

GARDEN STATE CLE LESSON PLAN

A 1.0 credit course

**FREE DOWNLOAD
LESSON PLAN AND EVALUATION**

ONCE! TWICE! SOLD! AUCTION LAW NEW JERSEY

With

Robert Del Sordo, Esq.
Mayor

And featuring

Robert Ramsey, Senior Instructor

Program description

You can buy and sell anything in New Jersey at the auction. But the laws are arcane and strictly enforced. Find out all about it in this 1.0 credit fun CLE class.

I. Introduction

- **Robert Del Sordo, Esq.**
- **Auctioneer – community, art, estates, appraisals, auto, personal property, real estate, municipalities**

II. Historical perspective of auctions

- **Egyptians and Babylonians used auction system**
- **Pilgrims used auction to sell off goods**
- **Contraband was sold to neighboring people in community to raise money**
- **Common practice around the world to have auctions – Germans, British**
- **Slave auctions in Philadelphia**
- **Governments involved in auctions**
 - **Marshall sales – federal government – for non payment of taxes or drug cases; bankruptcy**
 - **State – confiscated goods must be sold by auction – cannot do private sale to allow for open bid**
 - **Municipalities – old items, confiscated items must be sold at auction so that everyone has a fair shot**
 - **Sheriff's Sales – obligation to put foreclosed property up for auction, mortgage company will bid at \$100 over mortgage; Sheriff is responsible to gather money and get Sheriff's Deed and issue Deed to clean title to property – supercedes all other back problems, only thing outstanding may be federal taxes**
 - **Sheriff's Deed is cleanest title that you can get in NJ**
 - **Short period of redemption for property owner**

III. Sheriff's Sale/Foreclosure

- **Complaint is filed and mortgagor (debtor) has the right to file an Answer**
- **Judgment rendered – apply for foreclosure**
- **Usually foreclosure attorneys do very thorough searches and notify everyone necessary in order to proceed to foreclosure**
- **Make application for Sheriff's sale and gives format that is to be used for advertisement – specific language**

- **Auction takes place at Sheriff's office – there is a room, must have 20% funds available for payment and then balance within 7 days**
 - **Most times properties not worth what mortgage is owed**
 - **Usually 18 months until the house goes to foreclosure for Sheriff's sale**
 - **Many expenses incurred for foreclosure which will add to the costs/expenses for the property/mortgage**
 - **Bidding will start at mortgage plus \$100 – no one will bid, and then mortgage company owns the property and then negotiate with mortgage company; mortgage company becomes owner “real estate in possession” – held as a liability not an asset by the bank**
 - **Short sale – owner is still in possession of the property and mortgage company will take a hit at a lower rate to wipe it off the books**
 - **Title passes through mortgage company – so all liens are cleaned – clean deed – make your own deal with mortgage company**
 - **If old owners remain, you cannot evict them – must make an application to Chancery Court for ouster**
 - **Don't know what is inside a house up for Sheriff's sale – be sure to do your homework**
- IV. **Motels being converted to condominiums**
- **Wanted to auction multiple motel rooms together to make one hotel/condominium apartment/room**
 - **Properties were being auctioned as mechanism to get people to come in – better price for a property**
 - **Auctions force people to make decisions the spot – keep your attention and make you aware of the fact that if you don't bid then you can miss out**
- V. **Auctions – general information**
- **Knowledge of something that is defective, or not as advertised, then auction house can have problem with that – misrepresentation – consumer fraud**
 - **Auction house can limit liability by saying that it is “as is”**
 - **Opportunity for people to inspect the goods so no misunderstanding**

- **NJ is very lax on auction laws, not PA**
- **Can set minimum bid and don't have to sell if don't reach minimum bid – waste of time until someone bids minimum bid**
- **If something has a title (i.e. automobile), then the title must be present at the auction and then will be transferred over**
- **How do you know that there is no lienholder??**
- **DMV issue – you can place a lien against a vehicle that does not appear on the title**
- **The lien will not survive the auction unless there is a claim made ahead of time or if you did not pay fair consideration**
 - **If fair consideration is paid, then lien is suppressed because it is not of record – this is the problem with motor vehicles because DMV is respecting these liens – cannot be sure that you are getting a clean title**
- **Purchaser are entitled to own the vehicle without a lien**
- **Right of second and third mortgagees is to buy out others, but if don't then can lose the property rights**
- **Auctioner for real estate will have an agreement and that agreement gets completed when the property has sold; then period to get clear title**

