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“At the Drop of the Auctioneer’s Hammer”

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Recently, both the North Dakota Real Estate Commission and the Public Service Commission were asked if an auctioneer who negotiates a sale of real estate *after* the end of the auction sale is required to have a real estate license. The Public Service Commission regulates auctioneers; the North Dakota Real Estate Commission regulates real estate salespersons and brokers.

Currently in North Dakota, auctioneers can sell real estate *at public auction* without a real estate license. This is allowed because section 43-23-07 of the North Dakota Century Code provides certain exceptions to the definition of real estate brokers and salespersons. Specifically, at subsection 3, the statute provides the terms “real estate broker” or “real estate salesperson” do not include “any person selling real estate as an auctioneer, provided the sale is advertised as a bona fide public auction.”

Another section of the real estate chapter, section 43-23-05, provides “no person may act as a real estate broker or real estate salesperson, or advertise, or assume to act as such a real estate broker, or real estate salesperson, without a license issued by the Real Estate Commission.” Taken together with the exception for auctioneers (because they are not included in the definition of “real estate broker” or “real estate salesperson”), this means the real estate license law does not require a real estate license for “any person selling real estate as an auctioneer, provided the sale is advertised as a bona fide public auction.”

So the question becomes, how broad is this exception for auctioneers? When is a person “selling real estate as an auctioneer” at a sale advertised as a bona fide public auction so they do not need a real estate license, and when are they not? According to the Public Service Commission, at an auction sale, the contract for sale becomes complete when the bid is accepted. The bid is accepted when the auctioneer drops the hammer, or announces in some other acceptable manner that the property has been sold.

In addition, although the written contract memorializes what took place at the auction, the *auction* is complete for the sale of that real property when the bid is accepted. In other words, it is the Public Service Commission’s position that once the hammer drops in a sale of real property at an auction, the auctioneer is no longer “selling real estate as an auctioneer” at a public auction. The North Dakota Real Estate Commission agrees with the Public Service Commission’s interpretation. Therefore, any subsequent action by an auctioneer, such as contacting the second bidder if the contract formed at the drop of the hammer is not realized, is beyond the scope of “selling real estate as an auctioneer” at a public auction. Because of this, a real estate license is required for any such activity by an auctioneer.

So, in summary, an auctioneer can sell real estate at public auction without a real estate license, but once the hammer drops, the auctioneer is required to have a real estate license to proceed with any further actions in selling real estate.