

Anti-gazumping laws protect property buyers

Anyone who has been keeping an eye on international property trends over the last few years will likely have come across the term "gazumping" at one point or another.

Originating from the Yiddish word "gezumph", meaning "overcharge", the word has become slang for the practice of a property seller rejecting a previously accepted Offer to Purchase in favour of a higher bidder. Its converse is known as "gazundering" - when a buyer walks away from a purchase before transfer takes place."

While gazumping and gazundering are perfectly legal in several countries, including Australia and parts of the UK, they are strictly prohibited under South African law when it pertains to real estate.

In South Africa and according to the Alienation of Land Act, all Offers to Purchase and Agreements of Sale have to be reduced to writing and verbal agreements are not legally enforceable. Here, once a valid Offer to Purchase has been signed by all parties, neither buyer nor seller can legally back out of the deal, subject to certain suspensive conditions or by mutual consent. The reason for this, according to Wayne Albutt o Rawson's, is not only to protect both buyer and seller, but the health and stability of the property market in general.

"The effects gazumping can have are remarkably far-reaching," says Albutt. "It's not just about the uncertainty it creates during the sales process. Not being able to count on a sale going through until the actual transfer takes place is definitely stressful, but it' s the less obvious effects that have the most potential for damage."

Albutt goes on to explain that in any situation where a bidding-war is possible, competitive natures and impulse reactions can easily inflate prices beyond their traditional market value. "That might not seem like a bad thing on the surface, but if it happens consistently it can introduce instabilities into the market as a whole," he says. "Property prices in general can be driven up by the artificially-inflated perception of value, peaking at higher highs than they otherwise would. Of course, when the bubble pops and prices drop," he continues," they also fall to lower lows."

The resulting extreme peaks and valleys in property prices may offer opportunities to wealthy and well-informed property investors, but they make things very difficult for your average man on the street.

"Over 70% of buyers in South Africa require financing to purchase a house," Albutt explains. "When the market is unstable, banks have to protect themselves against the additional risk, and to do that, they get a lot stricter with their overall lending criteria. This criteria will then exclude a much higher proportion of that 70% of buyers, which means fewer people will get the financing they need to actually secure the purchase."

In cases where applicants do meet the basic criteria for the bond they need, they would still face another hurdle if they had offered above the traditional market value trend in order to "gazump" another buyer. " Banks conduct their own valuations of properties before the bond grant is finalised," says Albutt, " and if their valuation is too far below the purchase price, they generally won't grant the loan without a substantial deposit."

"We currently have around a 53% success rate for bond applicants," Albutt continues. " If gazumping were legal, we could easily see that dropping dramatically. If fewer buyers needed financing, that might not be an issue, but in South Africa it would have a detrimental effect on sales. That would add to market instability, and continue to fuel the whole vicious cycle."

Thankfully, here in SA, neither buyer nor seller can back out of a sale after signing on the dotted line. "It might seem severe," says Albutt, " but it does encourage everyone to think very carefully before signing an Offer to Purchase, and it helps to keep purchase prices grounded in reality, rather than bloated by the gazumping trend."

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