

# Making an offer to buy a 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 some useful information for consumers who may be considering buying a home.**

When it comes to selling a house, some vendors will choose to sell a property themselves; others will engage an agent or other experts to assist them. The sale may be by private treaty or by auction.

## Private treaty sale

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. Some vendors choose to use a real estate agent solely to manage the contract side of the negotiations.

The vendor normally sets a price and prospective purchasers negotiate until an agreed price is reached. The potential buyers may not know what others are offering for the property. A vendor who conducts a private sale themselves will be exempt from the new laws but they will have responsibility for all aspects of the sale, including the sale contract documentation and direct contact with potential buyers.

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 and they will also be responsible for contractual and other transfer documentation, as well as conducting direct contact with potential buyers.

For those who choose to engage an agent, it is essential that they only deal with a registered land agent or registered sales representative. Anyone who is in the business of selling, leasing or buying real estate must hold a land agent's registration or be employed by a registered land agent as a registered sales representative.

If you intend to buy a house which is listed for auction please refer to the fact sheet on this subject which is also available on our website [www.ocba.sa.gov.au](http://www.ocba.sa.gov.au). And remember, there is nothing to stop you from making an offer on a house which is listed for sale by auction before the planned auction date.

## Before making an offer

Under the new laws, at an open inspection the agent must offer all interested persons a 'Buyers Information Notice' which provides a suggested list of issues potential buyers should consider when assessing the suitability of a property (e.g. salt damp, proximity to a live music venue, etc).

## Making an offer

Agents who receive an offer from a potential buyer are now obliged to record the offer in writing, complying with certain requirements set out in the Land and Business (Sale and Conveyancing) Act and Regulations. This offer can only be passed on to the vendor once it is in writing and has been signed by the person making the offer. All copies of signed offers must be kept by agents to allow inspection by the regulator in the event of a complaint.

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).

Where an offer is made in the form of a contract, buyers may wish to insert a condition that the vendor signs the contract by a certain date. If the contract isn't signed by the set date the offer lapses. For contracts that are signed by both parties in line with the stated terms and conditions an accurate Form 1/Section 7 statement must be served on the buyer. The cooling-off period applies once the contract has been signed and the Form 1/Section 7 statement has been served. The cooling-off period 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).

## Further information

More comprehensive information about buying or selling a home and the impact of the new real estate laws is available at [www.ocba.sa.gov.au](http://www.ocba.sa.gov.au), or phone 8204 9516 to request a copy of OCBA's publication *It's about the house*.

### Office of Consumer and Business Affairs

Telephone (08) 8204 9777

SA country callers  
Telephone 131 882

Translating & Interpreting  
Service (TIS)

Telephone 131 450

Chesser House  
91-97 Grenfell Street  
Adelaide SA 5000

GPO Box 1719  
Adelaide SA 5001

[ocba.sa.gov.au](http://ocba.sa.gov.au)