

WHO IS LIABLE FOR WHAT? AUCTION V. PRIVATE SALE

The purpose of this table is to highlight how private property sales differ from properties purchased via the different types of auctions and to assist purchasers to determine whether it makes legal and financial sense to buy a property through a private sale or by public auction.

No.	Issues / Considerations	Private Sale	Normal Auction	Sheriff / Judicial Auction	Bank Auction (Repossessed Property)	Comment
1.	Who bears liability for municipal rates and taxes and body corporate / home owners association levies?	Seller	Purchaser	Purchaser	Bank	Unlike with a private sale, (where the obligation commences from date of transfer) with properties bought via auction, the purchaser's liability runs from date of sale.
2.	Who bears the obligation to grant vacant possession of the property / obligation to evict any tenants / occupants?	Seller	Purchaser	Purchaser	Purchaser	
3.	Who is liable for estate agent's commission / auctioneer's commission?	Seller	Purchaser	Purchaser	Purchaser	Generally, the auctioneer's commission is a maximum 10% of purchase price + VAT and payable on fall of the hammer.
4.	Who pays the Sheriff's fee? (in the case of a Sheriff Auction)	N/A	N/A	Purchaser	N/A	For a Sheriff auction, the maximum commission is R 7000, plus VAT, payable on fall of the hammer.
5.	Who bears liability for any interest on an existing bond over the property?	Seller	Seller	Purchaser	Bank	The purchaser's liability runs from date of sale.
6.	On whom does liability for risk of damage to the property from date of sale to registration of transfer fall?	Seller	Seller	Purchaser	Purchaser	
7.	Can offer / sale be subject to suspensive conditions (e.g. offer subject to mortgage bond finance)?	Yes, it's possible and advisable	Not possible	Not possible	yes	Advisable for Purchaser to arrange finance <i>prior to</i> auction
8.	Can the sale / offer be subject to a cooling-off period / clause?	Yes, it's possible	Not possible	Not possible	Not possible	NB – for private sales, the cooling period is for 5-days, but only for properties purchased for R 250,000 and lower.
9.	Who pays transfer duty on the property?	Seller	Seller	Purchaser	None is payable	
10.	Who bears responsibility to provide an Electrical Compliance Certificate?	Seller	Seller	Purchaser	Seller	

Clarification of terminology used above:

“Normal Auction”: This is the usual auction whereby a private person sells property using the services of an auctioneer. The advantage for the seller is that an auction bid is equivalent to a cash offer without conditions relating to finance or sales of other properties. NB even though an auction will have a confirmation period – the purpose of which is allow the bank and/or other creditors to review the sale price and withdraw if it does not cover the finance shortfall, the auction remains a cash transaction. Further note that a successful bidder is required to pay the auctioneer’s commission and the deposit and to provide security for the balance of the purchase price on the day of the auction.

Sheriff / Judicial Auction/ sale in execution: It is a public auction of a property, held by the Sheriff of the Court, to recover outstanding monies on a home loan. Firstly, a court order must be obtained by the bank authorizing it to attach and sell the property to recover the money that has not been repaid on a home loan. The bank cannot accept or decline offers on these properties as the bank is not the legal owner of the property being auctioned. However, the bank is entitled to bid to protect the value it needs to get out of the property (the balance outstanding on the bond and, in most cases, it will repossesses the property. Such auctions are advertised in the Government Gazette as well as in any one local newspaper distributed in the area in which the property is situated. The person from whom the property was repossessed is also notified of the sale, in case he would like to bid for it too.

Bank Auction: This is an auction conducted by / on behalf of a Bank in order to sell property that it has repossessed (also known as properties-in-possession). NB a property can only be sold on this basis after the Bank has taken judgement against a defaulting owner and the Sheriff has attached and attempted to sell the property at a Judicial / Sheriff sale in execution but failed to sell it for a price that covers the outstanding loan amount / bond.