

South Australia

# Land and Business (Sale and Conveyancing) Act 1994

An Act to regulate the sale of land and businesses and the preparation of conveyancing instruments; and for other purposes.

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**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *Land and Business (Sale and Conveyancing) Act 1994*.

### **3—Interpretation**

In this Act, unless the contrary intention appears—

**agent** has the same meaning as in the *Land Agents Act 1994*;

**allotment** has the same meaning as in Part 19AB of the *Real Property Act 1886* and in addition includes a community lot (not being a strata lot) within the meaning of the *Community Titles Act 1996*;

**auction record**—see section 24J;

**authorised officer** means an authorised officer under the *Fair Trading Act 1987*;

**bidders register**—see section 24J;

**business** includes a share of, or interest in, a business or the goodwill of a business, but does not include a share in the capital of a body corporate;

**business day** means any day except a Saturday or a Sunday or other public holiday;

**commission** includes any consideration (other than reimbursement of expenses) to which an agent is entitled for services as an agent;

**Commissioner** means the Commissioner for Consumer Affairs;

**conveyancing instrument** means instrument as defined in the *Real Property Act 1886*;

**date of settlement**, in relation to a contract for the sale of land or a business, means—

- (a) if a date is fixed by the contract for settlement—the date fixed by the contract or some other date agreed by the parties in substitution for that date;
- (b) in any other case—the date on which settlement takes place;

**encumbrance**, in relation to land, includes—

- (a) an easement (other than a statutory easement not registered on the certificate of title to the land that relates only to the provision of electricity, gas, water, sewerage or telephone to the land); or
- (b) a right of way, restrictive covenant, writ, summons, warrant, caveat, lien, notice, order, requirement, declaration, claim or demand; or
- (c) any other factor (whether similar or dissimilar to those mentioned in paragraphs (a) and (b)) affecting, presently or prospectively, the title to, or the possession or enjoyment of, the land;

**land** includes—

- (a) an interest in land; and

- (b) an exclusive right (whether deriving from the ownership of a share or interest in a body corporate or partnership or arising in some other way) to the separate occupation of land or a building or part of a building;

**legal practitioner** has the same meaning as in the *Legal Practitioners Act 1981*;

**mortgage** means a legal or equitable mortgage;

**offer**, in relation to the purchase of land or a business, includes a statement of the price that the purchaser is willing to pay for the land or business including such a statement made in a tender process, request for expressions of interest or other similar process, but does not include a bid in an auction;

**place of residence** means a building or part of a building used, or currently designed for use, as a single dwelling, and includes outbuildings or other appurtenances incidental to such a use;

**purchaser** means the person or persons named in a contract as purchaser or purchasers or any one or more of them, and includes a prospective purchaser and a person authorised to act on behalf of a purchaser or prospective purchaser in relation to the transaction (whether or not an agent within the meaning of the *Land Agents Act 1994*);

**qualified accountant** means—

- (a) a person who has qualifications in accountancy required by regulation; or
- (b) a person experienced in accountancy who is approved by the Commissioner as a suitable person to exercise the functions of a qualified accountant under Part 2;

**registered conveyancer** means a person registered as a conveyancer under the *Conveyancers Act 1994*;

**residential land** means—

- (a) land on which a single place of residence or 2 places of residence are situated, or in the course of construction, and on which there are no other improvements; or
- (b) vacant land on which it is lawful to construct a place of residence; or
- (c) a community lot or unit under the *Community Titles Act 1996* or the *Strata Titles Act 1988* comprising a single place of residence, whether constructed or in the course of construction, including a place used or designed for use for a purpose ancillary to the place of residence; or
- (d) an exclusive right (whether deriving from the ownership of a share or interest in a body corporate or partnership or arising in some other way) to the separate occupation of a single place of residence, whether constructed or in the course of construction, including a place used or designed for use for a purpose ancillary to the place of residence,

but does not include—

- (e) land or a community lot or unit that is used wholly for non-residential purposes; or
- (f) land that is more than 2.5 hectares in area (or such other area as may be prescribed); or

- (g) an exclusive right to the separate occupation of land referred to in paragraph (e) or (f);

*sale* includes auction and exchange and *purchase* has a corresponding meaning;

*sales agency agreement*—see section 20;

*sales representative* has the same meaning as in the *Land Agents Act 1994*;

*small business*—see section 4;

*subdivided land* means any one or more allotments comprising vacant land shown on a plan of division that has been—

- (a) approved under an Act; and
- (b) deposited in the Lands Titles Registration Office or the General Registry Office at Adelaide,

but does not include allotments intended wholly or mainly for use for agricultural, pastoral, horticultural or viticultural purposes;

*vacant land* means land on which no house or building suitable for human occupation is built;

*vendor* means the person or persons named in a contract as vendor or vendors or any one or more of them, and includes a prospective vendor and a person authorised to act on behalf of a vendor or prospective vendor in relation to the transaction (whether or not an agent within the meaning of the *Land Agents Act 1994*);

*vendor's statement* means the statement that the vendor of land or a small business is required to serve under Part 2, and includes all certificates that are required to be endorsed on or attached to the statement.

#### 4—Meaning of small business

- (1) A business is a small business for the purposes of this Act if the business is, or is to be, sold for a total consideration not exceeding—
  - (a) \$200 000; or
  - (b) if some other amount is fixed by regulation—that amount.
- (2) For the purposes of subsection (1)—
  - (a) if land is, or is to be, sold in fee simple under the contract for the sale of a business, any component of the consideration attributable to the value of the land is to be disregarded in determining the total consideration for which the business is, or is to be, sold; and
  - (b) the value of land sold or to be sold in fee simple under the contract will be taken to be—
    - (i) the value agreed in writing between the vendor and purchaser; or
    - (ii) in the absence of such an agreement—the capital value determined under the *Valuation of Land Act 1971*; and

- (c) if stock-in-trade is, or is to be, sold under the contract for the sale of a business, any component of the consideration attributable to the value of the stock-in-trade, determined according to the usual selling price of the stock, is to be disregarded in determining the total consideration for which the business is, or is to be, sold.

## **Part 2—Contracts for sale of land or businesses**

### **5—Cooling-off**

- (1) Subject to this section, a purchaser under a contract for the sale of land or a small business may, by giving the vendor written notice before the prescribed time of the purchaser's intention not to be bound by the contract, rescind the contract.
- (2) The notice may be given—
  - (a) by giving it to the vendor personally; or
  - (b) by posting it by registered post to the vendor at the vendor's last known address (in which case the notice is taken to have been given when the notice is posted); or
  - (c) by transmitting it by facsimile transmission to a facsimile number provided by the vendor to the purchaser for the purpose (in which case the notice is taken to have been given at the time of transmission); or
  - (d) without limiting the foregoing, if an agent is authorised to act on behalf of the vendor—
    - (i) by leaving it for the agent with a person apparently responsible to the agent at the agent's address for service; or
    - (ii) by posting it by registered post to the agent at the agent's address for service,  
(in which case the notice is taken to have been given when the notice is left at or posted to that address).
- (3) If in any legal proceedings the question arises whether a notice has been given in accordance with this section, the onus of proving the giving of the notice lies on the purchaser.
- (4) If a contract is rescinded under this section, the purchaser is entitled to the return of money paid under the contract, but the vendor may retain money paid by the purchaser—
  - (a) in consideration of an option to purchase the land or small business subject to the sale; or
  - (b) by way of deposit in respect of the sale if the deposit does not exceed—
    - (i) \$100; or
    - (ii) if a greater amount is fixed by regulation—that amount.

