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Illegal housing bidding on rise

*by **Catherine Reagor** - Nov. 22, 2009 12:00 AM*
The Arizona Republic

When foreclosure homes come up for public auction in Phoenix, a minimum opening bid is set and bidding is open to anyone.

At least that is the way it's supposed to work.

But a *Republic* investigation into the daily public auctions held on the Maricopa County Courthouse steps and at some local law offices suggests a growing number of homes are sold for less than the posted opening bid.

Prices on some foreclosure homes are being dropped below the opening bid just hours or even minutes before the auction. Buyers aware of the "drop bids" scoop up the houses before other bidders know about the price drops.

Drop bids violate the state's foreclosure-sale laws, say the state's leading court-appointed foreclosure-trustee attorneys.

This illegal practice comes at a time when it's normal for 4,000 Valley homes to be foreclosed on and put up for auction each month. Until a few months ago, most of the homes failed to sell at auction and went back to the lenders.

But last month, a record 1,000 foreclosure homes sold through public auctions, five t imes the number sold at auction in January.

Real estate market watchers and unsuccessful bidders at the auctions say drop bids are driving the record number of auction sales.

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Then the housing-market crash drove home prices down dramatically - a 50 percent drop since 2007. Now, investors who bid on homes won't pay prices based only on what a homeowner owes on a , a figure that can be higher than the home is worth. There would be no profit reselling it.

Lenders would rather cut prices than continue to carry the foreclosed homes on their books, observers say. Why lenders would drop prices at the last minute, instead of posting a lower opening bid the day before as required by law, is unclear.

Drop bids compromise what was intended to be a fair and transparent way for lenders to foreclose on homes and liquidate them, as well as a way for people to obtain homes at sometimes bargain prices. The practice of drop bids hurts a number of parties:

• People losing homes who are not offered the lower "drop bid" price. A buyer who lost a home owing $200,000 to the bank might

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then see it resold for $50,000 but would not have had the chance to bid on it at the lower prices.

• Bidders who do not receive information on drop-bid prices.

• Lenders with other homes to sell at auction who must compete with last-minute drop-bid deals.

Drop-bid purchases enable the few who know about the deals to buy homes and quickly resell them for hefty profits.

Foreclosure auctions are held every weekday in metropolitan Phoenix on the Maricopa County Courthouse steps and in the offices of attorneys acting as trustees for lenders.

In foreclosure proceedings, trustees are attorneys, real estate or insurance agents licensed by the state to handle the sale of foreclosure properties. A trustee must make sure property owners are contacted and given all the legally required information about their foreclosure.

Lenders must hire trustees to handle their foreclosure property sales. No state or county agency monitors the auctions.

In this atmosphere of little oversight and record numbers of homes going to foreclosure auction, state laws are being ignored, and the foreclosure process has been compromised.

Lenders are required by Arizona law to hold foreclosure auctions when taking back a home. A home can't be foreclosed on in Arizona without a "notice of trustee sale" and then a trustee sale.

Federal investigators said they have just begun their own investigation into the auctions in response to complaints about the bidding process.

"No one regulates those auctions," said Diane Drain, a Phoenix attorney and trustee. "But there are laws that dictate what can and can't be done."

How auctions work

When a homeowner falls behind on , the lender begins the foreclosure process by filing a notice of trustee sale with the Maricopa County Recorder's Office. An auction date is set then, but the date can be moved or canceled depending on negotiations between the lender and borrower. Trustees set the opening minimum bid - the amount that traditionally was the amount owed on the home. But that was before the housing market crash.

Real-estate analysts say lenders now don't mind making less money at auction because they still avoid taking the homes back and f ixing them up to put on the market, which can cost them tens of thousands of dollars.

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All Valley foreclosure auctions used to be held at the county courthouse. But as foreclosures have climbed, auctions have expanded to the offices of lenders' trustees. Now, as many as five foreclosure auctions are held a day in metropolitan Phoenix. The main auction on the courthouse steps starts at noon. Auctions in the law offices begin at 9 a.m. None of the auctions overlap, so bidders can attend any auction in pursuit of any property. Arizona statute requires bidders to bring a $10,000 cashiers check to participate in an auction.

