

South Australia

Land and Business (Sale and Conveyancing) Variation Regulations 2008

under the *Land and Business (Sale and Conveyancing) Act 1994*

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Part 1—Preliminary

1—Short title

These regulations may be cited as the *Land and Business (Sale and Conveyancing) Variation Regulations 2008*.

2—Commencement

These regulations will come into operation on the day on which the *Statutes Amendment (Real Estate Industry Reform) Act 2007* comes into operation.

3—Variation provisions

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

Part 2—Variation of *Land and Business (Sale and Conveyancing) Regulations 1995*

4—Variation of regulation 3—Interpretation

Regulation 3—after subregulation (2) insert:

- (3) In these regulations, a reference to the type size of printed or typewritten material is to be taken to be a reference to that type size when produced in Times New Roman font.

5—Variation of regulation 6A—Sale of land—instalment agreements

- (1) Regulation 6A—delete "State Development" and substitute:
Infrastructure
- (2) Regulation 6A—delete "Premises Development" and substitute:
and Commercial Premises

6—Variation of regulation 13—Sale of land—form of agent's certificate

Regulation 13—delete "or some person acting on the agent's behalf"

7—Insertion of regulation 15A

After regulation 15 insert:

15A—Prescribed notice to be given to purchaser

For the purposes of section 13A of the Act, the prescribed notice must be printed or typewritten in not smaller than 12-point type and in the form, and contain the information, set out in Schedule 1A.

8—Insertion of regulations 16A to 16J

After regulation 16 insert:

16A—Authority to act as agent

- (1) For the purposes of section 20(1)(c)(ii) of the Act, the prescribed number of days is 90.
- (2) For the purposes of section 20(1)(e) of the Act, a sales agency agreement must comply with the following:
 - (a) the agreement must be printed or typewritten in not smaller than 12-point type, however, variations to the sales agency agreement may be handwritten provided they are legible;
 - (b) the agreement must specify—
 - (i) the land that is the subject of the agreement (whether by street address or description sufficient to identify the land); and
 - (ii) the full names of the vendor and agent; and
 - (iii) the agent's registration number; and
 - (iv) the chattels that are included in or excluded from sale; and
 - (v) details of the circumstances in which the agent will be entitled to receive commission or fees for the sale of the land, including circumstances in which the sale may not be attributable to the agent, or may not be directly or completely attributable to the agent; and
 - (c) the agreement must contain a term by which the agent warrants that the agent will comply with all the agent's obligations under the Act and these regulations and will act in the vendor's best interests.
- (3) Auctioneers are exempt from the requirements of section 20(1) and (3) of the Act insofar as they act on behalf of a vendor or purchaser in the sale of land or a business only by performing the functions of an auctioneer, including having or exercising an auctioneer's authority to sign a contract for the sale of land or a business on behalf of the vendor or purchaser after the fall of the hammer to the highest bidder at an auction.

16B—Requirements relating to offers to purchase residential land

For the purposes of section 21(1)(a) and (2)(a) of the Act, an offer for residential land must contain the following details:

- (a) the offer must, if it is in the form of a contract of sale document, include the following statement at the head of the document printed or typewritten in not smaller than 12-point bold type:

Notice to purchaser:

This is a contract for the sale of residential land. You may be bound by the terms of this contract if it is signed by both you and the vendor. You should seek independent legal advice if you are unsure about the terms contained in this contract. Contracts for the sale of land may be subject to a 2 day cooling-off period (exercisable by the purchaser) under section 5 of the *Land and Business (Sale and Conveyancing) Act 1994*.

