

South Australia

Land and Business (Sale and Conveyancing) (Real Estate Reform Review and Other Matters) Variation Regulations 2013

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) (Real Estate Reform Review and Other Matters) Variation Regulations 2013*.

2—Commencement

These regulations will come into operation on the day on which Part 4 of the *Statutes Amendment (Real Estate Reform Review and Other Matters) Act 2013* 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 2010*

4—Revocation of regulation 15

Regulation 15—delete the regulation

5—Variation of regulation 19—Authority to act as agent

- (1) Regulation 19(2)(a)—delete "12-point" and substitute:
10-point
- (2) Regulation 19—after subregulation (5) insert:
 - (6) For the purposes of section 20(6a)(b)(i)(B) of the Act, the prescribed number of days is 90.
 - (7) For the purposes of section 20(6a)(b)(ii) of the Act, the prescribed number of days is 180.

6—Variation of regulation 20—Requirements relating to offers to purchase residential land

- (1) Regulation 20(a)—delete paragraph (a) and substitute:
 - (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. It is advisable to check section 5 of the *Land and Business (Sale and Conveyancing) Act 1994* regarding any cooling-off rights that you may have and how to exercise them.;

(2) Regulation 20(b)(i)—delete subparagraph (i) and substitute:

- (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. If you do enter into a contract of sale, it is advisable to check section 5 of the *Land and Business (Sale and Conveyancing) Act 1994* regarding any cooling-off rights that you may have and how to exercise them.;
and

7—Insertion of regulation 20A

After regulation 20 insert:

20A—Representations as to likely selling price in marketing residential land

Section 24A(1)(c) of the Act does not apply in relation to statements made in marketing land for sale by auction.

8—Substitution of regulation 21

Regulation 21—delete regulation 21 and substitute:

21—Financial and investment advice

For the purposes of section 24B of the Act, 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 must—

- (a) in the case of oral advice—immediately before giving the advice, give the person warning of the matters set out in Schedule 4 orally, prefaced by the words "**I am legally required to give you this warning**"; or
- (b) in the case of written advice—at the same time as giving the advice or as soon as reasonably practicable after giving the advice, give the person a notice in the form set out in Schedule 4, printed or typewritten in not smaller than 12-point type.

9—Variation of regulation 25—Restriction on obtaining beneficial interest where agent authorised to sell or appraises property

Regulation 25(1)(c)(iii)—delete subparagraph (iii) and substitute:

- (iii) if, in the case of a beneficial interest in land (whether to be obtained by the agent or sales representative in his or her own right or by an associate of the agent or sales representative)—
- (A) a formal written valuation of the land has not been carried out; or
 - (B) such a valuation has been carried out but—
 - the person who carried out the valuation was not authorised to carry on business as a land valuer under the *Land Valuers Act 1994*; or
 - the person who carried out the valuation was not approved by the Commissioner; or
 - the cost of the valuation was not borne by the agent, sales representative or associate (as the case may be) who obtained the beneficial interest; or
 - (C) the vendor has not been given a copy of the land valuer's report.

10—Substitution of regulation 26

Regulation 26—delete the regulation and substitute:

26—Standard conditions of auction for residential land

For the purposes of section 24I(1) of the Act, the conditions set out in Schedule 6 are prescribed.

11—Variation of regulation 27—Preliminary actions and records required for auctions of residential land

Regulation 27(1)—delete subregulation (1)

12—Substitution of regulation 28

Regulation 28—delete the regulation and substitute:

28—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 must be—

- (a) in the form set out in Schedule 7, printed or typewritten in not smaller than 12-point type; and
- (b) 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.

13—Insertion of Part 3A

After Part 3 insert:

Part 3A—Service of notices or documents

31A—Service by fax or email of vendor's statement, certificate of agent acting on behalf of purchaser or notice of amendment to vendor's statement

The following notices or documents required or authorised to be given to or served on a person under the Act may (instead of a method of service set out in section 17 of the Act) be given to or served on the person by transmission to the person by fax or email to a fax number or email address provided by the person for the purpose:

- (a) a vendor's statement;
- (b) a certificate of an agent acting on behalf of a purchaser (service on purchaser) (section 9(2)(c) of the Act);
- (c) a notice of amendment to a vendor's statement (section 10 of the Act).

