Real Estate
A guide for buyers and sellers

Consumer Affairs Victoria

Victoria
The Place To Be

Real estate: a guide for buyers and sellers is the summary approved by the Director of Consumer Affairs Victoria of the rights and responsibilities of buyers and sellers in a residential real estate transaction under the *Estate Agents and Sale of Land Acts (Amendment) Act* 2003.

Additional copies

This guide is available from Consumer Affairs Victoria by visiting the website at www.consumer.vic.gov.au or by telephoning the Estate Agents Resolution Service on 1300 73 70 30.

To order more than five copies at a time, fax a request to (03) 9627 6574 or write to:

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Disclaimer

This guide should not be used as a substitute for the *Estate Agents and Sale of Land Acts (Amendment) Act* 2003 or for professional legal advice.

Contents

Foreword

Buying or selling your home is probably one of the biggest financial transactions you will ever undertake.

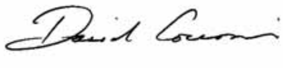
There are many important decisions to make and the aim of this guide is to help you make the right ones. It provides a simple overview of the basic steps involved in a real estate transaction and tips on how to avoid some of the common pitfalls. It also highlights new rules and regulations that provide you with greater protection when buying or selling real estate in Victoria.

We recommend this guide as an essential reference tool for anyone who is thinking about or is currently involved in buying or selling a property. In addition to reading this guide, we encourage you to research, shop around, negotiate and take your time when making decisions.

If you have any concerns, please call the Estate Agents Resolution Service (EARS) at Consumer Affairs Victoria on 1300 73 70 30.

We wish you every success in this exciting endeavour.

Marsha Thomson MP
Minister for Consumer Affairs



Dr David Cousins
Director Consumer Affairs Victoria

Introduction

This guide provides an overview of the basic steps involved in a residential real estate transaction, including laws that regulate the conduct of estate agents and the sale of real estate in Victoria. The contents correspond with the order in which they would normally be undertaken in the sales process. Wherever possible, information is presented for both buyers and sellers. Information that is specific to one or the other is clearly identified in the form of a buyer's or seller's tip. A comprehensive glossary and list of contacts are provided at the back of this guide.

Making the right choices

Buying or selling a home can be a complex and time-consuming process. Even before you make the 'big decisions' of which property to buy, which home loan to select, and which estate agent you engage to sell your home, there are many other important decisions you will need to make. Doing some homework can help you avoid potentially expensive mistakes.

You are more likely to make the right choices if you know what you want; are informed about your options; shop around for the best price, and service or product that meets your needs; refuse to be hassled or hurried into a decision; read everything before you sign it; learn to negotiate; and put your negotiating skills into practice.

Be informed

Make a list of what you absolutely must have in a property so that you don't get carried away and buy something that looks 'great' but doesn't have what you really need. Make a 'wish list' also, so that these desired but non-essential items can be factored into your decision making when you find them in a property within your price range.

Learn as much as possible about all aspects of the property buying and selling process. Find out all you can about the market value of property in your preferred areas by attending auctions, speaking with a variety of estate agents, and reading newspapers for auction results and prices of properties listed for sale.

Shop around

Apart from being informed about current market values, and what you need and want in a residential property, you will also need to be informed about the products and services offered by real estate agents, solicitors and conveyancers, and loan providers. Shopping around is the only way of really knowing that you are getting value for money and that your needs are being met as fully as possible.

Don't hurry

Never rush or be pressured into making hasty decisions. There is a lot of money at stake – a lot of years spent paying off the mortgage. Make sure that you are making this commitment for the right property.

If you take your time and do your homework, you will feel more confident that you have found the right house at the right price, the right agent or the right loan when it comes your way.

Read before you sign

During the buying and selling process you may come across several types of contracts such as loan agreements, authorities to sell, contract notes and contracts of sale of real estate. A good general rule is not to sign any document without reading and fully understanding its contents including all terms, conditions and fine print. Make sure that anything which has been agreed to verbally is put in writing. You will therefore know exactly what you are committing yourself to.

If something is unclear, ask the contractor to explain it to you. If you are still uncertain, it is better to wait and seek professional advice before signing.

Negotiate

Many terms and conditions are negotiable between you and the contractor. Estate agents, loan providers, solicitors and conveyancers, as well as buyers and sellers want your custom. Learn all you can about the art of negotiation and practise negotiating with family and friends before approaching these people and businesses to discuss fees or prices, and services, products or options.

Note: *For the purposes of this guide the vendor or person who owns the property being sold is referred to as the seller, unless otherwise specified.*

“Chapter one
Finance”

1

Buying a property is a large, ongoing financial commitment, so buyers should spend some time working out what they need and can afford.

It pays to be cautious when it comes to credit. Always ask questions about fees and charges, and make sure you carefully study the fine print on all contracts, brochures and information.

Be cautious about any financial advice or referrals given by any real estate agent or mortgage broker with whom you are dealing in a property transaction. Financial advisors must be licensed.

Assessing finances

Borrowers should carefully assess their financial situation and desired standard of living to calculate a loan amount they can comfortably afford. They should take into account not only current circumstances and financial commitments, but any changes that may occur in the future. For example, starting a family could mean a drop in income. It is also important to think about changes that cannot necessarily be predicted, such as rises in interest rates.

The borrower should also factor in additional purchase costs such as:

- legal fees
- loan establishment fees
- government charges such as stamp duty and GST
- property inspection fees
- moving costs
- insurance (building and contents).

Lending criteria

Eligibility requirements vary between institutions, but lenders generally use two criteria to work out how much they will lend:

- the borrower's income and repayment capacity
- the loan to value ratio. This is the percentage of the purchase price that lenders will agree to lend.

The lender will calculate a maximum loan amount. However, as an informed borrower, you are the best judge of what you need and can realistically afford.

As a general rule of thumb, aim to spend less than one third of your gross income on mortgage repayments.

The deposit

Depending on the lending institution and type of loan, a deposit equal to a certain percentage of the purchase price will be required. While most minimum deposits are ten percent of the purchase price, in some cases an institution may lend 100% of the purchase price, requiring no deposit at all. If you are borrowing 80% or more of the purchase price, lenders generally require you to pay for mortgage insurance, which means an additional upfront payment.

Some lenders require proof through bank statements that a certain amount of the deposit came from the borrower's own savings.

Deposit bonds

A deposit bond or guarantee is an alternative to providing a cash deposit or personal cheque upon the exchange of contracts for the sale of land. The use of a deposit bond requires the specific approval of the seller and needs to be written into the contract of sale. Deposit bonds should be used with caution as the buyer is effectively borrowing up to 100% of the purchase price of the property, which must be paid in total on settlement. There may be risks for buyers and sellers where a deposit bond is used.

Insurance

Mortgage insurance

Mortgage insurance or mortgage guarantee insurance applies if you are borrowing more than 80% of the purchase price. This is usually in the form of a one-off premium paid at the time of settlement. Mortgage insurance does not protect the consumer's interest. It protects the lender in the event that the borrower defaults on the loan and the amount still owed is greater than what is received from the sale of the property.

It is important to note that if the borrower defaults and the mortgage insurance is paid out, the insurance company will pursue the consumer to repay the debt.

Under the Consumer Credit Code a lender can require a borrower to take out this insurance.

Consumer credit insurance

Consumer credit insurance is an option for borrowers to guard against losing their property in case they default on the loan repayments. This will safeguard the loan if repayments cannot be made because of sickness, accident or unemployment. Carefully consider the costs of the insurance to determine if the benefits are worth the outlay. Also, study the terms and conditions for any restrictions or limitations, such as a three-month limit on coverage.

Under the Consumer Credit Code it is against the law for a lender to require a borrower to take out this type of insurance.

Consumer Credit Code

To ensure fair dealing and to protect the interests of consumers, all lenders must comply with the Consumer Credit Code. The Code regulates all credit for personal, domestic or household purposes. Under this Code lenders must provide:

- a statement outlining the borrower's rights and obligations
- a pre-contractual statement setting out certain financial information, which must be included in the contract document
- a schedule of comparison rates.

This not only protects borrowers, but also helps them to compare products and make an informed choice.

Choosing a lender

It usually takes some time to find the right home. This gives buyers the opportunity to organise their finances and apply for a loan. Most lenders will approve a loan 'in principle', allowing a buyer to be confident of his or her spending limit when searching for a property. This approval is usually valid for six to twelve months and needs to be renewed after this period. The loan is then formally approved once a purchase has been made.

Choosing the right home loan is as important as choosing the right home. Researching and understanding the home loan market will assist you in choosing the most suitable loan.

There is intense competition among lenders who offer a variety of packages, options and methods of payment. The loan that appears to be the cheapest because it has the lowest interest rate may not be the cheapest option in the longer term when fees, ongoing charges, and penalties are included. Also, it may not have the flexibility and added extras of some other loans.

There are two main types of lender:

- banks
- non-bank lenders such as
  - credit unions
  - building societies
  - mortgage originators.

Many lenders conduct their business through the internet, on the telephone and even by visiting you at home.

Comparison rate

Use a comparison rate to compare loans between different credit providers. A comparison rate is a tool that allows consumers to check the real cost of a home loan. It presents the comparison rate as a single percentage figure, based on the interest rate plus any fees and charges relating to the loan. For example, the lender's advertised interest rate may be 6.30%, but the comparison rate may be 6.95%.

