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By Harold D. Hunt

**T**exas culture equates auctions with “losing the ranch,” but in most other areas of the country, auctions are viewed as winning propositions.

Auctions are an increasingly popular way to sell real estate. In 1980, \$10 billion worth of real estate was sold by auction in the United States. By 1999, that figure had increased to more than \$49.5 billion.

A study conducted for the National Association of Realtors (NAR) projects that 30 percent of all real estate sold will be through auctions within eight years. NAR now provides links to more than 100 auction companies via their auction information site, [www.narauctionsource.com](http://www.narauctionsource.com). Not a bad idea, considering that all 50 states require real estate licensees to handle real estate transactions. Auctioneers must either have a real estate license themselves or hire a real estate licensee to handle sales.

### Types of Auctions

The two most common types of auction are the *reserve auction* and the *absolute auction*. A third type is the *minimum bid auction*. All three types of auctions typically require bidders to place a buyer’s deposit in the form of a certified

check for a specified amount. This allows only serious potential buyers to bid.

In a reserve auction, there is no minimum bid. The seller reserves the right to accept or reject the highest bid within the time period specified in the terms and conditions of the auction.

The main disadvantage of a reserve auction is that prospective buyers may not be willing to invest the time and expense necessary to thoroughly examine the property when there is no guarantee the seller will sell. The main advantage is that sellers are not obligated to accept any offer. Auctions are assumed to be reserve auctions unless explicitly advertised as another type.

At an absolute auction, the property is sold to the highest bidder, regardless of price. The sale is guaranteed to occur. The seller is not allowed to bid either personally or through an agent.

At a minimum bid auction, the auctioneer only accepts bids at or above a minimum price announced at the auction and in auction advertisements and brochures. Most auctioneers believe that, of the three auction types, absolute auctions bring the highest price for a property.

“Absolute auctions typically attract the most bidders because of the lure of the bargain,” says William Bone, President of the Gadsden, Alabama-based National Auction Group, Inc. These auctions produce the greatest number of motivated buyers and the most competitive bidding environment because of the guarantee that the property will be sold.

## Preparing for Auction

**B**efore entering into a contract for sale by auction, sellers must have realistic expectations about what constitutes a fair sales price. They should then choose a reputable real estate auction company to ensure that the auction is conducted professionally. Sellers sign a listing contract with the auction company authorizing the auctioneer to conduct the auction and establishing the terms and conditions of the agreement and the rights and responsibilities of each party.

Occasionally, a property about to be sold at auction spurs a buyer to negotiate a traditional sale before the auction takes place. If sellers have signed a listing agreement with the auction company before the negotiated sale occurs, they may be obligated to pay a fee to the auction firm even if the auction is not held.

A well-planned, aggressive marketing campaign targeted to the most likely buyers of a specific property is a must. Most properties require roughly six weeks of advertising prior to the auction. Two to four weeks are usually required to prepare marketing materials, which may include advertising for newspapers, radio, direct mail or television. Many auction houses keep a database of prospective buyers and their specific property preferences.

Auction sales are typically on an “as is, where is” basis without representation of the working condition of the property or warranty of any kind. Therefore, buyers must rely heavily on property inspections and their own judgment. They must also carefully study any information provided by the auction company regarding the property’s actual condition. This due diligence information must be provided to prospective buyers well in advance of the sale.

Information may include photos and maps of the property, a current survey, independent property inspection reports, current environmental reports, tax assessment information, zoning status, maintenance records, availability of financing and a title commitment. For commercial properties, detailed information about existing tenant leases and a history of the property’s net operating income should be included.

Announcements made by the auctioneer at the time of sale take precedence over any previously printed or oral statements made. Generally, any material defects known to the auctioneer prior to the auction will be disclosed at the time of the sale.

## At the Auction

Licensed real estate staff are present at auctions to answer questions, receive mandatory buyer deposits and execute contracts. The top bidders must sign the real estate sales contract without changes, additions or modifications. If a buyer does not close for any reason on or before the designated closing date, the initial deposit is forfeited.

Immediate back-up bidders often are required to execute a real estate sales contract and escrow their bid deposits in case the highest bidder does not close. Most auctions have some



## Properties Suitable for Auction

Mike Jones, president of the Dallas-based Mike Jones Auction Group, states that while “not all properties are good candidates for the auction method, when a suitable property is offered by a reputable auctioneer, the seller’s objectives are usually met.”

What properties are best suited for auction?

**Highly sought after properties.** Bidding can ensure the highest sales price for hot properties.

**Properties in overbuilt markets.** Specific properties in overbuilt markets can be showcased through an auction sale.

**Properties that are difficult to appraise.** Lack of comparable sales in the market may prompt the seller to ask too much or too little, resulting in either an extended listing period or seller’s remorse for letting the property go too cheaply.

**Properties with high carrying costs.** A quick sale at auction may be better for the seller than continuing to pay mortgage payments, maintenance expenses, taxes and insurance. Time can be critical for sellers driven by tax or financing timetables.

**Unique or extremely expensive properties.** The more expensive or unique a property is, the longer it typically takes to sell. Even the highest-priced properties sell relatively quickly at auction.

form of financing available to qualified buyers. Closings generally occur within 30 to 45 days of an auction.

Sellers are typically required to provide a clear title at closing. Cost of the title policy, advertising and marketing costs and other expenses are negotiated between the auction company and the seller when the listing contract is executed. Terms vary greatly and depend on the seller's financial position, the salability of the property and the auction company itself.

