

# Buying a home?

The *Property Agents and Motor Dealers Act 2000* provides safeguards for residential property buyers when dealing with a licensed agent, property developer, auctioneer or their salespeople.

## Before you buy

Buying a home is a major financial investment – investigate your purchase carefully. Research the area where you intend to buy. If it's unfamiliar, contact the local council for details about transport, services, climate, topography and local problem spots like contaminated and flood-prone land.

Prioritise your essential needs. Is it important to be close to transport, schools, shops and emergency services such as police, fire or ambulance? Is this area right for you?

How much can you afford to pay? Consult financial institutions or finance brokers. Many lenders offer pre-approved loans, so know what you can afford before you look for property. Shop around to get the best finance deal.

Set aside additional funds to pay for legal fees (including mortgage insurance and mortgage documentation), removalists, security deposits and connection fees for essential services such as electricity and telephone. Also allow for the cost of a formal valuation, and a building and pest inspection.

Research current market values of property in your chosen area. Peruse property listings at real estate agencies, on the Internet and in newspapers. Contact the Department of Natural Resources for sales data from the area.

Visit open houses to compare values of properties in the area.

Ask a reputable real estate agent for market information. See who is most active in the area where you wish to purchase and check them out at houses open for inspection. Ask friends and colleagues for referrals.

Ensure your agent is licensed. Their office should display a copy of the licence. If you deal with an unlicensed person or buy privately, you will not have the same level of consumer protection and recourse to compensation.

Never buy property unseen – what you 'see' may not be what you get. This is particularly important if you are

purchasing through the internet or an investment club or time-share opportunity. Always inspect the property personally or have a trusted friend inspect on your behalf.

## When you are ready to buy

Ask to see the agent's licence (it should be clearly displayed at the place of business). If you are dealing with real estate agents, auctioneers, property developers or their sales consultants, by law they must achieve the best price and terms for the property owner – not you. You may wish to appoint a buyer's agent to represent your interests in negotiations.

Ask the agent if the property has any restrictions such as the use of vacant land or any registered dealings or easements over the property that could reduce its value. In many older suburbs there can be problems over uncertain boundaries. Check that features such as a deck, garage, shed or pool comply with local council regulations or building standards. Ask the agent or owner to clarify this for you in writing. If requested, the agent has a duty to reveal any pertinent information to you about the property.

Don't rely on the provision in the standard land contract for the sale to be subject to a satisfactory building and pest inspection. Undertake these inspections before negotiations commence to put you in a stronger position because you know exactly what condition the property is in and what needs to be spent on it.

If you are buying a brand new house or house and land package, shop around to ensure you are getting a good deal. Obtain a valuation to ensure this is the case. Have a building inspection conducted by a certified, independent building inspector. Be aware the builder's own inspector, not the local council, is responsible for building compliance inspections. Buyers should also investigate appropriate statutory warranties for new buildings and procedures for making claims within the warranty period.

When you buy into a Body Corporate (such as a home unit or townhouse) you buy into a community lifestyle with shared responsibilities and liabilities. Investigate the affairs of the body corporate, its sinking fund and your obligations to pay levies and fees.

## When you are ready to sign

All residential sales contracts must have a warning statement as the front page. Follow the advice in the warning statement recommending you seek independent legal advice and valuation before you sign the contract.

It is wise to investigate and appoint your own service providers, such as solicitors, valuers, finance agents and building and pest inspectors. It is common for agents and developers to refer you to these services, however you have no guarantee of their independence in the transaction.

Agents and developers are required to provide a buyer with certain contract disclosures. For instance, you must be informed if the agent or any other party is receiving any benefit from the transaction (such as referral fees).

When buying a home unit or property run by a Body Corporate, you must be given disclosures about fees and the affairs of the Body Corporate before you sign a contract.

Real estate agents and developers in Queensland often prepare their own contracts. It is also common practice for all negotiations to be on contract rather than undertaken orally. When you are ready to sign a contract, take a copy away and discuss it with your solicitor, especially if you will be making an offer on the property subject to certain conditions such as finance or the sale of another property. Once you sign the contract and it is signed by the seller, it becomes binding.

Don't be pressured into signing a contract unless you understand it fully or have had your solicitor check it for you.

Contracts for residential property purchased not by auction have a cooling-off period of 5 business days. If you wish to shorten or forego the cooling-off period, ask your solicitor to issue you with a certificate.

