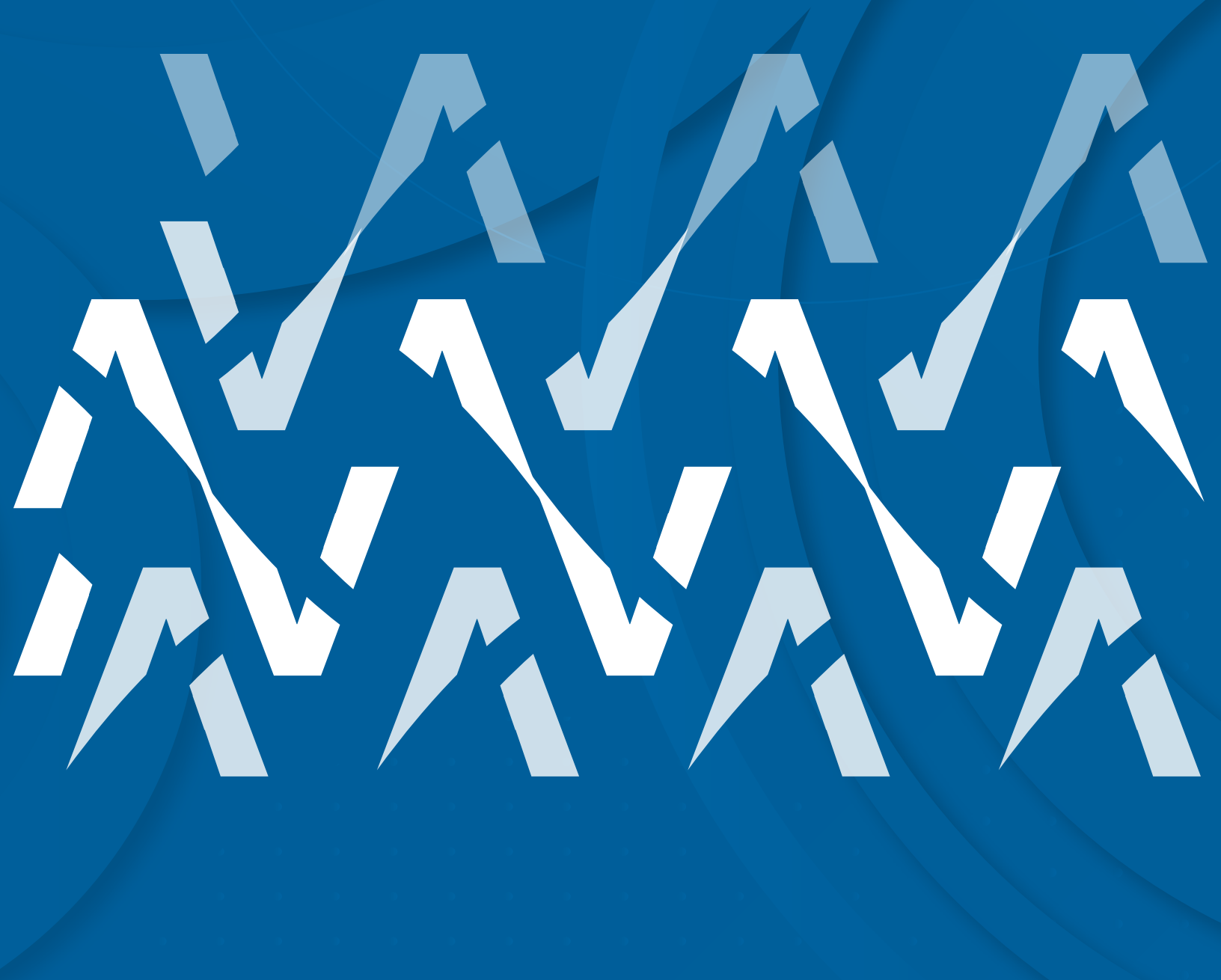




Why Attorneys Rely on **Professional Auctioneers** to Achieve Commercially Reasonable **UCC Article 9 Sales**



When a borrower defaults on a secured loan, attorneys are often called on to guide the lender through the UCC Article 9 foreclosure process. While Article 9 provides a streamlined, non-judicial path for recovering value from personal property collateral, it also imposes a strict—and litigation-sensitive—standard: every aspect of the sale must be commercially reasonable.

For counsel, the challenge is simple: how do you ensure the lender's disposition of collateral withstands scrutiny from debtors, guarantors, and the courts? The answer increasingly hinges on one strategic decision:

Bring in a qualified, experienced auction company.

As a firm that conducts UCC Article 9 sales nationwide, we see firsthand how professional auctioneers protect lenders from claims, maximize recovery, and create the arm's-length process courts expect. Below, we outline why partnering with an auction firm isn't just helpful—it's essential.

