

Heraldhomes Home Truths

COMPILED BY GILL SOUTH

Mortgagee caution

Tony Steindle, property lawyer and co-author of *How To Survive And Prosper In A Falling Property Market.*



TEN MINUTE TIP

Be careful who you pay your deposit to in a mortgagee sale. The contract must prevent it being released to the seller just in case the sale price is not enough to repay the seller's mortgage.

Recent increased advertising of mortgagee sales means the property slump has arrived. While many have questioned and predicted (with some success) the arrival of the slump, speculation turns to when it will end and the best time to buy.

Whether the time to buy is now or shortly, remember that when buying at a mortgagee sale or from a distressed seller you must be careful.

Auctions are used for mortgagee sales. A successful bidder at auction pays a 10 per cent deposit on the day. There is no way out of an auction agreement.

If you are going to make a commitment to buy at a mortgagee sale, you will need to have done your homework. These include having your lawyer check the title to the property, and getting a LIM (Land Information Memorandum) or inspecting the

council property file. Make sure you have pre-approved finance before buying at auction.

Checking council records or getting a LIM report, and obtaining a building report, are even more important for a mortgagee sale.

The standard sale and purchase agreement includes warranties by the seller that they have not received any notices from council and that they obtained consent to any building work.

But the auction agreement for a mortgagee sale does not include these warranties. As a result, making your own enquiries through a LIM and builder's report becomes important.

Make sure what you pay at auction reflects the state of the property at the time of the auction and what it could be like when you settle.

It is helpful where the property is

vacant when you buy at auction. If it is still occupied an owner after the auction may refuse to leave or, when leaving, takes chattels with them such as the dishwasher, curtains and light fittings. Nothing can be done to stop this occurring, but it should be a factor in setting the maximum price you are prepared to pay.

Like all auctions, remember that we all like to win but winning at any cost is not a measure of success in the property game. Always go to auction with a maximum price in mind and don't be influenced by others or the excitement of the auction to pay more than you were prepared to.

An owner of the property can stop the mortgagee sale at any time by finding alternative funding. As a result if the seller finds alternative funding or someone outbidding you, you may end up out of pocket and

unsuccessful in purchasing at auction.

For this reason, it is common to buy directly from the owner who faces a mortgagee sale. This reduces the risk of not purchasing the property you want but carries its own risks.

A standard sale and purchase agreement will be used if you purchase from a seller facing the risk of mortgagee sale. Often the mortgagee sale will only be a matter of a week or two away and time is of the essence.

If you are buying from a financially distressed seller, you may have a few days or a week or more to make the usual enquiries. These will include the same matters as outlined earlier in this column including a title search, LIM and a building inspection.

The advantage of this process is you can get the property under

contract knowing that if you incur costs there is no risk of losing the property you have agreed to buy.

The agreement includes all usual warranties that you would not have at auction. However, don't rely on these warranties — if the seller cannot pay the mortgage there is a fair chance they won't have the money to pay up on a breach of warranty.

Be careful who you pay the deposit to. It should be paid to the agent and, even after the agreement is unconditional, the contract must prevent it being released to the seller in case the sale price is not enough to repay the seller's mortgage.

You should complete a pre-settlement inspection and check that all the chattels are there and no damage has occurred.

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