

BUYING REAL ESTATE AT AUCTION

Auction is becoming a more common method of buying and selling property. But auction sales are different from other sales and the legal protection that you get is also different.

As a buyer, if you make the final bid, and that bid is accepted by the auctioneer, then you have entered into a legal agreement to buy the property. Any terms of the contract that the auctioneer wishes to make must be made clear to the buyers before the auction commences.

From a buyer's perspective, perhaps the most important point is that where a sale results from the auction it will be an unconditional agreement. This means a prospective buyer must complete all their inquiries, including the checking of title documents, arranging finance and obtaining LIM reports and builder's reports where necessary prior to the auction.

Particulars and conditions of sale

This is the document which describes the property being sold, governs the conduct of the auction, and contains the terms of the contract of sale which will result from a successful auction.

Reserve price

The seller may fix a reserve price. Until the bidding reaches this price, the highest bidder will not actually buy the property. When the reserve price is reached, often the auctioneer will say that the property is "on the market" and from that point the highest bidder will be the buyer.

How do you bid?

Simply attract the attention of the auctioneer by raising your hand, calling out or nodding your head when you catch the auctioneer's eye. The auctioneer will usually nominate the amount of the bid he or she is looking for.

Vendor's right to bid

The vendor may, in the conditions of sale, reserve a right to bid either personally or by an agent, in which case the vendor or the agent may bid.

Property can be withdrawn before auction

There is no obligation on the vendor to hold the sale and the property can be withdrawn from sale at any time before the auction. So, you can submit an offer to the vendor or the agent and if the price and conditions are agreed to the contract is then complete and the property is sold before auction.

What if I need finance?

You can organise through your bank approval to bid up to a certain price.

What if the property does not sell?

If the reserve price is not reached, it is passed in. The highest bidder then is usually given the first right to negotiate with the vendor before other interested bidders.

What are the usual conditions?

In general 10% of the purchase price is required as a deposit with the settlement date usually 30-90 days from the signing of the agreement.

It is important to recognise that in an auction situation the seller does not give the usual package of warranties that you obtain when buying through a listing. In general what you see is what you get and you are left to make your own investigations and satisfy yourself entirely as to the property.

Specifically, under a standard agreement for sale and purchase the vendor usually gives warranties that there are no requisitions or outstanding requirements imposed by any council or government authority and that the chattels are the unencumbered property of the vendor. The vendor also warrants that no works have been carried out without obtaining all the usual council permits or consents, that they were completed in compliance with that permit or consent and, where appropriate, a code compliance certificate was issued for those works. In many cases these warranties are specifically deleted from the conditions of sale at auction. You need to carefully check the particulars and conditions of sale before the auction for these points.

Additionally, the buyer is deemed to have accepted the seller's title, and the standard right to requisition for any defect in the title is removed.

It is therefore necessary to do your homework thoroughly prior to the auction.