Because of technology advances, real-time Internet bidding has become more common at auctions. While some bidders in attendance may question whether all Internet bids are legitimate bids, allowing Internet bidding can increase the pool of potential buyers. Internet bidding companies often work in tandem with auction companies, lending credibility to the process by acting as an independent third-party reporting electronic bids during the auction.

At many auctions, fees and commissions for all parties involved in the auction are paid by the buyer through a *buyer's premium*, either a flat fee or a percentage of the highest successful bid. This helps offset the cost of the event and the cost to the seller.

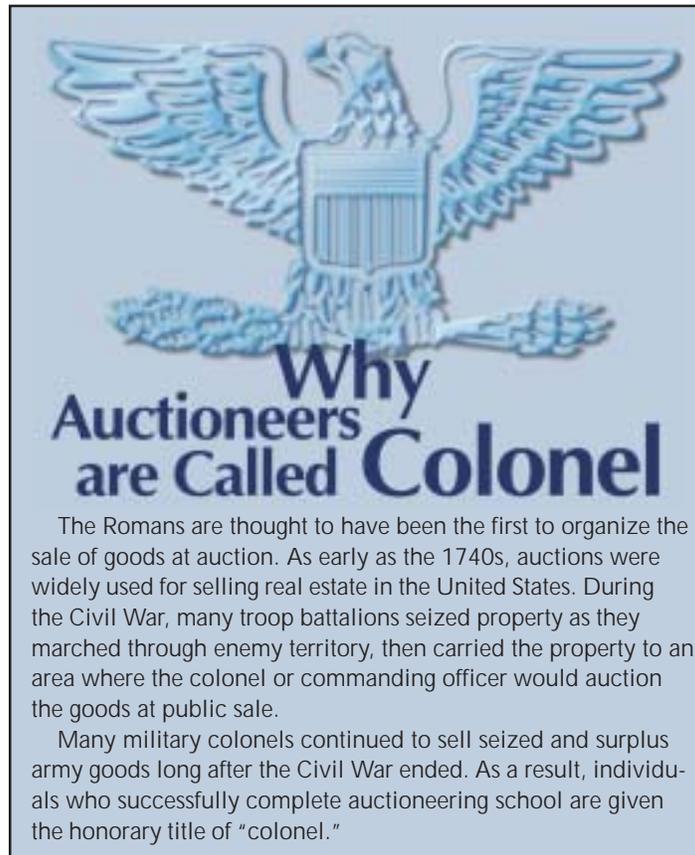
Although buyer's premiums are common in the industry, they are not used universally. The terms and conditions governing a sale state whether a buyer's premium will be charged. If commissions and fees are paid through a buyer's premium, they are generally calculated based on the amount of the high bid only. The high bid is then combined with the buyer's premium to determine the final purchase price paid by the buyer.

## Seller Benefits

**A** sale by auction achieves the seller's goal — selling the property — and frees the seller from dealing with buyers who are not serious about purchasing the property. Prequalified buyers come to auction prepared to buy on the seller's timetable. In a traditional sale, buyers are usually not under any pressure to buy, often leading to lengthy marketing periods. Increased market exposure resulting from an aggressive marketing campaign can generate a larger pool of potential buyers than a traditional sale.

Quick disposal of property by auction reduces the seller's carrying costs, benefiting the seller and the buyer as well through a reduced purchase price. If an auction property has been marketed correctly and generates sufficient competition between buyers, it should sell at its true market value. The sales price may even exceed what would have been received in a negotiated sale because there is no upper limit on bids. In a traditional sale, the asking price limits upside potential.

Auction sales eliminate the often stressful negotiation process between buyer and seller. Properties are typically sold without contingencies, which are clauses in contracts that allow for specified future events to dictate whether the sale actually closes or not. If contingencies are allowed, they are offered to all bidders. Furthermore, in an auction sale, the seller dictates what the contingencies are, not the buyer.



## Buyer Benefits

The competitive bidding process of an auction means that all buyers compete fairly and openly on the same terms, usually resulting in a purchase at true market value. Buyers generally have much more information about the property than in a traditional negotiated sale. Long negotiation periods are eliminated and the successful buyer knows with certainty how long it will take to close on the property.

Absolute auctions guarantee that the property will be sold at the scheduled auction time and that the purchase price will be determined by the buyer.

## Real Estate Licensee Benefits

Bill Vaughan, president and CEO of the newly formed Coldwell Banker Commercial Special Property & Auction Group based in Southlake, says,

"There has been a vast chasm in the past between the brokerage community and the auction community; they almost view themselves as competitors."

Vaughan explains that auction firms encourage broker participation and provide real estate professionals a whole new set of selling and purchasing options. Furthermore, a successful auction can result in referrals and return business for real estate licensees.

Auctions can assist listing agents and brokers by exposing the property to a broad group of ready, qualified buyers. They also let listing agents or brokers off the hook if a seller is mandating an unrealistic asking price. Through a quicker sale, the listing agent's advertising costs may be reduced as well.

Listing agents can represent sellers during the sale and at closing, receiving a commission based on level of involvement and the relationship defined by the parties involved. However, they must cooperate with the auction company by allowing the auction agreement to supercede their listing agreement.

Buyer agents and brokers can earn a commission established by the auction firm if they register with the firm prior to the auction, request property information and review all available information with their clients. A commission is paid only if their clients are the high bidders and successfully close on the property. Auction companies may also require buyer agents and brokers to preview the property and accompany their clients to the auction.

While auctions are not as widely accepted in Texas as they are in the southeastern United States, local auction companies are beginning to see more activity. According to Tom Hanley, regional president of Tranzon Hanley Auction Company in Fort Worth, "Even though sellers are not beating our doors down,

they are much more willing to consider our services as a sales alternative." ❖

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