

PRESCRIBED CONDITIONS OF SALE BY AUCTION



Section 77, Property and Stock Agents Act 2002 (NSW) and Sections 18 and 19, Property and Stock Agents Regulation 2022 (NSW).

Section 18 (1) – The following conditions are prescribed as applicable to the sale by auction of land or livestock:

- (a) The vendor's reserve price must be given in writing to the auctioneer before the auction commences unless the auction relates solely to livestock.
- (b) A vendor bid must not be made unless the auctioneer has, before the commencement of the auction, announced clearly and precisely the number of vendor bids that may be made.
- (c) The highest bidder is the purchaser, subject to any reserve price.
- (d) If there is a disputed bid —
 - (i) the auctioneer is the sole arbitrator, and
 - (ii) the auctioneer's decision is final.
- (e) The auctioneer may refuse to accept a bid that, in the auctioneer's opinion, is not in the best interests of the vendor.
- (f) A bidder is taken to be bidding on the bidder's own behalf unless, before bidding, the bidder has given to the auctioneer a copy of a written authority to bid for or on behalf of another person.
- (g) A bid must not be made or accepted after the fall of the hammer.
- (h) As soon as practicable after the fall of the hammer the purchaser must sign the agreement for sale, if any.

Section 18 (2) – The following conditions, in addition to the conditions prescribed by subsection (1), are prescribed as applicable to the sale by auction of residential property or rural land:

- (a) All bidders must be registered in the Bidders Record and display the identifying number allocated to the person when making a bid.
- (b) Subject to the condition prescribed by subsection 3(a) —
 - (i) the auctioneer may make only 1 vendor bid at an auction for the sale of residential property or rural land, and
 - (ii) no other vendor bid may be made by the auctioneer or another person.
- (c) Immediately before making a vendor bid the auctioneer must announce that the bid is made on behalf of the seller or announce, "vendor bid".

Section 18 (3) – The following conditions, in addition to the conditions prescribed by subsections (1) and (2), are prescribed as applicable to the sale by auction of co-owned residential property or rural land or the sale of co-owned residential property or rural land by a seller as executor or administrator:

- (a) More than 1 vendor bid may be made to purchase the interest of a co-owner.
- (b) A bid by or on behalf of an executor or administrator may be made to purchase in that capacity.
- (c) Before the commencement of the auction, the auctioneer must announce that bids to purchase the interest of another co-owner or to purchase as executor or administrator may be made by or on behalf of the seller.
- (d) Before the commencement of the auction, the auctioneer must announce the bidder registration number of all co-owners, executors or administrators or a person registered to bid on behalf of a co-owner, executor or administrator.

Section 18 (4) – The following condition, in addition to the conditions prescribed by subsection (1), is prescribed as applicable to the sale by auction of livestock:

The purchaser of livestock must pay the stock and station agent who conducted the auction, or under whose immediate and direct supervision the auction was conducted, or the vendor, the full amount of the purchase price:

- (a) if the amount can reasonably be determined immediately after the fall of the hammer — before the close of the next business day following the auction, or
- (b) if the amount cannot reasonably be determined immediately after the fall of the hammer — before the close of the next business day following determination of the amount, or
- (c) if some other time for payment is specified in a written agreement between the purchaser and the agent, or the purchaser and the vendor, made before the fall of the hammer — before or at the time specified in the agreement.

Section 78 (3), Property and Stock Agents Act 2002 (NSW) and section 20 (2) Property and Stock Agents Regulation 2022 (NSW)

Penalty for collusive practices

It is an offence against the Property and Stock Agents Act 2002 for a person to do one or more of the following as a result of a collusive practice, or to induce or attempt to induce another person by a collusive practice to do one or more of the following—

- (a) to abstain from bidding,
- (b) to bid to a limited extent only,
- (c) to do another act or thing that might prevent free and open competition.

Severe penalties may be imposed on persons convicted of collusive practices.

Section 83 (2) Property and Stock Agents Act 2002 (NSW) and clause 20 (3) Property and Stock Agents Regulation 2022 (NSW)

Successful bidders

The actual successful bidder at an auction sale must give to the auctioneer or an employee of the auctioneer:

- (a) The bidder's name, or
- (b) The name of the person on whose behalf the successful bid was made.

Section 66 (4), Property and Stock Agents Act 2002 (NSW) and clause 20 (1), Property and Stock Agents Regulation 2022 (NSW)

Penalty for dummy bidding

It is an offence against the Property and Stock Agents Act 2002 for a person to do one or more of the following—

- (a) make a bid as the seller,
- (b) make a bid on behalf of the seller unless the person is the auctioneer,
- (c) procure another person to make a bid on behalf of the seller.

A bid made with the dominant purpose of benefiting the seller constitutes a bid made on behalf of the seller.

A bid may be found to be a bid made on behalf of the seller even though the seller did not—

- (a) request the bid, or
- (b) know about the bid.

Severe penalties may be imposed on persons convicted of dummy bidding.