

Buying or selling at auction: some benefits and potential disadvantages.

Whether it's a modest one bedroom flat or a major city centre site with commercial tenants in occupation, auctions are now seen as a useful option for those looking to buy or sell a property, and have recently seen increasing activity from 'ordinary' buyers and sellers in addition to the usual activity of lenders wanting to quickly resell properties repossessed from defaulting borrowers.

Provided that one is aware of, and makes allowances for, some potential drawbacks, an auction is something which can have considerable advantages for a buyer or seller. Perhaps the most obvious of these is that by using an auction, one can avoid all the issues to do with potential delays involved in chain transactions, and that a buyer or seller can achieve some certainty in that a deal is either secured on the day or not.

At auction, a sale becomes binding when an offer is accepted by the auctioneer and the hammer comes down to close the deal. The buyer will then have to sign a contract or memorandum of sale and immediately put down a non-refundable deposit of approximately 10% of the price. A definite date is fixed for completion at this point, which is typically 4 - 6 weeks after the date of the auction which is when the change of ownership of the property takes place, and the balance of the money is paid over.

Although many auction sales and purchases may proceed to a smooth and satisfactory conclusion, there are risks and drawbacks involved which may unseat those who are not aware of the potential pitfalls, and this is why proper professional advice from a legal advisor is highly recommended.

For the seller, it is vital that a proper, comprehensive legal pack for the property is put together by a property professional, who will make sure that the pack provides for the buyers to reimburse the seller for all searches supplied and may, if the seller so wishes, also make provision for the buyer to contribute towards the seller's legal fees. This is important as failure to supply a properly prepared legal pack may jeopardise the whole transaction, even after the auction itself, if issues subsequently come to light which affect the property but which have not been dealt with in the sales pack.

There are significant risks also for the buyer. Once a bid has been accepted by the auctioneer and the hammer comes down to close the deal, a binding contract comes into existence between the seller and the buyer which cannot be avoided by the buyer on the grounds that he or she does not have the finance in place to complete the transaction, or that there has been insufficient time to organise a proper survey or inspection of the property.

These and many other matters need to be addressed before the auction. A buyer may, for example, need to take in consideration such issues as Stamp Duty Land Tax, VAT, Capital Allowances and insurance, which may be the buyer's responsibility from the date of the auction onwards, and therefore would be wise to seek advice on these matters before committing him or herself to a purchase.

In addition, a buyer will clearly need to ensure that the property which is being purchased is not affected by any adverse legal interests. This requires the legal pack

to be properly checked by somebody who is professionally qualified to do so, and again, that is where the services of a legal advisor will be indispensable.

This is particularly important where the buyer is looking to buy a property with an existing tenant in place, whether this should be a tenant of a shop, factory, office block, house or flat. The buyer will be bound by the terms of the existing lease or tenancy agreement of the property and it is vital therefore that proper legal advice is sought on the terms of such legally binding agreements so that the buyer is fully informed as to his or her obligations before proceeding to make a bid for the property.

Another important issue which may need to be addressed is where buyers may want to borrow against the property that they are hoping to purchase, as all existing leases or tenancies of the property must be acceptable to the lender. This again is where a buyer would be wise to seek proper legal advice on the matter before proceeding.

Further, the role of a legal advisor will continue after the auction to deal with such matters as paying any Stamp Duty Land Tax due on the transaction, giving notices of change of ownership to tenants, and of course dealing with the buyer's registration of title to the property at Land Registry.

One final point to mention is the complex area of guide prices and reserve prices. A property may have a guide price of a certain figure but it does not necessarily mean that this is what it will sell for, or indeed that it is the minimum price that is acceptable to the seller. This is evidenced by the commonly seen practice of properties attracting offers at auctions but not being sold because the reserve price has not been reached. Such practices may make it difficult to secure real bargains but, with proper advice, there are still good deals to be secured for buyers who are properly organised, and are fully aware of the legal implications of a successful bid. Building up experience and expertise can be a great help with auctions, particularly when backed up with the right legal advice.

Both Graeme Gaston and Alison Fielden have many years experience in acting for both buyers and sellers, at auction and in other forms of sale. For a professional legal service please contact Alison Fielden & Co on 01285 653261.