31B—Method of service of other notices or documents

- (1) The following notices or documents required or authorised to be given to or served on a person under the Act or these regulations may be given to or served on the person in the prescribed manner:
 - (a) a certificate of an agent acting on behalf of a vendor (section 9(1)(ba) of the Act);
 - (b) a certificate of an agent acting on behalf of a purchaser (service on vendor) (section 9(2)(ba) of the Act);
 - (c) a written guide and details of sales of comparable land and other information (section 20(2) of the Act);
 - (d) a copy of an agreement or instrument (section 20(4) of the Act);
 - (e) a copy of a variation of an agreement or instrument (section 20(6) of the Act);
 - (f) a notice of expiry (section 20(6a) of the Act);
 - (g) a notice indicating a vendor's intention not to extend a sales agency agreement (section 20(6a)(a) of the Act);
 - (h) a copy of a signed offer (section 21(1)(d) or (2)(d) of the Act);
 - (i) a notice confirming the fact that an offer was made (section 21(2a)(b) of the Act);
 - (j) a notice acknowledging a vendor's receipt of a copy of a signed offer (section 21(4) of the Act);

- (k) a copy of a written offer for land (section 21(5)(a) of the Act);
 - (l) a notice in relation to financial or investment advice (section 24B of the Act and regulation 21(b));
 - (m) a copy of a land valuer's valuation report (section 24E(1)(b) of the Act);
 - (n) a warning notice in the form approved by the Commissioner (section 24F(4)(a) of the Act);
 - (o) a copy of a form acknowledging receipt of a warning notice (section 24F(4)(b) of the Act).
- (2) For the purposes of subregulation (1), a notice or document is given to or served on a person in the prescribed manner if—
- (a) it is given to the person personally; or
 - (b) it is posted to the person at the person's address for service; or
 - (c) —
 - (i) if the person is an agent—it is left for the agent with a person apparently responsible to the agent at the agent's address for service (being 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 person serving the notice or document for the purpose of service of the notice document); or
 - (ii) in any other case—it is left for the person at the person's address for service of the notice or document with someone apparently over the age of 16 years; or
 - (d) it is transmitted to the person by fax or email to a fax number or email address provided by the person for the purpose of service of the notice or document.

31C—Service by email of signed notices or documents

If a provision of the Act or these regulations requires a notice or other document to be signed before it is given to or served on a person, a reference in the Act or these regulations to the giving or service of that notice or document by email will be taken to include a reference to the transmission by email of a scanned copy of the signed notice or document.

31D—Time of service

For the purposes of this Part—

- (a) service of a notice or document by post will be taken to have occurred at the time of posting;

- (b) service of a notice or document by leaving the notice or document at an address will be taken to have occurred at the time when the notice or document is left at the address;
- (c) service of a notice or document by fax or email will be taken to have occurred at the time of transmission of the fax or email.

14—Variation of regulation 32—Keeping of records

Regulation 32(a)—delete paragraph (a)

15—Substitution of Schedule 4

Schedule 4—delete the Schedule and substitute:

Schedule 4—Financial and investment advice— specified warning

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

Land and Business (Sale and Conveyancing) Regulations 2010 regulation 21

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 the following:

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.

16—Variation of Schedule 6—Standard conditions of auction for residential land

- (1) Schedule 6, clause 1(1)—delete "The prescribed standard conditions referred to in regulation 26 for an auction conducted by an agent" and substitute:

The standard conditions of auction
- (2) Schedule 6, clause 1(1)(d)—after "an identifying number" insert:

or other unique identifier
- (3) Schedule 6, clause 1(1)(e)—after "number" insert:

or identifier
- (4) Schedule 6, clause 1(2)—after "standard conditions" insert:

of auction

17—Substitution of Schedule 7

Schedule 7—delete the Schedule and substitute:

Schedule 7—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 2010 regulation 28

**Land and Business (Sale and Conveyancing) (Real Estate Reform Review and Other Matters)
Variation Regulations 2013**

Part 2—Variation of *Land and Business (Sale and Conveyancing) Regulations 2010*

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 do any of the following as a result of a collusive practice, or induce or attempt to induce another person by a collusive practice to do any of the following:

- (a) abstain from bidding;
- (b) bid to a limited extent;
- (c) do anything else that might tend to prevent free and open competition.

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

** "Collusive practice" is defined in section 24L(4) of the Act. If you are intending to bid at an auction and are unsure whether your activity constitutes a collusive practice, it is advisable to seek independent legal advice.*

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 21 November 2013

No 262 of 2013

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