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Judicial auctions

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Croatia



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1. Announcing and determining the prices for the sale of seized assets

Judicial auctions are used for the sale of movable property and real estate in accordance with the provisions of the Enforcement Act (*Ovršni zakon*) (*Narodne Novine* (NN; Official Gazette of the Republic of Croatia) Nos 112/12, 25/13, 93/14, 55/16 and 73/17, hereinafter: the EA). A system of sales of movable property and real estate by online judicial auctions in Croatia entered into force on 1 January 2015 for proceedings initiated after that date.

Real estate

Enforcement against real estate is carried out by entering a record of enforcement in the land register, establishing the value of real estate, selling the property in question and settling the claim of enforcement creditor(s) from the proceeds of such sale.

The value of real estate is determined by discretionary court conclusion, based on a reasoned finding and opinion of an authorised expert witness or appraiser; in establishing the real estate value, certain rights and encumbrances on the property which do not cease even after the sale, diminishing its value, will also be taken into account.

On completion of the property valuation procedure, the court will issue a conclusion on its sale establishing the property value and the manner and conditions of its sale.

Article 92(2) and (3) of the EA provides that the parties may determine the property value by judicial or extra-judicial agreement, forming the basis for a lien or other relevant property right established to secure the claim for which settlement is sought.

Real estate is sold by online judicial auctions carried out by the Financial Agency (*Financijska agencija*; hereinafter: FINA) at the request of a competent authority. The request for sale and other documents in the procedure of real estate sale are submitted to the regional centres of FINA having territorial jurisdiction according to the location and jurisdiction of the enforcement court.

An online judicial auction begins with a call for participation in an online judicial auction.

At the first online judicial auction, the real estate must not be sold below four fifths of its established value. At the second online judicial auction, the real estate must not be sold below three fifths of its established value (Article 102(1) and (2) of the EA).

Bids are collected over a period of 10 working days. If no valid bids are collected at the first online judicial auction, the second auction will begin by publishing a call for participation on the first day following the completion of the first online judicial auction.

If no valid bids are collected at the second online judicial auction either, FINA will notify it to the court. In that case, the court will suspend enforcement.

The online judicial auction will close at the time specified in the call for participation (Article 103(1) of the EA).

After the sale of real estate is successfully completed by online judicial auction, on receiving notification by FINA the court will issue a decision adjudicating the real estate. In that decision it will determine that, once the decision has become final and after the buyer has submitted the purchase price, the right of ownership to the adjudicated property is to be entered in his or her favour in the land register, and that any rights and encumbrances on the property in question which cease by its sale are to be deleted.

After the decision adjudicating the real estate to the buyer becomes final, the court will set a date for the hearing to divide the purchase price.

Movable property

Enforcement against movable property is carried out by foreclosure, appraisal, seizure, dispatch of the property, entrusting it to the care of the court, enforcement creditor or a third party, its sale and settling the claim of the enforcement creditor from the proceeds of such sale.

Movable property is sold by oral judicial auction or by direct dealing. The manner of sale is determined by conclusion of the court, taking care to ensure that the movable property is sold to the most advantageous bidder.

The sale of movable property is announced in due time on the court bulletin board, but it may also be announced in the same manner provided for the sale of real estate.

The place, date and hour of sale is notified to the enforcement creditor and the enforcement debtor.

At the proposal of the enforcement creditor, the sale of movable property may also be done by an online judicial auction, to which the provisions of the EA relating to the online judicial auction of real estate (Article 149(7) of the EA) will be applied *mutatis mutandis*.

At the auction, the movable property must not be sold below one half of its estimated value. It must not be sold below that price even in the time period determined by the court for the sale by direct dealing.

If the movable property cannot be sold via the auction or by direct dealing, the enforcement will be stayed.

On successful completion of the movable property sale, the buyer is required to submit the purchase price and take charge of the movable property as soon as the auction or the sale by direct dealing is concluded. If the buyer fails to submit the purchase price, the auction will be deemed to have failed.

The sale of movable property seized in the enforcement proceedings may be entrusted to a certified commission agent. The activities of a certified commission agent are organised and implemented by the Croatian Chamber of Economy (*Hrvatska gospodarska komora*).

Movable property auctions at the commission agent's are conducted by the notary public.

After the movable property is sold, the commission agent will hand it over to the buyer against payment of the purchase price.

2. Third persons who can conduct the sale

Real estate

In Croatia, real estate sales are carried out by FINA. Along with a request for sale to be submitted on the prescribed form, the court is required to deliver to FINA the enforcement decision, the extract from the land register and the conclusion concerning the sale.

In the case of real estate sales by direct dealing, real estate is sold through a person authorised for real estate sales, an enforcement administrator, a notary public or in another manner.

