

Summary: A real estate brokerage may use the services of a qualified auctioneer and share commissions with an auctioneer where the trade is made in the course of and as part of that person's duties as an auctioneer. [See: *Real Estate Act* Rules, s.50(c)(iii)]

Note: For the purposes of this Information Bulletin, and where the context permits, "real estate broker" means real estate brokerage, broker, associate broker and associate.

A real estate brokerage may use the services of a qualified auctioneer to sell real property for a client. A brokerage may contract with an auctioneer setting out the terms of the arrangement by written agreement. The agreement could establish the sharing of commissions by the brokerage and the auctioneer. The auctioneer's role in such a sale would be to conduct the bidding process.

The real estate brokerage must comply with the following requirements:

- The seller brokerage agreement (listing contract) must be between the seller and the real estate brokerage. This agreement may make reference to the auctioneer who will conduct the bidding.
- All advertising must be carried out by the real estate brokerage.
- Information describing the property must be obtained, reviewed and provided by the real estate brokerage.
- Offers to Purchase and trust deposits must be made to and administered by the real estate brokerage.

As in all real estate sales, it is the real estate broker, acting on behalf of the brokerage, who is legally obligated to ensure the sale of real estate is conducted in compliance with the *Real Estate Act*. The legislation allows auctioneers to participate in a specific way, so that buyers and sellers can benefit from the expertise of both the real estate broker and the professional auctioneer. Commonly, a real estate brokerage and an auctioneer would work together in the manner outlined below.

The brokerage might prepare a full presentation package commonly known as a "due diligence package" that is distributed by the brokerage to prospective bidders. It is common for each bidder to pay a nominal fee to receive the package containing all of the information regarding the property.

It is the buyer's responsibility to make whatever inquiries necessary to determine the permitted uses, taxes, levies, restrictions, costs or requirements by any level of municipal, provincial or federal government prior to bidding at the auction.

The buyer acknowledges that the real estate brokerage is acting as a sole agent representing the seller and is not representing or acting in any way as the buyer's agent. Prior to the auction date, buyers may need to have sufficient cash or financing pre-approved as well as to be prepared for a deposit. Properties are generally sold in an "as is" condition and all potential buyers have access to view the property prior to the auction.

At the time of the auction, the auctioneer performs the oral bid calling and establishes the selling price. The successful bidder attends before the real estate broker representing the brokerage to complete an Offer to Purchase Contract. The Offer to Purchase Contract is presented and negotiated with the seller by the Seller's Agent.

The auctioneer may be paid a flat fee or an agreed percentage of the sale price from the real estate brokerage as agreed to by the parties.

An auctioneer cannot conduct a sale of land by auction on his own without a real estate broker unless he is licensed as a real estate broker by the Real Estate Council of Alberta.