When using a comparison rate, make sure the loans being compared are of the same amount and length of term.

Mortgage brokers

A mortgage broker can assist in finding the right loan. Even if a broker is used, it is best to do some research to be sure that the recommended loan is the right one.

Choosing a broker

Before engaging the services of a broker you should ask for some information about the way his or her business is conducted.

- Find out if they belong to a reputable industry association.
- Ask if they are independent or if they only deal with a certain lender.
- Check that they have professional indemnity insurance.
- Find out if they are a lender as well as a broker, as this may affect their recommendations.
- Check that they offer a wide range of loans from a variety of independent lenders.
- Do not pay an upfront fee.
- Make sure that they disclose all fees and commissions prior to signing up.
- Ask them to justify their recommendations.
- Ask to see a copy of the application and any financial details they send to the lender on your behalf.

Types of loan

There are a variety of home loan types, each offering different rates and features. The generic term for a home loan is a mortgage, but a loan can usually be tailored to suit individual requirements. Lenders will advise on the types of loan they have available. With many packages on offer, it can often be difficult to work out the differences, benefits and disadvantages. Make sure you understand these before signing an agreement.

Choosing the right loan

The borrower should try to obtain as much information as possible and ask lenders to explain terms and conditions of loan packages in writing. Most lenders have software (mortgage simulators) that can create a model of a mortgage, according to variables such as the amount and duration of the loan, and the frequency of repayments (weekly, fortnightly or monthly). By entering these details into the software, the lender can show you a graph of how much will be paid off the loan each year.

Repayment options and switching costs should be taken into account when choosing a loan.

- A flexible repayment option may be beneficial if you are planning to start a family. A basic loan with less flexibility may not allow you to vary your repayments.
- Substantial costs may be incurred for ending or switching from certain loans.

The two basic home loan types are:

- variable loans
- fixed loans.

Variable loans

Variable rate loans, where the interest rate varies throughout the life of the loan, are the most common type of home loan available. The lender will adjust the rate, according to the economic climate and the official interest rate set by the Reserve Bank. Competition among other lenders may also affect the rate. While a fluctuation of one percent may not sound like a lot, it can translate to as much as $170 a month on a $200,000 loan.

Most lenders will offer several types of variable loans, with different rates and added extras. Generally, the loans with the lower interest rates have less flexibility in terms of conditions and fewer or no added extras.

Those with higher rates may offer extras such as a redraw facility, which allows the borrower to draw on money already paid into the loan. They will also have more flexible conditions such as no restrictions on making extra payments or paying off the loan early.

Fixed loans

These loans are set at a fixed rate for a certain period – generally, anywhere between one and ten years. This type of loan allows the borrower to organise his or her finances and repayments without having to worry about fluctuating interest rates. These borrowers do take the chance, however, of not benefiting from a drop in current interest rates. Stiff penalties may apply for breaking the loan contract or paying off the loan early. Most fixed loans have a restriction on extra repayments and limited extra features.

Split loans

Many lenders will allow the borrower the option of splitting a loan into a partly fixed rate and a partly variable rate, at whatever percentage the borrower chooses. For example, an 80% fixed rate with a 20% variable rate. This allows the borrower to customise the loan so as to combine the security of the fixed loan with some of the flexibility of the variable loan.

Capped rate loans

These are loans with rates that cannot exceed an agreed percentage for a fixed period of time, but may decrease during the fixed period.

Honeymoon loans

This type of loan has rates that are lower for the first six to twelve months. After this period the loan reverts to a standard variable rate and the repayments increase. At the end of the honeymoon period there may be 'switch costs' depending upon the type of loan chosen.

Home equity loans

This loan is essentially a revolving line of credit where all salary or wages are paid into the loan account. Interest on the loan is usually set at a higher variable rate than the standard rate. Fees and charges may also be higher.

The credit card can be used to pay for day-to-day running expenses, which can then be paid off once a month via the loan account.

The advantage with this loan is that the borrower's salary paid into the account is being used to pay off the loan. This means the loan may be paid off more quickly and cheaply.

The downside is the temptation for the borrower to overuse the credit card facility. This could result in overspending and means the loan will not be paid off as quickly. Some loans may also have penalty rates if the credit limit is exceeded.

Bridging loans

Timing can be a crucial issue when selling one property and buying another. Sometimes if the right property becomes available, it is not always possible to wait until the current one is sold or negotiate convenient settlement terms. A bridging loan can be used to cover the financial gap when buying one property before the existing one is sold. There is a certain time period, usually six to twelve months, in which the existing property must be sold. A bridging loan can be secured by both the existing and new properties.

Bridging finance is often much more expensive than ordinary home loan finance.

Vendor terms financing

Under a vendor terms contract, finance is supplied by the vendor, rather than by an established credit provider. This type of financing has been used for many years, particularly in the purchase of farm properties.

Wrapping

A form of vendor terms financing known as 'wrapping' also exists.

The vendor buys a property and then on-sells it at an increased price, which is generally between 20–25% above market price. The vendor also provides the finance to the buyer at a higher interest rate than mainstream interest rates – from two to ten percent higher.

Be very cautious about entering into this type of contract.

The penalties for default can be severe.

If you fall behind in your repayments, you may lose:

- your house
- any repayments already paid
- your First Home Owner Grant
- your credit rating.

Before entering into a vendor terms contract the buyer should:

- make sure repayments can be made
- seek independent legal advice
- be clear about will happen if repayments are missed
- get an independent valuation of the property.

Solicitor lending

Solicitor lending or solicitor nominee lending is another alternative means of obtaining finance for a home loan. The loans are usually 'interest only' and require payment of the principal after a relatively short period of time. Make sure that the loan terms and conditions are understood before signing up. It is possible that the comprehensive disclosure required under the Consumer Credit Code may not be provided in such loans.

It is advisable to obtain independent legal advice before entering this type of loan arrangement.

Other considerations

Early repayments

Making lump sum payments or higher loan repayments will help you pay off your loan sooner. It is also possible to shorten the term of the loan by making more frequent payments. For example, weekly or fortnightly payments rather than monthly. While the term (or repayment period) of many home loans is 25 years, the trend recently has been towards shortening the term. For example, to fifteen years.

Depending on the type of loan, there may be restrictions on making unscheduled payments or increasing the number of repayments.

Interest rate rises

In calculating the size of the loan and repayments, the borrower should include a margin to allow for potential rises in interest rates. In the last two decades rates have been as low as five and as high as seventeen percent.

Mortgage offset

This allows interest on savings held by a borrower to be credited against interest charges on the mortgage. This in turn helps reduce the term of the loan by paying off the interest earlier. Carefully check the terms and conditions as hidden fees and charges may apply.

First Home Owner Grant

The First Home Owner Grant scheme provides eligible first home owners with a non-means tested, one-off payment of $7000 (as of 1 July 2000). This is regardless of the purchase price of the property. It can be used for the purchase of an existing home or to build a new home.

Some lenders will arrange the First Home Owner Grant application for their borrowers. Eligibility criteria and application forms are available from the State Revenue Office of Victoria's website at www.sro.vic.gov.au

Applying for a loan

When you apply for a loan, the lender may ask a number of questions to fully assess your borrowing capacity. You should also have a list of questions prepared for the lender.

In addition, you should ensure you have the following paperwork:

- photocopies of current bank account statements
- proof of share holdings and other assets
- details of any second income, bonuses, allowances or benefits
- payslips or a letter from the applicant's employer outlining length of employment and salary
- if self-employed, tax agent income statements and income tax returns
- if self-employed, profit and loss statements certified by a registered accountant
- if also selling a home, copies of exchanged contracts or a solicitor's letter confirming a firm buyer
- if paying out an existing mortgage and starting a new home loan, a letter from the present lender stating amount owing and proof of past repayments
- a photocopy of the front page of the contract of sale, if the applicant has already decided on a property.

The loan agreement

Do not sign the loan agreement without carefully reading and understanding its contents.

Each credit contract and pre-contractual statement must include:

- the amount of credit to be provided
- the annual percentage rate/s
- how the interest will be calculated and when it will be charged
- the total amount of interest if the contract is paid out within seven years
- the credit fees and charges
- how changes in the contract will be advised
- any default rate of interest and how it will be calculated
- the frequency of account statements
- relevant commission charges
- if mortgage guarantee insurance applies
- details of credit-related insurance financed under the contract.

After the contract is signed, the lender is required to provide a copy of the signed contract. Regular account statements should be provided and include:

- all fees and charges
- the amount of credit provided during the statement period
- interest charges, including when they were charged
- the annual percentage rate, including any changes during the statement period
- the opening and closing balances
- the date the statement period begins and ends
- payment transfers to and from other accounts
- minimum payments owed and the due date
- insurance payments made, the name of the insurer and any commission paid
- any corrections to previous accounts.

If you are unsure about anything in the contract, ask for clarification from the lender or seek independent advice from a solicitor or financial advisor.

Telephone assistance

If you need any information about credit, call:
Consumer Affairs Victoria on 1300 55 81 81

“Chapter two Dealing with an estate agent”

2

There are laws that govern the licensing and conduct of estate agents. These laws prohibit unethical practices like underquoting, overquoting and dummy bidding.

A property transaction can be undertaken directly between buyer and seller, without the services of an estate agent.

However, most people will deal with an estate agent when buying or selling property.

