



Land and Business (Sale and Conveyancing) Act 1994

FORM TO SEEK APPROVAL OF THE COMMISSIONER – Under sections 24G(5) and 24G(9) for agents or sales representatives who wish to obtain a beneficial interest in land or a business

Information for Agents and Sales Representatives

This document provides important information to agents and sales representatives who wish to obtain beneficial interest in the property or business they are selling or have appraised on behalf of a client (vendor). For more information visit the OCBA website at www.ocba.sa.gov.au.

What is a 'beneficial interest'?

By either purchasing the property themselves, or selling the property to an '*associate*' of theirs, an agent or sales representative is obtaining a beneficial interest in that property or business. Obtaining an option to purchase land or a business or being granted a general power of appointment in respect of land or a business also constitute obtaining a beneficial interest in the land or business. Other sorts of transactions could also constitute obtaining a beneficial interest in land or businesses contrary to section 24G. Agents and sales representatives will need to seek their own legal advice as to how to deal with actual or potential conflict of interest situations and about whether a contemplated transaction could breach section 24G.

An *associate* of the agent or sales representative could be a:

- spouse or de facto partner
- parent or grandparent
- daughter or son or grandchild
- brother or sister
- employee or employer
- business partner
- corporation (if the agent or sale representative, or their relative, owns 10% or more of the shares of the corporation)
- trustee (if the agent or sales representative, or their relative, is a beneficiary of the trust)
- any person who will provide some benefit to the agent or sales representative connected with the subsequent sale of or dealing with the property.

Application to obtain a beneficial interest

An agent or sales representative who wishes to obtain a beneficial interest in land or a business must first obtain the approval of the Commissioner under section 24G(5) of the *Land and Business (Sale and Conveyancing) Act 1994* (the Act).

The *onus is on the agent or sales representative* to demonstrate that the circumstances warrant a departure from the usual position that an agent or sales representative should not obtain a beneficial interest in land or business the agent is authorised to sell, or that the agent or sales representative has appraised. The threshold for approval of an application under section 24G(5) is considerable and the circumstances in which it will be exercised will be fairly exceptional. The agent or sales representative should therefore provide reasons in the application as to why their particular circumstances warrant the approval of the application.

Application to obtain commission or expenses

An agent who obtains the approval of the Commissioner to obtain a beneficial interest in land or a business and who wishes to be paid the commission or expenses must also obtain the approval of the Commissioner under section 24G(9) to be paid the commission or expenses.

The *onus is on the agent* to demonstrate that the circumstances warrant a departure from the usual position that an agent who obtains a beneficial interest in land or a business is forbidden from demanding, receiving or retaining commission or expenses. The threshold for approval of an application under section 24G(9) is considerable and the circumstances in which it will be exercised will be fairly exceptional. The agent should therefore provide reasons in the application as to why their particular circumstances warrant the approval of the commission or expenses.

The commission or expenses will be treated separately under section 24G(9) and will not be automatically approved even if the Commissioner has approved the obtaining of the beneficial interest under section 24G(5).

Information/documents that must be supplied with this application

1. Completed application form (please ensure the application is completed correctly).
2. Completed Statutory Declarations from the agent/sales representative, the vendor, the purchaser and the valuer.
3. Copy of the sale contract. If the sale does go ahead without approval, the agent and/or sales representative will have committed an offence. Serious penalties apply.
4. Copy of the Sales Agency Agreement with any subsequent Agreement variations (not required if the sale is for a business).
5. Details of all offers made and evidence of written offers (written offers not required if the sale is for a business).

6. Copy of the Certificate of Title (not required if the sale is for a business unless land is involved).
7. Details of the marketing plan and evidence of promotional activities (e.g., number of open/private inspections, publication of advertisements, newspaper invoices and accounts, flyers, etc). Also include information about any previous marketing of the land/business by a different agent or privately (if relevant).
8. Copy of the valuation report from a qualified valuer who has been approved by the Commissioner (this report is not required if the sale is for a business)
 - (i) A list of approved valuers is available at www.ocba.sa.gov.au.
 - (ii) The valuation report must be paid for by either the agent or sales representative.