- (5) A vendor or stakeholder who, before the prescribed time, demands or requires the payment of money by a purchaser in respect of the sale of land or a small business other than—
- (a) money payable in consideration of an option to purchase the land or small business; or
  - (b) a deposit—
    - (i) in the case of the sale of land—of \$100 or such greater amount as may be fixed by regulation; or
    - (ii) in the case of the sale of a small business—of an amount not exceeding 10% of the total consideration for the sale specified in the contract,
- is guilty of an offence.
- (6) In proceedings for an offence against subsection (5), if it is proved that the defendant received money from the purchaser, it will be presumed, in the absence of proof to the contrary, that the defendant demanded or required the payment of that money.
- (7) This section does not apply in respect of a contract for the sale of land or a small business where—
- (a) in the case of a contract for the sale of land, the purchaser is a body corporate; or
  - (b) the purchaser has, before entering into the contract, received independent advice from a legal practitioner and the legal practitioner has signed a certificate in the form approved by regulation as to the giving of that advice; or
  - (c) the sale is by auction; or
  - (d) the land or business is offered for sale, but not sold, by auction and a person by whom, or on whose behalf, a bid for the land or business was made at the auction enters into the contract on the same day as the auction; or
  - (e) the sale is by tender and the contract is made—
    - (i) in the case of the sale of land—not less than five clear business days after the day fixed for the closing of tenders and not less than two clear business days after the vendor's statement is served on the purchaser; or
    - (ii) in the case of the sale of a small business—not less than five clear business days after the day fixed for the closing of tenders and not less than five clear business days after the vendor's statement is served on the purchaser; or
  - (f) the contract is made by the exercise by the purchaser of an option to purchase the land or business subject to the sale and the option is exercised—
    - (i) in the case of the sale of land—not less than five clear business days after the grant of the option and not less than two clear business days after the vendor's statement is served on the purchaser; or

- (ii) in the case of the sale of a small business—not less than five clear business days after the grant of the option and not less than five clear business days after the vendor's statement is served on the purchaser; or
  - (g) in the case of a contract for the sale of a small business (including any such contract that also provides for the sale of land), the vendor's statement has been served on the purchaser not less than five clear business days before the making of the contract; or
  - (h) in the case of a contract for the sale of land, the contract provides also for the sale of a business that is not a small business.
- (8) In this section—

*agent's address for service* of a notice means the address last notified to the Commissioner as the agent's address for service under the *Land Agents Act 1994* or an address nominated by the agent to the purchaser for the purpose of service of the notice;

*prescribed time* means—

- (a) in relation to the sale of land—
  - (i) where the vendor's statement is served on the purchaser before the making of the contract—the end of the second clear business day after the day on which the contract was made; or
  - (ii) where the vendor's statement is served on the purchaser after the making of the contract—the end of the second clear business day from the day on which the statement was served,or the time settlement takes place (whichever is the earlier);
- (b) in relation to the sale of a small business—
  - (i) the end of the fifth clear business day after the day on which the vendor's statement is served on the purchaser; or
  - (ii) the time settlement takes place,whichever is the earlier.

## **6—Abolition of instalment purchase or rental purchase arrangements**

- (1) A contract for the sale of land or a business that provides for the payment of part of the purchase price of the land or business (except a deposit) before the date of settlement is void.
- (2) Money paid under a contract that is void under subsection (1) may be recovered by action in any court of competent jurisdiction.
- (2a) A contract under which a person has—
  - (a) a right or obligation to purchase land; but
  - (b) an obligation to pay rent in respect of a period of occupation of the land of more than 6 months before the right is exercised or the purchase completed,is voidable at any time at the option of that person.

- (2b) A person will not be taken to have elected to affirm a contract that is voidable under subsection (2a) by reason of a payment made under the contract.
- (2c) If a person avoids a contract that is voidable under subsection (2a), the person may, by action in any court of competent jurisdiction, recover any amount paid under the contract in excess of what would have been fair market rent for any period for which the person has occupied the land under the contract.
- (3) In this section—  
*deposit* means an amount paid by a purchaser in a lump sum, or in not more than three instalments, towards the purchase price of land or a business before the date of settlement;  
*rent* includes any amounts payable in respect of a right to occupy land.
- (4) This section does not apply in relation to—  
(a) a contract for the sale of land by the South Australian Housing Trust; and  
(b) a contract for the sale of land by a body specified by regulation.

### **7—Particulars to be supplied to purchaser of land before settlement**

- (1) A vendor of land must, at least 10 clear days before the date of settlement, serve, or cause to be served, on the purchaser a statement in the form required by regulation (signed by the vendor) setting out—  
(a) the rights of a purchaser under section 5; and  
(b) the particulars required by regulation of—  
(i) all mortgages, charges and prescribed encumbrances affecting the land subject to the sale; and  
(ii) if the vendor acquired a relevant interest in the land within 12 months before the date of the contract of sale—all transactions relating to the acquisition of the interest occurring within that period; and  
(iii) any prescribed matters.
- (2) For the purposes of subsection (1)(b)(ii), where a person enters into a transaction for the purpose of obtaining title to land and an instrument of transfer, conveyance or other instrument relating to the transaction is lodged at the Land Titles Registration Office or the General Registry Office, the person will be taken to have obtained title to the land not later than the day on which the instrument of transfer, conveyance or other instrument is so lodged.
- (3) The statement need not include reference to charges arising from the imposition of rates or taxes less than 12 months before the date of service of the statement.
- (4) This section—  
(a) applies only to the sale of land where the interest being sold is an estate in fee simple or leasehold interest granted by the Crown under an Act;  
(b) does not apply where land is sold under a contract for the sale of a business.

(5) In this section—

*acquired a relevant interest in the land* means—

- (a) obtained title to the land; or
- (b) obtained an option to purchase the land; or
- (c) entered into a contract to purchase the land (whether on the vendor's own behalf or on behalf of another); or
- (d) obtained an interest in the land of a category prescribed by regulation for the purposes of this definition.

### **8—Particulars to be supplied to purchaser of small business before settlement**

- (1) A vendor of a small business must, at least five clear business days before the date of settlement, serve, or cause to be served, on the purchaser a statement in the form required by regulation (signed by the vendor) setting out—
  - (a) the rights of a purchaser under section 5; and
  - (b) the prescribed particulars in relation to the business; and
  - (c) where land is sold under the contract for sale of the business—the particulars that would be required in a vendor's statement under section 7 if the land were sold separately.
- (2) The statement must have endorsed on, or attached to, it a certificate in the form required by regulation (signed by or on behalf of a qualified accountant, not being the vendor) certifying—
  - (a) that the accountant or a person acting on behalf of the accountant has examined the accounts of the business; and
  - (b) that the financial particulars disclosed under subsection (1)(b) appear to be in conformity with the accounts.

### **9—Verification of vendor's statement**

- (1) Where a vendor's statement is required to contain particulars in relation to land, and an agent acts on behalf of the vendor—
  - (a) the agent must ensure that the prescribed inquiries are made into the matters as to which particulars are required in the statement; and
  - (b) the agent must sign a certificate in the form required by regulation—
    - (i) that the responses to the inquiries confirm the completeness and accuracy of the particulars contained in the statement; or
    - (ii) that, subject to stated exceptions, the responses to the inquiries confirm the completeness and accuracy of those particulars; and
  - (ba) the agent must ensure that a copy of the certificate is given to the vendor immediately after the signing of the certificate; and
  - (c) the vendor must ensure that the certificate is endorsed on, or attached to, the vendor's statement at the time of service on the purchaser.

- (2) Where a vendor's statement is required to contain particulars in relation to land and no agent acts on behalf of the vendor but an agent acts on behalf of the purchaser—
- (a) the agent must ensure that the prescribed inquiries are made into the matters as to which particulars are required in the statement; and
  - (b) the agent must sign a certificate in the form required by regulation—
    - (i) that the responses to the inquiries confirm the completeness and accuracy of the particulars contained in the statement; or
    - (ii) that, subject to stated exceptions, the responses to the inquiries confirm the completeness and accuracy of those particulars; and
  - (ba) the agent must ensure that a copy of the certificate is given to the vendor immediately after the signing of the certificate; and
  - (c) the agent must serve the certificate or cause it to be served on the purchaser—
    - (i) when the vendor's statement is required under section 7—at least ten clear days before the date of settlement;
    - (ii) when the vendor's statement is required under section 8—at least five clear business days before the date of settlement.

### **10—Variation of particulars**

- (1) A vendor's statement must be accurate as at the date of service on the purchaser.
- (2) If after the service of a vendor's statement but before the purchaser signs the contract circumstances change so that if a fresh statement were to be prepared there would have to be some change in the particulars contained in the statement, then the vendor's statement will be regarded as defective until a notice of amendment is served and when such a notice is served it will be presumed that the vendor's statement was served, as amended by the notice, on the date of service of the notice.

### **11—Auctioneer to make statements available**

Where an auctioneer proposes to offer land or a small business for sale by auction—

- (a) the auctioneer must make the vendor's statement available for perusal by members of the public—
  - (i) at the office of the auctioneer or agent acting for the vendor for at least three consecutive business days preceding the auction; and
  - (ii) at the place at which the auction is to be conducted for at least 30 minutes before the auction commences; and
- (b) the auctioneer must cause public advertisement to be given in the manner and form required by regulation of the times and places at which the statement may be inspected.

## 12—Councils, statutory authorities and prescribed bodies to provide information

- (1) A council must within eight clear business days after receiving a request for information under this section provide the applicant with information reasonably required as to—
  - (a) any charge or prescribed encumbrance over land within the council's area of which the council has the benefit; or
  - (b) insurance under Division 3 of Part 5 of the *Building Work Contractors Act 1995*, in relation to a building on land within the council's area.
- (2) A statutory authority or prescribed body must within eight clear business days after receiving a request for information under this section provide the applicant with information reasonably required as to—
  - (a) any charge or prescribed encumbrance over land of which the statutory authority or prescribed body has the benefit; or
  - (b) any other prescribed matter.
- (3) An application under this section must be accompanied by the fee fixed by regulation and any documents that are, in accordance with the regulations, to accompany the application.

