



# Real estate auctions

**An auction is an accepted method of buying or selling a property. This fact sheet contains general information on the process involved in selling or buying at auction.**

## Scope of this publication

This publication provides general information and explains the law in simple language. It is no substitute for the legislation. You should get expert or legal advice about your particular situation.

A real estate auction is the process of buying and selling property by offering it to bidders at a forum conducted by a licensed auctioneer. The property will be sold to the bidder who makes the highest offer, if it is more than the 'reserve price'.

The more common method of selling is through sale by private treaty, where prospective buyers may inspect the advertised property and decide whether or not to make an offer in writing to the seller.

Selling by auction is an accepted real estate practice, and if you are considering buying or selling property through an auction, this fact sheet may help you decide if it is the best method for you.

## The auction process

Before an auction commences the seller will usually set in writing a minimum sale price, called the 'reserve price'. The auctioneer is not permitted to sell the property below the reserve price and it is not revealed to prospective buyers before the auction.

The auction is generally opened with the auctioneer announcing the attributes of the property, and any relevant details such as restrictions on the title and the deposit required. The auctioneer then calls for, or announces, an opening bid, usually below the reserve price. The price is raised progressively as the auctioneer accepts more bids.

When the reserve price has been reached or exceeded, the auctioneer will usually indicate this by saying 'this property will sell today' or something similar.

The person who makes the final bid must then complete the transaction by formally signing their offer to buy, which is then signed and accepted by the auctioneer on behalf of the seller. At this point the sales contract has been concluded (see the section 'The auction sales contract').

When a property is sold at auction, the settlement process is the same as that used when a home is sold by private treaty.

Generally, at the close of the auction, a deposit of 10 per cent of the purchase price is required to be paid when the sales contract is signed. The remainder is paid at the date of settlement, which is usually 30 days after the auction date. The settlement date is included in the conditions of sale and is added to the sales contract and must be initialled by all those involved.

If the auction fails to reach the reserve price, the property is 'passed in' (does not sell). The auctioneer, on behalf of the seller, may enter into private negotiations with the highest bidder or other bidders immediately after the property is passed in, to try to negotiate a sale.

For further information on the settlement process, read the Consumer Protection fact sheet *Property settlement*.

## The auction sales contract

The *Auction Particulars and Conditions of Sale of Freehold Property* form shows details of the auction date, certificate of title, location of the property, chattels, any encumbrances or restrictions on the land, zoning and use, any tenancy agreements and arrangements for the payment of the purchase price.

The *Auction Particulars and Conditions of Sales of Freehold Property* form is read out by the auctioneer prior to commencing the auction, but you may seek to obtain a copy from the auctioneer prior to the auction. If the property sells at the auction, this form becomes the sales contract, and is signed by the buyer and the seller's agent. Generally, the *Joint Form of General Conditions for the Sale of Land* is also attached and forms part of the contract.

For more information about the *Joint Form of General Conditions for the Sale of Land*, see the Consumer Protection fact sheets *Buying a home through an agent* or *Sale by offer and acceptance*.

It is wise for both the seller and prospective buyer to read the *Auction Particulars and Conditions of Sale of Freehold Property* and the *Joint Form of General Conditions for the Sale of Land* carefully before the auction. Once signed, the requirements in the sales contract are legally binding on both buyer and seller.

If you are in any doubt about the meaning of the document, or want to make changes to conditions that you do not understand, then you should seek independent advice from a lawyer prior to attending the auction.

### **Advice to the buyer**

In a sale by private treaty, you can write special conditions into your offer to protect yourself. See the Consumer Protection fact sheet *Sale by offer and acceptance*.

These special conditions may include repairs to the property, building inspections or termite inspections. However, in an auction you do not have this option; you cannot make your offer subject to any conditions and pre-finance approval.

### **Preparation is essential**

If you have decided you wish to bid at an auction, it is recommended that you have pre-finance approval and have developed a good understanding of what the property is worth.

Auction sales are generally not subject to finance. You will also need to have available the amount of the deposit (usually 10 per cent of the purchase price) is paid at the close of the auction when the sales contract is executed.

The primary duty of the real estate agent and the auctioneer is to look after the seller's interests.

It is therefore wise to ask the real estate agent questions about the property, inspect the property carefully, and do your own checks on the property through the local council and other relevant authorities prior to attending the auction. Special rules apply to strata title lots such as units and duplexes, and may require additional ongoing costs. The Consumer Protection fact sheet *Buying a home through an agent* can provide further guidance on the types of checks you can do on a property before buying.

Before bidding at an auction, it is important to have formed your own view about the value of the property. You will not be able to rely on the actions of other bidders to give you an idea of the property's value because some people may be bidding for the seller (vendor bidder). The sellers may make their own bids to reach the reserve price. When properly declared at the start of the auction and at the time of the bid (usually by the auctioneer) vendor bidding is a legal and ethical process. You may check with the auctioneer how they will inform those present that the bid is a vendor bid.

It is recommended that you check if the seller intends to bid by reading the *Auction Particulars and Conditions of Sale of Freehold Property* form prior to the auction. The

seller is required by law to show this if they intend to bid and how many bids will be made. The seller often reserves the right to make ten such bids on the property.

