

## **Mortgage Observer**

### **Breaking Up is Hard To Do: Inside the Fate of 251 Park Ave. South**

"Sell the building." So began my great adventure of 2013.

Earlier this year, **a court ordered me to hold a public auction of 251 Park Avenue South**, a 16-story office building that is almost 70 percent vacant—an incredible opportunity for someone to create a new landmark in one of the hottest neighborhoods in New York City.



Joshua Stein.

The court decided the property had to be sold because the co-owners weren't getting along. When that happens, New York law says a court can order the sale of the property. The proceeds of the sale are then divided among the fighting co-owners. It is a remarkable process—a "partition sale"—but it's a traditional element of American real estate law and one of the things that can happen when multiple parties have ownership interests in the same real estate.

Partition sales usually happen when two siblings fight over a house they inherited, or when a family has some other form of falling out. These sales are rare for commercial real property, because when multiple parties own commercial real property, they usually own it in a limited liability company. In the occasional case when they own it as tenants in common, they typically have a tenancy-in-common agreement that defines their relationship. In that agreement, everyone typically waives any right to force a partition sale.

In the case of 251 Park Avenue South, however, **the Ring family** had owned a 50 percent interest in the property for decades, and the other 50 percent found its way into the hands of an investor, reportedly an entity owned by **Extell Development**. The co-owners had no tenancy-in-common agreement or any other agreement regarding the property. The different parties just owned different percentage interests in the property. The investor said it wasn't happy with how the property had been managed and exercised its right to force a sale. And there we are.

The sale will take place on August 28, 2013 at the New York State Supreme Court on Centre Street. I will be the auctioneer.

Conceivably, the co-owners could stop the process by settling their differences. Maybe one will buy out the other(s). But if they haven't yet figured out how to do that, they seem unlikely to change their minds now. So my challenge is to achieve the highest price for the property.

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Most commercial real property changes hands through a process that involves brokers and exhaustive legal negotiations, typically followed by a voluminous purchase-and-sale contract that devotes a few pages to 99 percent of the transaction: the seller's obligation to convey the real estate. In the rest of the contract, the seller tells the buyer various facts about the property. Then the contract deals at length with what happens if those assurances are wrong. Many more pages devote themselves to hypothetical eventualities, such as condemnation, unexpected title problems, tenants in default and so on. The idea is to give the buyer certainty about what it is getting and deal with every possible eventuality, at significant cost in time, legal fees and uncertainty during negotiations.

In a typical court-ordered auction sale, however, the contract is simple and says very little more than this: the highest bidder will pay a certain amount for the property and will close within a short time. In a bankruptcy court sale, the process often starts with a negotiation and a somewhat typical purchase-and-sale contract, followed by an open bidding process, often with a breakup fee if another purchaser outbids the original contract purchaser. But 251 Park Avenue South is not a bankruptcy sale.

Without any of the familiar language from purchase-and-sale contracts, will bidders at the auction of 251 Park Avenue South bid as much as if they were buying the property under a standard purchase-and-sale contract? I am trying to make sure the answer is yes.

The key to doing that consists of giving potential buyers as much information and comfort as possible about the property—as close as possible, I hope, to what they would obtain if they bought through a negotiated bidding process and an ordinary purchase-and-sale contract.

So I've collected all the information that any seller would typically provide and made it available on a secure website. I am requiring purchasers to sign confidentiality agreements, not only because the parties care about confidentiality, but also so I know who is looking at the property and to prevent unexpected claims. And I am offering tours so bidders can see the merchandise.

Ask me on August 29 whether I think I achieved my goal. In the meantime, to find out more about the upcoming public auction and 251 Park Avenue South, visit the website I created, [www.251pas.com](http://www.251pas.com).

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