



# Sheriff's Auctions of Real Estate

## Information Sheet

**Sheriff's auctions of real estate differ from auctions conducted by real estate agents/licensed auctioneers. If you intend to bid at a Sheriff's real estate auction, you are advised to read this information sheet and seek independent legal advice.**

### Who is the Sheriff?

The Sheriff is an officer of the Supreme Court of Victoria.

### Why does the Sheriff sell property?

The Court directs the Sheriff to sell a person's interest in property when that person fails to pay a debt that the Court has ordered the person to pay.

### What is the Sheriff selling at an auction of property?

The Sheriff auctions a person's interest in property under a Warrant of Seizure and Sale.

A person's interest may be subject to any other interests in the property registered on the title to the property at the time of the auction, including mortgages and caveats. These other interests are noted on the advertisement of the Sheriff's auction. There may also be unregistered interests that are not recorded on the title. Where known, the Sheriff will advise prospective purchasers of unregistered interests. The Sheriff cannot guarantee that there may be other unregistered interests in the property.

The extent of the interest being sold by the Sheriff will differ at each auction. Prospective purchasers should ensure they understand what is being sold.

### Example

A person is the sole proprietor of a property valued at \$400,000. A registered mortgage of \$300,000 affects the property. No other registered interests affect the property. For the purpose of setting a reserve for the auction of the property, the person's interest in the property would be valued at \$100,000.

At the auction or, upon request, before the auction, the Sheriff provides the pay-out amount for any registered mortgages affecting the person's interest being sold if that information is known.

Also see section below, [Following sale what happens to the other interests registered on Title?](#)

### Method of sale

The Sheriff is only permitted to sell interests in real estate by public auction. This can be online, or at a location as advertised by the Sheriff.

The Sheriff cannot enter into negotiations to sell an interest in real estate by private sale prior to a scheduled auction or after the auction at which an interest has passed in.

### Inspection of property

The Sheriff does not obtain possession of a property as part of the sale process. The Sheriff may allow the property to be open for inspection prior to an auction if the property is vacant, or the occupier consents, and the Sheriff is given access to the property and determines that

there are no significant risks to the safety of the public or its officers. In most matters, a property is not able to be inspected prior to auction.

### Vendor's statement or "section 32"

A Sheriff's auction does not operate under the *Sale of Land Act 1962*. The Sheriff does not provide a vendor's statement under section 32 of the *Sale of Land Act 1962*.

A person wishing to bid at a Sheriff's auction should make their own enquiries in relation to the property. A solicitor can assist in making property information searches.

### Who conducts the auction?

A Sheriff's auction is conducted by a Sheriff's officer, not a real estate agent or auctioneer. To bid at a Sheriff's online auction you must have access to a laptop or phone with the Microsoft Teams App. All bidders or interested parties must complete the Sheriff's auction registration form including your email address to be invited to the auction. The registration form can be found in this website:

<http://www.justice.vic.gov.au/sheriffrealestate>

### Is there a reserve price?

Unless the Court orders otherwise, the Sheriff has a duty to obtain a fair and reasonable price. The Sheriff sets a reserve price, however, the reserve price is not disclosed.

### Does GST apply to the Sale?

GST is payable on some types of real property, such as commercial property and new residential property. The applicability of GST to the sale will vary in each circumstance. If GST is payable it will be set out in the contract of sale.

### What happens following a sale?

The purchaser must pay, by electronic funds transfer (EFT) using OSKO in the form of clear funds, a minimum of 10% deposit on the fall of

the hammer into the nominated Fines and Enforcement Services revenue account as provided by the Sheriff's officer conducting the sale.

### What is OSKO?

Osko is a service from payments platform BPAY, which was launched in February 2018. It allows customers to make near instant payments from one bank account to another, either by using a BSB and account number or a PayID, which is another of the banking services that was introduced as part of the New Payments Platform (NPP).

A contract of sale is entered into. This is not a standard form contract.

On payment of the purchase price, the Sheriff provides the purchaser with a completed Transfer of Land form, which the purchaser can use to become registered as a proprietor of the property.

The Certificate of Title for the property is also required for registration. The Sheriff does not must request that the person holding the Certificate of Title, usually the mortgagee, provide them with the Certificate of Title.

If the purchaser wants the Registrar of Titles to register the interest they have acquired in the property on the relevant Certificate of Title, section 52 of the *Transfer of Land Act 1958* requires the purchaser to lodge the relevant transfer for registration within three months of the date that the Registrar recorded the warrant on the title. Prospective purchasers should check the date the warrant was registered on Title carefully.

Payment terms vary from auction to auction. The advertisement for the Sheriff's sale will set out the payment terms.

There will be no adjustments made on the purchaser's payment of the balance of the price. The purchaser is liable for all unpaid and future outgoings incurred in respect of the property, in addition to any interest accruing on those amounts.

Stamp duty is payable on a transfer of land from the Sheriff. The State Revenue Office of Victoria will provide relevant advice in relation to stamp duty.

Although a purchaser is entitled at law to possession of the property in which the Sheriff has sold an interest, the purchaser may have to take legal action to obtain it. The Sheriff does not deliver possession of the property upon a sale.

### Following sale what happens to the other interests registered on Title?

A prospective purchaser at a Sheriff's auction should obtain legal advice in relation to the effect of other interests registered on title. The most common interest registered on Title is a mortgage. The purchaser does not become responsible for payments under the mortgage – the mortgagor would continue to be responsible.

The purchaser may choose to pay out the mortgage. If the purchaser pays out the mortgage, the interest purchased at auction will no longer be subject to the mortgage. If the purchaser does not pay out the mortgage, the property remains subject to the mortgage, and if the mortgagor defaults on payments, the mortgagee may sell the property at a mortgagee's sale.

### Further information

Please contact Sheriff's Asset and Administration Services by email at [realestatesection@justice.vic.gov.au](mailto:realestatesection@justice.vic.gov.au) if you have any questions.

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