## 13—False certificate

A person who gives a certificate under this Part knowing it to be false in a material particular is guilty of an offence.

Maximum penalty: \$20 000 or imprisonment for 1 year.

## 13A—Prescribed notice to be given to purchaser

- (1) A vendor of residential land must take all reasonable steps to deliver the prescribed notice to a purchaser when the purchaser is present on the land at the invitation of the vendor in order to inspect the land prior to its sale.
- (2) A vendor of land will be taken to have complied with subsection (1) in relation to a purchaser who is present on the land if the vendor—
  - (a) incorporates the prescribed notice with promotional material that the vendor delivers to the person; or
  - (b) offers to deliver the notice, or promotional material incorporating the notice, to the person but the person refuses to take it; or
  - (c) has delivered the notice, or promotional material incorporating the notice, to the person when the person has been present on the land on a previous occasion.
- (3) A vendor of residential land must ensure that the prescribed notice is attached to a vendor's statement when the vendor's statement is served on a purchaser under this Part.
- (4) An auctioneer who proposes to offer residential land for sale by auction must ensure that the prescribed notice is attached to a vendor's statement when the vendor's statement is made available for perusal by members of the public before the auction.

(5) If an agent is acting on behalf of a vendor of residential land in connection with sale of the land, this section applies as if the obligations imposed by this section on the vendor were instead imposed on the agent.

(6) In this section—

*prescribed notice* means a notice, in the form prescribed by regulation, containing information of the kind required by regulation relating to matters concerning land that might adversely affect—

- (a) a purchaser's enjoyment of the land; or
- (b) the safety of persons on the land; or
- (c) the value of the land.

#### **14—Offence to contravene Part**

A person who contravenes or fails to comply with a provision of this Part other than section 13 (whether or not the contravention or non-compliance is declared to be an offence) is guilty of an offence.

Maximum penalty: \$10 000.

#### **15—Remedies**

- (1) Where a vendor's statement is not given or certified as required by this Part, or the statement given is defective, the purchaser may apply to a court of competent jurisdiction for an order under this section.
- (2) On the hearing of an application under subsection (1) the Court may, if satisfied that the purchaser has been prejudiced by the failure to comply with this Part, exercise any one or more of the following powers:
  - (a) avoid the contract and make such other orders as the Court thinks necessary or desirable to restore the parties to the contract to their respective positions before entering into the contract;
  - (b) award such damages as may, in the opinion of the Court, be necessary to compensate loss arising from the non-compliance;
  - (c) make such other orders as may be just in the circumstances.
- (3) Damages may be awarded under subsection (2)(b) against—
  - (a) the vendor;
  - (b) if it appears that the purchaser has been prejudiced by a failure on the part of an agent to carry out duties imposed by this Part—the agent,

or both.

#### **16—Defences**

It is a defence to a charge of an offence, or to civil proceedings, under this Part arising from an alleged contravention or non-compliance with a requirement of this Part if the defendant proves—

- (a) that the alleged contravention or non-compliance was unintentional and did not occur by reason of the defendant's negligence or the negligence of an officer, employee or agent of the defendant; or

- (b) that the alleged contravention or non-compliance was due to reliance on information provided by a person or body to which an inquiry to obtain the information is, in accordance with the regulations, required to be made; or
- (c) that—
  - (i) the purchaser received independent advice from a legal practitioner in relation to waiving compliance with that requirement; and
  - (ii) the legal practitioner signed a certificate in the form required by regulation as to the giving of that advice; and
  - (iii) the purchaser waived compliance with that requirement by signing an instrument of waiver in the form required by regulation.

### **17—Service of vendor's statement etc**

A vendor's statement, a notice of amendment to a vendor's statement or a certificate of an agent acting on behalf of a purchaser may be served on a purchaser—

- (a) by delivering it to the person personally; or
- (b) by posting it by registered post to the person at the person's last known address.

## **Part 3—Subdivided land**

### **18—Obligations and offences in relation to subdivided land**

- (1) A person who, in order to induce another person (the *prospective purchaser*) to purchase subdivided land states—
  - (a) that the person or some other person will buy at a profit to be received by the prospective purchaser other land or a chattel then owned by the prospective purchaser; or
  - (b) that the person or some other person will at some future time obtain for the prospective purchaser a profit on the subdivided land or part of it,

is guilty of an offence.

Maximum penalty: \$5 000 or imprisonment for 1 year.

- (2) A contract for the sale of subdivided land or an interest in subdivided land is (except where the sale is by public auction) voidable at the option of the purchaser at any time within six months after the making of the contract unless the contract—
  - (a) is in writing; and
  - (b) contains the following particulars:
    - (i) the name, address and description of the vendor;
    - (ii) the name, address and description of the person who is, at the time when the contract is made, the owner of the land or interest;
    - (iii) the allotment number of the land and the name (if any) of the subdivision, or other information sufficient to enable the land to be readily identified;

- (iv) the name, address and description of some person to whom all money falling due under the contract may be paid towards satisfaction of the contractual liability.
- (3) A purchaser will not be taken to have elected to affirm a contract that is voidable under this section by reason of a payment made under the contract.
- (4) Where a contract that is voidable under this section is avoided, the purchaser may recover the money paid under the contract.

## 19—Inducement to buy subdivided land

If a person is induced—

- (a) to enter into a contract to purchase subdivided land; or
- (b) to affirm a contract to purchase subdivided land that is voidable by that person,

by unreasonable or undue persuasion on the part of the vendor, or a person appearing to act on behalf of the vendor, then, according to the nature of the case—

- (c) the contract will be taken to have been induced by undue influence and will be voidable at the option of the person induced to enter it; or
- (d) the affirmation will be void and of no effect.

## Part 4—Special requirements relating to agents and sales representatives

### 20—Authority to act as agent

- (1) An agent must not act on behalf of a vendor in the sale of residential land unless the agent has been authorised to so act by an agreement (a *sales agency agreement*) that—
  - (a) specifies the agent's genuine estimate of the selling price expressed without any qualifying words—
    - (i) as a single figure; or
    - (ii) as a price range in figures with an upper limit that does not exceed 110 per cent of the lower limit; and
  - (b) specifies the selling price sought by, or acceptable to, the vendor expressed without any qualifying words as a single figure; and
  - (c) specifies—
    - (i) the manner of sale (for example, by auction, private treaty or tender); and
    - (ii) the duration of the agreement (not exceeding the prescribed number of days); and
    - (iii) the rights of the vendor to terminate the agreement; and

- (iv) the services, including advertising and marketing, to be provided for the vendor by the agent or a third person that will be separately charged for by the agent, the amounts to be charged for the services and the time for payment of the amounts; and
- (v) the nature and source and, if known, the amount or value of any rebate, discount, refund or other benefit expected to be received by the agent from a third person in relation to services referred to in subparagraph (iv); and
- (vi) whether the agreement is a sole agency agreement; and
- (vii) whether the agent has authority to accept an offer for the land on behalf of the vendor; and

(d) is dated and signed by the vendor and the agent; and

(e) complies with the regulations.

Maximum penalty: \$5 000.

- (2) An agent must not make a sales agency agreement unless the agent has first given the vendor a written guide that explains the vendor's rights and obligations under such an agreement and is in the form approved by the Commissioner for the purposes of this section.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (3) An agent must not act on behalf of—

- (a) a vendor in the sale of land (other than residential land) or a business; or
- (b) a purchaser in the sale of land or a business,

unless the agent has been authorised to so act by instrument in writing signed by the vendor or the purchaser.

Maximum penalty: \$5 000.

- (4) An agent who has been authorised to act on behalf of a vendor or purchaser under this section must ensure that the vendor or purchaser is given a copy of the signed agreement or instrument immediately after the agreement or instrument has been signed by the vendor or purchaser and delivered to the agent.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (5) The matters specified or agreed in a sales agency agreement may not be varied unless the variation is in writing and dated and signed by the parties to the agreement.

- (6) An agent who has been authorised to act on behalf of a vendor or purchaser under this section must ensure that a copy of any variation of the sales agency agreement or instrument is given to the vendor or purchaser immediately after the variation has been signed by the vendor or purchaser and delivered to the agent.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (7) An agent must not demand, receive or retain commission or expenses in respect of the sale or purchase of land or a business if the agent has contravened or failed to comply with a requirement of this section in acting on behalf of the vendor or purchaser.

Maximum penalty: \$5 000.

- (8) Commission or expenses received or retained by an agent in contravention of this section may be recovered, as a debt, from the agent by the person by whom it was paid.
- (9) An agent must keep a copy of—
- (a) each sales agency agreement, and any variation of the sales agency agreement, to which the agent has become party; and
  - (b) each instrument by which the agent has been authorised to act on behalf of a vendor or purchaser as referred to in subsection (3).