- (b) the offer must, in any other case—
- (i) be headed "NOTICE OF OFFER TO PURCHASE RESIDENTIAL LAND" printed or typewritten in upper case type not smaller than 14-point followed by the following statement printed or typewritten in not smaller than 12-point bold type:

Note:

This is not a contract of sale document. Both the purchaser and vendor must sign a contract of sale document before this offer becomes legally binding. An offer may be withdrawn at any time before signing a contract of sale document. Contracts of sale may also be subject to a 2 day cooling-off period (exercisable by the purchaser) under section 5 of the *Land and Business (Sale and Conveyancing) Act 1994*; and

- (ii) include the following details, printed or typewritten in not smaller than 12-point type:
- (A) the full name of the offeror;
- (B) the land that is the subject of the offer (whether by street address or description sufficient to identify the land);
- (C) the amount of the offer;
- (D) any conditions to which the offer is subject (for example, finance, sale of another property or satisfactory building or land inspection report);

- (E) the proposed date of settlement or length of time between the signing of the contract of sale and settlement.

16C—Financial and investment advice

For the purposes of section 24B of the Act, the specified information or warnings to be given to a person in respect of financial or investment advice must be in the form set out in Schedule 2A printed or typewritten in not smaller than 12-point type.

16D—Agent to disclose certain benefits connected with sale or purchase

For the purposes of section 24C(2) of the Act, the disclosure must be in the form set out in Schedule 2B printed or typewritten in not smaller than 12-point type.

16E—Agent to supply valuation in prescribed circumstances

- (1) For the purposes of section 24E of the Act, the prescribed circumstances in relation to the sale of land or a business by an agent are circumstances in which—
 - (a) the agent or a sales representative or another person employed by the agent has made unsolicited contact (other than by advertisement or mail) with the owner of the land or business; and
 - (b) as a result of that contact, the agent has been authorised to sell the land or business on behalf of the owner; and
 - (c) negotiations by the agent or sales representative for the sale of the land or business commence or are to commence with any person without prior advertising of the land or business by the agent for sale to the public.
- (2) An application for the approval of the Commissioner under section 24E(1) of the Act must be made to the Commissioner in the form approved by the Commissioner.

16F—Agent not to act for both purchaser and vendor of land or business

Auctioneers are exempt from the application of section 24F of the Act insofar as they act on behalf of both a vendor and purchaser in the sale of land or a business only by performing the functions of an auctioneer, including having or exercising an auctioneer's authority to sign a contract for the sale of land or a business on behalf of the vendor or purchaser after the fall of the hammer to the highest bidder at an auction.

16G—Restriction on obtaining beneficial interest where agent authorised to sell or appraises property

- (1) For the purposes of section 24G(5) of the Act—
 - (a) the Commissioner may approve the obtaining by the agent or sales representative of a beneficial interest in the land or business on application by the agent or sales representative to the Commissioner in the form approved by the Commissioner; and
 - (b) the Commissioner may require the applicant to provide the Commissioner with specified information to enable the Commissioner to determine the application, verified, if the Commissioner so requires, by statutory declaration; and
 - (c) the Commissioner may refuse the application—
 - (i) if the applicant has not provided the information required by the application or the Commissioner; or
 - (ii) if, in the opinion of the Commissioner—
 - (A) the information provided by the applicant is inaccurate, incomplete or calculated to mislead; or
 - (B) the agent or sales representative is not acting in the best interests of the vendor; or
 - (C) the vendor is likely to suffer detriment as a result of the transaction; or
 - (iii) if the agent or sales representative has not—
 - (A) arranged a formal written valuation of the land or business, at the agent's or sales representative'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) furnished the vendor with a copy of the land valuer's report.
- (2) For the purposes of paragraph (e) of the definition of *associate* in section 24G(11) of the Act, a relationship between the agent or sales representative and a person is prescribed if the agent or sales representative will, to the knowledge of the agent or sales representative, receive a benefit from the other person in connection with a transaction or dealing relating to the land or business subsequent to the agent or sales representative successfully negotiating the sale of the land or business for the vendor.

16H—Prescribed standard conditions for auctions of residential land

For the purposes of section 24I of the Act, the conditions set out in Schedule 2C are prescribed standard conditions for an auction conducted by an agent for the sale of residential land, binding as between—

- (a) the vendor and the purchaser; and
- (b) the vendor and the auctioneer; and
- (c) the bidders and the auctioneer.