VI. NADE

- **National Auto Dealers Exchange**
- **Dealer will bring his cars up for sale, a leasing company as well**
- **Once car is sold – dealer only – not public auction**
- **Dealer needs line of credit with NAED to prove solvent and cars run through lane and gets sold under a series of lights to indicate the condition of the vehicle**
- **Open auction – usually takes 1 minute to sell a car with seasoned buyers**
- **Strategies used by buyers??**
 - **Psychology in bidding process**
- **Representative selling the car does not need to sell the car either**

VII. “Hammer” coming down

- **The UCC recognizes the finality of the sale**
- **Means of finality of the sale**
- **Chapter 9 sale – secured transaction**
- **Auction is acceptable means of sale**

- **After hammer goes down, it is considered a finality**
- **“absolute auction” – buyer pays money and he owns it**
- **“reserved auction” – if hasn’t reached reserve, then seller can remove item from auction; once reserve is met then “out of reserve” and then it turns into an absolute auction**
- **“sold with an if” – I have a price and if the seller wants to sell it they have the right to sell it**

VIII. Sales Tax

- **If the auction is outside the auction house, i.e. someone’s house, it is not a taxable event – “occasional sale”**
- **Sales tax license for auction house**
- **Motor vehicle – auctioneer does not collect sales tax, pays directly to DMV**

IX. Problems at auction

- **Auctioneer can be held responsible to consummate sale because pre-qualify the bidder in order to participate – large sale may require to put up a deposit**
- **Pre qualify the bidders or for dealers only**
- **If person changes mind and does not want to buy it – then may have to sue person to get money**
- **Auctioneer has liability for bad checks – consignor wants his money, so auctioneer is responsible**
- **People being injured at sales**
- **Liability for food at auctions – food vendors must have proper certifications**
- **Auctioneers not recognizing a bid – can reopen the bidding between the two bidders (usually not when paddle biddings) if determine that both were bidding; announce before sale – “condition of sale”**

X. Gun auctions

- **Can have firearms auction in NJ**
- **To auction off guns an auctioneer must be a Federal Firearms Licensed Dealer or auction must be sponsored by the FFL**
- **Firearm cannot be transferred the night of the auction – must be transferred at FFL’s store after check is done**

- **NJ allows an estate sale – auctioneer can sell firearm without being FFL dealer but must utilize an FFL dealer for final transfer**
 - **Must have correct documentation in order to be able to purchase**
- XI. **How do you become an auctioneer**
- **NJ does not require a license to be an auctioneer**
 - **PA and other states do require a license**
 - **NJ requires that you be bonded and local ordinances may effect auctioneers**
- XII. **Auction process**
- **Auctioneers work on commission and therefore keep the auction moving**
 - **Auctioneer is agent of the seller**
 - **Buyer premiums – when an auctioneer gets commission from seller, and then something from the buyer after the sale**
 - **Auctioneer wants to keep the auction moving to keep the tempo up – snooze you lose!**
 - **Record keeping – NJ requires a log of the auctions – must notify Chief of Police of community where auction is; and log must be maintained by auctioneer for 7 years**
 - **Some municipalities require a permit**
 - **Cannot auction stuff birds, animal – taxidermy**
 - **Cannot auction an American flag, liquor if open bottle only and must be to persons with liquor license**
 - **Wine can be sold only in sealed bottles**
 - **If an item that requires a bill of sale, then that is provided by auctioneer**
- XIII. **Money issues**
- **Strictly by check – funds clear and then seller gets money from auctioneer**
 - **Auctioneer is liable for bounced checks**
- XIV. **Automobiles**
- **Person receives title**
 - **If car does not have insurance, then cannot drive it**
 - **Can come back later to pick up with proper paperwork**

- XV. Who has the most to gain/lose**
- **Buyer/seller are mostly protected**
 - **Biggest risk is auctioneer**
- XVI. Advice to auctioneers**
- **Have funds available to set up an auction**
 - **Be careful of people you are hiring (clerk hears amount of bid and who purchased – important for record keeping)**
 - **Have insurance**
 - **Have ability to have 1 day insurance**
 - **Have sales tax identification**
 - **Have a clean record**
 - **Be aware that there are items you cannot sell**
 - **Have ability to have location where they can conduct business**
- XVII. How to market auctions**
- **Word of mouth**
 - **Newspapers**
 - **Signs**
 - **Internet**
- XVIII. What sells at an auction – most popular**
- **Cars**
 - **Tools/machinery**
 - **Jewelry**
 - **Art**
 - **Auctioneer opens bids at what item is worth**
 - **Auctioneer must be knowledgeable about the items in order to know item's value**