



Buying at a mortgagee sale-the pitfalls.

A mortgagee sale occurs when the Bank needs to realise its security to cover outstanding mortgage repayments. The property can often be purchased at a very low price because of the forced nature of the sale. There are however some downsides to purchasing at mortgagee sale:

- The sale usually, but not always, occurs by way of an auction. The sale contract usually contains special terms that remove your usual rights and favour the Bank. Unlike the normal sale and purchase situation, when the standard Law Society/REINZ contract is used, there is usually no scope for negotiation by you on the terms of the contract.
- The main issue is the Bank usually will not guarantee whether you will get vacant possession on settlement. You may end up buying the property with the mortgagor "in place" or with a tenant who appears from nowhere claiming the right to occupy the property at a very low rental. You will then be left to sort out the mess after settlement, perhaps having to terminate the tenancy or apply to the Court for occupation.
- There is also no guarantee of the property's condition. Even if you have the benefit of viewing the property before settlement, it may not be in the same state on the settlement day. Further, the Bank can only sell you the land and buildings, not the chattels, you may find the mortgagor has stripped the property before settlement.
- In a regular transaction, you will get standard warranties from the vendor, for example that the construction or subsequent alteration of the dwelling is permitted and meets council requirements or that the vendor will correct defects in the cross lease title. A mortgagee auction contract will include no warranties from the Bank, you will have no recourse against the Bank if unauthorised structures are later found on the property.
- Even though the contract will specify a settlement date, settlement may be delayed if there are claims from people alleging an interest in the property. This can happen when a spouse or partner of the mortgagor claims a half share of the property under the Property (Relationships) Act 1976. They can lodge a caveat on the property's title, preventing the sale concluding. The Bank will need to negotiate with them in order to sell you the property.
- You should be particularly careful when buying a unit title at a mortgagee auction. Unit titles can have issues with additions and alterations, problems with property managers and "leaky building" problems. You should always ask for the minutes of the last annual general meeting of the body corporate and obtain a LIM and builders report.

You should try to find out as much as possible about the property before they take part in the auction. If you are considering buying at a mortgagee sale action talk to us as soon as possible before the auction so that we can do proper due diligence on your purchase.