If you use estate agents, there are several important things to know about their roles and responsibilities and the rules that govern their conduct.

Licensed estate agents and agents' representatives

Anyone who is in the business of buying, selling, leasing or otherwise dealing with real estate or a business on behalf of any other person, must hold an estate agent's licence or be employed by a licensed estate agent as an agent's representative. An agent's representative needs written authority to act on behalf of his or her employer before commencing work and the licensed estate agent is responsible for the employee's professional conduct.

Only deal with a licensed estate agent or an agent's representative. Ask the agent to prove that he or she is licensed or if dealing with an agents' representative that his or her employer is licensed. If you still have doubts, contact Victoria's Business Licensing Authority on 1300 13 54 52 or check the public register of licensed estate agents at www.bla.vic.gov.au.

Laws governing estate agents

By law, estate agents must:

- advise a client that all commissions and other outgoings are negotiable
- disclose any vendor bids (if auction rules allow vendor bids)
- communicate all offers
- state an estimated selling price in the authority to sell.

By law, estate agents must not:

- use underquoting, overquoting or dummy bidding
- retain advertising or other rebates
- charge a client more for outgoings than was paid by the agent
- charge more than was authorised by the vendor in writing.

The agent–principal relationship

The relationship a seller has with an estate agent is different to that of a buyer. Estate agents are obliged to act responsibly and ethically when dealing with both buyers and sellers. However, the agent's responsibility is to the seller, unless they are acting as a buyer's advocate also known as a buyer's agent. It is important for a buyer to be aware of this whenever he or she is dealing with an agent.

The agent's responsibilities to the seller

Sellers who engage or list with an agent are employing the agent's services to help sell their property. The agent is bound by professional conduct regulations to always act in the best interests of the seller and to engage in good estate-agency practices. The agent will charge a fee for this service, usually in the form of a commission, although it could be a negotiated fixed fee.

A seller can generally expect the agent to:

- give an estimated selling price of the property*
- advise on a method of sale
- advertise and market the property, and provide a marketing plan
- organise and attend open house and other inspections
- attract prospective buyers
- communicate offers*
- organise and conduct an auction
- arrange the signing of the contract.

**These must be undertaken by law.*

The agent's responsibilities to the buyer

A buyer will usually not pay for the services of an agent, unless specifically employing a buyer's advocate. Buyers will generally deal with several agents, depending on who is handling the sale of the properties in which they are interested. They may also leave their details with one or a number of agents indicating the type of property they are seeking and an approximate price range. The agent can then notify them directly when suitable properties become available.

A buyer can generally expect an agent to:

- take the buyer's details and advise him or her about relevant properties for sale
- answer any questions about listed properties*
- arrange inspections
- provide a copy of a vendor's statement upon request*
- communicate offers to the seller*
- organise the signing of the contract.

**These must be undertaken by law.*

Selecting an agent

For the seller, choosing an agent is an important part of the selling process.

There are several ways to help you make this decision.

- Attend local auctions and check the prices of sales. This will help you in gauging the value of your property and when discussing your selling needs with an agent.
- Friends and acquaintances can be a useful source of information.
- Read promotional material from a range of agencies. Local agents are more likely to be familiar with the local market.
- Ring and talk to several agents and arrange to meet them. Find out if they belong to a reputable industry association.

Buyer's Tip #1

If you use a buyer's advocate, make sure that he or she is a licensed estate agent. A buyer's advocate may be engaged to source properties, bid at auction and generally represent you throughout the buying process. You will pay a fee or commission for this service.

Points to discuss

When talking to agents, important points to discuss are:

- their knowledge of the market in the area
- their marketing plan for the property
- their estimated selling price of the property
- their commission, or how much they will charge
- the cost of advertising and other outgoings.

An agent can be asked to provide any quotes in writing. Do not sign anything, including an authority, unless you are prepared to engage the services of that agent.

The marketing plan

One of the most important deciding factors when choosing an agent is their overall marketing plan. Sellers should ask for a comprehensive written plan of the agent's strategy for selling their property. This will be based on the agent's experience, the nature of the property and any specific wishes of the seller. The marketing plan will include an estimated selling price.

The estimated selling price

This is the price the estate agent estimates a property is likely to attract, based on his or her experience and knowledge of the market. It must be recorded in the authority to sell as either a single amount or a price range. If recorded as a range, the difference between the top and the bottom figures must not exceed ten percent of the bottom figure. For example, a quoted range of \$400,000–\$440,000 = (\$400,000 + 10%).

This price is not a sworn valuation or a guaranteed selling price.

The estimated selling price does not have to be the same as the seller's reserve price, although it is recommended that the seller consider using the estimated selling price as a guide when deciding on the reserve price. (See page 31.)

Overquoting and underquoting

The practice of deliberately overstating the estimated selling price to encourage a seller to engage the services of an agent is known as overquoting.

It is illegal for an agent to mislead a seller or prospective seller about the estimated selling price of a property.

It is also illegal for an agent to advertise or advise a prospective buyer of a price that is less than the estimated selling price (or the lowest figure in the range) stated on the authority to sell. This is known as underquoting.

Commissions

Most agents obtain their fee from the seller in the form of a commission upon completion of the sale. An agent cannot obtain a commission without an authority to sell signed by the seller.

An agent is required by law to advise the seller that the commission is negotiable, prior to the seller signing the authority to sell.

There is no set amount for a commission; it is negotiable between the seller and the agent, and can be set at whatever amount both parties agree on.

The commission can be paid as either a flat rate or as a percentage of the sale price.

The agreed commission, whether a flat rate or fee, must be recorded on the authority to sell. If it is recorded as a percentage (%), it must also be shown as a figure in dollar terms. If the agent is using a commission scale, ensure that it clearly and accurately outlines how much could be paid.

For example, the agent's commission may be three percent on a scale up to $500,000 and 3.5% if the price goes above $500,000. The seller may interpret this as meaning that only the amount above $500,000 has a 3.5% commission, but the agent's interpretation may be that if the sale price exceeds $500,000, the entire sale price has a 3.5% commission.

GST is payable on the commission fee. The commission fee should be stated in the authority to sell indicating that it is GST inclusive.

Commission sharing

The agent is required by law to advise the seller in writing if they will be sharing the commission with someone other than another agent or agent's representative in their agency, or a licensed estate agent with whom they are in partnership. A statement must be made listing the people with whom the commission is to be shared, prior to the seller signing the authority to sell.

Advertising and other outgoings

There will be costs associated with marketing and advertising a property, on top of the estate agent's commission. Even if the property fails to sell, the seller may have to cover marketing and advertising costs out of his or her own pocket. This may be avoided by negotiating a 'no sale, no fee' arrangement in the authority to sell. In this instance make sure that there are no hidden charges. The agent can be asked to provide a written schedule outlining advertising and other outgoings to clarify what is being paid for.

All expenses, including advertising and other outgoings, are negotiable and must be recorded on the authority to sell.

Seller's Tip #1

Do not choose an agent just because he or she gives you the highest estimated selling price.

Have several agents inspect your property and give you an estimated selling price. Ask them to justify their price by showing you, for example, similar properties sold at similar prices in the area.

Take into account the agent's overall marketing plan when making your decision.

Rebates

Agents place substantial amounts of advertising and can be offered significant discounts or rebates by newspapers for purchasing bulk advertising.

It is illegal for agents to retain advertising or any other rebate, even where the seller agrees to the agent keeping the rebate.

If a rebate or discount is received on any goods or services, such as advertising, it must be passed on to the seller. If benefits received are in a form other than money, such as gifts, then the monetary value of the gift must be passed on to the seller.

If the exact price is not known, then an estimation must be made by the agent.

The amount of any rebates or benefits must be stated in the authority to sell.

The sales authority

Once an agent is chosen, the seller will be asked to sign a written sales authority appointing that agent. The authority to sell is a legally binding contract, which fully sets out the details of the seller's agreement with the agent, including:

- the estimated selling price
- the negotiated commission
- the negotiated marketing expenses.

Types of authority

There are a number of different types of authority that fall into two basic categories: general and exclusive. With a general authority a seller can list with more than one agency, and only pay commission to the agency that sells the property. An exclusive authority is used when engaging the services of one agency only. The seller should not sign more than one exclusive authority, or an exclusive authority plus a general authority, as in certain circumstances more than one commission may have to be paid. An agent can also claim commission under an exclusive authority even if sellers end up selling their own property themselves.

What can be negotiated?

Many aspects of the authority to sell are negotiable between the seller and the agent. Sellers should discuss these with the agent and make sure that all details fit their requirements before signing.

The following aspects of the sales authority can be negotiated.

The method of sale

There are two main ways of selling a property: by auction or private sale. Each of these methods of sale has advantages and disadvantages. An agent will be able to recommend the best method of sale for the seller's particular circumstances. (See page 31.)

The authority period

This is the period of time in which the authority is in force and is fully negotiable. The length of the authority period should be carefully considered. Once sellers sign the authority they will not be able to break with the agent during this period, unless the agent agrees. It is advisable to consider an authority period that does not exceed 60 days.

If no period is stated on an exclusive authority, then the default period for sale by auction is 30 days from the date of the auction. For a private sale, the default period is 60 days from the signing of the authority to sell.

If the authority period expires and the property has not been sold, the seller should notify the agent in writing if the agency's services are no longer required.