The Commissioner may deny the application if a valuation report has not been arranged and a copy has not been given to the vendor. This report must be independent and free from influence (i.e., the valuer must not know the proposed purchaser's offer for the land or business).

9. Documentary evidence of the commission that has been agreed to by the vendor and evidence of expenses paid for by the agent (e.g., newspaper invoices/accounts).

How long does the application process take?

Applications are considered carefully and may take several weeks from receipt of all information before the application is finalised. This may affect the settlement date for the parties so it is important the agent/sales representative let the vendor know this before a contract is signed.

Where to lodge this form

Consumer and Business Services
Level 3, Chesser House
91-97 Grenfell Street
ADELAIDE SA 5000

Consumer and Business Services
GPO Box 1719
ADELAIDE SA 5001

APPLICATION TO OBTAIN A BENEFICIAL INTEREST IN LAND OR A BUSINESS

Section 24G(5)

Land and Business (Sale and Conveyancing) Act 1994

Part 1 Contact Details

Section 1 Registered agent - individual or company

Title Mr Mrs Ms Miss

Full name

Company name

Business name

RLA number

Contact number Facsimile

Email

Business address

..... Postcode

Note
The agent to complete Section 1

Section 2 Manager's details

Title Mr Mrs Ms Miss

Full name

RLA number

Contact number Facsimile

Email

Note
Where the agent is a company, the details of the manager of the corporation who is a registered agent to be provided in Section 2

Section 3 Registered sales representative handling the sale

Title Mr Mrs Ms Miss

Full name

RLA/RSR number

Contact number Facsimile

Email

Residential address

..... Postcode

Note
The sales rep who is handling the sale of the vendor's land or business to complete Section 3

Part 2 Sale Details

Section 1 Property information

Is the agent authorised to sell the land/business? Yes No

If NO, did the agent/sales representative appraise the land/business? Yes No

Date of appraisal//..... Appraisal price/range

Vendor was advised of the appraisal price/range on or around

The land for which approval is sought is situated at
..... Postcode

as described in the whole/part of
Certificate of Title Register Volume..... Folio.....

If the sale is for a business, the business known as
and is carried on at

Listing date//..... Advertised price \$

Purchase price \$..... Highest prior offer \$

Number of prior offers Property has been days/weeks/
marketed for months

Section 2 Purchasing details

It is proposed that the land/business be sold to the purchaser(s) named below:

Purchaser 1

Title Mr Mrs Ms Miss

Full name/
company name

Contact number Address

Purchaser 2

Title Mr Mrs Ms Miss

Full name/
company name

Contact number Address

Purchaser 3

Title Mr Mrs Ms Miss

Full name/
company name

Contact number Address

Purchaser 4

Title Mr Mrs Ms Miss

Full name/
company name

Contact number Address

Section 3 Vendor details

Vendor 1

Title Mr Mrs Ms Miss

Full name/
company name

Residential/
business address

..... Postcode

Contact number Email

Vendor 2

Title Mr Mrs Ms Miss

Full name/
company name

Residential/
business address

..... Postcode

Contact number Email

Vendor 3

Title Mr Mrs Ms Miss

Full name/
company name

Residential/
business address

..... Postcode

Contact number Email

Vendor 4

Title Mr Mrs Ms Miss

Full name/
company name

Residential/
business address

..... Postcode

Contact number Email

Part 3 Registered agent/sales representative to complete

Section 1

Who will obtain the beneficial interest?

.....**Agent**

(print full name/company name)

.....**Sales Representative**

(print full name)

What is the relationship with the purchaser(s)?

.....**Relationship to purchaser(s)**

(state the association, e.g., myself, brother, sister, parent, business partner, employee)

Please note: If someone, other than yourself will obtain the beneficial interest then that person will have to complete section 3.

Section 2

This section is to be completed by the sales representative handling the sale.

