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The Importance of contracts at auction

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Agents need to ensure they know what is included in each contract for sale or they will end up missing out on sales.

auctionWORKS Principal David Scholes said that agents who don't know about the contract for sale will see 'buyers deserting them in hordes'.

He revealed that some agents aren't focusing on or checking the contracts and rely too much on their solicitors prior to auction day.

David said: "A buyer is signing a contract to give them the right to own and occupy the property within a certain period so agents cannot spend enough time working out what is in that contract to make sure it is straightforward and is a contract that can be enforced.

"I have had experiences where I have arrived at the auction and can't conduct it because there are deficiencies in the contract.

"An agent needs to go through the contract and ensure the correct annexures are in place and all vendor disclosures attached."

What disclosures and documents need to be part of the contract?

- For a freehold property, David says the contract needs a minimum of:
- section 149 certificate
- drainage diagram (if it is connected to the sewer)
- certificate of title
- a lot plan that identifies the property - or for strata titles properties, a copy of the strata plan
- if the property has a swimming pool, a certificate of compliance or non-compliance (not required for a property that is part of a strata with more than two lots).

Request for changes

David says it is important for an agent to make sure owners are aware that many buyers will request amendments to contracts.

It is common for a 5% deposit to be requested. If acceptable, it is prudent for the vendor's conveyancer to have a "reduced deposit clause" ready for insertion to the contract.

It is also good practice for the agent to ensure they insert a price equivalent to the full 10% on the front page of the contract. sue a full 10% deposit s

When agents sell properties to companies, partnerships or superannuation funds instead of individuals, they need to have a director's guarantee attached to the contract.

David explained: "These steps are simple and makes agents look good if they can advise their owners what to expect and what they need from their solicitors."

Biggest problem in commercial contracts

David said that one of the biggest problems with commercial contracts was GST not being marked up correctly.

He said: "It is just laziness. GST has been in Australia for over 16 years and there is not a week that goes by where we don't have an issue with GST on a contract."

"Agents must understand the GST implication on the sale of individual commercial property and be prepared to make buyers aware of it. For me to discover on auction day that a contract does not refer to GST means the agent has not bothered to ever look at it."

David also warns on the importance of understanding the encumbrances listed on the certificate of title.

"It is not only a mortgage that is listed but everything that affects the clear title of that property. Covenants, caveats and easements are all areas of concern to incoming owners."

"A certificate of title is the first document a purchaser's solicitor will look at when determining potential risk to the purchaser. An agent must understand every encumbrance and be prepared to discuss those with potential bidders so they are comfortable with them before a contract is handed over."

"Agents have to realise that an auction campaign is a very intense period for buyers and they must make it as easy as possible for bidders to compete. A poorly prepared contract WILL restrict the amount of competition you can expect."