimise costs and maximise our speed of response. We use the latest online facilities to carry out searches quickly and to deal with the Land Registry.

The team is very accessible, offering a variety of services to make it easier for you, including out-of-hours appointments, direct-dial phone lines, email and SMS text messaging. We offer competitive fixed fee pricing for the majority of cases but have the flexibility to meet any specific requirements you may have.

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Please also note that this information relates to residential properties. It does not cover commercial or mixed use properties, where there may be other and additional issues that need to be considered in the context of an auction sale.
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INDIVIDUALS
AND BUSINESS
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CLARITY IN EVERYTHING WE DO

Colchester
T 01206 574431
Stable 6 Stable Road Colchester Essex CO2 7GL
info@tsplegal.com

Clacton on Sea
T 01255 221919
39 Station Road Clacton on Sea Essex CO15 1RN
clacton@tsplegal.com