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Using the auction process to maximize value in a 1031 exch.

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Investors today can find themselves daunted by the prospect of selling their highly appreciated real estate given the complex issues which must be addressed to ensure that the investor receives maximum value on the sale of his/her property. These issues include how and where to market the property, how to evaluate and qualify the offers received and the offerors that made them and how to determine the true fair market value of their property given its highest and best use. Ideally, if an investor could convey information about the property to all potential buyers, the marketplace would itself determine its highest and best use and, consequentially, its fair market value. Therefore, since disseminating this information to all potential buyers is so essential to a successful marketing and sales program, sophisticated investors are increasingly elect-

ing to sell their property via auction. Note that while auctions were traditionally utilized to sell bankrupt or non-performing assets, this is no longer the case. Highly appreciated, performing properties are now commonly sold via auction as well.

Proceeding with an auction as the selected disposition strategy provides numerous advantages with which conventional methods of sale simply cannot compete. The real estate auction is an accelerated and structured sale whereby the seller alone sets the terms of sale, including those of the actual purchase and sale agreement. A properly conceived marketing program should be comprehensive, the goal of which is to reach all potential buyers in the marketplace for the subject property. The seller's property is sold and subsequently closed upon as-is and on a non-contingent basis

on dates that are designated by the seller. Furthermore, inherent in the auction process is a deadline which creates the sense of urgency that forces buyers to act immediately. Finally, in many cases, a property sold at auction will attract more potential buyers than one sold conventionally simply because many buyers have the perception that they may be able to obtain a better deal when purchasing through an auction.

Another major advantage that the auction provides is the minimization of carry costs associated with prolonged conventional marketing programs. Moreover, not only will the competitive bidding process, sustained by an atmosphere of excitement and urgency, yield the highest price for the seller, it may also in fact cause the property to trade for a premium. In effect, the auction process establishes value without ever setting a ceiling on price. Consider a conventional program where it is unlikely that property will trade for more than the asking price, which is generally the starting point. In an auction, however, bidding begins below market value and

stops at the point when no one is willing to pay more. Once again, that point may be higher than the asking price the seller would have set in a conventional sales program.

Finally, and perhaps most importantly for an investor wishing to exploit these advantages as well as those of a §1031 tax-deferred exchange, is the fact that, in an auction, the timeline for due diligence, inspection, sale and closing are determined almost unilaterally by the seller. While timing is always important, in order to execute a §1031 exchange it is imperative—and the auction affords a seller with the ability to sell property as-is and on the timeline that is consistent with the seller's trading objectives.

Part two can be seen in the October 28th edition of the New York Real Estate Journal.

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