

QUICK LEGAL GUIDE ON THE SPANISH COURT AUCTION OF REAL ESTATE PROPERTIES

CASE STUDY: An apartment in Spain with a market value of 120,000 euro has several burdens:

- firstly, a mortgage of 60,000 euro;
- secondly, a 1st creditor of 25,000 euro and,
- thirdly, a 2nd creditor of 15,000 euro.

The apartment is not rented to anybody. The 1st creditor of 25,000 euro decides to execute his seizure and applies for the court auction.

AT WHAT PRICE IS THIS APARTMENT OFFERED IN THE COURT AUCTION?

In court auctions, the real estate properties are offered at its market value minus the burdens prior to the seizure of the executing creditor (article 666 of the Spanish civil procedural law).

In the above described case study, this means that the apartment is offered at 120,000 – 60,000 euro = 60,000 euro.

AT WHAT PRICE CAN THE INVESTOR BUY THIS APARTMENT?

The investor can present his counter offer at more than 50% of that court auction value (only exceptionally, will he be able to offer 50% or less).

Suppose that in the above described example our investor offers at 30,600 euro.

In this case, the debtor and the executing creditor are allowed to present some counteroffers within 10 and 5 days, respectively. If they do not and if there is no higher offer, then the apartment is allotted to the investor offering 30,600 euro.

WHICH ARE THE LIABILITIES OF THE BUYER? WHICH IS THE REAL PURCHASING PRICE?

The buyer is liable for the burdens prior to the burden of the executing creditor. The buyer is not liable for those subsequent burdens to the one of the executing creditor.

In addition to that, the buyer is liable for some special debts, e.g. community debts of the apartment and the IBI tax of the running and previous year, salary debts of workers, tax debts, debts to the Social Security ect. However, these debts can be determined prior to the purchasing by a legal research.

In addition to that, a legal research must check if a third person is renting the apartment. Most probably, this 3rd person might be entitled to continue renting it and living in it even after the auction.

In our case study, this means the investor acquires the apartment with the mortgage of 60,000 euro which he must pay. He must not pay the debt of the 2nd creditor amounting to 15,000 euro.

This means, the buyer has to pay the purchasing price of 30,600 euro + 60,000 euro of the mortgage (in total 90,600 euro).

CAN THE INVESTOR “BUY” THIS APARTMENT AT A MUCH LOWER TOTAL COST?

Yes he can.

OPTION 1: The investor may negotiate with the financial entity which granted the mortgage to the owner and buy the mortgage at, say, 40,000 euro or less (this depends on the negotiating skills of the investor). In our case study, the investor acquiring this mortgage may execute it himself and:

- either get the 60,000 euro of his mortgage in the court auction from a buyer (in our case study) gaining a gross margin of 20,000 euro; or
- if nobody offers in the court auction, the mortgage holder himself may apply for the apartment for the value of his mortgage (no extra payment). In our case study this means the investor would pay nothing extra and would not be liable for all subsequent burdens. In this case he would have “bought” the apartment for 40,000 euro or less (the amount paid to the financial entity when buying the mortgage).

OPTION 2: The financial entity may get the apartment itself allocated for the value of the mortgage and resell this allocation right to the investor.

ARE THERE ANY ADDITIONAL COSTS FOR THE INVESTOR?

The investor must pay the asset transfer taxes and for the registration costs of the Official Registry Property Office.

WHICH ARE THE REQUIREMENTS FOR PARTICIPATING IN THE COURT AUCTION?

The investor must present a 30% bank guarantee or payment before making any offer which will be returned if somebody else made a better offer and gets the apartment allocated.

This quick legal guide simplifies the situation for better understanding. If you are interested in a concrete case, you will need expert advice: the expert will have to do some research on the real situation of the burdens (maybe the burdens are less than shown in the Property Registry Office, which is not unusual), on the so called market price (in mortgage execution the market price for auction purposes is, normally, determined in the deed) ect.