## **21—Requirements relating to offers to purchase residential land**

- (1) If a person communicates to an agent an offer for residential land that the agent is authorised to sell on behalf of a vendor, the agent must ensure that the following requirements are satisfied:
- (a) all reasonable steps must be taken to have the offer recorded in writing, in a form containing the details required by the regulations, and signed by the offeror;
  - (b) subject to subsection (5), the offer must not be passed on to the vendor unless it is so recorded and signed;
  - (c) the offeror must, if the regulations so require, be given a notice in writing containing the information prescribed by the regulations before signing the offer;
  - (d) a copy of the signed offer must be given to the vendor within 48 hours or at a later time agreed with the vendor;
  - (e) details of the offer must not be disclosed to a person other than the vendor or, on request, an authorised officer;
  - (f) a copy of the signed offer must be kept by the agent.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (2) If a person communicates to a sales representative employed by an agent an offer for residential land that the agent is authorised to sell on behalf of a vendor, the sales representative must—
- (a) take all reasonable steps to have the offer recorded in writing, in a form containing the details required by the regulations, and signed by the offeror; and
  - (b) subject to subsection (5), the offer must not be passed on to the vendor unless it is so recorded and signed;
  - (c) if the regulations so require, give the offeror a notice in writing containing the information prescribed by the regulations before the offeror signs the offer; and

- (d) give a copy of the signed offer to the vendor within 48 hours or at a later time agreed with the vendor; and
- (e) not disclose any details of the offer to a person other than the vendor or, on request, an authorised officer; and
- (f) enable a copy of the signed offer to be kept as part of the agent's records.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (3) Nothing in this section prevents details of an offer received by an agent (or a sales representative employed by the agent) from being communicated between persons engaged in the business of the agent as reasonably required for the purposes of the business.
- (4) The vendor must, at the request of an agent or sales representative, as soon as practicable after receiving a copy of a signed offer, give the agent a notice in writing acknowledging its receipt.  
Maximum penalty: \$1 250.
- (5) An agent authorised to sell residential land on behalf of a vendor, and any sales representative employed by the agent, must, before taking any step on behalf of the vendor directed towards acceptance of an offer for the land—
  - (a) ensure that the vendor has been given copies of all written offers for the land that have been received by the agent; and
  - (b) if a person has communicated to the agent or sales representative an offer for the land and there has been insufficient time to have the offer recorded in writing in accordance with subsection (1) or (2), ensure that the vendor has notice of the proposed offer.

Maximum penalty: \$5 000.

- (6) This section applies with modifications prescribed by the regulations in a case where the agent has authority to accept an offer for the land on behalf of the vendor.
- (7) A contravention of this section does not affect the validity of an offer or a contract for the sale of the land.

## **22—Person signing document to be given copy**

- (1) If a person signs an offer, contract or agreement, or a document intended to constitute an offer, contract or agreement, relating to a transaction that has been negotiated wholly or in part by an agent, the agent must ensure that the person is given a copy of the signed offer, contract, agreement or document immediately after the document has been signed by the person and delivered to the agent.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (2) If a person signs an offer, contract or agreement, or a document intended to constitute an offer, contract or agreement, relating to a transaction that has been negotiated wholly or in part by a sales representative, the sales representative must give the person a copy of the signed offer, contract, agreement or document immediately after the document has been signed by the person and delivered to the sales representative.

Maximum penalty: \$5 000.

Expiation fee: \$315.

### **23—Agent not to receive commission if contract avoided or rescinded**

- (1) An agent must not demand, receive or retain commission in respect of the sale or purchase of land or a business if the contract by which the transaction is to be effected is rescinded or avoided under this Act.

Maximum penalty: \$5 000.

- (2) Subsection (1) does not apply if—

- (a) the contract is rescinded under Part 2; and
- (b) the parties to the contract subsequently enter into another contract for the sale or purchase of the land or business; and
- (c) commission would, apart from this section, have been payable to the agent in respect of the subsequent contract.

- (3) Commission received or retained by an agent in contravention of this section may be recovered, as a debt, from the agent by the person by whom it was paid.

### **24—Agent not to lodge caveat for sums owing by client**

An agent who has been authorised to act on behalf of a vendor in the sale of residential land must not lodge a caveat over the land in order to secure payment of a debt owing to the agent by the vendor in connection with the sale of the land.

Maximum penalty: \$5 000.

### **24A—Representations as to likely selling price in marketing residential land**

- (1) For the purposes of this section—

- (a) a representation is made in marketing land if—

- (i) it is made in an advertisement for the sale of the land that is published, or caused to be published, by the agent; or
- (ii) it is made (whether orally or in writing) to a purchaser who has not commenced negotiations for the purchase of the land; and

- (b) information in an advertisement is a representation as to a likely price or likely price range for the sale of land if it could be reasonably taken to be such; and

- (c) a statement as to the price actually sought by, or acceptable to, the vendor of land is not a representation as to a likely price or likely price range for the sale of the land provided that the amount stated as the price is the same as the selling price sought by, or acceptable to, the vendor as expressed in the sales agency agreement at the time of the statement; and

- (d) *prescribed minimum advertising price*, in relation to a representation, is the amount that is the greater of—
  - (i) the agent's estimate of the selling price as expressed in the sales agency agreement as a single figure at the time of the representation, or, if that estimate is expressed in the agreement at that time as a price range, the lower limit of that range; or
  - (ii) the selling price sought by, or acceptable to, the vendor as expressed in the sales agency agreement at the time of the representation.
- (2) In marketing residential land that an agent is authorised to sell on behalf of a vendor, the agent or a sales representative employed by the agent must not—
  - (a) make a representation as to a likely price for the sale of the land that is less than the prescribed minimum advertising price; or
  - (b) make a representation as to a likely price range for the sale of the land specifying—
    - (i) as the lower limit of the range an amount less than the prescribed minimum advertising price; or
    - (ii) as the upper limit of the range an amount exceeding 110 per cent of the lower limit.

Maximum penalty: \$10 000.

#### **24B—Financial and investment advice**

- (1) The regulations may make provision for or with respect to requiring an agent or sales representative who provides financial or investment advice to a person in connection with the sale or purchase of land or a business to provide to the person specified information or warnings.
- (2) An agent or sales representative who fails to comply with a requirement of the regulations under this section is guilty of an offence.

Maximum penalty: \$10 000.

#### **24C—Agent to disclose certain benefits connected with sale or purchase**

- (1) This section applies in relation to the sale or purchase of land or a business.
- (2) An agent must disclose to the client in such manner as may be prescribed by the regulations—
  - (a) the nature, source and amount (or estimated amount or value) of any benefit the agent receives or expects to receive from a third person to whom the agent has referred the client, or with whom the agent has contracted, for the provision of services associated with the sale or purchase; and
  - (b) the nature, source and amount (or estimated amount or value) of any other benefit any person receives or expects to receive in connection with the sale or purchase.

Maximum penalty: \$20 000.

- (3) This section does not require an agent to make a disclosure of—
  - (a) a benefit disclosed in a sales agency agreement with the client; or

- (b) a benefit received or expected to be received by the agent from the client; or
  - (c) a benefit received or expected to be received by the vendor or purchaser; or
  - (d) a benefit related to the provision of services to the client that have been contracted for by the agent unless the agent has made, or is to make, a separate charge to the client in respect of the cost of the services; or
  - (e) a benefit while the agent remains unaware of the benefit (but in any proceedings against the agent, the burden will lie on the agent to prove that the agent was not, at the material time, aware of the benefit); or
  - (f) a benefit that the agent or another person receives if the agent has disclosed, in accordance with this section, that the agent or other person expected to receive the benefit.
- (4) For the purposes of this section—
- (a) the value of a non-monetary benefit is to be determined on the basis of a reasonable estimate in dollars of the value of the benefit to the agent; and
  - (b) if an agent receives a benefit in relation to multiple transactions (whether involving the same or different clients of the agent), the amount or value of the benefit in respect of any 1 of the transactions is to be determined by apportionment between the transactions according to the proportions that the amounts charged to the client or clients in respect of each transaction for the services provided by the third person bear to each other.
- (5) In this section—
- agent** means a purchaser's or vendor's agent;
- benefit** includes a rebate, discount and refund;
- client** means the person for whom the agent is or has been acting;
- purchaser's agent** means—
- (a) an agent who is or has been authorised to act on behalf of a purchaser in the purchase of land or a business; or
  - (b) a sales representative who is or has been acting for that agent;
- vendor's agent** means—
- (a) an agent who is or has been authorised to act on behalf of a vendor in the sale of land or a business; or
  - (b) a sales representative who is or has been acting for that agent.

