



**Haigslea Residential Limited (HRL) (ACN 168 101 479)**

Real Estate Licence Number: 3995434

## Is this Rent to Buy?

Mortgage Alternative (MA) is an alternative purchasing method involving deferred settlement and long term lease of a property and this paper explains why it is dramatically differs to Rent to Buy models that are severely criticised by the media and by courts.

As an opening comment:

- Rent to buy models do not provide the buyer with a mortgage on the seller's title to protect part of deposit payments and inflated rents in the event of seller default. MA does;
- They also do not usually involve a registered lease on title, noting the lessee's (and in our case sub-lessee's interest(s)). MA does;
- Rent to Buy models are often simply a lease with no upfront Contract of Sale and are mentioned on the internet and in the media. Generally, unlicensed agents are involved, prices and rents are abnormally high and contracts favour the Seller. People enter the associated contracts without seeking advice.

The Mortgage Alternative structure and product are marketed by licensed real estate agents and have features that address in a balanced way all the typical matters that would concern Sellers and Buyers. MA always involves a Contract for Sale with a predetermined methodology for Purchase Price and allows up to ten years to settle at that price, with provision for the buyer to settle earlier;

- Rent to buy models also do not typically require an independent solicitor's certificate in advance of signing contracts to confirm that the contract terms have been explained to them. MA does – for both the investor/seller and the MA Buyer. However, no one controls future property price movements, and if a party to the contracts is not aware of the likely direction of future residential property prices during the Mortgage Alternative period, independent advice should be sought to consider whether the product is right for that particular party, in their particular circumstances. See point 8 below for more on this.
1. MA does not pretend to be suited to all property buyers e.g.
    - a. Those with low income or poor credit;
    - b. Those with no expectation that property values will rise;
    - c. People who are unsure about their work or family circumstances;
    - d. People with aspirations or expectations to relocate within the next 5 years (and possibly longer – up to 8-10 years);

Real Estate Licence Number: 3995434

- e. Renters who cannot accept that under certain circumstances they can lose money. Please refer to points 8 to 10 below.
2. MA is suited to buyers who:
- a. Would pass credit check for a conventional housing loan;
  - b. Have difficulty saving the required deposit, stamp duty and loan mortgage insurance;
  - c. Are willing to enter a contract with settlement deferred up to 10 years;
  - d. Have an expectation that property values will rise;
  - e. Wish to trade-up;
  - f. Want to conserve capital for investment in other places.
3. Sellers suited to enter contracts with MA Buyers:
- a. Accept that they are selling their property now by a contracted position, with settlement deferred up to 10 years;
  - b. Want an accelerated and more certain cashflow immediately and prior to settlement, than waiting to be able to sell the property for a capital gain;
  - c. Do not think that capital gains will be much greater than 7% p.a. compound;
  - d. Do not need to borrow more than 70% of the current market value of the property;
  - e. Have not cross collateralised the property;
  - f. Recognise that the MA Buyer's interest will be recognised on title via a Buyer's mortgage and a registered lease;
  - g. Accept that in the event of the Seller defaulting, the contract has terms intended to reduce losses suffered by the MA Buyer.
4. MA contracts are structured as a fair and negotiated bargain between the MA Buyer and the Seller:
- a. Third parties are involved:
    - i. Licensed real estate agents;
    - ii. Registered valuers;
    - iii. Qualified property and safety inspectors;
    - iv. Professional advisers – legal, financial and tax
  - b. The Contract of Sale with Assquire® system special conditions including deferred settlement is subject to stamp duty and capital gains tax, just like any other conventional contract of sale;
  - c. An Assquire® system head lease and sub lease is used to implement the system and whilst a Buyer's mortgage and the leases register Haigslea Australia Leasing Pty Ltd's and the MA Buyer's interest, we understand that buyers can also lodge a caveat on title should their advisers so advise;
  - d. Leases are in a form suitable for registration with the titles office;
  - e. No companies in the HRL group have any legal interest in the property;
  - f. HRL is a licensed real estate agent in Qld (Licence Number 3995434) and the person in charge is a lawyer and chartered accountant by education, as well as a fully licensed real estate agent in Queensland (Licence Number 4001920).