If you want to cancel the contract during the cooling-off period, write a letter to the property developer or agent and deliver it before the period ends. You will be refunded your deposit less an amount up to 0.25% of the purchase price of the property.

Before you sign the contract, make sure all the items to be included in the sale are actually included in the contract. The standard terms of the contract will provide for all fixtures and fittings (any item that is glued, bolted, screwed, joined, nailed or plumbed into a property) to be sold with the property unless otherwise specified under 'exclusions' to the sale.

Make sure all alterations made to the contract during negotiations are initialled and any special conditions can be fulfilled within a reasonable time frame.

It is wise to appoint a solicitor to undertake your conveyancing as legal issues may affect the sale.

Under Queensland's standard contract terms, the buyer carries the risk of the property from 5pm the next working day after signing so ensure you have taken out an appropriate insurance cover note to legally protect you if the property is destroyed or someone is injured.

## Buying at auction

Buying at auction requires more research and preparation than a traditional private sale.

The terms of a residential auction sale usually require the buyer to bid on an unconditional basis. This means you cannot have any special conditions such as subject to finance or subject to the completion of another sale. You do not have the protection of a cooling-off period. Further, if you are the successful buyer, you could be required to settle the contract even if the house is defective or you cannot afford it.

Under certain circumstances you can request to bid with a 'side agreement'. For instance, the terms of the auction are 10% deposit and a 30-day settlement. If you only wish to pay a 5% deposit and settle in 60 days, you can request a variation to the terms of sale before auction. If the owner agrees you should get this in writing, and you may then bid at auction. A property can be sold or withdrawn prior to auction.

If you need to arrange finance or a building or pest inspection, do this before the auction.

Ask your solicitor to peruse a copy of the contract and conduct searches **before** the auction day.

Arrange a 10% deposit (or an amount otherwise agreed) for payment at the auction. A personal cheque, bank cheque or deposit bond is usually sufficient.

You must be given a copy of the terms and conditions of the auction sale at the commencement of the auction. They should also be read out to prospective bidders. You also have an opportunity to ask questions of the auctioneer or the sales consultant regarding the property before the bidding commences.

Set a bidding limit prior to auction and stick to it. In Queensland auctioneers are allowed to accept 'vendor' bids up to the reserve but not once it is 'on the market'.

If you are the successful bidder, you must sign a contract immediately. There are serious legal ramifications if you cannot settle the sale on time.

## Licensed to deal

Real estate agents, auctioneers, property developers and their salespeople must be licensed by the Office of Fair Trading.

The Office of Fair Trading decides on applications, issues licences and registration certificates and keeps a public register. You can inspect and take copies of licence information from the register for a fee.

## Codes, conduct and consumer complaints

Licensed agents, auctioneers and property developers are required to conduct themselves and their businesses according to a **Code of Conduct**.

Each Code of Conduct requires industry members to establish their own complaint process to resolve buyers' problems.

If you have a complaint about an agent's conduct, approach them first to try to resolve the dispute through their complaint process.

If you are not satisfied, you can complain in writing to the Office of Fair Trading. Officers will investigate to see if there is evidence they broke the law.

Investigations may lead to disciplinary charges, reprimands, fines and suspension or disqualification of licences or registration certificates.

## Getting the real picture

You are protected if agents make **false or misleading representations** about a property.

If an agent provides you with information about:

- the value of a property;
- the property's income-producing potential;
- the sales history of similar properties; and
- the income tax benefits of buying a property

then it should be factually correct and not misleading.

If you lose money after relying on an agent's false or misleading claims, the agent may be required by the Office of Fair Trading to substantiate any claims they may have made to persuade you to buy a property. There are severe penalties for misleading conduct.

If you lose money after dealing with a property developer, even if they are licensed, you cannot seek reimbursement through the Claim Fund.

## Lost money on a bad deal?

You can make a written claim for compensation from the Claim Fund, through the Office of Fair Trading, if you have lost money because of the actions of an agent or their salespeople in

certain situations. Claims could be regarding misrepresentations about a property or stealing of the deposit held on trust. There are time and other limitations for making a claim.

## For more information:

The Office of Fair Trading website

[www.fairtrading.qld.gov.au](http://www.fairtrading.qld.gov.au)

or call 1300 658 030 (for the cost of a local call).

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