

Gazumping

Gazumping occurs when you have a verbal agreement with an agent or seller to buy a property at an agreed price but the property is not sold to you in the end. This usually happens when the vendor (the person selling the property) has decided to sell the property to someone else, usually for a higher amount. The agent is legally obliged to pass on to the vendor any further offers received for the property up until the exchange of contracts.

If you are gazumped, neither the agent nor the vendor is obliged to compensate you for any money you may have spent on legal advice, inspection reports, finance application costs or inquiries. However, your 'expression of interest' payment (if you have paid one) must be refunded to you in full.

In NSW, a property sale is generally only binding on the vendor and buyer when contracts are exchanged between the two parties. Exchange occurs when the vendor signs their copy of the sale contract; the purchaser signs their copy, and the two parties 'exchange' their signed contracts. It is usual at this time for the purchaser to pay a deposit, usually 10% of the purchase price.

Protect yourself

Some ways to protect yourself from being gazumped are:

- Always have your loan finance pre-arranged, and ensure you can pay the 10% deposit, by Bank Cheque or a deposit bond so there is no delay before attempting to exchange contracts on a property.
- Obtain a copy of the sale contract as soon as possible and have it examined by either your licensed conveyancer or solicitor.
- Seek to exchange contracts with the vendor as soon as possible. Anyone purchasing residential property has a five-day cooling off period commencing from the time of exchange of the contracts. Only the purchaser can waive the cooling off period and it can be extended by agreement.
- During the cooling off period, you can do a building and pest inspection and have the contract examined. However, if you rescind the contract during this period, you forfeit .25% of the purchase price to the vendor, as the property has been taken off the market for a period of time. The amount forfeited is recovered from the deposit you paid under the contract. If the amount of the deposit is insufficient, you will have to provide the necessary additional funds. You should find information relating to the cooling off period in your contract.
- Negotiate firmly with the vendor or real estate agent. Insist on the agent passing your bona-fide offers to the vendor. The law requires agents to inform the vendor of all offers up until exchange of contracts has taken place unless the vendor has instructed otherwise in writing (eg. the vendor instructs an agent not to advise of offers under a certain price).
- You may wish to ask for evidence in writing that your offer has been passed on but this is not required of an agent by law. Be ready to exchange with a signed copy of the contract and follow through on the exchange process yourself or with another trusted person to ensure exchange.
- If you are advised that other offers have been made, ask to have this in writing. While an agent is not obligated to provide this information in writing most agents will do it.
- If you are certain that you want the particular property, be ready to possibly increase your purchase offer to the vendor.

- Be aware that the vendor is not generally compelled to sell to any specific person and can change their mind at any time prior to the exchange of contracts. Vendors may not necessarily sell to the person that makes the highest offer, but may accept a lower offer from a prospective purchaser.

Auctions

When a property is sold by auction, a purchaser is bound to purchase the property after having made the highest bid at the end of the auction after the property has been placed on the market by the vendor. Gazumping cannot occur in the auction process.

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