

Section 363 Sales - Including Stalking Horse Representation



Section 363 of the Bankruptcy Code allows for sales of bankruptcy estate property outside of the ordinary course of business. This has evolved from a narrowly-construed authorization for occasional sales of property to a procedure by which substantially all of the assets of an estate can be sold, sometimes early in a case. Section 363 sales are handled by a trustee in a liquidation case or, in Chapter 11 reorganization, by the debtor in possession.

Our firm has represented debtors in possession and buyers in Section 363 sales, which includes representation of “stalking horse” bidders. Such representation requires a high level of expertise in bankruptcy law, and often in real estate or merger and acquisition law, because “stalking horse” bidders often take the lead in document preparation or structuring how a Section 363 sale is handled. Often, a “stalking horse” also seeks (and is granted) a break-up fee or some form of compensation for its efforts should it not be a successful bidder.

In Chapter 11 cases, Section 363 sale procedure has evolved where bidding procedures can include items such as sale structure, bid procedures, qualifications for bidding, contract templates, secured lender credit bidding, and many other processes.

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