The commission

The commission or agent's fee is completely negotiable. (See page 18.) Sellers may wish to negotiate a 'no sale, no fee contract', which means they will not have to pay anything unless the agent completes the sale of the property.

Advertising and other outgoings

There will generally be costs associated with marketing and advertising a property, as well as the estate agent's commission. The amount spent on these outgoings is negotiable between the seller and the agent. (See page 19.)

Other terms and conditions

Read both sides of the contract carefully and make sure all terms and conditions are understood and agreed upon before signing. These conditions are negotiable. Any changes, whether deletions, amendments or additions, must be made to the authority to sell and initialled by both parties. All verbal agreements should be confirmed in writing on the contract and signed by both parties.

Service agreement

If the seller wishes the agent to perform any specific functions that are not covered in the authority, he or she can attach a list to the contract, which is then signed by both the seller and the agent. This list is known as a service agreement.

Unfair contract terms

The agent's authority to sell is a legally binding contract.

Changes to the *Fair Trading Act* 1999 make unfair terms in consumer contracts void. The authority to sell a residential property is a consumer contract. Consumers can now take action if they believe their contracts are unfair, and businesses must make sure that their contracts comply with the law.

If a term is unfair, it will be void. The contract will continue to bind all parties, but only if the contract can exist without the unfair term.

An unfair term in a consumer contract is a term that causes a significant imbalance in the rights and obligations of both parties to the detriment of the consumer, and was inserted in the contract through lack of good faith.

Who to call about an unfair term?

If you believe there is an unfair term in the contract, contact the Estate Agents Resolution Service at Consumer Affairs Victoria on 1300 73 70 30.

Seller's Tip #2

Do not sign without carefully reading and understanding the authority to sell. If you are unsure of anything, ask for clarification from the agent or seek professional legal advice.

By law the agent is obliged to provide a copy of the authority to sell to the seller at the time of signing. Retain this as proof of what was agreed with the agent.

Also, clarify with the agent the exact circumstances under which the commission must be paid, before signing the authority.

Seller's Tip #3

If you want to make any changes after the authority has been signed, they must be made in writing on the authority to sell and initialled by both you and the agent.

Chapter three
The vendor's statement, bodies corporate and buying 'off the plan'

3

Before a property is sold, the seller (vendor) is required by law to provide the buyer with a vendor's statement or 'section 32'.

The transfer of ownership of land from the seller to the buyer is called a conveyance of land. This process is usually undertaken with the assistance of a solicitor or conveyancer. Buyers and sellers should engage their own solicitor or conveyancer separately.

Whether it is a conveyancer or a solicitor that is chosen will depend on the buyer's or seller's preferences and individual requirements. For example, the need for legal advice. However it is important to understand that there are differences in what a solicitor and a conveyancer are qualified to do and what they are legally allowed to undertake on behalf of a client.

Solicitors and Conveyancers

Solicitors

A solicitor must have formal legal qualifications, be licensed and have professional indemnity insurance. They can perform general legal work and provide legal advice to their client. Some solicitors specialise in conveyancing and property law.

A solicitor can be engaged by a seller to prepare all the required documentation including the vendor's statement and the contract of sale.

They can also by engaged by a buyer to conduct relevant searches, make requisitions and ensure that the transfer of title is done correctly. A solicitor can also advise a prospective buyer on how different types of title may affect their ownership rights and responsibilities.

Conveyancers

A conveyancer is not required to have any formal legal qualifications, however they will usually have undertaken some form of training in conveyancing. They do not have to be licensed, or have professional indemnity insurance, although many do take this out. Some conveyancers are members of a professional industry association or institute. They may also have met the institutes criteria to be recognised as Certified Practicing Conveyancers.

Conveyancers specialise in conveyancing and must not undertake any legal work or give legal advice.

Conveyancers can be engaged by a seller to prepare the vendor's statement but not other legal documentation such as the contract of sale.

They can also be engaged by a buyer to conduct searches on title and check the vendor's statement.

Conveyancers must advise a prospective client in writing whether or not they have insurance and if so the amount of cover they have. They must also notify the client if they will engage a legal practitioner and if not, that the conveyancer is not authorised to perform legal work.

The vendor's statement (section 32)

The vendor's statement or section 32 is usually prepared by the seller's solicitor or conveyancer several weeks prior to the sale or auction. It is then signed by the seller and made available to prospective buyers, usually via the agent. The buyer may then have the statement checked by his or her own conveyancer or solicitor prior to purchase.

The vendor's statement contains information about the property's title, including mortgages, covenants and easements, zoning and outgoings such as rates. It does not include any information about the condition of any buildings, whether they comply with building regulations or if measurements on the title are accurate. The onus is on the buyer to find out about anything that is not covered in the statement.

The information that must be included in the vendor's statement is outlined in section 32 of the *Sale of Land Act* 1962.

The vendor's statement is a legal document and must be factually accurate and complete. If the vendor's statement contains incorrect or insufficient information, a buyer may be able to withdraw from the sale or take legal action.

Seller's Tip #4

Make sure that all charges including disbursements (additional administrative costs) are discussed before signing up with a solicitor or conveyancer.

Buyer's Tip #2

Before making an offer on a property or bidding at an auction, have a solicitor or conveyancer carefully check the vendor's statement for you.

You should also consider getting a building condition report from a qualified building inspector.

Do-it-yourself conveyancing kits

Do-it-yourself conveyancing kits are also available. However, if you choose this option, you are not covered by a solicitor's professional indemnity insurance if complications arise or something goes wrong. There is a lot at stake, so if you decide to do it yourself, make sure you are 100% confident that you are up to the task.

Property schemes

Properties can be held under different schemes. For example, when purchasing a unit, flat or apartment, a buyer could be purchasing a company share, a stratum title, or a *Subdivision Act* title. A solicitor will be able to advise on how the various types of title will affect in different ways the buyer's ownership, rights and responsibilities.

Bodies corporate

Under the *Subdivision Act* 1988, when buying a unit, flat or apartment, the buyer is purchasing not only the individual property but also ownership of and the right to use the common property as set out by the plan of subdivision. Where a plan of subdivision creates common property, there must be a body corporate.

A body corporate is generally made up of owners of the various individual properties. When purchasing such a property, buyers automatically become members of the body corporate. They have their own certificate of title as with any other residential property, but this will include a share in the common property.

As a member of a body corporate, the buyer has the right to vote on decisions about and contribute to costs for repairs, maintenance and insurance not only for his or her own home, but also for the common property shared jointly with others.

Before signing a contract, have the following checked carefully:

- vendor's statement
- the body corporate certificate (Form 3).

The body corporate certificate (Form 3) states whether there are any proposed works, fee increases, and any existing or potential legal claims affecting the property being purchased.

The buyer may request to see the following for additional information:

- the minutes of previous body corporate annual general meetings
- the body corporate rules.

Buying 'off the plan'

Buying 'off the plan' normally means purchasing a building before it has been constructed. This usually involves prospective buyers viewing

architectural plans and models or visiting a display suite to see what they will be purchasing. Buying ‘off the plan’ may have the benefit of stamp duty being significantly reduced, as stamp duty is calculated on the value of the property at the date of the contract, not the value of the final building. A property bought ‘off the plan’ will generally be a body corporate.

Buyer’s Tip #3

Obtain independent legal advice before buying a unit, flat or apartment to find out about the advantages and disadvantages of holding a title under the different property schemes.

Buyer’s Tip #4

When buying a unit, apartment or flat, you will probably be living in close proximity to others. This means certain rights and responsibilities apply. Be aware that this can also mean additional noise and other possible inconveniences.

Buyer’s Tip #5

If buying ‘off the plan’, get a firm date from the developer of when the property will be finished. Seek professional legal advice before signing a contract with a developer.


OPEN FOR
INSPECTION

“*Chapter four*

Methods of sale and the sales campaign”

4

The decision to sell by auction or private sale will depend on many factors including the type of property and location, as well as the seller's available time frame and personal preference.

There are two main ways that real estate can be bought and sold:

Private sale

In a private sale the property is advertised and offers are invited from prospective buyers. The sale is negotiated between the buyer and seller, usually with the assistance of an agent.

Public auction

An auction is a public sale, usually conducted by an estate agent acting as auctioneer. It is advertised for a specific place, time and date. Prospective buyers bid and the property is sold to the highest bidder, provided the seller accepts the bid.

Private sale and public auction: a comparison

Private sale	Auction
• The seller and buyer agree on a sale price through negotiation.	• Price is determined by competitive bidding, and the property is sold to the highest bidder acceptable to the seller.
• The contract can be conditional, that is, the buyer can make the sale subject to the availability of finance, a satisfactory condition report, or other conditions (with the seller's approval).	• The contract is unconditional, that is, the buyer cannot make it subject to finance, inspection and the like.
• For residential properties the buyer has a cooling-off period of three business days (with exceptions).	• There is no cooling-off period.

Deciding on a method of sale

The agent will recommend a method of sale based on the type and location of the property, the nature of the market and the seller's available time frame and personal preference. They should also back up their recommendation with recent sales data. The seller should understand all the pros and cons before deciding on a method of sale. The agent's commission is generally the same whether the property is sold privately or at auction. However, there are usually additional costs involved in selling by auction.