Understanding the Attorney's Risk: The Commercial Reasonableness Standard

UCC Article 9 grants lenders the ability to liquidate personal property through either public or private sale. But Section 9-610 is clear: method, manner, time, place, marketing, and terms all must be commercially reasonable.

An attorney can construct all the right notices and paperwork — but if the sale itself was poorly marketed or insufficiently competitive, the creditor's deficiency claim may be jeopardized and litigation risk skyrockets.

When this standard is challenged, courts look beyond the simple act of selling. They analyze:

- How the collateral was exposed to the market
- Whether the sale terms were typical for the asset class
- Whether the lender took steps to find real buyers
- Whether the sale realized the best reasonably obtainable price
- Whether the process aligned with industry norms



Where Auction Professionals Add Critical Protection

1. Demonstrable Market Exposure

Courts expect lenders to do more than simply list collateral—they expect a real effort to reach the right buyers. A qualified auction firm brings:

- Established databases of motivated bidders
- Industry-specific marketing channels
- Multi-platform advertising strategies
- Outreach to niche markets when collateral requires it

2. Competitive, Arm's-Length Bidding

A public auction conducted by an independent firm creates the environment courts view as commercially reasonable:

- Open, competitive bidding
- Transparent procedures
- An arm's-length sale without insider influence
- A third-party professional determining timing, method, and terms

3. Realistic Valuation & Market-Aligned Strategy

A commercially reasonable sale requires thoughtful planning. We assist attorneys by:

- Evaluating whether collateral is best sold individually or in bulk
- Setting sale timing based on market norms
- Assessing whether specialized marketing is required
- Providing valuation guidance based on real-world buyer behavior

4. Maximizing Proceeds & Minimizing Attacks

Courts routinely scrutinize low sale prices. A professional auction process:

- Reduces the likelihood of a large gap between market value and sale price
- Demonstrates lender good faith
- Shows effort to avoid unnecessary loss
- Helps preserve the lender's deficiency claim



What Happens When Lenders Don't Use a Qualified Auctioneer



Courts have found sales commercially unreasonable when lenders:

- Failed to advertise to industry-specific buyers
- Sold niche collateral without proper exposure
- Accepted far-below-market bids
- Conducted rushed, poorly attended sales
- Used methods inconsistent with trade practice

Our Role in Your UCC Article 9 Strategy

When attorneys involve us early, we help ensure:

- Marketing and sale procedures are fully documented
- Collateral is positioned for maximum buyer engagement
- Sale timing and method mirror industry practice
- The process can withstand judicial scrutiny
- The lender realizes the highest achievable value

Conclusion

The UCC standard is clear, but meeting it requires more than procedural compliance. It requires a sale process that is market-driven, transparent, and defensible. For attorneys advising secured lenders, partnering with a qualified auction company isn't just a best practice—it's the strongest defense against claims of improper foreclosure and the most effective way to protect the lender's recovery.

PROJECT LEADERS

OREN KLEIN



Oren Klein is a restructuring and insolvency professional specializing in assignments concerning bankruptcy trustees, federal and state receiverships, special fiscal agents, special masters and assignments for the benefit of creditors. Mr. Klein has served as a Partner with AuctionAdvisors for the past 12 years. Prior to his position at AuctionAdvisors, Mr. Klein was a Partner at Integrated Property Group, LLC for over 4 years. Mr. Klein currently serves as the Chairman of the Turnaround Management Association's New Jersey Chapter with over 220 members in the insolvency and restructuring industry. He also served as a member of the Chapter Resource and Response Committee for the Global Turnaround Management Association serving 52 Chapters with over 10,000 members worldwide.

Mr. Klein holds a bachelor's degree from Rutgers University and is a graduate of The World Champion College of Auctioneering. He is a real estate broker in 5 states and a licensed auctioneer. Mr. Klein has also served as Special Master and Court-Appointed Receiver in several state court actions.

JOSHUA OLSHIN

Joshua Olshin is a partner at AuctionAdvisors and brings his extensive experience advising corporations, financial institutions, municipalities and individuals on the disposition of assets throughout the United States. Before entering the auction business, Mr. Olshin worked as a corporate/transactional attorney in private practice for more than 8 years, beginning his career at Skadden Arps Slate Meagher & Flom and then at Friedman Kaplan Seiler & Adelman. During his time as an attorney, he advised top Fortune 500 companies on the acquisition and disposition of corporate assets.

Mr. Olshin received his B.A. from Johns Hopkins University, his J.D. from Northwestern University Law School and his M.B.A from INSEAD (Fontainebleau, France). Mr. Olshin is a member of various trade organizations and his affiliations have included: Turnaround Management Association (TMA), American Bankruptcy Institute (ABI), National Association of Home Builders (NAHB), Urban Land Institute (ULI), Mortgage Bankers Association (MBA), National Association of Auctioneers (NAA) and is admitted to the New York Bar Association.

