

The differences between buying at auction and private sale

legal

By **LOUISE AITKEN**

SPRING IS UPON us, which means a busy time of year for the property market.

Spring is when we usually see more properties going on the market and more properties sold by auction.

So, what is the difference between buying at auction versus buying by private sale arrangements?

From a legal perspective, there are many differences, and you should be aware of all of them before entering the market and bidding at auction.

Here are some of the key differences:

Cooling-off period

Private sale: Purchasing under a private sale arrangement provides a purchaser with the right to a three-day cooling-off period.

The period is three business days and begins from the date you (the purchaser) sign the Contract of Sale.

It's important to note it does not start from the date the vendor countersigns.

Accordingly, do not wait until the vendor signs to complete any further due diligence you may wish to complete.

Auction: Purchasing under auction conditions means legally you waive the right to any cooling-off period.

Auction conditions apply to any

publicly marketed auction and the three business days before and after the marketed auction date.

By way of example, if you purchased a property on Wednesday, September 11, 2024, and the advertised auction date is Saturday, September 14, 2024, you will waive your right to any cooling-off period as this is within the three-business-day period on either side of the marketed auction date.

Contract of sale conditions

Private sale: You have the right to negotiate certain conditions that are acceptable to the vendor.

These may include a finance condition, building and pest condition, or any other additional conditions that may be required.

Recently, Madison Sloan Lawyers has been reviewing more contracts of sale that are subject to the sale of the purchaser's existing property.

Special conditions like those need to be carefully drafted by your Property Lawyer or Conveyancer to ensure you can rescind the contract of sale if the condition(s) are not met.

Auction: Purchasing this way means that you, as the purchaser, waive the right to include any further conditions.

As such, you need to ensure your finance is in order, if required, and inspections have been completed well before auction.

A property purchased at auction is commonly known as an unconditional

contract of sale, which means that the contract is unconditional at the time the vendor and purchaser sign it.

Have your contract of sale and Section 32, vendors statement reviewed.

Before you sign a contract of sale and Section 32, vendor's statement, you should ensure you have had the documents reviewed by a Property Lawyer or Conveyancer.

The review is designed to provide you with the necessary advice and details of any further due diligence you may wish to carry out to ensure the property is the right fit for you.

A contract review often gives a purchaser further insight and power to negotiate.

Furthermore, if you are purchasing at auction, you have no right to cool off, so the contract of sale and Section 32 must be reviewed beforehand to ensure you know exactly what you are signing on the day of auction.

You don't want to find out post-auction that there is an easement or covenant disclosed that is going to prevent you from completing those additional works to the property that you had dreamed of.

Be ready

Speak to the Real Estate Agent well before Auction Day and ask all the relevant questions, including what deposit is required and how this is payable on the day, the preferred settlement period, and any inclusions

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or exclusions that will be set out in the contract of sale.

Ensure all those final questions have been answered following the contract review and any further due diligence has been done.

This may include items such as contacting Council or the Water Authority to ensure that an easement located on title will not restrict any works you have planned or if they do impact any prospective works or renovations, what are the implications.

Have your building and pest inspections completed, and have

the inspector prepare the report well before the auction.

This will give you time to review the report and discuss any necessary changes with the inspector.

Having these discussions and completing the due diligence will allow you to feel confident and prepared to bid at auction.

Louise Aitken, Conveyancing Manager at Madison Sloan Lawyers in Park Orchards.

For more information, go to: madisonsloanlawyers.com.au.