1. When did the proposed purchaser first express an interest in the land/business?
.....
2. When was the relationship between the proposed purchaser(s) and the agent/sales representative disclosed to the vendor?
.....
3. What price representations have been made to the public in relation to the land/business?
.....
4. What price representations have been made to the proposed purchaser(s)?
.....
5. How long has the land/business been on the market? Include any previous marketing of the land/business by a different agent or privately, if relevant.
.....
6. What has been the level of interest in the land/business?
 Low (i.e. 1-5 enquiries) medium (6 - 10 enquiries) high (11 or more)
7. Has any information/details been disclosed to the proposed purchaser(s) about the land/business that may conflict with the agent’s duty of care to the vendor?
Yes **No**

If **Yes**, please provide below the details of the type of information disclosed.

.....

8. When was the vendor given a copy of the valuation report?

(date)

9. Was the qualified valuer informed of the amount of the proposed purchaser's offer?

Yes No

If **Yes**, please provide below the details of the type of information disclosed.

.....
.....

10. In what way is the sale to the proposed purchaser(s) in the vendor's interest?

.....
.....

11. Please state the reasons that would entitle the agent/sales representative to obtain the beneficial interest.

.....
.....
.....
.....
.....

12. Describe the marketing plan and any promotional activities undertaken to sell the property/business (include number of open/private inspections). Attach evidence of these activities (e.g. published advertisements, flyers, advertising account, etc). Also include any previous marketing done by a different agent or privately, if relevant.

.....
.....
.....
.....
.....
.....

STATUTORY DECLARATION

Oaths Act 1936

Note

This declaration is to be completed by the sales representative handling the sale. It must be signed in the presence of a witness who is either a Justice of the Peace or a Commissioner for Taking Affidavits which includes judges and legal practitioners.

I, (full name)

of (address)

..... (occupation)

do solemnly and sincerely declare that I am the sales representative named in Part 1 and to the best of my knowledge, the contents of the information provided in Part 3 above are true and correct and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1936*.

Making a false declaration is an offence under the *Oaths Act 1936*, and under the *Land and Business (Sale and Conveyancing) Act 1994*, which carry significant penalties.

You must sign this declaration in the presence of a witness

.....
(signature of sales representative handling the sale)

This section to be completed by the witness

Declared at

..... (suburb or town)

in the State of South Australia, on the

.....
(day) (month) (year)

.....
(signature of witness - Justice of the Peace or Commissioner for Taking Affidavits)

Printed full name, initials, I.D. number and qualification to witness this Statutory Declaration

Section 3

This section to be completed by the agent or sales representative who will obtain a beneficial interest

I being the entity named in Part 3 above, am aware of this application and believe that I will obtain a beneficial interest upon the sale of the land/business as described in Part 2.

..... (date)
(signature of agent or nominated manager if a company, or sales representative)

Part 4 Vendor(s) to complete

WARNING: Your agent and/or sales representative or an associate of your agent and/or sales representative such as a relative, employee or business partner, has offered to buy your land/business. This means your agent/sales representative will obtain a beneficial interest in the land or business. This is prohibited by law unless approved by the Commissioner.

Agents/sales representatives who wish to obtain a beneficial interest in land or a business must obtain the Commissioner's approval **before** the sale can proceed. Your agent/sales representative wishes to apply to the Commissioner to obtain that permission.

As part of the application, you, as the vendor, will be required to complete this part of the form. But before you complete and sign this part of the form, you must be satisfied that you have been fully informed of the beneficial interest to be obtained by the agent/sales representative and understand the relationship between the purchaser of your property or business and the agent/sales representative. For example, if there is to be a profit or benefit from development or sale of the land, you, as the vendor, should be informed of this and have an opportunity to decide whether you should obtain that benefit yourself and not the purchaser. The agent/sales representative are also obliged to arrange at his or her cost a written valuation report of your property (not required for the sale of a business) and provide you with a copy of that report so that you can make a fully informed decision about market value of your property and the purchaser's offer.

The Commissioner must also be satisfied that you fully understand and have been fully informed of the details of the beneficial interest to be obtained by the agent/sales representative and that you have consented to the transaction proceeding despite the existence of that conflict of interest.

The Commissioner has the discretion to grant or refuse the application.

