

Auctions

3-2-1...Sold!

Purchasing at an auction is easy, it's also the easiest way to make the worst decision in your life if you have not done your homework. If you are thinking of buying a residential or commercial property at auction, you need to be well informed about your rights and responsibilities before you raise your hand. Make sure you consider the following tips before you buy or sell property at an auction.

Auction Contracts are different

Did you know that a Contract of Sale for property to be sold at auction generally contains different terms to that of a contract for private sale? The vendor is required to spell out the terms of the auction and to make a number of disclosures. Therefore, buyers should carefully review the terms before you arrive on the day. Similarly, sellers need to ensure that you engage experienced lawyers who can help make your deal binding.

Whilst the auctioneer is obliged to make the contract available for inspection immediately prior to the auction, it's usually too late to call your lawyer at that time. Request the estate agent to send you a copy of the Contract of Sale for review and seek advice from your lawyer at least 1 week prior to the auction.

No Cooling Off Period

Unlike a private sale, when you purchase property at an auction, you are required to exchange contracts and pay the deposit on the same day that the auction took place on.

More importantly, the cooling off period does **not** apply to Contracts of Sale when the sale is by publicly advertised auction. This means that you cannot change your mind or terminate the contract after you sign the contract or get legal advice on the contract.

Get legal advice before you sign the Contract

Make sure that you spend time to properly read the Contract of Sale and any special conditions imposed on the transaction. If there are terms which you wish to negotiate, this can be done via your solicitor prior to the auction day. We are often engaged to negotiate settlement terms, reduced deposit or to vary special conditions. However, if you do not make arrangements beforehand, you will not be in a position to change the terms of the Contract unless you can obtain the consent of the seller as you will be bound by the terms of the contract.

Subject to...?

Many people today are very careful when they buy property and even though they are prepared to sign a Contract of Sale, they are only prepared to be bound by it when the buyer has satisfied itself of a number of conditions. The common conditions are to sign a contract subject to finance or subject to a satisfactory building or pest report being conducted on the property. This way a purchaser buys with the peace of mind of knowing exactly what they are buying and what they can afford.

When you purchase at auction, you are buying the property “as is” including all defects that are known or unknown at the time and irrespective of whether you can obtain finance. Therefore, you would be wise to obtain finance approval before you raise your hand and to organise any necessary inspections in advance.

Can I terminate a contract if I later discover problems?

It is very difficult to avoid a contract when it is purchased at auction. If the problem arises because you have failed to investigate the matter prior to bidding then the principle of *caveat emptor* (which means buyer beware) is likely to apply and you are usually required to complete the transaction.

If there has been some misrepresentation or dishonesty involved, then there may be avenues to investigate. However, even if you are able to claim compensation or try to renegotiate the terms of the Contract, this is likely to result in significant legal costs and potential court action. Therefore, it is important for you to be sure of your purchase before (not after) you bid at the auction.

Buying in whose name?

If you are not sure of whose name the property will ultimately be purchased under it would be best to sign the contract with “and / or nominees”. However, please note that the nomination process is not intended to be used as a re-sale provision. This means that there are restrictions on who you can nominate to and strict procedures which must be adhered to in order for the nomination to be effective. Please note that sometimes this will result in additional costs to the purchase price.

It is also important to know that the person who signs the contract will still be bound by the contract and be responsible for performance of the contract despite there being a nomination. Therefore, nomination does not absolve the original person who signed the contract from his/her obligations.

What are the bidding conditions?

There will usually be a number of conditions imposed on the auction process and in the way bids can be made. Beware of the situations when the auctioneer can make a “Vendor’s bid” and when the “reserve price” has been reached. If the reserve price has been reached, the auctioneer is likely to say that that property is now on the market and will be sold to the highest bidder. In that situation, a late bid (that is a bid made after the hammer falls) will not be acceptable. It is also illegal to obstruct an auction or to make a false bid.

Beware of Mortgagee in Possession Sales

Many times when a bank has taken possession of a property and is selling the property as a mortgagee in possession, the property must be sold at auction. Be very careful when purchasing from a mortgagee in possession and ensure that a solicitor has carefully reviewed your contract prior to making a bid at auction. Sometimes onerous special conditions may be imposed affecting the title of the property or limiting your ability to make adjustments to the outgoings therefore leaving the new purchaser to inherent significant costs.

For this reason, if you are seeking to purchase a property from a mortgagee make sure that you instruct your solicitor to perform a detailed review of the fine print of the contract. Even if this means more upfront legal fees to get the contract right, be cautious of the deal which is too good to be true.

If you are considering buying or selling at an Auction
and wish to obtain additional or specific legal advice,
please [contact us](#) for a free quote today.