Real Estate Licence Number: 3995434

5. All care is taken to ensure that the MA Buyer and Seller are fully informed on how the contracts will operate and every effort is made to minimise their costs.
  - a. Both parties to the Assquire® system Contract of Sale must pass a full credit assessment and this is done in two stages:
    - i. The conditional credit assessment is free of cost to determine if the applicant will be able to meet essential criteria;
    - ii. A \$250 +GST fee is charged for a full credit assessment and Veda check;
  - b. All parties are strongly recommended to seek professional advice. In a stepped process the parties to the Assquire® system Contract of Sale are supplied with:
    - i. A preliminary information pack and Assquire® system Product specification outlining all fees and charges to them;
    - ii. Blank contracts with completed pricing schedules for an example home of \$500,000 Agreed Value today;
  - c. The contracts are written to balance the interests of the MA Buyer and the Seller so variations to contractual terms and conditions are not encouraged. However, the MA Buyer and Seller can negotiate Agreed Value on which ultimate sale prices and lease rentals are based within stipulated limits:
    - i. Because of the impact of escalation, base sale prices for listing a property must not exceed the independently assessed market valuation by more than 3%;
    - ii. Lease rentals will be impacted by the Agreed Value struck between the parties at arm's length (which may not equal the list price);
    - iii. Balance deposit payments cannot generally be varied (other than through negotiation of the Agreed Value or by increasing the MA Buyer's embedded savings plan), but the Initial Deposit offered by an MA Buyer can be increased;
6. MA offers no "free lunches". Lease rentals are about the same as payments on a conventional mortgage plus property ownership costs. The price at which the MA Buyer will contract to buy the property will be higher than the current market value of the property.

#### WHY?

Conventional landlords receive a low rental return with the expectation of future capital growth ultimately generating a reasonable overall investment return. With MA, those low rental returns (which are insufficient for many landlords) can be boosted by foregoing the capital growth in return for higher (but static) pre-agreed monthly rentals.

Sellers selling to first home buyers sell for a price receivable in 10 years. This price is the Agreed Value escalated at 1% p.a. compound. All growth above the escalated value belongs to the MA Buyer.

Sellers selling to non first home buyers also sell for a price receivable in 10 years. This price is the Agreed Value escalated at 1.5% p.a. compound. In cases of compound annual growth rates equal or above 4.5% pa, an Uplift Payment is also payable at settlement, based on an independent valuation just before settlement.

**Haigslea Residential Limited (HRL) (ACN 168 101 479)**

Real Estate Licence Number: 3995434

So prior to settlement, the property is to be independently valued. The 1.5% pa escalated price may increase by this uplift value but most growth belongs to the MA Buyer. Collateral is available on our websites and to solicitors for the seller and buyer to explain to their clients. Once contracted, the uplift methodology cannot change, providing both parties with greater price certainty.

- 7. As mentioned, the normal MA contract has a 10 year deferred settlement with the ability for the MA Buyer to settle early. The length is to make the monthly payments as affordable as possible to MA buyers.

Ten years is selected as a reasonable (but not assured) time for an MA Buyer to project to have a 20% equity for a conventional mortgage to be obtained without the need for loan mortgage insurance.

If the MA Buyer elects to Take Early, then there is no reduction in the contract sales price because the Seller would be expecting investment returns for 10 years.

Had the contract been for a shorter period, then monthly rent payments by the MA Buyer would be higher.