Movable property

Oral judicial auctions of movable property are conducted by an enforcement administrator. In a conclusion, the court may entrust the conduct of the auction to a notary public (Article 149(2) of the EA). The sale of movable property seized in the enforcement proceedings may be entrusted to a certified commission agent (Article 152(1) of the EA).

At the proposal of the enforcement creditor, the sale of movable property will be performed by an online judicial auction conducted by FINA.

3. Types of auction which may not be fully subject to the rules

Real estate

Real estate is sold by online judicial auctions. An online judicial auction begins with a call for participation in an online judicial auction (Article 97(1) of the EA).

Parties, lien creditors and the holders of personal servitudes and proprietary charges that are to cease once the real estate is sold may come to an agreement, by the time of the real estate sale at the online judicial auction at the latest, for the sale of the property in question to be carried out by direct dealing through a person authorised for trading in real estate, an enforcement administrator, a notary public or in another manner within a specific period of time (Article 97(6) of the EA).

In the case of a sale by direct dealing, the court will issue a decision adjudicating the real estate sold by direct dealing, having established that the conditions for legal validity of the sale have been met (Article 104(1) of the EA).

The adjudication decision will be displayed on the court bulletin board and sent to all persons to whom the conclusion on sale of the real estate to the buyer is delivered (Article 104(2) of the EA).

Movable property

Movable property is sold by oral judicial auction or by direct dealing. The manner of sale is determined by conclusion of the court, taking care to ensure that the movable property is sold to the most advantageous bidder (Article 149(1) of the EA).

The sale by direct dealing is concluded by and between the buyer as one party and the enforcement administrator or a person performing commission activities as the other party. The enforcement administrator sells the movable property on behalf and for the account of the enforcement debtor, while the person performing commission activities sells the movable property on his or her own behalf and for the account of the enforcement debtor (Article 149(3) of the EA).

At the proposal of the enforcement creditor, the sale of movable property may also be done by online judicial auction, to which the provisions of this Act relating to the online judicial auction of movable property (Article 149(7) of the EA) will be applied *mutatis mutandis*.

The sale of real estate and movable property that is the subject of judicial and notarial security by the transfer of ownership and the transfer of rights may be carried out in accordance with the relevant provisions relating to the sale of real estate and movable property for the purpose of enforcement.

4. Information on national property registers

The following property registers are kept in Croatia:

- land registry books relating to the legal status of real estate in the territory of Croatia,
- register of motor vehicles,
- register of ships,
- register of aircraft,

- register of shares and dematerialised securities,
- register of judicial and notarial security instruments (register of liens),
- single register of accounts,
- other registry books and registers.

Registers are kept in electronic form by various state authorities and can be accessed electronically (for example, by accessing a register of legal persons kept by commercial courts).

In order to obtain data from state authorities, it is typically necessary to pay an appropriate fee, where the amount of the fee depends on each individual state authority and is determined in accordance with the Administrative Fees Act (*Zakon o upravnim pristojbama*) (NN No 115/16) and the Decree on the Administrative Fee Tariff (*Uredba o tarifi upravnih pristojbi*) (NN No 8/17). Administrative fees of up to HRK 100.00 are payable in revenue stamps, and those exceeding HRK 100.00 can be paid by internet banking.

The list of real estate and movable property sold in enforcement proceedings is regulated by the Rules on the content and manner of keeping a register of the real estate and movable property sold in enforcement proceedings (*Pravilnik o sadržaju i načinu vođenja očevidnika nekretnina i pokretnina koje se prodaju u ovršnom postupku*) (NN Nos 115/12 and 156/14).

5. Information on databases allowing creditors to determine the assets or the claims of debtors

Article 18 of the EA requires state authorities to provide information on the debtor at the request of a person who claims that he or she intends to initiate enforcement proceedings or security proceedings, within 8 days from the day on which the request is filed.

- The Ministry of the Interior is required to provide information on whether a person is entered in the record of registered and marked vehicles as the vehicle owner and on the kind, make, type, model, year of production and registration number of the vehicle, as well as on any encumbrances on that vehicle. The Ministry of the Interior is also required to indicate the person's identity card number in addition to their name and date of birth.
- The Central Depository and Clearing Company (*Središnje klirinško depozitarno društvo*) or other authorised persons keeping the accounts of registered securities or dematerialised securities, shares, bonds, treasury bills, central bank bills, commercial paper, depositary receipts and other securities issued in a series are required to furnish data on whether a person in the registry book kept by it has securities registered in the accounts.
- The Harbourmaster's Office is required to furnish data on whether a person in the registry book or register kept by it is entered as the owner of a ship, yacht, floating facility, fixed off-shore facility or boat, or such facilities under construction.
- The authority responsible for cadastral records is required to provide a printout of any property sheets kept on a natural or legal person.
- The employer or the payee of permanent cash income is required to furnish data on the method of payment of salary or other permanent cash income to a person against whom the claimant intends to initiate the proceedings.
- Another authority or person keeping a relevant registry book or register of any rights constituting property is required to furnish data on whether a person entered in the registry book or in the register kept by it is entered as a holder of a particular right.

