

Title Insurance

Many risks faced by buyers of residential property cannot be discovered by conducting a title search alone and therefore, it is necessary to conduct a number of additional searches to identify whether there are any issues with the property. If a title defect is identified following settlement, the buyer will assume the responsibility for the defect.

Title insurance can give buyers protection by providing an indemnity against losses that may be incurred as a result of an unknown and hidden defect in title such as boundary or encroachment issues or other risks such as illegal or unapproved building work.

In Queensland, title insurance is not currently required by financiers as a matter of course nor is such cover commonly taken out by buyers. However, this may change over time as awareness of this type of cover develops.

In any event, all buyers should discuss the potential risks associated with purchasing residential property with their solicitor prior to entering into the contract. Buyers should also ensure that appropriate insurances are obtained for the property at the appropriate time.

Ban on Auction Price Guides

As discussed in an earlier edition of Clear Title, the Property Occupations Bill is one of four bills splitting the *Property Agents and Motor Dealers Act 2000*. Contained within this bill are various requirements for auctioneers and real estate agents in relation to representations about price.

Whilst the bill permits an auctioneer or agent to disclose that a reserve price has been set for residential property being sold by auction, they must not disclose the reserve price and therefore, agents will not be permitted to advertise any indication of price on homes going to auction.

However, the bill allows an auctioneer or agent to provide a comparative market analysis giving an opinion on what a property is worth provided the analysis is given in writing at the direct request of a buyer. This means that people searching multiple properties would need to lodge individual requests with every respective agent.

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There has been considerable debate in the real estate sector in relation to the proposed ban, with some in support and others not. Some agents believe that the proposed ban could negatively impact the Queensland real estate market and according to realestate.com.au, 91 per cent of their users do not consider homes without price guides.

The Real Estate Institute of Queensland (REIQ) has supported the move as it allows the market to decide the value of the property. However, the Real Estate Institute of New South Wales (REINSW) believes that the bill removes transparency from the auction process.

A report on the bill has now been tabled in Parliament in relation to the Legal Affairs and Community Safety Committee's examination of the Property Occupations Bill 2013.

The report recommended that the Bill be passed but sought clarification from the Attorney-General and Minister for Justice on whether an auctioneer would be allowed to announce a property is on the market or use words to that effect after the reserve price had been met at the auction. The Committee has recommended that it be clarified whether it is intended that an auctioneer would be in breach of the legislation if they make such an announcement. The Committee's report indicates that it does not consider that this should be a breach of the legislation but further clarification in respect of this issue is necessary.

It remains to be seen whether the bill will be passed or whether it will be subject to further amendment. Watch this space!

Feedback

Kelly Conveyancing is the residential conveyancing division of Kelly Legal.

This newsletter is intended to provide an information and referral network for residential real estate agents, mortgage brokers, accountants, financial institutions and buyers and sellers of residential property.

If you have any feedback on this edition of Kelly Conveyancing's newsletter 'Clear Title' or suggestions for topics in upcoming editions you are invited to contact the Manager of Kelly Conveyancing, Shaun Spada on (07) 4911 0504.