

YOU AND YOUR PROPERTY

BY RESIDENTIAL PROPERTY LAWYER
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One of the first questions I am asked by prospective buyers of property is the best way to present their offer. My usual response is to ask two questions. Is the property being sold through an agent or privately? What is the method of sale? The answers to these questions shape my advice significantly.

The first question regarding the involvement of an agent is an attempt to glean some insight into the vendor. Whilst both real estate agents and private sellers are motivated to sell their respective approaches can be quite different. Real estate agents are highly regulated and operate on a best practice model. They have ethical guidelines they must comply with and will ensure their seller and the buyer are adequately advised throughout the process. The agent takes control of the sale process, prepares an agreement and acts as a mediator between the seller and buyer.

Private sellers are not regulated in the same way and their motivation is predominantly to obtain the best price. In my experience private sellers are often blissfully unaware of their duties to disclose important and relevant information to prospective buyers. The process is usually

slower as once an agreement is reached the buyer must instruct their lawyer to prepare the offer for the property, arrange for it to be signed and then deliver it to the seller's lawyer. Owing to the involvement of two lawyers this process can be markedly slower than through a real estate agent.

I am aware of people who have sold their homes privately with great success. I am also aware of sellers who have attempted to sell privately and have ultimately instructed agents to complete the sale as they have realised they are out of their depth. This is a personal decision each seller needs to make, but I always recommend we trust the experts rather than rely on our own perceived skills and abilities.

The second question relates to the method of sale. If a property is being sold by negotiation, an offer can be presented and accepted at any time. This is a low pressure way of selling. It creates more certainty for buyers as they know the offer they are presenting at any given point in time is the only offer.

Another common method of sale is closed tender. With a closed tender, the seller and agent call for offers to be delivered at a certain time on a certain date. The seller will then consider all of the

offers at the same time, and may or may not accept one of them. The difficulty for buyers in this situation is they have no idea who their competition is and the extent of that competition. Even if there are multiple parties returning regularly to open homes, this is not necessarily indicative of the fact they will eventually make an offer. When I purchased my home, I recall at least four or five groups being at every single open home. I am advised only one other tender was received apart from mine. I do not know the level of the other tender. It is quite possible I beat the lower tender by a substantial, or possibly only a very small, margin. The closed tender process invites purchasers to put a dollar figure on the property. This can result in buyers making inflated offers in an effort to secure the property.

When buying at closed tender the key is to ensure your offer is "clean". The fewer conditions that are attached to the offer, the better. For example, if there were two competing offers at a similar dollar value and one is subject to the sale of another property and the other one is subject to finance, the offer which is subject to sale is substantially less attractive as it

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is less certain. An unconditional offer is optimal for the seller. This necessitates that buyers do as much of their due diligence as possible prior to submitting their tender. Titles should be checked, Council records reviewed, finance should be confirmed, if there is any potential issue with insuring the property this should be addressed. If there is doubt as to what an appropriate value for the property is, a valuation can be obtained. In addition, a builder's report should be obtained to ensure the weather-tightness and quality of the house. This necessitates buyers to spend funds without any certainty they will be successful.

The final common method of sale of property is auction. Auctions can be high pressure, but the parties and the price are completely transparent. All the parties can see the price incrementally increase. They will notice when parties cease or commence bidding. Like closed tenders, there is a necessity that due diligence is completed prior to the auction. Buying at auction will always be unconditional. Once the hammer drops, the buyer is legally obliged to buy the property and pay the deposit immediately following the auction.

Before attending an auction for a property you are interested in, you should attend other auctions for properties in which you have no interest. This will enable you to identify how auctions work and how parties' bid, and the bidding patterns that are followed. Without being aware of how the process works, you will not be adequately prepared for the real thing.

If you are going to buy at auction, you should set very clear parameters prior to the auction as to what you are prepared to pay for a property. The price should be set using objective standards and be realistic. It can be fatal to over-extend yourself financially just to secure a property. It gives no room for error and in my experience will often end badly.

Prior to buying a property you should always seek advice as to the best way to present your offer.

"If you would like a copy of previous articles on property written by Michael email him on michael@homelegal.co.nz."

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