At the request of the court, the person claimed by the enforcement creditor to be a debtor of the enforcement debtor or to hold some of the enforcement creditor's property in his or her possession is required, within 8 days, to issue a statement on whether the enforcement debtor has a claim against him or her, and whether the person concerned holds any of the enforcement debtor's property in his or her possession.

The Ministry of Finance's Tax Administration is required to provide the data under Article 217 of the EA within 8 days, at the request of the person who claims that he or she intends to initiate enforcement proceedings in order to recover the amount, stated in gross terms, of a pecuniary claim arising from an employment relationship.

The authorities and persons listed above are not required to act upon the request of the person requesting the data until the costs for undertaking such actions have been paid to them.

The person submitting a request for data is required to identify in the request the claim in respect of the enforcement or security of which that person intends to initiate the enforcement or the security proceedings, and enclose a document forming the basis of that claim.

It is not necessary to hire an attorney to submit the above request for data, and the costs depend on the state authority to which the request is submitted.

6. Information on online judicial auctions

The procedure for real estate and movable property sales by online judicial auction is regulated by the provisions of the EA, as well as by implementing regulations, specifically:

- the Rules on the manner and procedure for the sale of real estate and movable property in enforcement proceedings (*Pravilnik o načinu i postupku provedbe prodaje nekretnina i pokretnina u ovršnom postupku*) (NN Nos 156/14, 1/19 and 28/21; hereinafter: the Rules of sale),
- the Rules on the types and amount of fees for conducting the sale of real estate and movable property in enforcement proceedings (*Pravilnik o vrstama i visini naknada za obavljanje poslova provedbe prodaje nekretnina i pokretnina u ovršnom postupku*) (NN No 156/14),
- the Rules on the content and manner of keeping a register of the real estate and movable property sold in enforcement proceedings (*Pravilnik o sadržaju i načinu vođenja očevidnika nekretnina i pokretnina koje se prodaju u ovršnom postupku*)(NN Nos 115/12 and 156/14).

An online judicial auction begins with a call for participation in an online judicial auction.

The call for participation in an online judicial auction must contain the manner and the conditions of sale, the date and time of the start and end of the online judicial auction, the time when the persons interested in real estate can view the property in question, as well as other necessary data.

FINA will publish a call for participation in an online judicial auction in public media if the party submits a written request to FINA and advances the costs of such procedure.

At least 60 days must elapse between the announcement of the call for participation in an online auction on the FINA website and the start of the bidding process.

Only the persons who have submitted a security deposit may participate as buyers in the online judicial auction (Article 99(1) of the EA).

The prerequisite for accessing the online judicial auction system is a valid digital certificate confirming the identity of the bidder and a certificate enabling the use of an advanced electronic signature on the bid of the respective person (Article 14(2) of the Rules of sale).

At the time of the first log-on to a particular online judicial auction, the bidder is required to fill in a registration form for participation in the online judicial auction.

The bidder signs this form with an advanced electronic signature.

On completion of the electronic form referred to in Article 15 of the Rules of sale, the online judicial auction system will assign a unique identifier to the bidder for a particular online judicial auction.

Forms form an integral part of the Rules of sale.

The collection of bids in an online judicial auction lasts 10 working days, and bids are collected electronically between 0 and 24 hours on working and non-working days.

The time limit for the collection of bids will be set at between 9 and 15 hours on working days. By way of exception, if the most advantageous valid bid is given in the last 10 minutes before the expiry of the time limit specified in the call for participation in the online judicial auction as the closing time for the collection of bids, the

bidding will be extended by 10 minutes from each last most advantageous valid bid until 10 minutes have elapsed since the last most advantageous valid bid.

The guide price of the item on sale, which is the price at which bidding commences, is determined by the court. On completion of the online judicial auction, FINA will submit a report to the court containing the information laid down in Article 25 of the Rules of sale.

The online judicial auction procedure takes place before FINA, and payments are made through a bank transfer. The bidder does not have to be present at the auction in person, but may participate in that procedure remotely.

The court will issue a written decision (adjudication decision) to be displayed on the court bulletin board and on the FINA website.

In the case of movable property sales, at the proposal of the enforcement creditor, the sale of movable property may also be done by online judicial auction, to which the provisions of the EA relating to the online judicial auction of real estate (Article 149(7) of the EA) will be applied *mutatis mutandis*.

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