Although it is best not to be in a hurry to sell, sometimes there is no choice. If a property must be sold quickly, an auction may provide a better opportunity to sell by a specified date. However, there is no guarantee that by doing this the property will be sold, or that the best price will be achieved.

The lowest selling price or 'reserve'

The lowest price at which a seller is prepared to sell his or her property is called the reserve price.

It is not easy to put a price on something as personal as the family home. No matter what anyone says, your house will seem much more to you than just bricks and mortar.

Seller's Tip #5

Sometimes an external estate agent auctioneer is contracted by an agency to conduct an auction. He or she will charge a fee, which may then be passed on to the seller.

To help you decide on the lowest selling price for your home, you should:

- use the agent's estimated selling price as a guide
- research and get to know sale prices in your area
- consider paying for a valuation by an independent sworn valuer
- not allow emotion to cloud any judgments
- be realistic.

This will help you avoid both disappointment and the risk of purchasing another property based on unrealistic expectations of the sales value of your own home.

The sales campaign

The aim of a sales campaign is to notify prospective buyers and encourage them to inspect a property. There are two main ways of doing this.

Direct notification

The agent may have a list of prospective buyers who can be notified directly when suitable properties become available. These are people who have either contacted the agent requesting notification, or have left their personal details at another open house inspection.

Advertising

This is a major way of attracting prospective buyers to a property. The nature of the advertising depends on the type and location of the property and the amount of money spent. Advertising notifies prospective buyers that the property is for sale and lists the inspection dates and times. It also includes names and contact details of the agents who are handling the sale.

Sourcing properties for sale

There are three main ways prospective buyers can source properties for sale.

Direct contact

Directly contacting real estate agencies by telephone, email, fax or in person is one major way of sourcing properties for sale.

Newspapers

Most local newspapers have a property section or lift-out. Major metropolitan papers have a comprehensive list of properties for sale and inspection in their Saturday editions, and sales results in their Sunday or Monday editions.

The internet

This is a popular means of sourcing properties for sale. As well as individual agency websites, there are several large property websites that are used by a number of real estate agencies.

These provide photographs and 'virtual tours' as well as updated inspection times and other relevant details. There is also the opportunity for prospective buyers to register free of charge and receive regular email updates of properties that match their criteria.

Other ways of sourcing properties for sale include:

- noting signboards in front of properties
- reading real estate industry magazines
- hearing of listings through word of mouth.

The advertised price

When marketing a property it is illegal for an agent to quote or advertise a figure that is less than the estimated selling price or range stated in the authority to sell.

Underquoting is unfair to buyers who may waste time and money inspecting a property that they cannot realistically afford. It is also unfair to the seller who is expecting the agent to generate genuine interest from prospective buyers prepared to pay a fair price.

Seller's Tip #6

Property advertising must not be misleading or deceptive.

It is illegal to misrepresent a property in any way when advertising or marketing that property, either verbally, or in writing and photographs.

Sellers must ensure that any information provided to the agent about their property is factual and up to date. If advertising is not accurate, and a buyer can show that a property has been 'misrepresented', the buyer may be able to take legal action.

Buyer's Tip #6

By doing research and knowing the market in a particular area, you will be a better judge of property sales prices.

A reputable real estate industry association may also provide information on the market and property prices in your area.

“Chapter five
Property inspections”

5

Prospective buyers should inspect a property to see that it meets their requirements. They should also consider having a qualified building inspector provide a professional condition report prior to purchasing.

Open houses

Advertising advises prospective buyers of the times a property is open for inspection. This will generally be for 30 to 45 minutes, two or three times a week. Buyers may wish to arrange an alternative inspection appointment through the agent.

Anyone who enters the property may be asked to leave a contact name and telephone number with the agent. This serves as a security measure and also provides the agent with a ready database of potential buyers, who can be notified if an offer is received on the property, or if other properties become available.

First inspection

If possible, a prospective buyer should make several visits to a property before deciding to buy it. The first visit will give an initial impression and determine if the property meets any basic requirements, such as location, age, size, position, style and condition. If inspecting a number of properties in one day, it is a good idea to take a notebook and note any identifying features.

Buyers should also keep an eye out for signs of potential structural problems.

- Sloping or bouncy floors may mean that stumps need replacing.
- Cracked walls could mean subsidence or that stumps need replacing.
- Damp brick walls can indicate rising damp or salt damp.
- Blisters or bubbles on paintwork could indicate termite activity.

- If there are large cracks, seek advice from a structural engineer.
- Mouldy walls, lifting tiles, peeling paint or pools of water in wet areas could mean excessive moisture.
- Fretting (crazed) brickwork could indicate major structural problems.
- Sagging roof framing, or cracked or broken roof tiles may involve costly roof repairs or replacement.

Professional building inspections

Before signing a contract, a buyer should consider enlisting the services of a qualified building inspector, surveyor or architect to provide a professional report. A qualified inspector will know exactly what to look for and will see through any cosmetic improvements covering up faults that may be missed by the untrained eye. He or she will also check items such as electrical wiring, plumbing and roof spaces, which are potentially dangerous if they do not meet building standards.

The inspector will provide a written condition report, pointing out faults in the property, whether they can be repaired and how much these repairs are likely to cost. The report will also highlight any unsafe or unauthorised renovations and extensions.

The buyer may be able to use this report to negotiate conditions in the contract as well as the price.

The inspection service should have full professional indemnity insurance to protect the buyer if a problem is missed in the inspection.

Seller's Tip #7

It is not a legal requirement that a person leave their details with an agent at an open house. However, sellers can make this a condition of entry to their property by stating this in the authority to sell.

If there is anything the seller does not want the public to see, it should be hidden from view. Valuables should be locked away.

Buyer's Tip #7

If the property has been recently renovated, or if extensions have been made, call the local council, as they will be able to check that relevant planning or building permits were obtained.

Any illegal alterations may become the responsibility of the buyer once the contract has been signed.

Buyer's Tip #8

Be cautious of any property inspection report offered by the agent or the seller. The independence of a report is only guaranteed if it is obtained specifically by and for the buyer.

Builders warranty insurance

Under the *Domestic Building Contracts Act* 1995, a builder may not carry out domestic building work over $5000 without being registered and, in the case where the contract is more than $12,000, the builder must take out builders warranty insurance. It is the responsibility of the builder to fix defects or complete the work according to the plans and specifications in a domestic building contract.

Builders warranty insurance will only protect a home owner where the builder:

- has died
- is insolvent, or
- has disappeared, and
- the work is not completed, or
- there are structural defects up to six years after completion (and non-structural defects up to two years after completion).

Owner-built properties

If selling an owner-built house, the owner builder is required to provide a defects inspection report and domestic builders warranty insurance, if the sale is within six years of completion of the house.

A defects inspection report is required for any owner-builder works.

Checking the vendor's statement

As well as inspecting the property itself, a prospective buyer should have all legal aspects relating to the land and title checked thoroughly before making an offer. A copy of the vendor's statement must be made available and can be obtained from the seller through the agent. The buyer can then have his or her conveyancer or solicitor check the document. (See page 24.)

Seller's Tip #8

It is natural to want to present your property in the best possible light. First impressions count for a lot and it never hurts to mow the lawn, pop a few plants in the garden, keep the house clean and tidy, and even add a lick of paint.

While it is acceptable to present a property in a good light, it is not acceptable to cover up, misrepresent or in any way mislead a buyer about the true nature of your property.

Buyer's Tip #9

The fee for a professional inspection service is small compared with the cost of buying a property that requires extensive unforseen repairs. Even if major faults are not found, you can use minor faults discovered in the pre-purchase inspection as the basis of an ongoing maintenance program, if you decide to buy the property.

Buyer's Tip #10

Do not sign a contract for an owner-built property before checking the property very carefully.

If there is a query regarding defective or incomplete work, call Building Advice & Conciliation Victoria (BACV) on 1300 55 75 59 before signing the contract.

Chapter six
Private sales

6

A property may be sold privately by a seller dealing directly with prospective buyers. However, it is more common for a seller to engage the services of an estate agent to do this for him or her.

Making an offer

Any offer to buy a property will be made through the agent. The agent must then communicate this offer to the seller. Although an offer can be made verbally, it is not legally binding until it is in writing and signed by both parties. This will generally be in the form of a contract note or a contract of sale of real estate signed by the buyer and, if accepted, countersigned by the seller.

The agent may also require the buyer to provide a deposit to validate the offer. This is known as a holding deposit and is not compulsory. The deposit will be returned if the offer is not accepted.

An offer becomes binding when both parties sign the contract note or contract of sale and all conditions are met. A buyer should not sign without carefully reading and understanding this document.

A deposit is payable at this time. (See page 52.)

Conditional offers

In a private sale the buyer can negotiate with the seller to have the sale subject to certain conditions. For example, obtaining finance, the sale of an existing property or the successful completion of a building inspection.

If the contract is made 'subject to finance', the buyer should always nominate a lender in the relevant section of the contract. An auction contract of sale is generally unconditional and cannot be negotiated.

Negotiation

If the seller does not accept the offer, the agent may go back to the buyer and see if he or she is prepared to make another offer. Through a process of negotiation the agent will attempt to achieve a mutually acceptable price. This negotiation may involve verbal offers, but will only be legally binding when in writing.

Often there is more than one person making an offer on a property. Through a process of offer and counteroffer the agent will negotiate between parties to obtain the highest possible price for the seller.

