

# Selling your home

**New laws which started on 28 July 2008 aim to improve the safeguards for people who are buying or selling a property by making real estate dealings more transparent. This fact sheet gives consumers useful information about selling their home.**

## Selling by Private Treaty

A private treaty sale is when a house is offered for sale at a negotiated price. It may be conducted by the vendor personally or via an agent. The vendor normally sets a price and prospective purchasers negotiate until an agreed price is reached. Potential buyers do not know what others may be offering for the property.

A vendor who conducts a private sale without engaging a land agent does not have to comply with the Sales Agency Agreement and bait advertising restrictions. But they are still required to comply with some of the new laws – in particular the auction provisions prohibiting collusive practices, the disruption of auctions, dummy bidding and so on. The general prohibitions on false or misleading misrepresentations still apply to vendors who have chosen to sell without an agent; they will also be responsible for contractual and other transfer documentation, as well as undertaking direct contact with potential buyers.

## Selling by Auction

Sale by auction is often the preferred option for vendors and agents when the property in question is unique, in a sought after location, or when there is peak demand for housing in a particular price range. If you choose to sell by auction you'll need to set a reserve price in writing, authorising the auctioneer to sell to the highest bidder at, or above, the reserve.

The rules governing auctions have changed as a result of reforms and you should be aware of the following:

- All bidders must be registered using proof of identification.
- A person bidding on another's behalf must supply proof of that person's ID and their written authorisation to bid.
- All registered bidders must be given a Bidders Guide and a bidder's number to display when making an offer.
- Auctions may be stopped temporarily to allow any latecomers to register so they can bid.
- Auctioneers/agents must keep written records of the entire auction process, including all bids made and any subsequent events (which are not to be used other than for inspection by OCBA).

Under the reforms dummy bids are now formally outlawed (with a penalty of up to \$20,000 for a breach). The auctioneer is permitted to make three bids on behalf of the vendor but these must be audibly announced as vendor bids and must be below the reserve price.

## Engaging an agent

Choosing an agent is a big decision. Before you lock into anything it's wise to seek advice from at least three real estate agents.

Under the recent reforms agents, including companies that are agents, must be registered with the Commissioner for Consumer Affairs. You can check that they are registered by visiting [www.ocba.sa.gov.au](http://www.ocba.sa.gov.au). If the real estate agency is a registered land agent company, the company must be managed by a person who is a qualified registered land agent.

Once you've picked an agent to help sell your property make sure the fee they are charging is clear. The fee can be in the form of a commission, a set fee, or a combination of both. Some agents may agree to a sliding commission percentage that varies depending on the final selling price.

It is the agent's duty to act in the vendor's best interests and engage in good business practices.

Their job is to:

- give an estimated selling price for your property
- advise on a method of sale
- advertise and market the property, and provide a marketing plan
- organise and attend open house and other inspections
- attract prospective buyers
- communicate offers in writing
- organise an auction, if required
- prepare and arrange the signing of the contract.

By law, the agent must tell you if they have any actual or potential conflict of interest related to the sale of your property. It is illegal for agents (and their sales representatives) who are authorised to sell a property to obtain a beneficial interest in that property. For example, an agent engaged to sell your house isn't allowed to buy it for themselves or benefit from an associate buying it unless they are granted an exemption from the Commissioner for Consumer Affairs. The Commissioner will carefully consider the merits of such an application before approving it (refer to fact sheet - Agent's Conflict of Interest / Beneficial Interest).

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## Pricing

To address issues such as bait advertising and over-quoting by agents the reforms have directly tackled the issue of pricing.

Under the reforms, an agent must specify in the Sales Agency Agreement their genuine estimate of the likely selling price of the property concerned. The price can be expressed as a single figure (e.g. \$300,000) or as a price range. If the agent nominates a price range the upper limit mustn't exceed the lower limit by more than 10%. For example, if the lower limit is \$300,000 then the upper limit can't be greater than \$330,000. The agreement must also include the vendor's bottom line.

The price specified in the agreement will affect how the property is marketed. By law, agents are prohibited from representing to potential buyers a likely selling price that is lower than the agent's estimated selling price or your bottom line (whichever is the higher).

Whilst vendors must state their acceptable selling price in the agreement this doesn't mean that the price has to appear in any marketing material. In fact, the price of a property doesn't have to appear on any marketing material if this is what's agreed to.

When making your judgement about the selling price consider the following:

- your own research/ enquiries regarding the selling price of comparable homes in your area
- the prices estimated by agents you've asked to give an appraisal of your home
- a valuation by an independent, qualified valuer.

## Sales Agency Agreements

If you decide to engage an agent, there must be a signed written agreement (a sales agency agreement) between you and the agent, authorising the agent to act for you.