16I—Preliminary actions and records required for auctions of residential land

- (1) For the purposes of section 24J(1)(b) of the Act, all prescribed standard conditions for an auction conducted by an agent for the sale of residential land must be audibly announced by the auctioneer to the members of the public attending the auction immediately before the commencement of the auction.
- (2) For the purposes of section 24J(1)(c), (e) and (j) of the Act—
 - (a) the following details relating to an auction must be included in the auction record before the commencement of the auction:
 - (i) the street address of the land or a description of the land sufficient to identify it;
 - (ii) the full name of the vendor, the responsible agent and the auctioneer;
 - (iii) the date and time of the auction;
 - (iv) for the bidders register—
 - (A) the full name and address of each person intending to bid at the auction (subject to the requirements of paragraph (c)); and
 - (B) a general description of the proof of identity produced by the person in accordance with paragraph (c) and the signature of the agent verifying that the agent has sighted it; and
 - (C) if the intending bidder is proposing to bid on behalf of another person, the full name and address of the other person and a statement that the intending bidder is proposing to bid on behalf of that person;
 - (b) the following details relating to bidding or subsequent events must be entered in the auction record:

- (i) for the bidders register if the auction is interrupted in order to register a further person as an intending bidder in the register—
 - (A) the full name and address of the person (subject to the requirements of paragraph (c)); and
 - (B) a general description of the proof of identity produced by the person in accordance with paragraph (c) and the signature of the agent verifying that the agent has sighted it; and
 - (C) if the intending bidder is proposing to bid on behalf of another person, the full name and address of the other person and a statement that the intending bidder is proposing to bid on behalf of that person; and
- (ii) if the land is sold at the auction—
 - (A) the full name and address of the purchaser; and
 - (B) the amount for which the land was sold;
- (iii) if the land is passed in at the auction but the auctioneer, on the same day, conducts further negotiations for the sale of the land with a person by whom, or on whose behalf, a bid for the land was made at the auction (whether or not resulting in a sale)—
 - (A) the full name and address of that person; and
 - (B) the amounts offered by that person for the land during those negotiations; and
 - (C) in the case of a resulting sale of the land on that day to that person—the amount for which the land was sold;
- (c) details of an intending bidder must not be entered in the bidders register unless—
 - (i) the intending bidder has produced to the agent proof of his or her identity in the form of a drivers licence, passport, credit or debit card or gas, electricity or telephone account or similar document or card issued to the person; and
 - (ii) if the intending bidder is proposing to bid on behalf of another person, the bidder has—

- (A) provided to the agent a written authority to so act signed by the other person; and
 - (B) produced to the agent proof of the other person's identity in the form of a drivers licence, passport, credit or debit card or gas, electricity or telephone account or similar document or card issued to the other person, or, in the case of a body corporate, the certificate of the body's incorporation.
- (3) For the purposes of subregulation (2)(c)(ii), an authority or proof of identity may be an original document or a photocopy, facsimile copy or electronically scanned copy of the original document.
- (4) There are exemptions from the application of section 24J(3) of the Act as follows:
 - (a) the responsible agent or, if a different person, the auctioneer is exempt insofar as the agent or auctioneer—
 - (i) discloses or makes use of information in the auction record relating to a person accepted by the auctioneer as having made the highest bid above the reserve price for a purpose connected with the auction or sale of the land on behalf of the vendor; or
 - (ii) discloses to the vendor the name of a person registered in the bidders register (whether as a bidder or a person on whose behalf bids may be made); or
 - (iii) discloses or makes use of information in the auction record as permitted by section 24J(3) of the Act;
 - (b) the vendor is exempt insofar as the vendor discloses or makes use of information in the auction record disclosed to the vendor under this regulation;
 - (c) a person who has the auction record or has had access to it is exempt insofar as the person does anything with respect to the record, or information in it, for the purposes of the administration or enforcement of the Act or as required or authorised by a court or tribunal constituted by law.

