

Buying at a Forced Sale – Increasing the Risk



With rising cost of living pressures, an increase in unemployment and certain industries experiencing tough times, home loan delinquencies and repossessions are on the rise.

Forced sales can come in the form of receiver auctions, bankrupt estate sales, mortgagees in possession or a local council or other authority selling properties for unpaid rates or taxes.

While forced sales can often present opportunities to buyers for genuine bargains, buying a property from a forced sale also presents unique risks and pitfalls requiring the buyer to be more aware.

Forced sales are not always advertised in those terms. Buyers will not always know early on if they are negotiating with a mortgagee in possession and sometimes not until they are signing the contract.

Receiver contracts often contain numerous pages of special conditions that shift risk away from the sellers. Warranties that are normally given by the seller as a standard clause in most property transactions are often deleted from these contracts, diminishing the protections a buyer can normally expect.

Sometimes, there will be a dispute about whether the property can legally be sold, and the contract should accommodate that possibility through special conditions.

If the original owner is insolvent, it is not unusual to find there may be more than one party claiming an interest against the property under contract, and while there are laws in place to deal with this situation, this can be unsettling for a buyer who has innocently signed a contract to buy a property with no knowledge of all of the competing interests.

Buyers need to be savvy when dealing with forced sale contracts. They should seek advice before signing the contract to know what they are getting into and should be more prepared for possible complications than if it were a 'standard' arms length property purchase.



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Buying Property off the Plan – What to Look For



In an earlier column I observed that buying property from a forced sale can potentially yield a bargain for savvy participants in the property market.

Similarly, there is the potential for buyers to realise a significant appreciation in property values when buying off the plan.

Whether they are buying flat land to warehouse or to build on, or a unit in a strata title scheme, the prospect of striking a genuine bargain entices many buyers to sign off the plan contracts without considering the greater risks associated with these transactions.

This first warning is that buyers are dealing with savvy sellers, property developers who have often drafted their contracts to achieve maximum return for minimum risk.

Established property developers generally trade on their good name and the quality of their product, so stories of unscrupulous property developers are rare. Cautionary tales often arise from developers not getting development approvals in the terms they want or otherwise going broke, which can hold up settlements for years.

But there are also times when the developer does not deliver what they promised, yet they still expect the buyer to settle.

There are protections in place from legislation that can require developers to disclose certain information about the development before the buyer signs the contract, and the conditions imposed in the development approvals from the planning authority also provide some guarantee that the development will be completed as it was advertised.

In certain jurisdictions, there has been some recent relaxation in the requirements on developers, while still maintaining some consumer protections.

But litigation can still occur between developers and buyers who thought the contract was going to be plain sailing, arguing over what the buyer had expected the developer to deliver, if the finished product is now what the buyer thought they had bargained for.

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Most developer contracts try to avoid arguments about building defects until after the contract settles, so buyers who have signed off the plan contracts thinking they would have all defects remedied before settlement are often disappointed.

Buyers who have put up a substantial deposit will sometimes change their minds if settlement hasn't occurred within their expected timeframe, and will look at ways of getting out of the contract. Sometimes after the buyer has already got finance approval and made the contract unconditional, the bank's valuation after construction comes in low, leaving the buyer with the dilemma of finding the shortfall in the purchase price or looking at how they might get out of the contract.

Disputes of this nature involve complex arguments of law and careful negotiations.

The best protection to avoid those disputes is to seek legal advice before signing the contract, to understand the off the plan product and to consider legal strategies to manage the buyers risk, such as due diligence conditions, shorter settlement timeframes, and contingencies if valuations don't stack up.

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Elsbeth's articles can be accessed on the Daily Mercury website at <http://www.dailymercury.com.au/topic/elsbeth-ledwy/> or you can find Elsbeth's column "Mind Your Own Business" in the Daily Mercury newspaper each Wednesday.

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