- 8. Property values can slump and if that happens all people, other than conventional renters, will suffer a loss. This is exemplified in the following two tables which examine the relative positions of a renter, MA Buyer and a mortgagor at the end of 4 years and 2 years respectively (source: Investor Comparison model 20160815 v1):

Year 4	% decline	Cumulative conventional rental payments	Cumulative total MAB payments	Total loss with conventional mortgage
	30%	89,279	190,820	275,219
	20%	89,279	190,820	226,719
	10%	89,279	190,820	178,219
	0%	89,279	190,820	129,719

Year 2	% decline	Cumulative conventional rental payments	Cumulative total MAB payments	Total loss with conventional mortgage
	30%	43,538	105,863	227,343
	20%	43,538	105,863	178,843
	10%	43,538	105,863	130,343
	0%	43,538	105,863	81,843

9. The MA product allows an MA Buyer to request the seller to take the property back in the following circumstances:
  - a. any one or more of the following matters affecting a person who is a person constituting the Buyer:
    - i. A loss of the employment or a change of employment that affects the person's earning capacity;
    - ii. An Insolvency Event occurs in respect of the person;
    - iii. A change in the person's marital or other analogous relationship (for example, a long term defacto relationship);
    - iv. Significant illness or injury of the person;
    - v. Death of the person;
    - vi. A change in location of the person's residence relative to the person's usual place of work or employment on a permanent or semi permanent basis; and
    - vii. Another material change to the person's personal circumstances,
    - viii. having a material adverse effect on the Buyer's financial capacity or ability to perform its Settlement Obligations; or
  - b. The subject to finance clause not being satisfied; or
  - c. A material adverse change in market conditions relating to the Property which the Buyer believes, acting reasonably, has a material adverse effect on the Buyer's ability to perform its Settlement Obligations.
  
10. Following an MA Buyer's exercise of Take Back, the contract is at an end.
  - a. The MA Buyer will forfeit all deposit monies paid. There will be no right for the MA Buyer to share in any capital growth.
  - b. Unlike with a mortgage, the MA Buyer will have no debt that needs to be repaid. In distressed times, the net proceeds from sale of property is not always enough to cover the balance owing on a mortgage. Loan mortgage insurance will protect the bank but does not stop the mortgagor from being liable for the shortfall.
  
11. Should a Seller default at any time, the MA contract of sale has special conditions that attempt to protect the MA Buyer. A "Notifiable Recovery Amount" (NRA) is stipulated in Special Condition 20 and an example provided in Schedule 3 to the Contract. This is protected by the buyer's mortgage on the Title. An independent valuer is involved in determining the MA Buyer's entitlement which is the higher of:
  - a. The MA Buyer's share of capital growth to the termination time calculated in accordance with the pre-agreed formula in the special conditions to the Contract of Sale; and
  - b. Amount by which the Assquire lease rentals exceeds the conventional rental that would have been paid up to the Seller default.

In addition, the balance deposit payments to date of termination may also be recoverable, and perhaps also any stamp duty that was paid by the buyer to the Office of State Revenue, in the

Real Estate Licence Number: 3995434

case of a Seller default. That is a matter for the buyer's solicitor to advise on, in the particular circumstances of termination.

MA minimises the likelihood of a Seller default by having the following requirements:

- a. The Seller to pass a full credit assessment;
  - b. In the case of individuals, companies and trusts, Sellers must not borrow more than 70% of the current market value of the property plus up to a further 5% can be borrowed to cover a capital gains tax liability on the property;
  - c. Superannuation funds must not borrow more than 55% of the current market value of the property;
  - d. The property cannot be cross collateralised.
12. The ongoing condition of the property is important to the Seller and the MA Buyer
- a. A pre-purchase building and safety report is commissioned;
  - b. Photos are stored;
  - c. The building condition will be considered during negotiations between the MA Buyer and Seller and their respective solicitors (where they so desire);
  - d. The building and safety report is redone at year 5 at the investor/seller's cost;
  - e. Real estate agents handling the ongoing property management will inspect the property regularly as required and at least annually;
  - f. The Seller is responsible for repairs pursuant to the lease agreement. When the lease rental is negotiated, the building condition should be considered.

For more information:

**Keith Burchill | Hagslea Residential Limited ACN 168 101 479**

Director

Mobile: +61 (0)419 903381

[Linked in profile:](#)

Property listings website

<https://buyorinvest.com.au>