16J—Collusive practices at auctions of land or businesses

For the purposes of section 24L(3) of the Act, notice of the material parts of that section —

- (a) must, in the case of the sale of residential land by auction—
 - (i) include the information set out in the form in Schedule 2D printed or typewritten in not smaller than 12-point type; and

- (ii) be supplied to each intending bidder when the person's details are being taken for entry in the bidders register; and
- (b) must, in the case of the sale by auction of any other land or a business—
 - (i) include the information set out in the form in Schedule 2D; and
 - (ii) be audibly announced by the auctioneer to the members of the public attending the auction immediately before the auction commences.

9—Insertion of Part 4

After Part 3 insert:

Part 4—Miscellaneous

20—Keeping of records

For the purposes of section 37A(2) of the Act, if a person who is required to keep a document or record under Part 4 or 4A of the Act uses a computer program for the purpose, the person must ensure that—

- (a) an electronic copy of the document or record is made within 24 hours of the making, receipt or variation of the document or record; and
- (b) an electronic copy of all the documents and records is made at least once in each month and kept so as to be protected against deterioration, loss, theft and unauthorised access, modification or use; and
- (c) before any information is deleted from the computer records, a hard copy of the information is made and kept by the person as part of the person's records; and
- (d) an up-to-date electronic copy of the computer program is made and kept so as to be protected against deterioration, loss, theft and unauthorised access, modification or use.

10—Insertion of Schedule 1A

After Schedule 1 insert:

Schedule 1A—Prescribed notice to be given to purchaser

Land and Business (Sale and Conveyancing) Act 1994 section 13A

Land and Business (Sale and Conveyancing) Regulations 1995 regulation 15A

Before you buy a home there are a number of things that you should investigate and consider. Though it may not be obvious at the time, there could be matters that may affect your enjoyment of the property, the safety of people on the property or the value of the property.

The following questions may help you to identify if a property is appropriate to purchase. In many cases the questions relate to a variety of laws and standards. These laws and standards change over time, so it is important to seek the most up to date information. Various government agencies can provide up to date and relevant information on many of these questions. To find out more, the Office of Consumer and Business Affairs recommends that you check the website: www.ocba.sa.gov.au/consumeradvice/realstate

Consider having a professional building inspection done before proceeding with a purchase. A building inspection will help you answer some of the questions below.

The questions have been categorised under the headings **Safety**, **Enjoyment** and **Value**, but all of the issues are relevant to each heading.

Safety

- Is there **asbestos** in any of the buildings or elsewhere on the property e.g. sheds and fences?
- Does the property have any significant **defects** e.g. **cracking** or **salt damp**? Have the wet areas been waterproofed?
- Is the property in a **bushfire** prone area?
- Are the **electrical wiring, gas installation, plumbing and appliances** in good working order and in good condition? Is a **safety switch** (RCD) installed? Is it working?
- Are there any prohibited **gas appliances** in bedrooms or bathrooms?
- Are **smoke alarms** installed in the house? If so, are they hardwired? Are they in good working order and in good condition? Are they compliant?
- Is there a **swimming pool and/or spa pool** installed on the property? Are there any safety barriers or fences in place? Do they conform to current standards?

- Does the property have any **termite** or other pest infestations? Is there a current preventive termite treatment program in place? Was the property treated at some stage with persistent organochlorins (now banned) or other **toxic** termiticides?
- Has fill been used on the site? Is the soil contaminated by **chemical residues** or waste?
- Does the property use **cooling towers** or manufactured warm water systems? If so, what are the maintenance requirements?

