

Legislative Council—No 130A

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 14 May 2013

South Australia

**Statutes Amendment (Real Estate Reform Review
and Other Matters) Bill 2012**

A BILL FOR

An Act to amend the *Conveyancers Act 1994*, the *Land Agents Act 1994* and the *Land and Business (Sale and Conveyancing) Act 1994*.

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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 *Statutes Amendment (Real Estate Reform Review and Other Matters) Act 2012*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Conveyancers Act 1994*

4—Amendment of section 31—Indemnity fund

(1) Section 31(2)(a)—after "with this Act" insert:

, compliance with the *Land and Business (Sale and Conveyancing) Act 1994* by conveyancers

(2) Section 31(2)(b)—after "this Act" insert:

or for alleged offences by conveyancers against the *Land and Business (Sale and Conveyancing) Act 1994*;

(3) Section 31(2)(f)—delete paragraph (f) and substitute:

(f) the payment of amounts, approved by the Minister, towards the cost of—

(i) prescribed educational programs conducted for the benefit of conveyancers or members of the public; or

(ii) reviewing the operation of this Act or the operation of the *Land and Business (Sale and Conveyancing) Act 1994* insofar as it relates to conveyancers;

Part 3—Amendment of *Land Agents Act 1994*

5—Amendment of section 29—Indemnity fund

(1) Section 29(4)(a)—after "with this Act" insert:

, compliance with the *Land and Business (Sale and Conveyancing) Act 1994* by agents or sales representatives

(2) Section 29(4)(b)—after "this Act" insert:

or for alleged offences by agents or sales representatives against the *Land and Business (Sale and Conveyancing) Act 1994*;

(3) Section 29(4)(f)—delete paragraph (f) and substitute:

(f) the payment of amounts, approved by the Minister, towards the cost of—

(i) prescribed educational programs conducted for the benefit of agents, sales representatives or members of the public; or

(ii) reviewing the operation of this Act or the operation of the *Land and Business (Sale and Conveyancing) Act 1994* insofar as it relates to agents or sales representatives;

6—Amendment of section 47—Disciplinary action

- (1) Section 47(1)—delete "On the hearing" and substitute:

Subject to subsection (1a), on the hearing

- (2) Section 47—after subsection (1) insert:

5 (1a) If the person to whom the complaint relates has been found guilty of
a prescribed offence and the circumstances of the offence form, in
whole or in part, the subject matter of the complaint, the Court must,
by order, cancel any registration of the person and disqualify the
person from being so registered unless the Court is satisfied on the
10 balance of probabilities, by evidence given by the person on oath,
that the offence was trifling or committed in exceptional
circumstances.

(1b) Nothing in subsection (1a) prevents the Court from exercising such
15 other powers under this section as the Court considers appropriate in
the circumstances.

- (3) Section 47—after subsection (4) insert:

(5) In this section—

prescribed offence means an offence against section 24A(2),
20 section 24G(1), (2) or (3) or section 36 of the *Land and Business*
(Sale and Conveyancing) Act 1994.

Part 4—Amendment of *Land and Business (Sale and Conveyancing) Act 1994*

7—Amendment of section 3—Interpretation

Section 3—after the definition of *small business* insert:

25 *standard conditions of auction*—see section 24I;

8—Amendment of section 4—Meaning of small business

Section 4(1)(a)—delete "\$200 000" and substitute:

\$300 000 (excluding GST)

9—Amendment of section 5—Cooling-off

- 30 (1) Section 5(2)(c)—delete "facsimile transmission to a facsimile number" and substitute:

fax or email to a fax number or email address

- (2) Section 5(7)(a)—after "land" insert:

other than residential land

10—Amendment of section 9—Verification of vendor's statement

- 35 (1) Section 9(1)(ba)—delete "immediately" and substitute:

within 48 hours

- (2) Section 9(2)(ba)—delete "immediately" and substitute:
within 48 hours

11—Substitution of section 11

Section 11—delete the section and substitute:

11—Agent or auctioneer to make statements available before auction

- (1) If land or a small business is to be offered for sale by auction, the following provisions apply:
- (a) if an agent is acting on behalf of the vendor in the sale, the agent must ensure that—
 - (i) the vendor's statement is available for perusal by members of the public—
 - (A) at the office of the agent or auctioneer for at least 3 consecutive business days immediately preceding the auction; and
 - (B) at the place at which the auction is to be conducted for at least 30 minutes immediately before the auction commences; and
 - (ii) all reasonable steps are taken to give prospective purchasers notice of the times and places at which the vendor's statement may be inspected before the auction;
 - (b) if no agent is acting on behalf of the vendor in the sale, the auctioneer must ensure that the vendor's statement is available for perusal by members of the public—
 - (i) at the office of the auctioneer for at least 3 consecutive business days immediately preceding the auction; and
 - (ii) at the place at which the auction is to be conducted for at least 30 minutes immediately before the auction commences.
- (2) An agent will be taken to have complied with subsection (1)(a)(ii) in relation to a prospective purchaser if the agent or a sales representative employed by the agent—
- (a) incorporates the notice with promotional material for the sale that the agent or sales representative delivers to the purchaser; or
 - (b) offers to deliver the notice, or promotional material for the sale incorporating the notice, to the purchaser but the purchaser refuses to take it; or
 - (c) publishes the notice in a prominent position—

- (i) in promotional material for the sale on the agent's website or in a newspaper circulating generally throughout the State or the area in which the land or business is situated; or
- (ii) on the signboard advertising the sale at the land or at the premises of the small business.

