



Thinking of buying a residential home or investment property?

It is often stated the purchase of a home involves one of life's biggest investment decisions. This statement equally applies to the purchase of residential investment properties. Accordingly purchasers should be well versed in the procedure involved in the conveyancing process and the things that need to be done to protect their interests.

Conveyancing in New South Wales

In NSW residential properties are generally acquired in one of three ways:

- At Auction
- By Private Treaty Contract under a Cooling-Off Period.
- By Private Treaty Contract without a Cooling-Off Period.

Purchasing at Auction

A purchaser who successfully buys a property at auction is bound to purchase the property "at the fall of the auctioneer's hammer". That is when the auctioneer declares that the property has been "sold" to them following the auctioneer's acceptance of their bid. The vendor is similarly bound to sell at that time. Consequently as purchasers who buy at auction or otherwise exchange contracts on the day of the auction do not obtain the benefit of the Cooling-Off period they must undertake any of the desired "pre-purchase investigations" prior to the auction date. These include obtaining pest and building inspection reports etc. As the proposed auction contract is generally available for perusal prior to the auction date a prudent purchaser should always have their solicitor review the contract prior to the auction to advise on the title of the property, the use its current zoning permits or prohibits, the position or potential affect of current services and the terms of the contract relating to completion date, inclusions, e xclusions, disclosures made by the vendor and special conditions contained therein.

Purchasing by Private Treaty

With a Cooling-Off Period

Since the 1980's purchasers of residential properties have been conferred with the benefit of a "Cooling -Off" period in contracts for sale. Under current legislation all purchasers (but not vendors) receive the benefit of a five (5) business day cooling-off period. This cooling-off period can be extended but only by written agreement between the parties. Transactions of this nature most often occur when contracts are signed by the parties with the vendor's agent and are exchanged by the agent once the sale price has been negotiated. A purchaser is required to pay a deposit equivalent to 0.25% of the purchase price at this time (eg. \$750.00 for a property with a price of \$300,000.00). The cooling -off period commences on the first business day after the date on which the contracts are exchanged and expires at 5.00pm on the fifth (5th) business day thereafter. The benefit of this method of purchase is that it enables the



purchaser to have the vendor “locked into the sale” at an early date thus eliminating the vendor gazumping the purchaser or withdrawing the property from sale or otherwise attempting to increase the negotiated sale price prior to an exchange being affected. A prudent purchaser would generally obtain written unconditional finance approval and pre purchase investigation reports before the cooling-off period expires. A purchaser who decides not to proceed and rescind the contract prior to the expiration of the cooling-off period forfeits the 0.25% deposit paid. Otherwise purchasers desiring to proceed are required to pay the balance of the deposit before the cooling-off period expires.

Without a Cooling-Off Period

Most transactions of this type occur when either a purchaser or a vendor is unable or unwilling to sign a contract at the time the sale price is negotiated. In these circumstances neither party is bound to sell or purchase the property until an exchange of contracts has been effected. As such, notwithstanding a verbal agreement between the parties as regards to the sale of the property either party can withdraw from the “transaction” prior to an exchange of Contracts being effected. Under this method most vendors will require that a purchaser waive the benefit of the cooling-off period which necessitates that purchasers obtain unconditional loan approval and pre-purchase investigations reports before exchanging contracts.

Dealing with Accredited Specialists

Property Law has been a significant part of our practice for over 25 years. During that time we have acted in over 11,000 property transactions for families selling or buying their homes, for property investors, developers and builders. We therefore have a broad experience in all matters relating to the purchase or sale of a property which we provide to our clients during the course of any property transaction. In addition, the solicitors who undertake property work in our practice, John Bateman, Michael Battersby and Scott Johnson all hold a Specialist Accreditation from the Law Society of NSW in Property Law. They are ably supported by our property support team, Debbie O'Brien and Jenni Hutchings who between them have in excess of 40 years legal experience in property transactions.

If you are considering the purchase of your residential property or wish to discuss any of the matters addressed above, please feel free to contact John Bateman, Michael Battersby or Scott Johnson of Bateman Battersby Lawyers on (02) 4731 5899 or email to property@batemanbattersby.com.au if you require further information or assistance. Alternatively you may wish to peruse the property section on our website.