**24D—Agent not to retain benefits in respect of services associated with sale or purchase of residential land**

- (1) This section applies in relation to the sale or purchase of residential land.
- (2) An agent must not seek to obtain from the client an amount for expenses that is more than the amount paid or payable for those expenses by the agent.

Maximum penalty: \$20 000.

- (3) In determining the amount paid or payable by the agent for expenses, the amount or value of any benefit received or receivable by the agent in respect of the expenses (other than a benefit that is contingent on the happening of an event that has not yet occurred) must be taken into account.
- (4) If it is not reasonably possible to determine the amount paid or payable by the agent at the time the agent seeks payment for those expenses from the client, the agent may make an estimate of the amount.
- (5) If the client has paid the agent an amount for expenses based on an estimate under subsection (4) and the agent becomes aware that the amount exceeds the actual amount paid or payable for the expenses by the agent, the agent must immediately pay the client the amount of the excess.

Maximum penalty: \$20 000.

- (6) If—
  - (a) an agent—
    - (i) refers the client to a third person for the provision of services associated with the sale or purchase of the residential land; or
    - (ii) contracts with a third person for the provision of services associated with the sale or purchase of the residential land that will be separately charged for by the agent; and
  - (b) the agent receives a benefit from the third person as a result of referring the client to the third person or contracting with the third person,

the agent must immediately pay the amount or value of the benefit to the client, except to the extent that the agent has accounted for or paid the amount or value of the benefit in accordance with the preceding provisions of this section.

Maximum penalty: \$20 000.

- (7) If an agent fails to pay an amount as required under subsection (5) or (6), the client may recover the amount as a debt due to the person by the agent.
- (8) This section does not apply in relation to a benefit disclosed—
  - (a) in a sales agency agreement with the client; or
  - (b) to the client in accordance with section 24C.
- (9) For the purposes of this section—
  - (a) the value of a non-monetary benefit is to be determined on the basis of a reasonable estimate in dollars of the value of the benefit to the agent; and
  - (b) if an agent receives a benefit in relation to multiple transactions (whether involving the same or different clients of the agent), the amount or value of the benefit in respect of any 1 of the transactions is to be determined by apportionment between the transactions according to the proportions that the amounts charged to the client or clients in respect of each transaction for the services provided by the third person bear to each other.

- (10) In this section—

**agent** means a purchaser's or vendor's agent;

**benefit** includes a rebate, discount and refund;

*client* means the person for whom the agent is or has been acting;

*expenses* means outgoings or proposed outgoings;

*purchaser's agent* means—

- (a) an agent who is or has been authorised to act on behalf of a purchaser in the purchase of the residential land; or
- (b) a sales representative who is or has been acting for that agent;

*vendor's agent* means—

- (a) an agent who is or has been authorised to act on behalf of a vendor in the sale of the residential land; or
- (b) a sales representative who is or has been acting for that agent.

#### **24E—Agent to supply valuation in prescribed circumstances**

- (1) An agent who is authorised to sell land or a business on behalf of a person (the *vendor*) must, if the prescribed circumstances apply, before negotiating the sale of the land or business—
  - (a) arrange a formal written valuation of the land or business, at the agent's own expense, by a person authorised to carry on business as a land valuer under the *Land Valuers Act 1994* and approved by the Commissioner; and
  - (b) furnish the vendor with a copy of the land valuer's valuation report.

Maximum penalty: \$20 000.

- (2) Before regulations are made for the purposes of subsection (1), the Minister must consult with the The Real Estate Institute of South Australia Incorporated.
- (3) In this section—

*prescribed circumstances* means circumstances of a kind prescribed by the regulations in which the agent has a conflict of interest or potential conflict of interest.

#### **24F—Agent not to act for both purchaser and vendor of land or business**

- (1) A person must not act as an agent on behalf of both the vendor and purchaser of the same land or business at the same time.  
Maximum penalty: \$20 000.
- (2) A person must not enter into agreements to act as an agent in the sale or purchase of land or a business if the performance of services by the person under the agreements will or can result in the person acting as an agent on behalf of both the vendor and the purchaser of the same land or business at the same time.  
Maximum penalty: \$20 000.
- (3) For the purposes of this section, without limiting the circumstances in which a person acts as an agent on behalf of both the vendor and purchaser of the same land or business at the same time, a person will be taken to so act if—
  - (a) the sale of land or a business is negotiated by the agent on behalf of a person; and
  - (b) the purchase of the land or business is made subject to the sale of some other land or business by the purchaser; and

- (c) the agent acts on behalf of the purchaser in the sale of the other land or business.
- (4) Despite the preceding provisions of this section, an agent may act on behalf of the purchaser in the circumstances referred to in subsection (3) if, before the purchaser authorises the agent to do so—
  - (a) the agent gives the purchaser a warning notice in the form approved by the Commissioner for the purposes of this section; and
  - (b) its receipt is acknowledged by the purchaser in writing on a copy of the form.

**24G—Restriction on obtaining beneficial interest where agent authorised to sell or appraises property**

- (1) An agent who is authorised by a person (the *vendor*) to sell land or a business must not obtain, or be in any way concerned in obtaining, a beneficial interest in the land or business.  
Maximum penalty: \$20 000 or imprisonment for 1 year.
- (2) A sales representative employed by an agent must not obtain, or be in any way concerned in obtaining, a beneficial interest in land or a business that the agent is authorised to sell for a person (the *vendor*).  
Maximum penalty: \$20 000 or imprisonment for 1 year.
- (3) An agent or sales representative who appraises land or a business for a person (the *vendor*) must not obtain, or be in any way concerned in obtaining, a beneficial interest in the land or business.  
Maximum penalty: \$20 000 or imprisonment for 1 year.
- (4) A person does not contravene subsection (3) by obtaining a beneficial interest in land or a business if an agent is acting on behalf of the vendor in the sale of the land or business.
- (5) A person does not contravene this section by obtaining a beneficial interest in land or a business if, before the person obtains the interest, the Commissioner approves such action in accordance with the regulations.
- (6) Without limiting this section, a person is considered to obtain a beneficial interest in land or a business if the person or an associate of the person obtains a beneficial interest in the land or business.
- (7) Without limiting this section, each of the following is considered to constitute the obtaining of a beneficial interest in land or a business:
  - (a) purchasing land or a business;
  - (b) obtaining an option to purchase land or a business;
  - (c) being granted a general power of appointment in respect of land or a business.
- (8) The court by which a person is convicted of an offence against this section may order the person to pay to the vendor any profit that the person has made, or is, in the opinion of the court, likely to make, from a dealing with the land or business to which the offence relates.

- (9) If an agent obtains a beneficial interest in land or a business that the agent is authorised to sell, the agent must not demand, receive or retain commission or expenses in respect of the sale or purchase of the land or business unless—
- (a) the Commissioner has approved the agent obtaining the benefit under subsection (5); and
  - (b) the Commissioner has, when giving that approval, also approved the receipt of the commission or expenses.

Maximum penalty: \$5 000.

- (10) Commission or expenses received or retained by an agent in contravention of this section may be recovered, as a debt, from the agent by the person by whom it was paid.

- (11) In this section—

**appraise**—an agent or sales representative appraises land or a business if the agent or sales representative provides advice, whether or not at the request of the vendor, as to the value of the land or business in circumstances where it may be reasonably assumed that the vendor may rely on the advice of the agent or sales representative;

**associate** of a person means—

- (a) a relative of the person or of the person's spouse or domestic partner; or
- (b) a body corporate where the person or a relative of the person or of the person's spouse or domestic partner has, or 2 or more such persons together have, a relevant interest or relevant interests in shares in the body corporate the nominal value of which is not less than 10 per cent of the nominal value of the issued share capital of the body corporate; or
- (c) a trustee of a trust of which the person, a relative of the person or of the person's spouse or domestic partner or a body corporate referred to in paragraph (b) is a beneficiary; or
- (d) an employee, employer or partner of the person; or
- (e) a person who has a relationship with the person (whether or not similar to the relationships referred to in the preceding paragraphs) of a kind prescribed by the regulations for the purposes of this section;

**beneficiary** of a trust includes an object of a discretionary trust;

**domestic partner** means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

**relative** of a person means the spouse, domestic partner, parent or remoter linear ancestor, son, daughter or remoter issue or brother or sister of the person;

**relevant interest** has the same meaning as in the *Corporations Act 2001* of the Commonwealth;

**spouse**—a person is the spouse of another if they are legally married.

## 24H—Agent not to pay commission except to officers or employees or another agent

- (1) An agent must not pay the whole or part of the commission to which the agent is entitled for services as an agent to a person other than—
  - (a) an officer or employee of the agent; or
  - (b) a registered agent.

Maximum penalty: \$5 000.

