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# THE ART OF THE AUCTION: PRACTICAL INSIGHTS FROM SECTION 363 SALE PROCESSES

*Navigating a bankruptcy-sale process requires the implementation of various procedures and following numerous requirements to ensure that the integrity of the sale process is preserved and a commercial reasonableness standard is satisfied. This article reviews the necessary steps in enabling a debtor in a chapter 11 bankruptcy to successfully implement a section 363 bankruptcy sale and cautions readers as to what may ensue if the appropriate steps are not followed.*

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In bankruptcy, a powerful tool in the form of "Section 363 sales" exists, which provides a buyer with numerous protections as part of its acquisition of assets. Section 363 of the Bankruptcy Code authorizes a debtor (or trustee) to sell all or a portion of its assets "free and clear" of any liens, claims, interests and encumbrances outside of the ordinary court of business. These transactions are court-supervised and require notice and a hearing.

Auction sales conducted under Section 363 of the Bankruptcy Code also establish the ability to uncover the true worth of assets. When the value of a distressed business, real estate, or intellectual property is uncertain, auctions allow the market to speak for itself. They replace closed-door negotiations and arbitrary valuations with open competition and structured price discovery.

More than a procedural formality, the auction process undergirding Section 363 sales is a critical mechanism for promoting transparency, fairness, and competition in distressed asset sales. By subjecting the asset-disposition process to competitive market dynamics, auctions mitigate information asymmetry and protect against insider favoritism. In doing so, auctions facilitate real-time price discovery, foster creditor confidence in distressed asset dispositions, and help achieve one of bankruptcy's fundamental goals: maximizing value for the estate and its creditors.

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