

# changes to legislation

## The Statutes Amendment (Real Estate Industry Reform) Act 2007

### Protection for buyers and sellers

South Australian consumers have better protections when buying or selling real estate as a result of the Statutes Amendment (Real Estate Industry Reform) Act 2007 (the REIR Act).

The REIR Act implements the recommendations of a review of the real estate industry and amends three separate pieces of legislation, the Conveyancers Act 1994, the Land Agents Act 1994 and the Land and Business (Sale and Conveyancing) Act 1994.

The new laws aim to improve protection for people who are buying or selling a property, and will make changes to the way real estate transactions are conducted to increase transparency in the industry. The reforms contained in the Act cover practices such as dummy bidding at auctions, over-quoting by agents to secure property listings, and bait advertising of properties for prices well below the actual estimated selling price. The Act deals with residential land, which is now defined so as to exclude most farming properties.

### The reforms include:

- The sales agreement engaging the agent will be required to specify how the property is to be offered for sale, the duration of the agreement, the services to be charged separately for by the agent and the cost of these services. The agreement must also disclose the nature, source and amount of any commissions, rebates or discounts expected to be received by the agent in relation to those services.
- Agents will be required to provide a guide to a vendor explaining their rights and obligations under the sales agency agreement.
- The agent must specify in the sales agreement their genuine estimate of the likely selling price of the property being sold. The price can be expressed as a single figure (e.g. \$300,000) or a price range. If the agent specifies a price range, the upper limit of the range must not exceed the lower limit plus 10%. That is, if the lower limit is \$300,000 then the upper limit cannot be higher than \$330,000. The price acceptable to the vendor must also be stipulated.
- Agents will be prohibited from making a representation (including in an advertisement or verbally) as to the likely selling price of a property that is less than the agent's estimated selling price or the vendor's bottom line (whichever is the higher).
- Agents are required to take all reasonable steps to have an offer to purchase residential property recorded in writing and signed by the person(s) making the offer. Signed offers must be given to a vendor within 48 hours (or at a later time agreed with the vendor). All offers must be retained by agents to allow inspection by the Office of Consumer and Business Affairs in the event of a complaint.
- All bidders must be registered to bid at an auction, and must be provided with a guide to the auction and sales process.
- It will be an offence for any person to 'dummy bid'. This includes procuring a dummy bid and an auctioneer knowingly taking a dummy bid. Practices that induce a person to abstain from or limit bidding at an auction, or that hinder bidders from freely bidding or attending an auction are also prohibited.
- An auctioneer may make bids on behalf of the vendor but not more than three such bids and only for amounts below the reserve price; any such bid must be audibly announced by the auctioneer as a 'vendor's bid'.



- At an auction, agents will be required to record in writing the agreed reserve, and document any changes to the reserve, and keep a record of all bids made.
- The use of caveats to secure payments of agents' fees will be prohibited.
- Auctioneers and sales representatives will be required to be registered and, as for agents, carry a photographic registration card. A fit and proper person test is added to the eligibility criteria for registration of agents, sales representatives and conveyancers.
- Agents must not publish, or cause to be published, an advertisement relating to the sale of land or a business unless the advertisement specifies, alongside the agent's name or contact details, the agent's registration number preceded by the letters RLA.
- Agents will be required to give all prospective purchasers an information notice or checklist to assist them discover whether there are features of the property that may adversely affect the value, enjoyment or safety of the land, e.g. the presence of asbestos, structural problems due to termites or salt damp, illegal building work, the proximity of the property to a live music venue, whether property has septic tank etc.
- The provisions prohibiting an agent obtaining an interest in a property that they are authorised to sell have been strengthened. Agents (and their sales representatives) who are authorised by a seller to sell a property are prohibited from obtaining, or being in any way concerned in obtaining, a beneficial interest in that property. If an agent is employed to sell a house, the agent is not allowed to buy that house either personally, or through an associate. There are certain circumstances in which an agent or their associate may legitimately want to buy a house they are commissioned to sell. If that is the case, they must apply to the Commissioner for Consumer Affairs for an exemption.
- Laws in relation to the sale of land by instalment (wrapping) have been tightened.

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