- (2) In this section—

*registered agent* means—

- (a) a registered agent within the meaning of the *Land Agents Act 1994*; or
- (b) a person who usually resides in a place outside the State and who is authorised under the law of that place to carry on business as an agent in that place.

## Part 4A—Auctions

### 24I—Standard conditions for auctions of residential land

The standard conditions prescribed for auctions by the regulations apply as contractual conditions to any auction conducted by an agent for the sale of residential land.

### 24J—Preliminary actions and records required for auctions of residential land

- (1) The responsible agent must ensure that the following requirements are satisfied in relation to an auction for the sale of residential land (in addition to other requirements under this Act):
  - (a) the standard conditions of auction must be made available for perusal by members of the public at the place at which the auction is to be conducted for at least 30 minutes before the auction is due to commence;
  - (b) the standard conditions of auction must be audibly announced as required by the regulations by the auctioneer to the members of the public attending the auction immediately before the auction commences;
  - (c) a written record (an *auction record*) must be made and kept by the agent, consisting of the following which must be made before the commencement of the auction:
    - (i) a record of the reserve price for the land and any changes in the reserve price made before the commencement of the auction;
    - (ii) a register (a *bidders register*) of the persons intending to bid at the auction, containing the details relating to the intending bidders required by the regulations;
    - (iii) other records containing details relating to the auction required by the regulations;

- (d) if a bid is to be allowed by a person who was not registered in the bidders register as an intending bidder before the commencement of the auction, the auction must be interrupted and the person's details entered in the bidders register;
- (e) before details of an intending bidder are entered in the bidders register, the identity of the intending bidder must be established in accordance with the regulations, and if the intending bidder is to bid on behalf of another person, the person's authority to so act must be established in accordance with the regulations and proof must be obtained in accordance with the regulations of the other person's identity;
- (f) each person registered in the bidders register must, when the person's details are being taken for entry in the register, be supplied with a written guide relating to the sale of residential land by auction in the form approved by the Commissioner for the purposes of this section;
- (g) any change in the reserve price made during the auction must be entered in the auction record;
- (h) an entry must be made in the auction record recording the amount of each bid and (except in the case of a bid referred to in paragraph (i)) the identifying number allocated to the person who made the bid;
- (i) if the auctioneer makes a bid on behalf of the vendor (see section 24O), an entry must be made in the auction record recording the amount of the bid and that the bid was a vendor bid;
- (j) other details relating to bidding or subsequent events must be entered in the auction record in accordance with the regulations;
- (k) any entry to be made in the auction record must be made immediately on the happening of the event to be recorded in the entry.

Maximum penalty: \$10 000.

- (2) A person must not enter details in an auction record, or furnish details for entry in an auction record, that the person knows, or has reason to believe, are false in a material particular.

Maximum penalty: \$10 000.

- (3) A person who has made an auction record or had access to the record must not disclose or make any use of information in the record except—
  - (a) as authorised under this Part; or
  - (b) as required by an authorised officer.

Maximum penalty: \$10 000.

- (4) A contravention of this section does not affect the validity of a bid or a contract for the sale of the land.
- (5) In this section—

**responsible agent** in relation to an auction for the sale of land means the agent who has entered into a sales agency agreement with the vendor for the sale of the land, whether or not the agent is to conduct the auction through the instrumentality of another agent.

## 24K—Registered bidders only at auctions of residential land

- (1) An auctioneer at a sale by auction of residential land—
  - (a) must not take a bid from a person unless—
    - (i) the person has been registered in the bidders register for the auction and the auctioneer is in possession of that register when the bid is taken; and
    - (ii) the person is identified at the auction by the person displaying an identifying number allocated to the person for the purposes of the auction and recorded in the bidders register as the identifying number allocated to the person; and
  - (b) must, when taking the bid, audibly announce the bid as having been taken from a bidder with that person's identifying number.

Maximum penalty: \$10 000.

- (2) An auctioneer who refuses to take a bid from a person because of subsection (1) does not incur a liability to any person as a result of that refusal.
- (3) The taking of a bid in contravention of this section does not affect the validity of the bid or a contract for the sale of the land.

## 24L—Collusive practices at auctions of land or businesses

- (1) A person must not, by a collusive practice relating to the sale by auction of land or a business, induce or attempt to induce any other person—
  - (a) to abstain from bidding, or limit his or her bidding, at the auction; or
  - (b) to do any other act or thing that might in any way prevent or tend to prevent free and open competition at the auction.

Maximum penalty: \$20 000.

- (2) A person must not, as a result of a collusive practice relating to a sale by auction of land or a business—
  - (a) abstain from bidding, or limit his or her bidding, or agree to abstain from bidding, or to limit his or her bidding, at the auction; or
  - (b) do any other act or thing that might in any way prevent or tend to prevent free and open competition at the auction.

Maximum penalty: \$20 000.

- (3) An auctioneer must not sell land or a business by auction unless notice is given prior to the auction, in such manner and in such terms as may be prescribed by the regulations, of the material parts of this section.

Maximum penalty: \$5 000.

- (4) In this section—

*collusive practice* includes an agreement, arrangement or understanding under which 1 person will, on being the successful bidder at an auction of land or a business (and whether or not subject to other conditions), allow another person to take over as purchaser of the land or business through the auctioneer at the auction price.

### 24M—Disruption of auction prohibited

- (1) An intending bidder at an auction of land or a business, or a person acting on behalf of an intending bidder, must not—
  - (a) knowingly prevent or hinder any other person whom he or she believes is an actual or potential rival bidder from attending, participating in or freely bidding at the auction; or
  - (b) harass any other person whom he or she believes is an actual or potential rival bidder with the intention of interfering with that other person's attendance at, participation in, or bidding at the auction.

Maximum penalty: \$20 000.

- (2) A person must not do anything with the intention of preventing, causing a major disruption to, or causing the cancellation of, an auction of land or a business.

Maximum penalty: \$20 000.

### 24N—Dummy bidding prohibited at auctions of land or businesses

- (1) This section applies subject to section 24O.
- (2) A vendor of land or a business must not make a bid at an auction of the land or business.
- (3) A person must not make a bid at an auction of land or a business knowing that the bid is being made on behalf of a vendor of the land or business.
- (4) For the purposes of subsection (3), a bid may be found to have been made on behalf of a vendor even though it is not made at the request of, or with the knowledge of, the vendor.
- (5) A person must not procure another person to make a bid at an auction of land or a business that is contrary to this section.
- (6) An auctioneer must not take a bid at an auction of land or a business if he or she knows that the bid was made by, or on behalf of, a vendor of the land or business.
- (7) An auctioneer must not purport to take a bid at an auction of land or a business when in fact no bid is being made.
- (8) A person who contravenes this section is guilty of an offence.

Maximum penalty: \$20 000.

- (9) In this section—

*vendor* of land or a business has the meaning assigned by section 3 and includes—

- (a) a mortgagee or other holder of a security interest in respect of the land or business; and
- (b) a person of a class prescribed by regulation.

### **24O—When vendor bid by auctioneer permitted**

- (1) Despite section 24N and any other law, an auctioneer may make not more than 3 bids at an auction of residential land on behalf of the vendor of the land, or 1 or more bids at an auction of land (other than residential land) or a business on behalf of the vendor of the land or business, if—
  - (a) the conditions under which the auction is conducted permit the making of such bids; and
  - (b) before any bidding starts, the auctioneer audibly announces to the members of the public attending the auction that the conditions permit the making of such bids; and
  - (c) immediately before, or in the process of making such a bid, the auctioneer audibly announces that the bid is a "vendor bid"; and
  - (d) the amount of any such bid is less than the reserve price for the land or business.
- (2) In this section—

*vendor* has the meaning assigned by section 24N.

### **24P—Last vendor bid must be identified if property passed in**

- (1) This section applies if, at an auction of land or a business, the land or business is not sold and the last bid made before the auction stopped was a bid made by the auctioneer on behalf of the vendor of the land or business.
- (2) In making any statement while marketing the land or business, a person must not state the amount of the last bid without also stating that the bid was a bid made on behalf of the vendor of the land or business.

Maximum penalty: \$10 000.
- (3) For the purposes of subsection (2), a statement is made while marketing land or a business if—
  - (a) it is made in an advertisement in respect of the land or business that is published, or caused to be published, by the person; or
  - (b) it is made (whether orally or in writing) to a person as a purchaser of the land or business.
- (4) A person who advises another person of the amount of the last bid to enable that amount to be published must not knowingly fail to disclose to the other person that the bid was a bid made on behalf of the vendor of the land or business.

Maximum penalty: \$10 000.
- (5) A person who is a publisher of results of auctions must not publish the fact that the land or business was passed in for the amount of the last bid without also stating that the bid was made on behalf of the vendor of the land or business.