Contracts

Contract note

A contract note is completed by prospective buyers when they wish to make an offer on a property. It contains details of the property for sale, names of the seller and buyer, seller's estate agent, price, the deposit paid, balance owing at a specific date (settlement) and any special conditions such as a clause 'subject to finance'. An agent or agent's representative can draw up the contract note. The contract note can either stand alone or precede a contract of sale document.

Contract of sale of real estate

A contract of sale of real estate is a more detailed legal document than the contract note and is usually prepared by a seller in consultation with a solicitor. The terms agreed upon in the contract note can be set out more formally and in greater detail in the contract of sale. It is possible to proceed straight to a contract of sale without first completing a contract note.

Goods and services tax (GST)

Most sales of residential homes will not be subject to GST. However there are certain circumstances where GST does apply. Do not sign the contract without checking whether GST applies. If uncertain, seek professional legal advice.

If GST applies to a sale, it must be clearly specified in the contract whether the price is inclusive or exclusive of GST and how the GST will be calculated.

Settlement period

Settlement is the date on which the remainder of the purchase price is paid to the seller, and the title of the property is handed over to the buyer. The seller generally sets the date of settlement in the contract. The settlement period is usually between 30 to 90 days but a buyer may be able to negotiate an alternative settlement period with the seller prior to signing the contract.

Cooling-off period

A cooling-off period of three clear business days applies to non-auctioned residential property sales regardless of price. The cooling-off period allows the prospective buyer time to consider the offer, and begins from the date the buyer signs the contract, not from the date the seller countersigns it.

To end the contract within that period, the buyer must provide written notification to the seller or the seller's agent. A fee of $100 or 0.2% of the purchase price (whichever is the greater) may be payable.

The cooling-off period does not apply in the following circumstances.

- The property was purchased within three clear business days before or after a public auction.
- The buyer received independent advice from a solicitor prior to signing the contract.
- The property is used mainly for industrial or commercial purposes.
- The property is more than 20 hectares in size and is used mainly for farming.
- The buyer has previously signed a contract for the same property with the same terms.
- The buyer is an estate agent or corporate body.

When is it sold?

When both parties have signed this forms a legally binding contract. The sale is finalised at settlement when all checks have been made, the title and transfer documents exchanged, and the balance of the purchase price has been paid.

Seller's Tip #9

Do not accept a lower offer for the sake of a quick sale unless you are completely satisfied and willing to sell at that price.

Buyer's Tip #11

The decision on how much to offer is a difficult one to make. You have to decide whether to make your best offer upfront or offer a lower price and be prepared to negotiate up. Note that in the case of multiple offers, the seller may decide to accept another offer, without giving you the opportunity to increase yours.

If you are not confident negotiating with the agent, you may prefer to engage a solicitor or buyer's advocate to do your bargaining for you. You can expect to be charged a fee for this service.

Buyer's Tip #12

You should insert in the contract a date by which your offer will lapse. This way you will be notified in a timely manner as to whether or not your offer has been accepted.


YOUR REAL ESTATE
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AUCTION
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“Chapter seven
Sale by auction”

7

There are strict rules governing the conduct of an auction in the interest of transparency and fairness.

The sales campaign leading up to an auction is generally similar to that for a private sale. There is an advertising campaign and open house inspections for approximately four weeks leading up to the auction date. The cost of advertising for an auction may be higher than if advertising for a private sale.

In the lead-up to the auction the agent will have called prospective buyers to gauge their level of interest. This gives an indication of the potential attendance and bidding range on auction day.

Pre-auction offers and inspections

Offers through an agent may be made prior to an auction. These will usually be in the form of a signed contract and the process of negotiation is the same as for a private sale.

If an offer is accepted less than three clear business days prior to the auction date, then no cooling-off period applies. (See page 43.)

On the day of the auction the property will be open for inspection, generally half an hour before the bidding starts. This allows prospective buyers the chance to have one final look at the property and the relevant paperwork.

Auction conduct

There are strict rules governing the conduct of an auction in the interest of transparency and fairness. Substantial penalties may apply to anyone who breaks these rules.

Before accepting a bid at an auction an auctioneer must state that:

- the auction will be conducted according to the auction rules
- any additional conditions will be made available for public inspection
- he or she must indicate who made a bid if asked to do so
- the law prohibits an intending bidder from making a false bid, hindering another bidder, or in any way intentionally disrupting an auction
- substantial penalties apply to anyone who engages in prohibited conduct.

What is a vendor bid?

A vendor bid is a bid made on behalf of the vendor (seller).

Whether vendor bids are to be permitted at an auction will be negotiated between the seller and the agent and must be outlined in the auction rules.

A vendor bid is legal, but only when made by the auctioneer and only where:

- allowed by the auction rules, and
- the auctioneer announces before the auction starts that such bids are permitted, and
- the auctioneer announces before, or while making a vendor bid, that it is a vendor bid.

What is a dummy bid?

A dummy bid is where an auctioneer makes or accepts a false bid, either pulled out of the air, or from a 'plant' in the crowd. A vendor bid made by anyone other than the auctioneer is considered a dummy bid. Dummy bidding is illegal.

Buyer's Tip #13

A copy of the auction rules and information statement, and any additional conditions must be made available for inspection prior to the commencement of the auction.

A prospective buyer is advised to read these carefully before making a bid.

Buyer's Tip #14

Before the bidding starts a prospective buyer should have:

- decided on a definite upper limit, based on a firm offer of finance from a lender
- arranged a property inspection, preferably by a professional building inspector
- checked all legal documentation including the vendor's statement and contract of sale, preferably through a solicitor or conveyancer
- organised a cheque to pay the deposit, if successful
- organised someone to bid on his or her behalf, if desired
- understood that the contract is unconditional, that is, it is not subject to finance. If successful, there will be no right to withdraw from the contract and no cooling-off period.

Bidding at an auction

Different auctioneers have different methods of conducting an auction. Generally, their aim is to encourage as many possible bidders to compete in order to achieve the highest possible price.

The auctioneer can set the amount by which bids increase. These are called rises or bidding advances. The bidder may make a bid at the amount stated by the auctioneer or offer an alternative amount. The auctioneer may in turn choose to accept or reject that bid.

Generally, the amount the bidding advances will decrease as the auction draws to a close.

'On the market'

At a certain point the auctioneer may halt the proceedings and say he or she is 'going inside' or 'seeking advice or instructions' from the client. The agent will then confer with the seller.

Generally, if the seller is satisfied that the reserve has been reached, or if the seller is prepared to sell at the bid offered, then the agent will announce that the property is 'on the market'. This means that the property will then be sold, at the seller's discretion. Alternatively, if the seller's reserve is not met, the auctioneer will seek further bids. If the reserve is still not met, then the property may be 'passed in'.

When is it sold?

At the final bid the auctioneer will announce, 'Going once, twice, three times … SOLD!' While no further offers should be accepted, there is no legally binding contract until both the buyer and seller have signed the contract of sale and the buyer has paid the deposit specified in the contract (unless otherwise agreed).

As this is an auction, the buyer cannot make the contract subject to conditions and there is no cooling-off period.

The sale is finalised at settlement when all checks have been made, the title and transfer documents have been exchanged, and the balance of the purchase price has been paid.

Seller's Tip #10

The vendor (seller) cannot make a vendor bid; neither can anyone acting on the vendor's behalf, other than through the auctioneer and only under the conditions outlined above.

Substantial financial penalties apply for dummy and illegal vendor bidding.

Seller's Tip #11

Make sure that your lowest selling price has been reached before allowing the agent to declare that the property is 'on the market'.

Bids may continue beyond this price. However, it is also possible that there will be no further bids.

'Passed in'

If bidding does not reach the seller's reserve price, then the property may be 'passed in' or 'withdrawn from auction'.

The seller will then first negotiate with the highest bidder. This may result in a sale.

Advertising after an auction

If a property is 'passed in' on a vendor bid, then an agent cannot quote this 'passed in' amount when advertising and marketing the property, without disclosing that it was a vendor bid.

Buyer's Tip #15

Anyone at a public auction is permitted to ask the auctioneer in good faith a reasonable number of questions about the property, the contract or the rules and conduct of the auction.

A bidder may also ask the auctioneer to indicate who made a bid.

Buyer's Tip #16

In order to bid successfully at an auction, a bidder should:

- be clear about his or her bidding limit
- bid confidently
- ask any questions of the auctioneer including an indication of who made a bid.

Buyer's Tip #17

Do not necessarily wait until after the 'half time' break before making a bid in the belief that any bid before that is a waste of time. The 'half time' break allows the agent to refer the bid to the seller and usually means the reserve price has been reached.

However, this 'referral' does not always happen. The seller may have advised the auctioneer of the reserve price prior to bidding and does not need to consult further with the auctioneer.

This is known as a non-referral auction.

“Chapter eight
After the sale”

8

After the sale there are several steps before the buyer can take possession of the property. The solicitor or conveyancer usually undertakes these steps if acting on the buyer’s behalf.

Before taking possession

The deposit

The deposit is the amount of money to be paid by the buyer to the seller upon the exchange of contracts. It is usually ten percent of the agreed sale price, but is also negotiable. The deposit will be paid to the seller's estate agent or solicitor who will place the money into a trust account until the settlement date.