You should consider seeking independent legal advice before signing this form, especially if you have any doubts about the price offered or how the transaction was handled.

Note
*The vendor **must** ensure he or she has read and understood the purpose of the agent's or sales representative's application to seek the Commissioner's approval in relation to their land/business before completing and signing this form and Statutory Declaration.*

This section to be completed by the vendor(s)

Please answer the following and complete the Statutory Declaration

1. State the identity and relationship of the purchaser(s) to the agent/sales representative.

Name of purchaser(s)

Relationship to agent/sales representative

.....

.....

2. When did the agent or sale representative disclose this relationship?

.....

3. What is the purchase price offered by the purchaser(s)? \$

4. Did the agent/sales representative conduct an appraisal of your property or business?

Yes No

If **Yes**, what was the price/range? \$.....

Was the appraisal advice in writing? If so, please provide a copy of that advice.

5. Are you aware of any other offers for your land/business?

Yes No

If Yes, give reasons why you did not accept any of those offers.

.....
.....
.....

6. Has the agent/sales representative provided you with a copy of the valuation report? (Report is not required for the sale of a business)

Yes No

If Yes, please answer the following:

Who paid for the report?

When did you receive the report?

7. What is the market value stated in the valuation report? \$

8. Do you believe the purchaser's offer is the best price for your land/business?

Yes No Please provide reasons below.

.....
.....
.....

9. Has the agent/sales representative disclosed any benefits he/she may get in relation to the sale of your land/business?

Yes No If Yes, what are those benefits?

.....
.....
.....

10. What has been explained to you about the purchaser's reasons for wanting to buy your land or business?

.....
.....
.....

11. Are there any other matters that you would like the Commissioner to consider in relation to this application?

.....
.....
.....
.....

This section to be completed by the vendor(s)

STATUTORY DECLARATION

Oaths Act 1936

Vendor 1

I,
(print full name/company name)

of
(address)

in the occupation of
.....
(vendor 1 - occupation)

Vendor 2

I,
(print full name/company name)

of
(address)

in the occupation of
.....
(vendor 2 - occupation)

declare that:

- I am/we are aware of the purchaser's identity and relationship with the agent/sales representative;
- I am/we are satisfied the agent/sales representative has acted in my/our best interests; and
- I/we **CONSENT** to the agent/sales representative obtaining a beneficial interest in the land/business.

I/we do solemnly and sincerely declare that to the best of my/our knowledge, that the information I/we have provided in Part 4 above is true and correct and I/we make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1936*.

Making a false declaration is an offence under the *Oaths Act 1936*, and under the *Land and Business (Sale and Conveyancing) Act 1994*, which carry significant penalties.

Note

This declaration is to be signed in the presence of a witness who is either a Justice of the Peace or a Commissioner for Taking Affidavits which includes judges and legal practitioners.

If more than two vendors, please attach an additional completed declaration in the names of the other vendors.

You must sign this declaration in the presence of a witness

.....
(signature of vendor 1)

.....
(signature of vendor 2)

This section to be completed by the witness

Declared at (print suburb or town)

.....

in the State of South Australia, on the

.....
(day of) (month) (year)

.....
(signature of witness - Justice of the Peace or Commissioner for Taking Affidavits)

Printed full name, initials, I.D. number and qualification to witness this Statutory Declaration

Part 5 Purchaser(s) to complete

This section to be completed by the purchaser(s)

STATUTORY DECLARATION

Oaths Act 1936

Purchaser 1

Purchaser 2

I,
(print full name/company name)

I,
(print full name/company name)

of
(address)

of
(address)

in the occupation of
.....
(purchaser 1 - occupation)

.....
(purchaser 2 - occupation)

declare that:

- I am/we are the proposed purchaser(s) of the land/business;
- my/our **association** with the agent/sales representative (strike out which is not applicable)

is that of

(state relationship below e.g., employee, brother, sister, parent, business partner, etc)

or I am the agent/sales representative

..... (state which one)

- the agent/sales representative will not receive any benefits from me/us (financial or otherwise) for selling the property to me/us.