Maximum penalty: \$10 000.
- (6) It is a defence to a charge against subsection (2) or (5) if the person making the statement, or publishing the amount—
  - (a) was not present at the auction; and

- (b) relied on a statement made by a person who purported to know what happened at the auction.
- (7) It is sufficient compliance with subsection (2) or (5) if the amount is described as a "vendor bid".
- (8) In this section—  
*vendor* has the meaning assigned by section 24N.

## **Part 5—Preparation of conveyancing instruments**

### **25—Part 5 subject to transitional provisions**

This Part operates subject to the transitional provisions contained in the Schedule.

### **26—Interpretation of Part 5**

- (1) For the purposes of this Part, a person stands in a prescribed relationship to an agent if the person—
  - (a) is an employee of the agent; or
  - (b) is a partner of the agent; or
  - (c) is an employee of, or is remunerated by, a body corporate and—
    - (i) the agent is in a position to control the conduct of the affairs of the body corporate; or
    - (ii) the agent is a director of, or a shareholder in, the body corporate and the body corporate is not a public company as defined in the *Corporations Act 2001* of the Commonwealth; or
    - (iii) the agent is also an employee of, or is also remunerated by, the body corporate.
- (2) For the purposes of this Part, an application under the *Strata Titles Act 1988*, for the deposit of a strata plan, the amendment of a deposited strata plan, the amalgamation of deposited strata plans, or the cancellation of a deposited strata plan, is a conveyancing instrument.

### **27—Preparation of conveyancing instrument for fee or reward**

A person other than a legal practitioner or registered conveyancer must not prepare a conveyancing instrument for fee or reward.

Maximum penalty: \$5 000.

### **28—Preparation of conveyancing instrument by agent or related person**

If a conveyancing instrument (other than one to give effect to a transaction in which the agent participates as a purchaser or mortgagee of land) is prepared by an agent, or a person who stands in a prescribed relationship to an agent, the agent and the person by whom the instrument is prepared are each guilty of an offence.

Maximum penalty: \$5 000.

## **29—Procuring or referring conveyancing business**

- (1) A legal practitioner or registered conveyancer must not pay or give a commission or fee or other consideration to a person for referring business involving the preparation of conveyancing instruments.  
Maximum penalty: \$5 000.
- (2) An agent, or a person who stands in a prescribed relationship to an agent, must not demand or receive from a legal practitioner or registered conveyancer a commission or fee or other consideration for referring to the legal practitioner or registered conveyancer business involving the preparation of conveyancing instruments.  
Maximum penalty: \$5 000.
- (3) An agent, or a person who stands in a prescribed relationship to an agent, must not procure or attempt to procure the execution of a document requiring or authorising the preparation of a conveyancing instrument by a particular person or person of a particular description.  
Maximum penalty: \$5 000.
- (4) A clause included in, or appended to, an offer or contract for the sale of land or a business requiring or authorising the preparation of a conveyancing instrument by a particular person or person of a particular description is void.

## **30—Conveyancer not to act for both parties unless authorised by regulations**

Except as authorised under the regulations, a conveyancer must not act for both the transferor and transferee, or the grantor and grantee, of property or rights under a transaction.

Maximum penalty: \$5 000.

## **31—Effect of contravention**

- (1) A conveyancing instrument is not void or voidable because it is prepared in contravention of this Part.
- (2) An officer of the Crown to whom a conveyancing instrument is presented for stamping or registration need not inquire whether the instrument has been prepared in contravention of this Part.

## **Part 6—Miscellaneous**

### **32—Exemptions**

- (1) The Minister may, on application by a person, exempt the person from compliance with a specified provision of this Act.
- (2) An exemption is subject to the conditions (if any) imposed by the Minister.
- (3) The Minister may, at his or her discretion, vary or revoke an exemption.
- (4) The grant or a variation or revocation of an exemption must be notified in the Gazette.

### **33—No exclusion etc of rights conferred or conditions implied or applied by Act**

Subject to this Act, a purported exclusion, limitation, modification or waiver of a right conferred, or contractual condition implied or applied, by this Act is void.

### **34—Civil remedies unaffected**

Nothing in this Act prejudices any civil remedy available apart from this Act.

### **35—Misrepresentation**

No term or provision of an agreement for the sale and purchase of land or a business prevents a party from claiming or being awarded damages or other relief in respect of misrepresentation in connection with the sale or purchase of the land or business.

### **36—False or misleading representation**

- (1) A person who makes a false or misleading representation for the purpose of inducing another person to—
  - (a) sell or purchase land or a business; or
  - (b) engage the first mentioned person or a third person to act as an agent in the sale or purchase of land or a business; or
  - (c) enter into any contract or arrangement in connection with the sale or purchase of land or a business,

is guilty of an offence.

Maximum penalty: \$20 000 or imprisonment for 1 year.

- (2) In proceedings for an offence against subsection (1), it is not necessary for the prosecution to establish that the defendant knew the representation to be false or misleading, but it is a defence for the defendant to prove that he or she had reasonable ground to believe, and did believe, the representation to be true.

### **37—Signing on behalf of agent**

If a document is required or authorised by this Act to be signed by an agent, the document may be signed by a person authorised to act on behalf of the agent.

### **37A—Keeping of records**

- (1) An agent who is required under Part 4 or 4A to keep a document or record must—
  - (a) keep the document or record at a place of business of the agent in the State for 5 years from the day on which the document or record was received or made; and
  - (b) have the document or record readily available for inspection at all reasonable times by an authorised officer.

Maximum penalty: \$5 000.

- (2) For the purposes of this section, a document or record may, subject to the regulations, be kept in electronic form.
- (3) In this section—

*record* includes a register.

### 37B—General defence

It is a defence to a charge of an offence against this Act, other than an offence against Part 2, if the defendant proves that the offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

### 38—Liability for act or default of officer, employee or agent

For the purposes of this Act, an act or default of an officer, employee or agent of a person will be taken to be an act or default of that person unless it is proved that the officer, employee or agent acted outside the scope of his or her actual, usual and ostensible authority.

### 39—Offences by bodies corporate

Where a body corporate is guilty of an offence against this Act, each director of the body corporate is guilty of an offence and liable to the same penalty as is imposed for the principal offence unless it is proved that the director could not by the exercise of reasonable diligence have prevented the commission of that offence.

### 40—Prosecutions

- (1) Proceedings for a summary offence against this Act must be commenced—
  - (a) in the case of an expiable offence—within the time limits prescribed for expiable offences by the *Summary Procedure Act 1921*;
  - (b) in any other case—within two years of the date on which the offence is alleged to have been committed or, with the authorisation of the Minister, at a later time within five years of that date.
- (2) A prosecution for an offence against this Act cannot be commenced except by—
  - (a) the Commissioner; or
  - (b) an authorised officer under the *Fair Trading Act 1987*; or
  - (c) a person who has the consent of the Minister to commence the prosecution.
- (3) In any proceedings, an apparently genuine document purporting to be a certificate of the Minister certifying authorisation of, or consent to, a prosecution for an offence against this Act will be accepted, in the absence of proof to the contrary, as proof of the authorisation or consent.

### 41—Regulations

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
  - (aa) make provision for a method of service (which may include electronic transmission) of a notice or other document required or authorised to be served or given by this Act, which may include a method in addition to, or as an alternative to, a method of service provided for by this Act;
  - (a) exempt (conditionally or unconditionally) classes of persons or activities from the application of this Act or specified provisions of this Act;

- (ab) impose fees in respect of any matter under this Act, and make provision relating to their payment, recovery or waiver;
  - (b) impose a penalty (not exceeding a fine of \$5 000) for contravention of, or non-compliance with, a regulation;
  - (c) fix expiation fees, not exceeding a fee of \$315, for alleged offences against the regulations.
- (3) Regulations under this Act—
- (a) may be of general application or limited application;
  - (b) may make different provision according to the matters or circumstances to which they are expressed to apply;
  - (c) may provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Commissioner or the Minister.

## 42—Review of Parts 4 and 4A

The Minister must—

- (a) within 2 years after the commencement of this section, cause a review of the operation of Parts 4 and 4A to be undertaken and the outcome of the review to be incorporated into a report; and
- (b) within 6 sitting days after receipt of the report, ensure that a copy of the report is laid before each House of Parliament.