In certain circumstances the seller may ask the buyer to release the deposit money, held in a trust account, earlier than the settlement date. This release requires written authorisation (in the form of a 'section 27') to be given by the buyer. If there are no objections, then the deposit may be released to the seller 28 days after the seller served the buyer notice.

Checking the measurements

The buyer's solicitor or conveyancer will send a plan of the land to the buyer to check that all measurements and boundaries correspond with those on the title.

Lender's valuation

The buyer's lender may also arrange for a valuation of the property. As they are lending against the value of the property, the lender will want to ensure that the price paid for the property corresponds with its approximate market value. This may happen prior to the sale if the property is not being sold at auction.

Requisitions (questions)

The buyer is entitled to ask questions of the seller in relation to the purchase. These questions generally relate to information not contained in the contract of sale of real estate or arising from a subsequent inspection of the property. This is usually done through the buyer's solicitor.

A seller must answer these questions honestly and accurately. If the title is substantially different from what the seller originally indicated, the buyer may have the right to withdraw from the contract or sue for damages.

Insurance

Even though the property may be covered by the seller's insurance up until the date of settlement, it is recommended that the buyer take out building and contents insurance, effective from the date of signing the contract. The buyer's lending institution will generally require the borrower to take out insurance on the property to safeguard the lending institution's interest as mortgagee.

Pre-settlement inspection

Buyers are entitled to make an inspection at any reasonable time one week before settlement. The contract of sale of real estate outlines that the seller has an obligation to hand over the property in the same condition as when it was sold.

Taking possession

Once settlement is completed, the agent is notified and the buyer can obtain the keys and take possession of the property.

Stamp duty

Stamp duty is a government tax to be paid by the buyer on settlement. This is calculated as a percentage of the purchase price or the market value of the property including chattels at the date of the contract of sale, whichever is the greater. For gifts, it is calculated on the market value of the property at the date of the gift. Stamp duty applies to the GST-inclusive price of a new property.

Stamp duty exemptions may apply for certain concession card holders and first home buyers with children. Contact the State Revenue Office for complete details on (03) 9628 6777.

The First Home Owner Grant seeks to compensate first home owners for price increases as a result of the GST. (See page 12.)

Settlement

The settlement date is the date on which the balance of the purchase price is paid to the seller in exchange for the title to the property.

This is an official process conducted between legal and financial representatives of the buyer and seller. The settlement date is also the date on which the buyer can obtain the keys and take possession of the property, unless otherwise arranged.

At settlement all outgoings such as rates and other charges will be adjusted between the seller and the buyer. The seller is responsible for rates up until and including the day of settlement. The buyer is liable from the day after settlement.

Settlement usually takes place between 30 to 90 days from the signing of the contract, but this period can be negotiated between the buyer and seller.

Transfer of land

This is the document that transfers the land from the seller to the buyer. It is lodged with the Land Registry office and describes how the land is to be held if purchased by more than one person.

The land can be held either jointly or as tenants in common. If held jointly, and one person dies, ownership of the land is automatically transferred to the survivor. Tenants in common effectively hold shares (equally or unequally) in the property and each has the right to dispose of his or her interest in the land as he or she sees fit.

Disputes and complaints

The Estate Agents Resolution Service (EARS) offers a free service for the exploration of complaints, advice, information, conciliation and dispute resolution on all residential real estate matters.

EARS was established by the state government within Consumer Affairs Victoria in order to help resolve disputes in a mutually acceptable and satisfactory manner and to monitor the conduct of estate agents.

If a buyer or seller has a problem with an estate agent, they can call the Estate Agents Resolution Service at Consumer Affairs Victoria on 1300 73 70 30 or visit the website at www.consumer.vic.gov.au

If EARS is unable to reach a mutually acceptable settlement, they can provide information and advice about alternative avenues through which the dispute may be resolved. As part of the assessment of a complaint, EARS also considers whether the complaint may involve a breach of legislation that should be investigated to determine whether enforcement action is necessary.

Penalties

Substantial penalties including fines of up to $24,000 for an individual and $60,000 for a corporation apply for illegal conduct relating to a real estate transaction.

Glossary

Agent's representative Not a licensed agent. The agent's representative is employed by or acts for a licensed agent and performs the function of an estate agent. (See also estate agent.)

Auction A public sale of property in which the highest bidder is normally the successful buyer.

Authority to sell A legally binding document which is signed by the seller. It details the agreement between the seller and the agent. Many aspects of the authority to sell, such as commission and advertising costs, are negotiable between both parties.

Body corporate The collective ownership of the common areas in a block of apartments or multi-dwelling complex. It is responsible for the administration and upkeep of the areas shared by all the owners (common property).

Breach of contract The breaking of one or more of the terms or conditions of a contract.

Bridging finance A short-term loan (approximately six to twelve months or less) that is used to fill the time gap between buying another property and either selling the one you own or obtaining a long-term loan. This type of borrowing is usually at a higher interest rate.

Building consultant An expert experienced in designing and/or constructing a building. When employing an expert for a pre-purchase report on a property, you should ask whether he or she has indemnity insurance to cover any serious omissions about building defects not covered in the report. A building consultant is not required to be registered.

Building inspector A person registered with the Building Practitioners Board as a building inspector. This person may operate as a private or council building inspector and is qualified to inspect buildings to ensure compliance with the *Building Act* and building regulations.

Building surveyor A person registered with the Building Practitioners Board as a building surveyor. This person is qualified to issue a building permit, inspect a building for compliance with the *Building Act* and building regulations, and issue an occupancy permit or certificate of final inspection.

Buyer's advocate (Buyer's agent) An estate agent who acts solely for the buyer by sourcing suitable properties and representing the buyer throughout the buying process.

Capital gain Profit you make from the sale of property.

Caveat A note on the title that an interest in the land is claimed by a third party.

Caveat emptor A Latin expression that means 'let the buyer beware'. It is the buyers responsibility to ensure that the property meets with their approval prior to purchase.

Cetificate of occupancy A document, issued by a building surveyor, which shows that the building is suitable for occupation. It is not evidence that the building complies with the *Building Act* or building regulations.

Certificate of title A document that shows who owns the property, the size of the land and whether there are any limitations on the title such as mortgages, easements or encumbrances.

Chattels Moveable personal property or furniture.

Commission Paid by the seller to the estate agent, normally when the property is sold. It is usually a percentage of the selling price of the property. The amount of commission is negotiable between the seller and the agent.

Common property Areas of a property that are used by and belong jointly to all of the owners of a property. This applies to such property as apartment blocks or multi-dwelling complexes.

Company title Each owner in a block of flats has shares in a company which has total ownership of the land and buildings of these flats. The owners receive a parcel of the shares with rights attached. Each owner is entitled to exclusive occupation of a flat, but this is subject to the company's Memoranda and Articles of Association. These should be carefully examined for restrictions and the like.

Comparison rate A tool that allows the true cost of a loan – interest rate, fees and charges – to be compared with other loans using a single figure percentage.

Consumer Credit Code Regulates all credit for personal, domestic or household purposes. To ensure fair dealing and to protect the interests of consumers, all lenders must comply with the Consumer Credit Code.

Consumer credit insurance An option for borrowers to guard against losing their property in case they default on the loan repayments. This will safeguard the loan if repayments cannot be made because of sickness, accident or unemployment.

Contract note A document given to a prospective buyer who is making an offer. The contract note is legally binding when signed by both parties. It may or may not precede a more detailed contract of sale document.

Contract of sale A legal document prepared by the seller, usually with the aid of a solicitor, that outlines the details of the sale. The contract of sale is legally binding when signed by both parties.

Conveyancer A person who is not a legal practitioner, who carries out the business of conveyancing. A conveyancer may not undertake any other legal work.

Conveyancing Transferring the ownership of a property from the seller to the buyer. It is often performed by a solicitor or conveyancer.

Covenant An agreement that creates an obligation on the titleholder of a property to do or refrain from doing something. For example, a restrictive covenant could state that no more than one dwelling may be built on the land.

Deposit A non-refundable percentage of the purchase price paid by the buyer when contracts are signed and exchanged. It is usually ten percent. The deposit must be held in a trust account by an estate agency or by the seller's solicitor, or held jointly in a trust account by the seller and buyer. (See also holding deposit.)

Deposit bond Offered by some lenders as an alternative to a cash deposit. Should be used with caution. It is also known as a deposit guarantee.

Disbursements Additional charges by some solicitors and conveyancers on top of their fee for extras such as postage, phone calls and government charges.

Dummy bid A false bid made or accepted by the auctioneer. Dummy bids can include bids made by a non-genuine bidder and 'fictitious' bids pulled out of the air by the auctioneer. Any bid made on behalf of the vendor by anyone, other than the auctioneer under the auction rules, is considered a dummy bid. Dummy bidding is illegal.

Easement A right held by one person to make use of the land of another. Drainage and sewerage pipes are examples.

Estate agent A licensed person who is authorised to act for another in the selling, buying, renting or management of a property. Estate agents usually act for the owner.

Encroachment The use of, or intrusion onto, another person's property without consent. This usually refers to a structure.

Encumbrance A third party's right that obstructs the unencumbered use or transfer of a property. Examples are easements, mortgages or caveats.

Estate Agents and Sale of Land Acts (Amendment) Act 2003 Changes to the Acts that regulate the licensing and operation of estate agents and the sale of land, including sale by auction.

