



AUCTIONS AND TENDERS

When the property market is running hot, many vendors think an auction will extract the highest price for their property.

This isn't necessarily so. The highest bidder might have paid even more if the second bidder had chased them higher. With a tender however, the competing tenderers will agonise in private beforehand about how high they should go, and then take the plunge with their tender price, not knowing what they are up against. It's a bit like a blind auction so sale by tender can sometimes achieve a higher price.

When the market is slow, auctions and tenders aren't so popular. This is because, for purchasers, they are not so user friendly. The written terms and conditions of auction or tender are usually slanted strongly in favour of the vendor. Purchasers must do their due diligence enquiries on the property, well before the auction or closing date. Title, Land Information Memorandum, finance and so on must also be checked and sorted out well beforehand, with no guarantee that all this work will bear fruit.

With sales by tender there are often two separate contracts.

First is the process contract. This is where the vendor and all the prospective purchasing tenderers are legally bound to follow a strict sale procedure. This will involve the tender closure date, the date of opening and examination of tenders, prohibitions from either side withdrawing, and the vendor's obligation to treat all tenderers equally and fairly in observing the tender process.

The second contract is the substantive one – when the best tender is accepted. If you are selling by tender and you want to sign up with a keen purchaser prior to tenders closing you may be in trouble, as you could be in breach of your process contract. If you're buying or selling, either at auction or tender, it is vital that you run the contract past your lawyer prior to signing anything. Sometimes there can be nasty terms tucked away in the small print, which can catch you out. If you're selling, your lawyer can draft the sale conditions to suit your own special needs.

With many houses now selling for half a million dollars, it is well worthwhile spending a hundred or so for peace of mind to ensure your lawyer gives the contract a clean bill of health before you sign it. Wynyard Wood's property law team can help here. It makes sense to reduce your risk, and avoid ending up with a half million dollar problem.

For more information, please contact one of our offices.

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