I/we do solemnly and sincerely declare that to the best of my/our knowledge, the above is true and correct and I/we make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1936*.

Making a false declaration is an offence under the *Oaths Act 1936*, and under the *Land and Business (Sale And Conveyancing) Act 1994*, which carry significant penalties.

Note
This declaration is to be signed in the presence of a witness who is either a Justice of the Peace or a Commissioner for Taking Affidavits which includes judges and legal practitioners.

If more than two purchasers, please attach an additional completed declaration in the names of the other purchasers.

You must sign this declaration in the presence of a witness

.....
(signature of purchaser 1)

.....
(signature of purchaser 2)

This section to be completed by the witness

Declared at (print suburb or town)

.....

in the State of South Australia, on the

.....
(day of) (month) (year)

.....
(signature of witness - Justice of the Peace or Commissioner for Taking Affidavits)

Printed full name, initials, I.D. number and qualification to witness this Statutory Declaration

Part 6 Land valuer to complete

Important information

This Statutory Declaration **must** be completed by the land valuer who prepared the written valuation report for the land that is the subject of this application.

This section to be completed by the valuer

STATUTORY DECLARATION

Oaths Act 1936

I, of
(print full name) (address)

in the occupation of

.....
(occupation)

declare that:

- I am a qualified and approved valuer
- I inspected and conducted a valuation of the land situated at (address)
on (date of valuation)
- It is my opinion the valuation of (amount) \$ is the fair market price for the land
- I prepared the valuation without knowledge of the offer made by the proposed purchaser
- I do not have any pecuniary interest in or with the parties associated with the sale transaction that could directly or indirectly be viewed as a conflict of interest.

I do solemnly and sincerely declare that to the best of my knowledge, the above is true and correct and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1936*.

Making a false declaration is an offence under the *Oaths Act 1936*, and under the *Land and Business (Sale and Conveyancing) Act 1994*, which carry significant penalties.

You must sign this declaration in the presence of a witness

.....
(signature of land valuer)

This section to be completed by the witness

Declared at (print suburb or town)

.....

in the State of South Australia, on the

.....
(day of) (month) (year)

.....
(signature of witness - Justice of the Peace or Commissioner for Taking Affidavits)

Printed full name, initials, I.D. number and qualification to witness this Statutory Declaration

Note

The valuation report **must** only be prepared by a person who is authorised to carry on business as a valuer under the *Land Valuers Act 1994* and who is approved by the Commissioner.

To preserve the independence of the valuation report, the valuer **must not** know (or attempt to find out) the offer made by the proposed purchaser.

This Statutory Declaration **must** be signed in the presence of a witness who is either a Justice of the Peace or a Commissioner for Taking Affidavits which includes judges and legal practitioners.

APPLICATION TO OBTAIN COMMISSION/EXPENSES

Section 24G(5)

Land and Business (Sale and Conveyancing) Act 1994

Agent to complete

Agents are prohibited from receiving, demanding or retaining commission or expenses where they have obtained a beneficial interest in the land or business the agent has been authorised to sell. A maximum penalty of \$5,000 applies.

I, the registered land agent named in Part 1, Section 1 of the *Application to Obtain a Beneficial Interest*, (print full name/company name)
wish to apply to the Commissioner to seek approval to obtain commission/expenses in relation to the transaction described in Part 2 of the application in accordance with section 24G(9) of the *Land and Business (Sale and Conveyancing) Act 1994*.

Part 1A Commission

Amount of commission being sought \$

Please provide reasons below that would entitle the agent to the commission.

.....
.....
.....

Part 1B Expenses

Amount of expenses being sought \$

Please provide reasons below that would entitle the agent to the expenses.

.....
.....
.....

Please provide below a detailed list of all expenses being sought and attach evidence of those expenses incurred (e.g. an account from a newspaper etc).

.....
.....
.....

Agent to sign

..... Date: / /
(signature of agent or, if a company,
signature of nominated manager)

Note
This application to obtain commission or expenses will be treated separately from the application to obtain the beneficial interest.

Commission or expenses are not automatically approved.

The agent should provide reasons to justify the commission or expenses.