Enjoyment

- Does the property have any **stormwater** problems?
- Is the property in a **flood prone** area? Is the property prone to coastal flooding?
- Does the property have an on-site **wastewater treatment facility** such as a septic tank installed? If so, what are the maintenance requirements? Is it compliant?
- Is a **sewer mains connection** available?
- Are all gutters, downpipes and stormwater systems in good working order and in good condition?
- Is the property near **power lines**? Are there any trees on the property near power lines? Are you considering planting any trees? Do all structures and trees maintain the required clearance from any power lines?
- Are there any **significant** trees on the property?
- Is this property a unit on **strata or community title**? What could this mean for you? Is this property on strata or community title? Do you understand the restrictions of use and the financial obligations of ownership? Will you have to pay a previous owner's debt or the cost of planned improvements?
- Is the property close to a hotel, restaurant or other venue with entertainment consent for live music? Is the property close to any industrial or commercial activity, a busy road or airport, etc that may result in the generation of **noise** or the **emission of materials or odours** into the air?
- What appliances, equipment and fittings are included in the sale of the property?
- Is there sufficient car parking space available to the property?

Value

- Are there any **illegal or unapproved additions**, extensions or alterations to the buildings on the property?
- How **energy efficient** is the home, including appliances and lighting? What **energy sources** (e.g. electricity, gas) are available?

- Is the property connected to SA Water operated and maintained **mains water**? Is a mains water connection available? Does the property have a **recycled water** connection? What sort of water meter is located on the property (a **direct or indirect meter** – an indirect meter can be located some distance from the property)? Is the property connected to a water meter that is also serving another property?
- Are there water taps outside the building? Is there a watering system installed? Are they in good working order and in good condition?
- Does the property have **alternative sources** of water other than mains water supply (including **bore or rainwater**)? If so, are there any special maintenance requirements?

For more information on these matters visit:
www.ocba.sa.gov.au/consumeradvice/realestate.

Disclaimer: There may be other issues relevant to the purchase of real estate. If you are unable to ascertain enough information about the questions raised in this form and any other concerns you may have we strongly recommend you obtain independent advice through a building inspection, a lawyer, and a financial adviser.

11—Insertion of Schedules 2A to 2D

After Schedule 2 insert:

Schedule 2A—Financial and investment advice— specified information and warnings

Land and Business (Sale and Conveyancing) Act 1994 section 24B

Land and Business (Sale and Conveyancing) Regulations 1995
regulation 16C

A land agent or sales representative who provides financial or investment advice to you in connection with the sale or purchase of land or a business is obliged to tell you that—

You should assess the suitability of any purchase of the land or business in light of your own needs and circumstances by seeking independent financial and legal advice.

An agent must also tell you about any other benefit that any other person (including the agent) will receive in connection with the sale or purchase, unless it is*:

- a benefit that has been disclosed in a sales agency agreement
- a benefit that you provide the agent
- a benefit received by the vendor or purchaser
- a benefit related to a service for which you have not or will not be charged
- a benefit of which the agent remains unaware.

**Refer to section 24C of the Land and Business (Sale and Conveyancing) Act 1994*

Schedule 2B—Disclosure of benefits

Land and Business (Sale and Conveyancing) Act 1994 section 24C

Land and Business (Sale and Conveyancing) Regulations 1995
regulation 16D

If a benefit has already been disclosed in a sales agency agreement then the use of this form is not required to disclose that benefit.

Subject to section 24C of the *Land and Business (Sale and Conveyancing) Act 1994*, a land agent must use this form to disclose to you (the client):

- benefits which the agent will receive or expects to receive from a third person to whom the agent has referred you, or with whom the agent has contracted, when the referral or contract is for the provision of services associated with the sale or purchase of property or a business;
- any other benefit of which the agent is aware that any person (including the agent) receives or expects to receive in connection with the sale or purchase.

The obligation to disclose a benefit to you under section 24C is ongoing and arises when the agent becomes aware of a benefit.

Note—

- When this form is used, the land agent **must** disclose the nature, source and amount (or estimated amount or value) of the benefit.
- A benefit includes a rebate, a discount, or a refund, and could include such things as frequent flyer points or gift vouchers.
- Under section 24C(5) of the *Land and Business (Sale and Conveyancing) Act 1994* an agent includes an agent acting for the purchaser or vendor, and a sales representative acting for that agent.

