

HOT AUCTIONS AND SHARP PRACTICES

by

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The NSW Government has recently passed new legislation to curb alarming real estate practices that have developed due to the buoyant property market. The Property, Stock and Business Agents Act 2002 (the “Act”) is due to commence operation on 1 August 2003 once the Regulations have been made. The Regulations have been drafted and comments or submissions may to be made to the Department of Fair Trading before 6 June 2003.

The legislation aims, in part, to ensure that agents have appropriate education, experience and character to act in a position of trust that is required of them and that they carry out their responsibilities professionally.

Guide for sale of Residential Property

Agency agreements for residential property must be in writing and can only be signed after the seller has been provided with a guide for the sale of residential property which is in the approved form.

Cooling-off period for residential or rural agency agreements

Before an agent can claim a commission for the sale of real property, he or she must hold a signed agency agreement. Section 59 of the Act provides that sellers have a one day “cooling off” period in relation to their agency agreement commencing at the time the agency agreement is signed and ending at 5pm the next day. It is possible, however, that there will be no cooling off period if the seller signs a waiver of cooling off period.

Accordingly, sellers signing an agency agreement should resist all pressure to waive the cooling off period and if they have a change of heart, immediately contact their solicitor so that the cooling off rights can be invoked.

Agent’s involvement in Exchange

Whilst the agent has limited authority to complete the parties’ details (and that of their solicitors) and mark inclusions which form part of the sale, if a party has a solicitor acting in relation to the sale or purchase, the solicitor’s express authority is required before the agent may participate in the exchange of contracts.

Bidding at auctions for residential property or rural land

Under the Act, the practice of multiple vendor “dummy bids” is prohibited. Section 66 provides that the seller (or an agent on a seller’s behalf) is only allowed to make one bid where this is permitted by the conditions of sale (i.e. the sale contract) and where this vendor bid is disclosed at the time it is made.

Bidders must be registered and an auctioneer will be required to establish a “Bidders Record” of all the persons entitled to bid at the auction. Bidders must show proof of their identity and will be allocated an identifying number and only those registered will be allowed to bid. Prospective buyers are also to be given

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a guide explaining their rights and responsibilities and the number that they will need to display when making the bid. An auctioneer who takes a bid from an unregistered bidder may be liable to a fine of up to \$11,000, however, this will not affect the validity of a bid.

Representations as to selling price of residential property

An estate agent who makes false representations to a seller or prospective seller or a buyer (including false representations as to the value of property) will be guilty of an offence and may be fined up to \$22,000. This will be in addition to any liability for misleading and deceptive conduct under the Commonwealth Trade Practices Act or the NSW Fair Trading Act.

Generally

The Commissioner of Fair Trading will also be given increased powers to act quickly against illegal and unethical operators by being able to immediately suspend or cancel their licences. A register of agents will be available to public scrutiny on the Fair Trading website and will contain details of disciplinary actions taken against them.

This broad summary has been provided for your general information. Clearly there are many more issues that may be relevant to your individual circumstances. Should you require any particular advice please do not hesitate to contact any member of the Property Team at The Argyle Partnership on (02) 8263 6600