12—Amendment of section 13A—Prescribed notice to be given to purchaser

Section 13A(2)—after paragraph (c) insert:

or

- (d) in the case of an inspection that is open to the general public—
displays the notice in a prominent position on the land and so as to indicate to persons inspecting the land that a copy of the notice may be taken by those persons.

13—Amendment of section 20—Authority to act as agent

(1) Section 20(1)(a)—delete paragraph (a) and substitute:

- (a) specifies the agent's genuine estimate of the selling price expressed without any qualifying words or symbols as a single figure; and

(2) Section 20(1)(b)—after "qualifying words" insert:

or symbols

(3) Section 20—delete subsection (2) and substitute:

- (2) An agent must not make a sales agency agreement unless the agent has first given the vendor—
 - (a) a written guide, in a form approved by the Commissioner for the purposes of this section, that explains the vendor's rights and obligations under such an agreement; and
 - (b) details of sales of comparable land and any other information on which the agent will rely in support of his or her estimate of the selling price.

Maximum penalty: \$5 000.

Expiation fee: \$315.

(4) Section 20(4)—after "immediately" insert:

, or at a later time within 48 hours as agreed with the vendor or purchaser,

(5) Section 20(5)—delete subsection (5) and substitute:

- (5) Subject to subsection (5a), the matters specified or agreed in a sales agency agreement may be varied provided that the variation is in writing and dated and signed by the parties to the agreement.
- (5a) A sales agency agreement for the sale of residential land by auction may not be varied by increasing the amount specified in the agreement as the selling price sought by, or acceptable to, the vendor.

(6) Section 20(6)—after "immediately" insert:

, or at a later time within 48 hours as agreed with the vendor or purchaser,

(7) Section 20—after subsection (6) insert:

(6a) If, in relation to a sales agency agreement, a *notice of expiry* is given in the prescribed manner to the vendor by the agent who has been authorised to act on behalf of the vendor under the agreement—

(a) the vendor may, by notice given to the agent before the date on which the agreement is due to expire, indicate his or her intention not to extend the agreement, in which case the agreement terminates on that date; or

(b) if notice is not given under paragraph (a), the following provisions apply, subject to subsection (6ab):

(i) the agreement may be extended—

(A) by agreement between the parties recorded in writing and dated and signed by the parties no earlier than 14 days before the agreement is due to expire; and

(B) for a period not exceeding the number of days prescribed by regulation;

(ii) if the agreement is not extended under subparagraph (i), it is taken to have been extended by force of this paragraph for the period prescribed by regulation from the time at which it would otherwise have expired.

(6ab) A sales agency agreement cannot be extended more than once.

(6ac) If a notice of expiry is not given by an agent to a vendor in accordance with subsection (6a), the sales agency agreement terminates on the date on which it is due to expire and cannot be extended.

(6b) An agent who has been authorised to act on behalf of a vendor under this section must ensure that a copy of the record of any extension of the sales agency agreement under subsection (6a)(b)(i) is given to the vendor immediately, or at a later time within 48 hours as agreed with the vendor, after it has been signed by the vendor and delivered to the agent.

Maximum penalty: \$5 000.

Expiation fee: \$315.

(6c) A vendor may, by notice in writing given to the agent at any time during a period of extension of a sales agency agreement, terminate the agreement without specifying any grounds.

(6d) If a sales agency agreement between a vendor and an agent for the sale of residential land by auction is terminated before its expiry or is varied by reducing the duration of the agreement, the agent must not make a new sales agency agreement with the vendor for the sale by auction of the same land specifying, as the selling price sought by, or acceptable to, the vendor, an amount that is greater than that specified in the agreement before its termination or variation unless the period specified as the duration of the agreement before its termination or variation has elapsed.

Maximum penalty: \$5 000.

(8) Section 20(9)(a)—after "variation" insert:

or extension

(9) Section 20—after subsection (9) insert:

(10) For the purposes of this section, a notice of expiry, in relation to a sales agency agreement, will be taken to have been given to the vendor in the prescribed manner if it is given to the vendor no earlier than 14 days before the agreement is due to expire.

(11) In this section—

notice of expiry, in relation to a sales agency agreement, means a notice in writing—

- (a) reminding the vendor of the date on which the agreement is due to expire and the vendor's rights to terminate the agreement; and
- (b) setting out the vendor's rights to extend the agreement and the effect of subsections (6a), (6ab), (6b) and (6c).