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Valley foreclosure auctions are packed these days. Dozens of people show up at the courthouse for the auction, usually up to an hour before it starts. Most bidders wear tennis shoes so they can move quickly and h ats and sunglasses to protect their faces from the Arizona sun. Auctioneers know the regulars by name, as do the hot-dog vendors set up in front of the courthouse steps.

Veteran bidders have seats with shade right next to the auctioneers and even meet with the auctioneers at the cafe adjacent to the courthouse steps before bidding starts. Novice bidders are conspicuous as they try to figure out the system and find a spot in the crowd around the auctioneer calling off property addresses and bids.

Potential buyers can hire people to represent them at auctions. These representatives tend to wear wireless cellphone earpieces so they can communicate with clients once the action starts. Some also carry walkie-talkies to communicate with other people on their team bidding at the auction.

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Foreclosure auctions held at Valley law firms don't draw as many bidders and are more subdued. Most are held in corporate conference rooms. Bidders aren't encouraged to linger before or after.

Arizona law requires opening bids on the foreclosure properties to be posted at 9 a.m. the day before the auctions. This is so all potential bidders, including the homeowner, have the information in time to research a property and line up money to bid.

This is where sources involved with auctions say things have gone wrong.

Drop bid

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A drop bid is a tactic used to sell a property faster, especially when there are many houses to sell. While legal in some states, drop bids are illegal in Arizona, say some top trustees, including one who helped write the state law.

"It's common knowledge (in the foreclosure market) that a certain California trustee has been lowering the minimum acceptable bid hours and sometimes minutes before the scheduled trustee's sale," said Tom Ruff, an analyst for the Arizona property-records research firm Information Market. "The amount by which these bids are dropped can be substantial."

Ruff identified many drop-bid deals by checking the posted opening bid the day before the auction and then the actual sales price. Houses that sold for less, he identified as drop-bid sales.

Ruff said other trustees also have started to drop bids the day of auctions. The number of homes purchased through drop bids varies by day. They are difficult to track because while trustees must post opening bids as part of the foreclosure auction process, they don't have to file a public document with the opening-bid asking price.

Most trustees list foreclosure-auction information on their Web sites. Some also have recorded telephone messages with the information.

The practice has become common enough that "drop bid" services have sprung up offering bidders last-minute updates on opening-bid prices on foreclosure properties for a fee.

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However, not all bidders receive the new foreclosure pricing information.

"Only a small group of insiders are hearing about drop bids," Ruff said. "I know the usual suspects on the courthouse steps love this tactic. Of course, they love anything which gives them an advantage and increases their bottom line."

Elusive profits

Valley foreclosure auctions have been a lucrative niche business for a small group of investors and lawyers for many years.

Before the recent housing-market crash, Valley foreclosure auctions always drew bidders who were mainly investors. Individual investors and well-financed investment groups followed foreclosure listings closely, checked out the homes and bid based on the properties they could fix up and flip for a fast profit. The big groups could buy a home at a foreclosure auction and within an hour have an employee knock on the door to tell the former homeowners they had to move.

The Valley's steady increase in home values worked for investors who could buy foreclosure houses and then flip or rent them for a profit. Foreclosure auctions slowed during boom years because struggling homeowners could sell their homes. Now, with homes sales and values both down, turning foreclosure homes at a profit is harder.

But buyers who get a house at auction in a drop-bid may still turn a big profit.

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Oversight

The foreclosure process is mandated by Arizona state statutes, but with little oversight.

"There's no regulating body overseeing trustee-sale auctions in Arizona," said Beth Jo Zeitzer, a former trustee attorney who now owns the real-estate brokerage R.O.I. Properties, which specializes in foreclosures. "If there's a violation of one of the state's foreclosure statutes, a suit can be brought against the trustee. Sales could be declared invalid and canceled."

Some trustees and lenders might not realize that dropping the opening bid on a home the day of the auction violates state statues. Buyers purchasing the foreclosure properties also may not be aware it's illegal.

Drain, the Phoenix attorney and court-appointed trustee, was among the group of Arizona attorneys who wrote the law. She said drop bids are clearly illegal. "The trustee has an obligation to provide that credit bid to anyone who asks no later than 9 a.m. the day before the sale," she said. "Failure to provide the credit bid within that period will require that the trustee's sale be postponed."

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