Estimated selling price The price an estate agent estimates a property will attract. It must be recorded on the authority to sell as either a single figure or as a range where the difference between the top and bottom figures does not exceed ten percent. For example, $400,000–$440,000.

Equity Having 'equity in your own house' refers to the difference between the market value of a property and what is still owing on a mortgage. This will increase as the loan is repaid or as the property's market value increases.

First Home Owners Grant A scheme providing first home owners with a non-means tested, one-off payment of $7,000 (as of 1 July 2000).

Fittings Items which can be removed without damaging the property such as garden ornaments, lighting and air conditioners. They must be listed in the contract of sale if the buyer wants them to remain with the property.

Fixtures Items which are attached to the property and cannot be removed without causing damage to the property such as bathroom suites, built-in wardrobes and kitchen stoves. They are usually included in the sale.

Fixed interest rate An interest rate that remains unchanged for a set period.

Foreclosure When a borrower fails to meet mortgage repayments or repay a loan, the lender takes over the property and keeps it.

General Law title (old system title) The original system of land titles. A General Law title is comprised of all the documents that show a property's complete historical record of title ownership. For the title to be 'clear', it must be traceable without a break up to and including the current ownership. Such a title must now be converted to a 'Torrens title' when such a property title is resold. (See also Torrens title.)

Goods and Services Tax (GST) A consumption tax of ten percent levied on the final consumer of the goods or services. The supplier of the transaction is responsible for collecting the GST and sending it to the Australian Taxation Office (ATO).

Gross income Total income before income tax and expenses are deducted.

Holding deposit An amount given by a buyer who is making an offer on a property to the estate agent acting for the seller. This is not compulsory and is refundable if the offer is rejected.

Interest only loan Throughout the term of the loan, only the interest is paid off. The loan itself (the principal) is repaid at the end of the time limit of the loan.

Joint tenants The form of ownership where two or more people purchase a property in equal shares. If one dies, his or her share of the property passes to the surviving owner/s. (See also tenants in common.)

Land Tax Calculated on the value of a block of land and payable by the owner/s.

Mortgage A written contract giving the lender of finance certain rights over specific property. For example, the house being bought by the borrower as security for the loan.

Mortgage guarantee insurance Paid by the borrower to protect the lender against failure by the borrower to keep up mortgage repayments or to pay back the loan in full when it is due. Such insurance normally applies where the borrower's loan exceeds 80% of the value of the property. This type of insurance is taken out by the lender with the cost passed on to the borrower. The borrower remains liable for any shortfall. For example, if the property is sold and the proceeds do not cover what is owed to the lender.

Mortgagee Organisation that lends money to a borrower by a mortage agreement.

Mortgagee sale If the borrower defaults, the lender can seek to recover the debt by selling the property, which was the security for the loan under the mortgage.

Mortgagor A person who takes out a mortgage on a property he or she is buying. The property is assigned to the lender as security for the loan.

Net income Your income after income tax and mandatory levies have been deducted.

'Off the plan' Purchasing 'off the plan' involves buying a property before it has been built. Such purchases are usually based on the architect's plans and models.

'On the market' The point at an auction where a price is reached at or above which the seller is prepared to sell. Also see Reserve Price.

Outgoings Any costs incurred by the seller on top of the agent's commission. For example, advertising costs. All outgoings are negotiable.

Overquoting The illegal practice of overstating the estimated selling price of a property. This is usually done to encourage a seller to list.

'Passed in' The circumstance where a property for auction is not sold, usually because it has not reached the seller's reserve price.

Principal The amount of the loan itself without interest or other charges associated with the loan.

Private sale In a private sale, the sale is negotiated between the buyer and seller usually with the assistance of an agent.

Rebates Discounts received, usually for bulk purchases such as advertising. Any rebates received by an agent must be passed on to the seller.

Requisitions on title A set of questions about a property that the buyer asks the seller after the contract has been signed. Usually with the help of a solicitor.

Reserve Bank of Australia Australia's central bank with responsibility for regulating monetary policy including the official interest rate.

Reserve price A seller's minimum sale price for the property. It may be recorded on the authority to sell.

Settlement (a) The occasion when ownership of a property passes from the seller to the buyer and the balance of the sale price is paid to the seller. (b) The subsidence (or sinking) of a wall or house, or of the soil supporting a dwelling.

Solicitor A legally qualified and licensed person who undertakes legal work and provides legal advice for a fee. A solicitor may specialise in conveyancing and property law.

Stamp duty A state government tax, based on the sale price of a property, paid by the buyer when property ownership is transferred.

Strata title Individual ownership of an apartment or unit within a block or multi-unit complex. This is separate from and additional to the joint ownership of common areas shared by all the property owners in the building or complex.

Stratum title Each owner has a certificate of title and is absolute owner of a freehold flat. A service company has the title to the common property and each flat titleholder has a responsibility to the service company. The service company, in which each flat titleholder has shares, administers, manages and maintains the property in which each owner's flat is registered.

Tenants in common A form of joint ownership of a property in which each person owns a share of the property, equally or unequally. On the death of one owner, the deceased's share passes to his or her heir/s, who assume/s the role of tenant in common with the other existing owner/s.

Title A legal document that identifies who has a right to the ownership of a property.

Torrens title A system of title by registration that is governed by the *Transfer of Land Act*.

Transfer of land A document that records the change of ownership of a property from the seller to the buyer.

Underquoting The illegal practice of understating the estimated selling price to prospective buyers, either directly or through advertising, to encourage greater interest in a property.

Unfair contract terms A term that is not in good faith and causes a significant imbalance in the rights and obligations of both parties to the detriment of the consumer.

Valuation An estimate of the value of a property by a registered valuer, usually for a fee.

Vendor (seller) The person selling the property.

Vendor bid A bid made on behalf of the vendor. Vendor bids can only be made by the auctioneer and only when the auction rules allow it. The auctioneer makes this statement before bidding starts and announces each vendor bid as, or before, it is made.

Vendor's statement (section 32) Information which the seller must provide to the buyer advising of restrictions such as covenants and easements, outgoings such as rates, and any other notices such as compulsory acquisition.

Vendor terms contract Also known as a terms contract, where finance is supplied by the vendor rather than by an established credit provider.

'Wrapping' A type of vendor terms contract where the property price and loan interest rates are usually well above the market rate. Penalties for defaulting can also be severe. Such contracts should be entered into with caution.

Zoning The permissible uses of an area of land as stipulated by the council.

Contacts

Archicentre
Royal Australian Institute of Architects
530 Glenferrie Road
Hawthorn Vic. 3122
Tel: (03) 9819 4577
www.archicentre.net.au

Building Advice & Conciliation Victoria (BACV)
Consumer Affairs Victoria
452 Flinders Street
Melbourne Vic. 3000
Tel: 1300 55 75 59
www.consumer.vic.gov.au

Business Licensing Authority (BLA)
Level 2, 452 Flinders Street
Melbourne Vic. 3000
Tel: 1300 13 54 52
www.bla.vic.gov.au

Consumer Affairs Victoria
Level 3, 452 Flinders Street
Melbourne Vic. 3000
Tel: 1300 55 81 81
www.consumer.vic.gov.au

Consumer Law Centre Victoria
Level 7, 20 Queen Street
Melbourne Vic. 3000
Tel: (03) 9629 6300
www.clcv.net.au

Estate Agents Council
Level 1, 452 Flinders Street
Melbourne Vic. 3000
Tel: (03) 9627 7273
www.consumer.vic.gov.au

Estate Agents Resolution Service (EARS)
Consumer Affairs Victoria
452 Flinders Street
Melbourne Vic. 3000
Tel: 1300 73 70 30
www.consumer.vic.gov.au

Housing Guarantee Fund
Level 3, 478 Albert Street
East Melbourne Vic. 3002
Tel: (03) 9660 6111
www.hgf.com.au

Housing Industry Association
70 Jolimont Street
Jolimont Vic. 3002
Tel: (03) 9280 8200
www.buildingonline.com.au

Information Victoria
Tel: 1300 36 63 56
www.information.vic.gov.au

Insurance Council of Australia
Level 7, 31 Queen Street
Melbourne Vic. 3000
Tel: (03) 9614 1077
www.ica.com.au

Land Victoria
Level 16, Marland House, 570 Bourke Street
Melbourne Vic. 3000
Tel: (03) 8636 2000
www.land.vic.gov.au

Law Institute of Victoria
470 Bourke Street
Melbourne Vic. 3000
Tel: (03) 9607 9311
www.liv.asn.au

Real Estate Institute of Victoria (REIV)
335 Camberwell Road
Camberwell Vic. 3124
Tel: (03) 9205 6666
www.reiv.com.au

State Revenue Office (SRO)
505 Little Collins Street
Melbourne Vic. 3000
Tel: 13 21 61
www.sro.vic.gov.au

Sustainable Energy Authority Victoria
Ground Floor, 215 Spring Street
Melbourne Vic. 3000
Tel: 1300 36 37 44
www.seav.vic.gov.au

Victorian Civil and Administrative Tribunal (VCAT)
55 King Street
Melbourne Vic. 3000
Tel: (03) 9628 9700
www.vcat.vic.gov.au

Victorian Conveyancers' Association
Australian Institute of Conveyancers (Vic. Division)
PO Box 843
Glen Waverley Vic. 3150
Tel: (03) 9887 8967
www.aicvic.com.au

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