



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 lawyer 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 properties and new residential properties. 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.

Osko is a payment platform BPAY that allows near instant payments to be made from one bank to another, a BSB and an account number, or a PayID.

A contract of sale is entered into between the Sheriff and purchaser. This is not a standard form contract.

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

On payment of the purchase price, the purchaser must invite the Sheriff as a party "to deal with the interest" to the PEXA workspace and set a time and date for completion. The Sheriff will accept the workspace and completion as soon as practical thereafter.

Insurance

The Sheriff does not insure the property or provide insurance advice. Purchasers should seek independent advice from a lawyer, their insurer or an insurance broker about insuring the property.

Timing

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 six 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.

Certificate of Title

The paper or electronic Certificate of Title for the property (the title) is required for

registration. The Sheriff does not have, nor can the Sheriff provide the title.

At their own expense, the purchaser is responsible for:

- locating the title holder (often the mortgagee who holds the electronic title)
- for inviting the title holder into the PEXA workspace. If the title holder (often the mortgagee) cannot operate in the same workspace as the Sheriff, the purchaser may need to arrange a paper settlement
- seeking orders from the court to proceed to have the transfer registered if the title holder refuses to enter the workspace, cannot be contacted, or if required does not nominate the title, and
- taking legal action to obtain vacant possession of the property (if necessary).

Outgoings on the property

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. There will be no adjustments made on the purchaser's payment of the balance of the price.

Stamp duty

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.

Possession of the property

Purchasers are entitled at law to possession of the property in which the Sheriff has sold

an interest. However, the Sheriff does not deliver possession of the property upon a sale. At its own expense, the purchaser may have to take legal action to obtain possession of the property.

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 if you have any questions.