

Preparation Key to Painless Property Transactions

With interest rates coming down, changes to the "fall of hammer" auction rules and new guidelines governing how real estate agents advertise house prices, you don't want to be caught out in the property market this Spring.

Perhaps you are in the market to buy, or are thinking of putting the family home on the market? Either way, it pays to be across the rules, regulations and laws governing real estate.

Forget "location, location", try "preparation, preparation" if you want the experience to be a painless one.

There are laws in Victoria designed to stop agents from making false or misleading statements about property prices, in particular, underquoting the estimated selling price to potential buyers.

Consumer Affairs Victoria has released guidelines that are designed to be "used to review underquoting practices and to assess compliance with the *Fair Trading Act 1999* and the *Estate Agents Act 1980*".

While the price you are willing to pay is the most important factor when organising finance, don't forget to take account of stamp duty, bank charges and other "hidden" fees such as mortgage insurance.

Get a lawyer to review the Vendor's Statement, also called a Section 32 document, and make sure you understand what you are actually buying as well

as your rights and responsibilities in relation to the property if you become the owner.

If you plan to bid at an auction, contact your solicitor before the day of the auction so that all documents can be reviewed and all the terms and conditions fully explained. Once you understand all the paperwork, you can set a realistic budget and be ready to bid with full confidence. Get to the auction early, do a final inspection and make sure you understand the auction rules.

Specific laws apply to the conduct of auctions and the rules agents must follow both before and during the auction. Before the auction, the agent must comply with the *Sale of Land Act Regulations 2005 (Vic)*, which includes producing an auction information statement and providing, in writing, the rules applying to the auction.

At the auction, the agent must declare the laws that apply to the auction and whether there will be co-owner and/or vendor bids received at the auction. The *Sale of Land Act 1962 (Vic)* prohibits the agent from accepting dummy bids to push up the price of the property during the auction. Auctioneers must indicate bidders on request.

Changes to the *Sale of Land Act Regulations 2005 (Vic)* mean that bids made after the fall of the hammer cannot be accepted by the auctioneer, unless the vendor or successful bidder refuses to sign the contract of sale following the auction.

If you are selling, you are responsible for the accuracy of

your Vendor's Statement, or Section 32, which will contain information about rates, the property title, zoning, notices, orders and building approvals.

A lawyer can help prepare this document, as well as draw up the Contract of Sale. Apart from price, other terms the Contract covers include the settlement date, chattels that form part of the sale and issues such as planning restrictions.

Victorians now have a new Contract of Sale for real estate transactions, that began on 28 September. The new Contract replaces both the Contract Note and the old Contract of Sale. Apart from simplifying and reducing costs involved in the conveyancing process, buyers and sellers should notice little practical difference in the sale process.

When it comes to real estate a lawyer can:

- advise on any contractual issue including your rights and obligations;
- check the information given in the Vendor's Statement on your behalf and advise you of your rights if false information has been given or necessary information has not been disclosed;
- negotiate contractual terms favourable to you and pursuant to your instructions;
- represent your interests if a dispute arises;
- ensure compliance with legislation and conduct relevant searches; and
- act for you in property settlements.

Underbelly – Why Couldn't We Watch It

Victorians finally got to see part of the multi-million dollar TV drama *Underbelly* in September, following a conviction in the murder trial that had prevented it from being shown in the state.

Supreme Court Justice Betty King imposed a suppression order on the 13-part weekly series in February after the Department of Public Prosecutions argued screening it would prejudice the March trial.

The decision to ban the broadcast in Victoria focused attention on the power of the Victorian Supreme Court to suppress publications or broadcasts which might prejudice a criminal trial.

The question of whether a TV drama should be prevented from depicting events which are the subject of a current criminal trial had not been raised before in Victoria.

Other issues also emerged such as the ability of courts to restrict the flow of information in the "digital age" and how to balance freedom of speech with the right to a fair trial.

The Nine Network appealed the orders made by Justice King which restricted the "transmission, publication, broadcasting or exhibiting" of *Underbelly* – which was based on Melbourne's gangland war.

The appeal was unsuccessful with the Court of Appeal upholding the findings of Justice King that the TV drama might interfere with the ability of a jury to properly consider the evidence in the trial.

This is because *Underbelly* gave an explanation of the murder, and contained a mixture of factual and fictional dialogue which would not be made clear to a juror. The Court found the series could potentially expose the jury to not only facts (which might be inadmissible) but also to fictional conversations and events which might confuse the facts presented at the trial.

The ban on *Underbelly* expired when a Supreme Court jury convicted Evangelos Goussis of the 2004 killing of Lewis Moran in May 2008.

Between 1998 and 2006, more than 30 people were killed in Victoria – deaths linked to various feuds between members of Melbourne's organised crime underworld. Some of the murders remain unsolved and others are subject to criminal proceedings in which charges have been laid but which have not yet gone to trial.

Which is why only the first five episodes of the 13-part series have been shown after a Supreme Court ruling by Justice Peter Vickery saw the sixth episode barred so as not to prejudice another accused criminal's upcoming trial.

The episodes which did go to air were edited to meet concerns raised by the Director of Public Prosecutions, Jeremy Rapke, QC. The face of one actor, who appears briefly, was pixellated.

The Nine Network did not seek to screen the remaining seven episodes of the show, but has said it has plans to commission a second series of *Underbelly*.

Self-Education Expenses

In a recent case, the AAT has affirmed the Commissioner's decision to deny a taxpayer a deduction for self-education expenses.

The Tribunal held that the taxpayer had not shown that the expenses were incidental and relevant to the gaining of assessable income.

Generally, self-education expenses incurred before employment commences or to obtain new employment are not deductible.

- **TIP:** The Tax Office has indicated that one of the areas it is focusing on is anomalous or "out-of-pattern" self-education claims.

Minors and Tax-Free Threshold

The maximum "unearned income" that a resident minor can earn for the 2008-09 income year is \$2,667.

Effectively, a resident minor can receive up to \$2,667 in trust distributions for 2008-09 before incurring a tax liability, unless the minor has other sources of income.

Generally, income derived by a minor is taxed under a separate rate. However, exceptions apply, such as income from full-time employment.

Important: This is not advice. Clients should not act solely on the basis of the material contained in this Bulletin. Items herein are general comments only and do not constitute or convey advice per se. Also changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. The Bulletin is issued as a helpful guide to clients and for their private information. Therefore it should be regarded as confidential and not be made available to any person without our prior approval.