The agent must also:

- give you a guide explaining your rights and obligations under the agreement
- give you a copy of the agreement once signed. Keep this as it shows the details of what the agent has agreed to do for you and the fees you will be charged.

The Sales Agency Agreement must specify the following:

- the selling price sought by or acceptable to the vendor
- the agent's genuine estimate of the selling price
- the manner of sale (e.g. auction or private treaty)

- the duration of the agreement (i.e. no longer than 90 days)
- the rights of the vendor to terminate the agreement
- the services, including advertising and marketing, to be provided by the agent, the fees for these services and when they must be paid
- the commission rate
- the nature or source of any rebate, discount or refund the agent expects to receive, e.g. for bulk newspaper advertisements and, if known, the amount or value of those benefits
- whether the contract is a sole agency agreement
- whether the agent is authorised to accept an offer on behalf of a vendor.

The Sales Agency Agreement must also comply with other requirements set out in the Land and Business Sale and Conveyancing Act and regulations such as ensuring that any changes to the Sales Agency Agreement are made in writing and signed by both the vendor and the agent.

## Making the sale - Marketing and advertising

Understand how the agent intends to market your property and what the various options will cost you.

You may be charged the up-front cost of advertising with a particular publication, but you should be aware that agents commonly get a rebate in return for placing large numbers of advertisements. That means you may be asked to pay more than the actual cost of the advertisement when the rebate is taken into account. Find out from the agent what advertising rebate is expected to come their way. You are within your rights to negotiate to receive some benefit from those rebates.

Make sure any information you've given the agent about your property is factual and up-to-date. It is illegal to misrepresent a property in any way when advertising a property for sale or marketing it - either orally, in writing or with photographs. If advertising is not accurate and a buyer can prove that a property has been misrepresented the buyer may be able to take legal action.

Whilst vendors must state their acceptable selling price in the agreement this doesn't mean that the price has to appear in any marketing material. In fact, it remains legal for the price of a property to be omitted from any marketing material if this is what the vendor and agent agree to.

## Offers from potential buyers

These reforms mean that agents who receive an offer from a potential buyer must record the offer in writing, in a form complying with the legislation. The offer, which can also take the form of a contract, can only be passed

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on to the vendor once it has been signed by the person making the offer. Agents are required to keep all copies of signed offers in case there is a complaint and the Office of Consumer and Business Affairs needs to investigate a matter.

An offer isn't binding until a sale contract has been signed by both parties. If the party making the offer has any conditions (e.g. the offer is subject to obtaining finance, selling an existing property or a satisfactory building inspection) these must be set out in the offer.

## The contract document

The contract document outlines the terms and conditions of the sale and contains provision for:

- the name and address of the vendor
- the buyer's name and address
- details of the land for sale
- chattels included and excluded from the sale
- the sale price (including GST if applicable)
- deposits
- settlement date
- exceptions
- tenancy details
- conditions of the sale (including if it is subject to finance or sale of an existing property).

## The cooling-off period

The cooling-off period applies once the contract has been signed and the Form 1 (also known as the section 7 statement) has been served. The Form 1 / Section 7 statement sets out various particulars such as heritage orders, conditions of development approval etc, that could affect what the purchaser is able to do with the property. The cooling-off period only applies to the buyer and it extends to the end of two business days from the making of the contract or the service of the Form 1 / Section 7 statement (whichever is the later). If there need to be changes to the Form 1 / Section 7 statement a notice of amendment must be provided and signed by both parties. This will extend the cooling-off period for a further two days.

It is against the law for an agent to be paid a commission if a purchaser decides to cool off on a sale contract.

## Settlement

Prior to settlement, both the vendor and buyer should retain a conveyancer to prepare settlement statements. Their job is to:

- arrange for the transfer of the title from the vendor to the new owner;
- calculate the adjustment of rates and taxes,
- prepare settlement statements, and
- provide any other documents necessary to complete the transaction and settlement.

Your conveyancer will also liaise with the buyer's conveyancer over settlement arrangements and make arrangements regarding the final payment.

## Withdrawal from sale

If you decide to withdraw your property from sale, there may be consequences if you list with another agent before the original agreement has lapsed. For example, you may have to pay commission to the first agent even though a second agent sold the property. If the agreement with an agent expires or is terminated, the agent may still be entitled to commission if the property is sold to a buyer who was introduced by that agent. Seek legal advice if you want to terminate an agreement.

## Disputes and complaints

If you have a complaint, first try to resolve it with the agent. If that is unsuccessful, contact the Office of Consumer and Business Affairs on 8204 9777 for advice.

### Office of Consumer and Business Affairs

Telephone (08) 8204 9777

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