

# Buying a home at auction

**New laws which started on 28 July 2008 aim to improve the safeguards for people who are buying or selling a property by making real estate dealings more transparent. This fact sheet gives some useful information for consumers who may be considering buying a home at auction.**

Traditionally, auctions have been the preferred sale strategy for agents and vendors during times of peak demand or when a property is in a highly sought after location. The vendor sets a reserve price that they are willing to accept for the property. That figure is not normally disclosed to prospective purchasers or to those bidding at the auction.

Ultimately, it is the bidders who determine the market price of the property. If bidding falls short of the reserve price, the vendor may decide not to sell the house. This is referred to as being 'passed in'. The vendor can choose to negotiate further with any of the bidders, or to put their home up for private sale.

To help you understand your rights and obligations at an auction the conditions of auction must now be on view for interested parties at the auction site at least 30 minutes before bidding is due to start.

## The Bidders Register

Under the new regime, auctions are more transparent than ever before. The new rules mean that if you hope to buy a property at an auction you will need to register as a bidder – preferably before the auction.

- Registration involves providing the agent with your name and address, and presenting proof of your identity to the agent (such as your driver's licence, passport or Medicare card). There's no need to leave the ID with the agent, or let them make a copy.
- You can add your details to a Bidders' Register on the day of the auction or any time before the auction (for example, when attending an open inspection for a property).
- The agent responsible for conducting the auction must provide a 'Bidders Guide' information sheet to each person who registers.
- If you are bidding on someone else's behalf you will need to give the agent that person's name and address. You'll also need to provide evidence of their identity (e.g. a copy of their driver's licence) and a document (or a copy) signed by that person authorising you to bid on their behalf.
- If you arrive late at an auction and would like to bid, in order for you to be registered the auction must be interrupted and your details need to be entered into the Bidders Register before you can bid. However, it is best to arrive on time otherwise it is possible that the auction will have concluded.
- When you register you will be given a bat/paddle with your unique bidder number that you need to display every time you make a bid.
- Those registered are not obliged to bid.

## The Auction Record

In order to improve transparency and ensure greater accountability the legislative changes include a requirement that a written record (the Auction Record) be made in relation to each auction and kept by the agent. It must include:

- a record of the reserve price and any changes to it before the start of the auction or any changes made during the auction
- the 'Bidders Register' containing the details of persons intending to bid, along with a general description of ID sighted
- name of vendor, responsible agent and auctioneer
- date and time of auction
- amount of each bid during the course of the auction (along with the bidder numbers)
- details of vendor bids and the figures involved

## Dummy and vendor bidding

It is illegal for the vendor of the property, or a person acting on behalf of the vendor, to make a bid at an auction of the vendor's property. This type of activity is called 'dummy bidding' and can attract a maximum penalty of \$20,000. However, the auctioneer of the vendor's property is entitled to make up to three bids on behalf of the vendor. These bids must be announced as a 'vendor bid'. The amount of a vendor bid must be less than the reserve price.

## Other offences

Disruptive behaviour at an auction is prohibited. A person intending to bid must not prevent, hinder or harass another potential bidder from attending, participating in, or freely bidding at an auction. It is also an offence to engage in collusive practices affecting free and open competition at an auction. These offences carry a maximum penalty of \$20,000.

## When the bidding is over

The auction is completed when the highest bid has been reached. The auctioneer has authority to accept the highest bid if it is at or above the reserve price. If that price is not reached, and the vendor does not wish to lower the reserve price, there is no sale and the property is passed in.

If an auction has been successful, contract documents are normally signed on the spot and deposit's paid at the same time. Before the auction you may wish to negotiate alternative arrangements with the agent.

**There is no cooling-off period when you buy at auction.** That's also the case for a bidder who negotiates to buy a property after it's passed in at auction - as long as the sale contract is signed before midnight on the same day as the auction. If you were registered to bid but didn't end up doing so and you negotiate to buy the property straight after the auction you are entitled to the two-day cooling-off right.

Auctions can be very emotionally charged and anyone who's unsure about bidding at an auction should consider consulting a specialist to act as an advisor or arrange a proxy.

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