## Schedule—Transitional provisions

### Preparation of conveyancing instruments

- (1) Part 5 does not prevent a person who is a party to, or has acted as an agent in, a transaction in respect of which a conveyancing instrument has been, or is to be, prepared from charging a fee for the preparation of the instrument if—
- (a) the instrument is prepared by a legal practitioner or registered conveyancer in that person's employment; and
  - (b) the legal practitioner or registered conveyancer has been continuously in that person's employment since 1 May 1973 or some earlier date.
- (2) Part 5 does not prevent the preparation of a conveyancing instrument by a legal practitioner or registered conveyancer who stands in a prescribed relationship to an agent acting for a party to the transaction in respect of which the instrument is prepared if the legal practitioner or registered conveyancer—
- (a) has stood in that relationship continuously from 1 May 1973 or some earlier date; and
  - (b) was licensed as a land broker, or admitted and enrolled as a practitioner of the Supreme Court of South Australia, or was qualified to be so licensed, or admitted and enrolled, on 1 May 1973; and
  - (c) in the case of a person acting in the employment of a conveyancer that is a body corporate—is not a director of the body corporate, or in a position to control the conduct of the affairs of the body corporate.

- (3) An exemption granted under Part 7 Division 3 of the *Land Agents, Brokers and Valuers Act 1973* and in force immediately before the commencement of this Act continues in force according to its terms as an exemption from the corresponding provision of Part 5.
- (4) The Commissioner may, by notice in writing, vary or revoke an exemption referred to in subclause (3).

## Legislative history

### Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1994	85	<i>Land and Business (Sale and Conveyancing) Act 1994</i>	15.12.1994	1.6.1995 ( <i>Gazette 25.5.1995 p2198</i> )
1995	96	<i>Statutes Amendment (Sunday Auctions and Indemnity Fund) Act 1995</i>	7.12.1995	Pt 4—1.2.1996 ( <i>Gazette 1.2.1996 p1002</i> )
1996	34	<i>Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996</i>	2.5.1996	Sch (cl 21)—3.2.1997 ( <i>Gazette 19.12.1996 p1923</i> )
1996	38	<i>Statutes Amendment (Community Titles) Act 1996</i>	9.5.1996	s 8—4.11.1996 ( <i>Gazette 31.10.1996 p1460</i> )
2000	43	<i>Statutes Amendment (Consumer Affairs—Portfolio) Act 2000</i>	13.7.2000	Pt 3 (ss 8 & 9) and Sch 2—1.10.2000 ( <i>Gazette 7.9.2000 p1638</i> ); Pt 3 (s 7)—13.7.2002 (s 7(5) <i>Acts Interpretation Act 1915</i> )
2003	4	<i>Statutes Amendment and Repeal (National Competition Policy) Act 2003</i>	29.5.2003	Pt 3 (s 6)—1.7.2003 ( <i>Gazette 26.6.2003 p2811</i> )
<b>2007</b>	<b>28</b>	<b><i>Statutes Amendment (Real Estate Industry Reform) Act 2007</i></b>	<b>2.8.2007</b>	<b>Pt 4 —28.7.2008 (<i>Gazette 3.7.2008 p3203</i>) except ss 33(1), (3) &amp; 35(2), (3)—1.8.2009 (<i>Gazette 30.4.2009 p1543</i>)</b>

### Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
s 2	<i>deleted by 43/2000 s 9 (Sch 2)</i>	<i>1.10.2000</i>
s 3		
allotment	inserted by 38/1996 s 8(a)	4.11.1996

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auction record	inserted by 28/2007 s 31(1)	28.7.2008
authorised officer	inserted by 28/2007 s 31(1)	28.7.2008
bidders register	inserted by 28/2007 s 31(1)	28.7.2008
commission	inserted by 28/2007 s 31(2)	28.7.2008
legal practitioner	substituted by 4/2003 s 6	1.7.2003
offer	inserted by 28/2007 s 31(3)	28.7.2008
place of residence	inserted by 28/2007 s 31(3)	28.7.2008
purchaser	amended by 28/2007 s 31(4)	28.7.2008
residential land	inserted by 28/2007 s 31(5)	28.7.2008
sales agency agreement	inserted by 28/2007 s 31(6)	28.7.2008
sales representative	inserted by 28/2007 s 31(6)	28.7.2008
subdivided land	amended by 38/1996 s 8(b)	4.11.1996
vendor	amended by 28/2007 s 31(7)	28.7.2008
s 4		
s 4(2)	amended by 28/2007 s 32	28.7.2008
Pt 2		
s 5		
<b>s 5(2)</b>	<b>substituted by 28/2007 s 33(1)</b>	<b>1.8.2009</b>
s 5(5)	amended by 28/2007 s 33(2)	28.7.2008
s 5(8)		
<b>agent's address for service</b>	<b>inserted by 28/2007 s 33(3)</b>	<b>1.8.2009</b>
prescribed time	amended by 28/2007 s 33(4)	28.7.2008
s 6		
s 6(2a)—(2c)	inserted by 28/2007 s 34(1)	28.7.2008
s 6(3)		
rent	inserted by 28/2007 s 34(2)	28.7.2008
s 7		
s 7(1)	amended by 28/2007 s 35(1)	28.7.2008
	<b>amended by 28/2007 s 35(2)</b>	<b>1.8.2009</b>
<b>s 7(5)</b>	<b>inserted by 28/2007 s 35(3)</b>	<b>1.8.2009</b>
s 8		
s 8(1)	amended by 28/2007 s 36	28.7.2008
s 9		
s 9(1)	amended by 28/2007 s 37(1)—(3)	28.7.2008
s 9(2)	amended by 28/2007 s 37(4)—(6)	28.7.2008
s 12		
s 12(1)	amended by 43/2000 s 9 (Sch 2)	1.10.2000
s 12(2)	amended by 43/2000 s 7	13.7.2002
s 13	amended by 28/2007 s 38	28.7.2008
s 13A	inserted by 28/2007 s 39	28.7.2008
s 14	amended by 43/2000 s 9 (Sch 2)	1.10.2000

	amended by 28/2007 s 40(1), (2)	28.7.2008
s 17	amended by 28/2007 s 41	28.7.2008
Pt 3		
s 18		
s 18(1)	amended by 43/2000 s 9 (Sch 2)	1.10.2000
s 19	amended by 28/2007 s 42	28.7.2008
<i>Pt 4 before substitution by 28/2007</i>		
s 20	<i>amended by 34/1996 s 4 (Sch cl 21)</i>	3.2.1997
	<i>amended by 43/2000 s 9 (Sch 2)</i>	1.10.2000
s 21		
s 21(1)	<i>amended by 43/2000 s 9 (Sch 2)</i>	1.10.2000
s 21(2)	<i>amended by 34/1996 s 4 (Sch cl 21)</i>	3.2.1997
	<i>amended by 43/2000 s 9 (Sch 2)</i>	1.10.2000
s 23		
s 23(1) and (2)	<i>amended by 43/2000 s 9 (Sch 2)</i>	1.10.2000
s 24		
s 24(1)	<i>amended by 43/2000 s 9 (Sch 2)</i>	1.10.2000
Pt 4	substituted by 28/2007 s 43	28.7.2008
Pt 4A	inserted by 28/2007 s 43	28.7.2008
Pt 5		
s 26		
s 26(1)	amended by 28/2007 s 44	28.7.2008
s 27	amended by 43/2000 s 9 (Sch 2)	1.10.2000
	amended by 28/2007 s 45	28.7.2008
s 28	amended by 43/2000 s 9 (Sch 2)	1.10.2000
	amended by 28/2007 s 46	28.7.2008
s 29		
s 29(1)—(3)	amended by 43/2000 s 9 (Sch 2)	1.10.2000
	amended by 28/2007 s 47	28.7.2008
s 30	amended by 43/2000 s 9 (Sch 2)	1.10.2000
	amended by 28/2007 s 48	28.7.2008
Pt 6		
s 33	amended by 28/2007 s 49	28.7.2008
s 36		
s 36(1)	amended by 43/2000 s 9 (Sch 2)	1.10.2000
	substituted by 28/2007 s 50(1)	28.7.2008
s 36(2)	amended by 28/2007 s 50(2)	28.7.2008
s 37	deleted by 96/1995 s 6	1.2.1996
	inserted by 28/2007 s 51	28.7.2008
ss 37A and 37B	inserted by 28/2007 s 51	28.7.2008
s 40		
s 40(1)	substituted by 43/2000 s 8	1.10.2000

s 41		
s 41(2)	amended by 34/1996 s 4 (Sch cl 21)	3.2.1997
	amended by 43/2000 s 9 (Sch 2)	1.10.2000
	amended by 28/2007 s 52(1)—(4)	28.7.2008
s 42	inserted by 28/2007 s 53	28.7.2008

## **Transitional etc provisions associated with Act or amendments**

### ***Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996***

#### **5—Transitional provision**

An Act repealed or amended by this Act will continue to apply (as in force immediately prior to the repeal or amendment coming into operation) to an expiation notice issued under the repealed or amended Act.

### **Historical versions**

Reprint No 1—1.2.1996

Reprint No 2—4.11.1996

Reprint No 3—3.2.1997

Reprint No 4—1.10.2000

Reprint No 5—13.7.2002

Reprint No 6—1.7.2003

28.7.2008