14—Amendment of section 21—Requirements relating to offers to purchase residential land

Section 21(2)—delete subsection (2) and substitute:

(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—

- (a) must 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), must not pass the offer on to the vendor unless it is so recorded and signed; and
- (c) must, 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) must give a copy of the signed offer to the vendor within 48 hours or at a later time agreed with the vendor; and

- (e) must not disclose any details of the offer to a person other than the vendor or, on request, an authorised officer; and
- (f) must enable a copy of the signed offer to be kept as part of the agent's records.

5 Maximum penalty: \$5 000.

Expiation fee: \$315.

(2a) Despite subsections (1)(e) and (2)(e), an agent (or a sales representative employed by the agent) may disclose to a purchaser the fact that an offer has been made if the following requirements are satisfied:

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- (a) the amount of the offer and any terms or conditions of the offer must not, at any time before the sale, be disclosed to the purchaser;
- (b) a notice in writing confirming the fact that the offer was made must be provided, on request, to the purchaser;
- (c) a copy of the notice must be kept as part of the agent's records.

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(2b) An agent (or a sales representative employed by the agent) who, in making a disclosure of a kind referred to in subsection (2a), contravenes or fails to comply with a requirement specified in that subsection is guilty of an offence.

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Maximum penalty: \$5 000.

Expiation fee: \$315.

15—Amendment of section 24A—Representations as to likely selling price in marketing residential land

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- (1) Section 24A(1)(c)—delete "or likely price range"
- (2) Section 24A(1)(d)(i)—delete "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" and substitute:

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at the time of the representation

- (3) Section 24A(2)—delete subsection (2) and substitute:

(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 comply with the following:

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- (a) if the agent or sales representative makes a representation as to a likely price for the land—
 - (i) the price must be expressed as a single figure without any qualifying words or symbols; and
 - (ii) the price must not be less than the prescribed minimum advertising price;

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(b) if the agent or sales representative makes a representation as to a likely price range for the land—

(i) the price range must be expressed using 2 single figures in combination only with such words or symbols as are necessary to denote a range¹ with the first figure constituting the lower limit of the range and the second figure constituting the upper limit of the range; and

(ii) the lower limit of the range must not be less than the prescribed minimum advertising price; and

(iii) the upper limit of the range must not exceed 110% of the lower limit of the range.

Note—

1 For example, "between \$340 000 and \$360 000", "from \$340 000 to \$360 000" or "\$340 000 - \$360 000".

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

(3) An agent must not demand, receive or retain commission or expenses in respect of the sale of land if the agent or a sales representative employed by the agent has failed to comply with a requirement of subsection (2) in marketing the land on behalf of the vendor.

Maximum penalty: \$5 000.

(4) 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.

16—Substitution of section 24I

Section 24I—delete the section and substitute:

24I—Standard conditions of auction for residential land

(1) The regulations may prescribe conditions (*standard conditions of auction*) that will apply as contractual conditions to any auction conducted by an agent for the sale of residential land.

(2) The standard conditions of auction will be binding as between—

(a) the vendor and the purchaser; and

(b) the vendor and the auctioneer; and

(c) the bidders and the auctioneer.

17—Amendment of section 24J—Preliminary actions and records required for auctions of residential land

Section 24J(1)(b)—delete paragraph (b) and substitute:

- 5 (b) the auctioneer must, immediately before the auction commences, audibly announce to members of the public attending the auction that the standard conditions of auction (as required to be made available for perusal before the auction) apply to the auction as binding contractual conditions;
- 10 (ba) the reserve price for the land must not, at any time before or during the auction, be set at an amount exceeding 110% of the amount specified in the sales agency agreement as the selling price sought by, or acceptable to, the vendor;

18—Amendment of section 24K—Registered bidders only at auctions of residential land

- 15 (1) Section 24K(1)(a)(ii)—delete "an identifying number" and substitute:
a unique identifier (comprising a number, letter, colour or some other identifying feature)
- (2) Section 24K(1)(a)(ii)—delete "the identifying number" and substitute:
the unique identifier
- 20 (3) Section 24K(1)(b)—delete "identifying number" and substitute:
unique identifier

19—Amendment of section 27—Preparation of conveyancing instrument for fee or reward

Section 27, penalty provision—delete the penalty provision and substitute:
25 Maximum penalty: \$20 000.

20—Amendment of section 28—Preparation of conveyancing instrument by agent or related person

Section 28, penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$20 000.

30 **21—Amendment of section 29—Procuring or referring conveyancing business**

- (1) Section 29(1), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$20 000.
- (2) Section 29(2), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$20 000.
- 35 (3) Section 29(3), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$20 000.

22—Amendment of section 30—Conveyancer not to act for both parties unless authorised by regulations

Section 30, penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$20 000.