Description of property or business

Nature of the benefit	Source of the benefit	Amount (or estimated amount or value) of the benefit	Name of recipient of the benefit and capacity* of recipient

* refers to the capacity in which the person receives the benefit, e.g. as an agent, a financier, mortgage broker, lawyer.

If insufficient space, add an annexure

Name of agent/sales representative	Name of client
Signature	Signature
Date	Date

Schedule 2C—Prescribed standard conditions for auctions of residential land

Land and Business (Sale and Conveyancing) Act 1994 section 24I

Land and Business (Sale and Conveyancing) Regulations 1995 regulation 16H

1—Prescribed standard conditions

- (1) The prescribed standard conditions referred to in regulation 16H for an auction conducted by an agent for the sale of residential land (the *property*) are as follows:
 - (a) any person may bid in the auction in person, or by their proxy or representative, subject to the conditions of auction;
 - (b) the vendor's reserve price will be as recorded in the auction record;
 - (c) to make a bid a person must be registered in the bidders register, having satisfied the requirements as to proof of identity and, if applicable, authority to bid as a proxy or representative;
 - (d) the auctioneer will only accept a bid if the person making the bid displays an identifying number allocated to the person by the auctioneer;
 - (e) the auctioneer will, when accepting a bid, audibly announce the number so displayed by the bidder;
 - (f) the auctioneer may refuse a bid if of the opinion that it is not in the best interests of the vendor, and will not be obliged to give any reason for refusing a bid;
 - (g) the auctioneer may make bids on behalf of the vendor but not more than 3 such bids and only for amounts below the reserve price; any such bid will be audibly announced by the auctioneer as a "vendor's bid";
 - (h) bidding increments will be accepted at the discretion of the auctioneer;
 - (i) the person accepted by the auctioneer as having made the highest bid above the reserve price will be the purchaser and that bid will be the purchase price;
 - (j) the auctioneer will not accept a bid made after the fall of the auctioneer's hammer;

- (k) unless otherwise agreed in writing by the purchaser and the vendor before the commencement of the auction—
- (i) a contract for the sale of the property, in the form displayed by the auctioneer at the auction, will be completed and signed by or on behalf of the purchaser and the vendor immediately after the fall of the hammer; and
 - (ii) the purchaser will pay a deposit immediately after the fall of the hammer, as specified in the conditions of auction;
- (l) the auctioneer will have irrevocable authority, after the fall of the auctioneer's hammer, to complete and sign the contract on behalf of the purchaser or the vendor, or both; completion and signing under that authority will be at the auctioneer's discretion in the event of breach by the purchaser of any of the conditions of auction;
- (m) the cooling off rights under section 5 of the *Land and Business (Sale and Conveyancing) Act 1994* do not apply to a sale by auction or a sale on the day of auction to a person who has made a bid in the auction (whether in person or by their proxy or representative).
- (2) In this Schedule—
conditions of auction includes conditions displayed by the auctioneer at the auction as conditions of the auction, together with the standard conditions set out above.

Schedule 2D—Collusive practices at auctions of land or businesses

Land and Business (Sale and Conveyancing) Act 1994 section 24L

Land and Business (Sale and Conveyancing) Regulations 1995 regulation 16J

Section 24L of the *Land and Business (Sale and Conveyancing) Act 1994* makes it unlawful to engage in collusive practices in relation to an auction of land or a business. Under that section a person must not behave in such a way that might tend to prevent **free and open competition** at an auction by, for example—

- abstaining from bidding or limiting his or her bidding; or
- agreeing to abstain from bidding or limit his or her bidding; or
- inducing or attempting to induce another person to abstain from bidding or limit his or her bidding; or
- doing anything else or inducing or attempting to induce another person to do anything else that might tend to prevent free and open competition at the auction.

The maximum penalty for committing such an offence is \$20 000.

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on 3 July 2008

No 209 of 2008

MCA07/051CS