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## THE JUDICIAL SALE

OR

## FORECLOSURE IN THE EXECUTIVE MORTGAGE PROCESSES

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We must initiate this article clarifying that the judicial sale or foreclosure as are commonly known, are not a sale of contractual character, consequently are not governed by the principles that are applicable to the own purchase and sale. In the judicial sale, the seller respond for alienation for defects or secret encumbrances, but it is not responsible for legal damages. This is a forced sale on which the seller of the thing does not have to give its consent.

We do this observation, because in the last years the judicial sale has turned for many, especially to companies engaged on real estate business, into a business of purchase and sale of real estate on foreclosure by banks, nevertheless in many cases, for not knowing this important aspect of this figure, they invest in farms that in the end are not as profitable they expect at the beginning and try to look in the mortgagees for the solution to multiple problems found at the time of filing the property in the Public Registry and to take possession of it.

Once fulfilled with the procedure established by the Judicial Code in relation to this type of processes, the mortgagee requests the date of auction and publishes the notice in a newspaper of national circulation during a 3-day term, in order to which any interested party could take part the day of the auction in the purchase of the good; on the established date, in a

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schedule of 8:00 am to 12:00 md and of 2:00 pm to 4:00 pm, all the offers are received, for which all the interested parties, different to the mortgagee, has to not only present its offer, but it is a mandatory requirement to be credited as bidder, for which it will have to consign a 10% of the base of auction by means of a judicial deposit in the National Bank.



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At 4:01 pm the executing deputy announces that the period of presentation of offers concluded and will start the phase of bidding and rebidding; the practice demonstrates that the mortgagee usually presents offer for its credit and it remains there, the third party bidders will be those participating in the phase of bidding and rebidding, awarding in a provisional for the property to the bidder who offers the biggest amount.

Up to this moment it is very probable that there is no problem regarding the purchase of the property in foreclosure, nevertheless, once the order of definitive awarding is expressed it could occur that the debtors who want to dilate the exit of the property or believing that an aberration has happened in the process, appeal to such order, which represents that the third party who bought in auction could not make use of its right until the Superior Tribunal and even, if the quantity allows it, the First Hall evaluates the viability of the resource and if it has or not the right that it sustains, what in time are several months and even years waiting for the decision.

If on the contrary the order of definitive awarding was not appealed, the third party purchaser will try to file the sale in the Public Registry, for which it needs a good standing certificate from IDAAN, MEF and PH in the case of properties subject to horizontal property regime. To avoid surprises it is advisable that the third party interested in buying a property in an auction does all these investigations previously, and include on its investment the taxes and debt that has the property, because as we explained at the beginning of this article, it is not a sale of contractual character, but of a forced sale.

Likewise, it is possible that over this property there are other precautionary measures, entires pending of registration, all these are possible disadvantages that affect the inscription of the awarding order.

Finally once it is recorded, you can find that the property in documents was not what it was expected, since they never went to see it physically or that it is still occupied by persons who certainly will prevent the new owner from making use of its right.

The only way of avoiding all these mishaps is doing a finished investigation of the property object of the auction, previously to the date of the judicial sale, since erroneously it is believed that who sells is the mortgagee or in many cases the court, and this is a confusion that many third parties participating in this type of sale have, convinced that the mortgagee will correct the disadvantages found and prevents them from filing the award.

We must not forget which parts are inside a process of judicial sale, where the owner remains as the seller, responsible for correcting the property, nevertheless



since it is the forced sale, this will not do anything to comply with this principle; the mortgagee only receives the product of the auction in concept of what the owner owed, and the Judge is the relevant authority to perform the auction.



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