



## **WHAT HAPPENS WHEN WE FIND A PROPERTY?**

I have drawn together this 'guide' from several decades experience in numerous property transactions. Please note, that no transaction follows an absolute format, so please, take the advice of your solicitor/conveyancer as well.

As the laws in NSW still reflect 'let the buyer beware', there are three key areas that you need to address before you either sign a contract or attend an auction. These three key areas are:

**Finance** – get a pre-approval

**Contract** – know what you are signing

**Enquiries** – do your inspections and searches

Here are 3 steps that you should follow once you find a suitable property:

### **STEP 1 – OBTAIN THE CONTRACT**

When you have seen a property you want to buy, you should ask the managing real estate agent for a copy of the contract of sale and forward it to your conveyancer/solicitor to review it. If you have not requested a copy of the contract of sale, the real estate agent will be unaware of your interest and is therefore unlikely to keep you in the loop with regards to notifying you of other interested parties.

Normally it is an offence for an agent to offer a residential property for sale until they hold a proposed contract of sale (check your relevant state laws). This contract is normally prepared by the sellers' solicitor and will set out the terms and conditions on which the sale will take place. The sections relating to the buyer and the purchase price will be left blank.

The contract should include a copy of the title documents, drainage diagram and the zoning certificate issued by the local council. It may also include council restrictions on the use of the property.

Do not assume that everything you see in the property will be included in the sale. Normally if an item is attached to the building and is essential (ie. hot water system), it will be automatically included. If an item can be easily removed (ie. curtains, dishwasher etc), they are normally excluded unless specifically mentioned in the contract. This information is normally on the front page of the contract.

Make sure you read it carefully. The real estate agent should know what is included, excluded or negotiable. If in doubt, ask and get all the inclusions in writing. If an item is not mentioned in the contract (such as a dishwasher), and the seller agrees to include it, make sure this is added to the contract before you sign it. Your solicitor/conveyancer will help you check the contract so you know exactly what you are paying for.

The other parts of the contract that are commonly negotiable are the length of settlement, the cooling off period and the amount of the exchange deposit.

... You are now ready to make your initial offer on the property!

## **STEP 2 – MAKING AN OFFER**

Often a vendor has been influenced by their real estate agent when arriving at a figure at which they are prepared to sell. Most real estate agents use a combination of recent sales information (eg. how much nearby homes have sold for recently), together with their local experience with the current supply and demand for the type of property to be sold. We can supply you with CoreLogic property reports free of charge, which will include recent sales information.

It is the real estate agents job to act as the middle man between offers from potential purchasers and acceptances by the vendor. Don't be afraid to make offers less than the asking price, however beware of offering something 'too low' (more than 10% less as a rule of thumb), as it may prejudice the agent and vendor from dealing with you. You should make it clear what your offer is subject to (eg. acceptable pest and building inspections or satisfactory valuation by your lender). These conditions mean you do not have to spend money on these due diligences until after your offer is accepted. However, you need to be aware that the vendor is under no obligation to sell the property to you unless you have signed a contract. In a quiet market, it is less likely that you will be gazumped, but if there appears to be significant interest in the property, you may consider signing a contract with a 5 day cooling off period (10

days is the standard so a 5 day cooling off period will make your offer more desirable to the vendor).

You will need to pay a 0.25% 'holding' deposit of the agreed purchase price, and this will "lock out" other offers and give you 5 days to conduct your due diligences. If you discover something that makes you change your mind about the property within those 5 days, you can exit the contract but you will lose the 0.25% deposit.

**We strongly advise against a 5 day cooling off period unless you feel it is absolutely necessary to secure the property, as 5 days is usually not long enough for a lender to conduct their valuation of the property. A 7-10 day cooling off period is recommended wherever possible.**

If you are bidding at auction, you will need to conduct your inspections or searches prior to the auction, as a successful bid at auction is binding and there is no cooling off period.

### **STEP 3 – PAYING THE DEPOSIT**

Upon the end of a cooling off period (private treaty), or upon signing a contract (auction), you will need to pay an exchange deposit. The standard NSW contract says that is 10% of the purchase price. The deposit is held in a trust account (usually by the real estate agent) until settlement.

If you do not have access to 10%, you need to have negotiated a lower amount (5% or a fixed dollar amount). Alternatively, you can negotiate to have a deposit bond accepted. A deposit bond can be used instead of cash, however vendors and agents can be reluctant to accept them, especially if the vendor is relying on the 10% in cash to pay for the deposit on their new home. If a deposit bond is accepted, it will attract additional costs (usually 1.5% of the bond amount) and will take at least 24 hours to arrange.

If you are bidding at auction, you will need to have the deposit accessible to you on the day, as a successful bid is binding.

**You may need to log into your online banking and increase your daily transfer limit prior to auction.**

## IN SUMMARY – PRIVATE TREATY VS AUCTION

### Private Treaty



## **Auction**



## **WHAT DOES YOUR SOLICITOR/CONVEYANCOR ACTUALLY DO?**

A solicitor has a number of key rolls to play in the process of buying/selling and transferring money from a lending institution into the account of the vendor.

As mentioned earlier, you should contact your legal representative early in the process after you've received pre-approval for a home loan, and before you make an offer on a property.

Whether your purchasing in a private treaty or via auction, your solicitor can do a number of things:

### **1. A title search on the land and property**

Your solicitor will contact the local land registry office and ask for the certificate of title. This document details any legally registered dealings on the land that may still be binding. For example, there may be restrictions on access, or the types of fencing that can be constructed. These restrictions will apply to the new owner as well. The certificate of title will also detail ownership changes over the years and note whether there are any mortgages against the title. It is your solicitors job to alert you if there is anything on the certificate of title that may deter you from purchasing the property.

### **2. Local government search**

This will tell you about any special features of the land such as likelihood of flooding, any council rates due or owing and outline allowable uses of the land. You will also be given important information such as the location of underground drains, electrical cables and gas pipes.

### **3. Strata search**

Your solicitor can do a strata search for you. This will look at the body corporate if you are purchasing a unit, and will tell you how well they are running the unit block. It should reveal any structural defects, common-area problems and any ongoing issues with other tenants. Your solicitor will usually charge you an additional fee to obtain the strata report for you. You can obtain one yourself, which may be cheaper. An example of where you can obtain a strata report is [here](#).

### **4. Liase with the lender and vendors solicitor**

Your solicitor will arrange for funds to be transferred from the bank to the solicitors trust account and then to the vendors account at the appropriate time

on the appropriate day (Settlement Day – which is agreed on when you sign the contract of sale).

## **5. Preparing a memorandum of transfer and notices of change of ownership**

They will prepare the above for the local council to let them know who the new rate payer is – you!

### **HOW DOES THE SETTLEMENT PROCESS ACTUALLY WORK?**

Traditionally, on the day of settlement, all parties would meet around a table. They would then pass around documents and cheques, and once everyone had what they needed, settlement would be complete. The problem was, it was quite common for issues to arise on the day (eg. spelling mistakes on cheques) and settlement would be cancelled. With a bit of luck, settlement would be rescheduled for later that same day, but this was not always the case.

Today, settlement is conducted through a digital platform called PEXA.

Once you have signed loan documents, your solicitor and your lender will communicate to open a settlement workspace in PEXA for a specific date and time. On this day, several things happen through the PEXA workspace, including:

- Your lender will provide funds to purchase the property and lodge a new mortgage against the title of the property.
- Funds are paid to the vendor and any existing mortgage they hold is discharged.
- Documents to transfer ownership to the purchaser are lodged with the Land Registry in the corresponding state/territory.

As a buyer, you are notified once settlement has been completed through PEXA.