Prior to bids being called the auctioneer will read out the general conditions of sale as set out in the *Auction Particulars and Conditions of Sale of Freehold Property*. If you have any questions about the property that you have not yet resolved, you should ask them before the auction commences. For instance, you may wish to ask if a timber pest or building inspection has been done on the property.

### **Choosing a conveyancer**

If you become the successful bidder, you will need to immediately nominate a conveyancer a settlement agent or a practising lawyer to transfer the land title and conduct the settlement for you unless you wish to do it yourself. It is therefore best to choose a conveyancer before the auction. A conveyancer who is not connected to the seller or the seller's real estate agent is preferable, because they are less likely to have a conflict of interest when representing you. For more information see the Consumer Protection fact sheet *Choosing a settlement agent*.

### **Advice to the seller**

#### **Why auction?**

Sale by private treaty is the most common method of selling a property in Western Australia, but there are times when an auction may be appropriate.

The main attraction of selling by auction is where the property is in a sought-after suburb or is of a unique character likely to generate strong interest among bidders.

An auction is also used when a property requires particular exposure to find potential buyers.

One issue to consider is the cost of an auction, which often exceeds the costs of selling by private treaty. The price of holding an auction will be negotiated by you with your real estate agent and is likely to include advertising and promotion costs, coordination of the auction, auctioneer's fees, hiring chairs and a marquee.

You should also be aware that there are no guarantees in an auction that you will receive an acceptable bid above the reserve price. If the property is not sold, it could affect the eventual sale price of the property because a number of prospective buyers will be aware that your property failed to sell at a bid that was not acceptable to you.

Although there is an increasing trend in the real estate industry to promote selling by auction, it is suggested that you consider your options carefully before making a decision.

#### **Choosing an agent**

If you are considering selling your home by auction you may choose to engage a real estate agent to handle the auction for you. In order to conduct an auction, a real estate agent must have a licensed auctioneer on staff or appoint a consultant auctioneer.

As with any other service, it is wise for you to protect yourself by comparing the fees and services of several agents. Some ways of assessing the agent's expertise include:

- checking that the agent is licensed with Consumer Protection by calling 1300 304 054;
- asking for details of other auctions that the agent has organised;
- asking about possible marketing plans for your property and sample advertisements;
- asking about the auctioneer's skills and experience;
- attending an auction that the agent is conducting; and
- speaking to a person who employed the agent to auction their property.

For further information about choosing a real estate agent see the Consumer Protection fact sheets *Real estate fees – negotiating with an agent* and *Buying a home through an agent*.

### Your contract with the agent

Before real estate agents can perform any services for you, they are required by law to have written instructions from you setting out the services that the agent will provide and confirming the fees and charges in an auction. This contract is known as an *Authority to Auction*. The *Authority to Auction* legally binds you and the agent to the conditions within, so it is worth reading carefully and seeking advice if it is not understood.

The *Authority to Auction* allows the agent/auctioneer to sign the sales contract on your behalf, provided the highest bid is equal to or above the reserve price placed by you on the property.

Make sure you are happy with the reserve price before you go to auction or you risk your property being sold at a price lower than you want.

Some other factors to consider carefully before completing and signing the *Authority to Auction* contract include:

- How long do you wish to engage the agent? This is known as the 'exclusive rights period'.
- What are the maximum marketing charges and expenses you have agreed to pay?
- Are there any other expenses or costs?
- How much is the agent's selling fee (commission)?
- How much is the agent's offering fee? Have you agreed to pay this fee in the event the property fails to sell?

In most sales contracts, the conditions give the agent rights to the selling fee if the property is sold privately or by another agent during the exclusive rights period. The agent is also likely to have rights to the commission if the property is sold, within a set period of time at the end of the exclusive rights period, to someone introduced to the property by themselves or another person during the exclusive rights period.

Before you sign, you may choose to amend the *Authority to Auction* by crossing out or amending any conditions that you do not agree with and signing and dating these changes. The agent would have to agree to these changes by signing and dating them.

Since this *Authority to Auction* contract will become legally binding once it is signed, it is suggested that you seek independent advice from a lawyer if you do not understand parts of the document, or want to make changes to conditions that you do not understand.

### At the auction

You, or your agent, have the right to make bids up to the reserve price. The intended number of bids must be shown in the conditions of sale if you intend to exercise this right.

If the property is passed in because it failed to reach the reserve price, the auctioneer or your agent can negotiate privately with bidders towards achieving a sale.

### Other useful publications

- *Sale by offer and acceptance*
- *Timber pest inspections and reports – A guide to homebuyers*
- *Buying vacant land*
- *Buying a home through an agent*
- *Real estate fees – negotiating with an agent*
- *Choosing a settlement agent*
- *Property settlement*

**Disclaimer** – The information contained in this fact sheet is provided as general information and a guide only. It should not be relied upon as legal advice or as an accurate statement of the relevant legislation provisions. If you are uncertain as to your legal obligations, you should obtain independent legal advice.

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