

LICENSING, REGULATION AND ALCOHOL STRATEGY

Gazumping

Gazumping is the practice where a seller accepts a buyer's offer to purchase property and accepts a higher offer before contracts are exchanged.

Gazumping by definition is the bypassing of a buyer of real estate, with whom a price has been agreed, by selling at a higher price to another buyer. Gazumping occurs where there is a verbal agreement with the seller to buy a property at an agreed price or where an offer to purchase has been made and accepted and the seller then decides to sell to someone else, usually for a higher amount.

By law, an agent is required to pass all offers to the seller for consideration. Prior to the exchange of contracts, the seller is free to negotiate with other prospective purchasers. If the seller accepts another offer and exchanges a contract with that party, any purchaser who had a verbal agreement to buy it is gazumped.

If you are gazumped, you will be liable for any costs incurred such as costs for legal advice or services of the conveyancing agent, inspection reports and finance application costs. If you paid a deposit, it must be refunded with no penalty.

Gazumping is not illegal, as there has been no exchange of contracts.

Why Gazumping Occurs

Gazumping can happen at any time for a number of reasons. A seller has the right to consider and accept a higher offer or different contract conditions during the course of negotiations in selling a property.

For a seller, gazumping can result in a higher sale price or better contract conditions, such as a shorter settlement period or unconditional finance.

How to Protect Yourself Against Gazumping

Gazumping results in disappointment and frustration for the potential buyer, particularly where the buyer's heart was set on the property and where money was spent for pest and building reports or legal or conveyancing costs.

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If you are buying a property, you must be aware that when you make an offer, even if verbally accepted by the seller, there is potential to be gazumped until such time as the contracts are signed and exchanged.

Paying a deposit does not secure the sale. The legally binding agreement between the seller and buyer only exists on the exchange of contracts.

To avoid being gazumped as a buyer you should:

- be careful that your offer is not too low to avoid the risk of another keen buyer making a higher offer and entering into a contract quickly;
- be aware that an accepted offer does not mean that the property is sold to you. There is always a risk that another keen buyer will make a higher offer or propose more favourable terms of sale, and exchange contracts first;
- have your loan finance pre-arranged and ensure you can pay the deposit;
- seek to exchange contracts as soon as possible. The exchange of the contract will take the property off the market;
- ensure that your obligations can be met within the cooling-off period after the exchange of contracts; and
- be an informed consumer. Be aware that the seller is not generally compelled to sell to any specific person and can change their mind at any time prior to the exchange of contracts. A seller may not necessarily sell to the prospective purchaser who made the highest offer.

There is little you can do if you are gazumped. It is legal for the seller to accept more than one offer and deposit.

Auctions

When a property is sold by auction, the person who made the highest bid at the end of the auction is bound to purchase the property, after the property has been placed on the market. Gazumping cannot occur at an auction.

The Agent's Role

A real estate agent has a duty to sell a property for the best price, as quickly as possible. The agent must act in the best interest of his client, the seller. The agent will manage negotiations involving the sale of the property and must pass all offers from potential buyers to the seller.

Remember that the agent's responsibility is to the seller, not the buyer.