



**OUWENS CASSERLY**  
REAL ESTATE

# Auction statutory forms, *terms & conditions*

---



Make it happen™



**Ouwens Casserly**  
REAL ESTATE

## It all happens *here...*

The places in which we live come to define chapters of our lives and when we decide to move, it signifies the end of one stage and the start of another.

This new time is about to begin and from everyone at Ouwens Casserly, we wish you the best of luck.

Of course, if it doesn't happen for you today, visit our website where you can find that perfect place to start your next chapter.

**[OCRE.COM.AU](http://OCRE.COM.AU)**

Make it happen™

# Buying residential property at *auktion*

## **Do I need to register to bid at auction?**

Yes. You must register providing your name, address, contact phone number and proof of identity. All Ouwens Casserly properties have Bidder Registration forms available prior to and on auction day.

## **Do I require a bidding number to bid?**

Yes. Once registered to bid you will be provided with your bidding number which identifies you as a bidder at the auction.

## **Will the auctioneer announce when the reserve price is reached?**

No. The reserve price is a confidential amount and will not be disclosed.

## **Will the auctioneer use vendor bids?**

If the bidding is competitive with multiple bidders, the auctioneer may not use Vendor Bids at all. However, if no one opens the bidding, the auctioneer may exercise their right to bid on behalf of the vendor. These bids will be identified as "Vendor Bids", ensuring total transparency, and can only occur before the reserve price is reached.

## **How many vendor bids can an auctioneer make?**

Depending on the competition, the auctioneer has the right to exercise up to three Vendor Bids to encourage bidding into the selling range.

## **If I am the only registered bidder, why should I bid?**

If the auctioneer has stated that the highest bidder shall have the first right to negotiate, at either the reserve or amended reserve, as the highest bidder you will secure the right to negotiate with the vendor prior to the agent entering into any negotiations with any other interested parties.

It is imperative that you bid to take advantage of this negotiation position, otherwise you could be just one of several interested parties attempting to negotiate after auction.

## **Will the auctioneer announce the property is on the market and going to be sold?**

Not necessarily. If you intend to hold back from bidding in anticipation for this announcement, you run the risk of losing the property as the auctioneer has no legal obligation to make this announcement. If you wish to purchase the property, you must bid.

## **Will the auctioneer have a mid-auction conference with the vendor?**

Possibly. Depending on the activity of the auction and vendor instructions, the auctioneer may simply call three times and sell to the highest bidder without any further reference to the vendor.

## **Do cooling off rights apply at auction?**

No. You will be required to sign an unconditional contract and no cooling off period will apply.

## **Do I have an insurable risk from the fall of the hammer?**

Yes. If you are the successful purchaser we strongly advise you to organise insurance preempting your purchase of the property - you have an equitable interest in the property from the fall of the hammer.

## **What do I need to do after purchasing the property?**

You will need to immediately sign the contract and pay a deposit of 10% of the purchase price, unless the vendor has accepted other deposit terms prior to the auction commencing.

**From everyone at Ouwens Casserly, we wish you the best of luck during your home buying journey.**

**If we can be of any assistance to help you find that perfect place to start your next chapter, please visit [ocre.com.au](http://ocre.com.au) or call 08 7070 6488.**

# Form R3

## Buyers Information Notice

Land and Business (Sale and Conveyancing) Act 1994 section 13A  
Land and Business (Sale and Conveyancing) Regulations 2010 regulation 17

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, Consumer and Business Services recommends that you check the website: [www.cbs.sa.gov.au](http://www.cbs.sa.gov.au)

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 eg sheds and fences?
- Does the property have any significant **defects** eg **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?

# Form R3

## 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** (eg 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.cbs.sa.gov.au](http://www.cbs.sa.gov.au)

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.

# Form R4

## Bidders Guide

Guide to the sale of residential property by auction

Land and Business (Sale and Conveyancing) Act 1994 section 24I and section 24J(1)(f)

Under the Act, the real estate agent responsible for this auction must provide each person registered on the bidders register with this guide.

### Who needs to register?

Any person who intends to bid at an auction for residential property must register. Registering for an auction does not mean you must bid. Registering simply gives you the right to bid. You can register with the agent at any time before the auction, such as when you inspect the property, or on the day of the auction.

If you are bidding to buy the property jointly, for example, with a spouse or partner, only one person needs to register, however, only that person will be able to bid at the auction.

If you are bidding on behalf of another person you will need to provide that person's name and present a copy of a document signed by that person that authorises you to bid on their behalf.

### Proof of identity

To register, you must show the agent one of the following\*:

- a current document or card issued to you from a Commonwealth, State, Territory or local government authority (e.g. passport, driver's licence, or pension/health concession card, council or water rates notice)
- a document or card issued to you from a utility company (e.g. an electricity supply company)
- a document or card issued to you by a bank (e.g. visa card)
- a passport issued to you by a foreign government.

\*you do not need to leave the document with the agent or allow them to make a copy

If you are bidding on behalf of another person, you must also provide a copy of one of the documents listed above that has been issued to that person.

It is against the law to provide false information for entry onto the bidders register.

### What happens at registration?

Once you have registered, the agent will provide you with a unique identifier (comprising a number, letter, colour or some other identifying feature). Each time you make a bid you must display this unique identifier.

### What if I arrive at the auction late?

Once an auction has commenced, the agent may interrupt the auction to allow you to register. It is up to the agent to determine whether or not to stop the auction to allow you to register. If you are entered on the register you may bid at the auction.

# Form R4

## Prescribed standard conditions for auction of residential property

Apart from any conditions of auction that the agent also displays at the auction, the following prescribed standard conditions will apply to all auctions of residential land:

- 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 a unique identifier (comprising a number, letter, colour, or some other identifying feature) allocated to the person by the auctioneer
- e. the auctioneer will, when accepting a bid, audibly announce the unique identifier 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 at or 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).

\*NOTE: 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.

## Dummy and vendor bidding

It is against the law for the vendor of the property, or a person acting on behalf of the vendor, to make a bid at the auction. This type of activity is called dummy bidding and can attract a maximum penalty of \$20,000.

However, the vendor of the property is entitled to have up to three bids made on their behalf by the auctioneer, who must announce each such bid as a "Vendor Bid". The amount of a vendor bid must be less than the vendor's reserve price.

# Form R4

---

## Interrupting auctions

It is against the law to knowingly prevent a rival bidder from freely bidding at an auction, or to harass a bidder.

It is also against the law to do anything with the intention of preventing, causing a major disruption to, or causing cancellation of an auction. A maximum penalty of \$20,000 applies.

## Cooling-off period

There is no cooling-off period when you buy at auction.

If you are the successful bidder at auction no further bids can be made or accepted. You must then sign a binding sale contract as soon as possible after the conclusion of the auction. You will usually be required to pay a deposit at the time. The deposit amount is usually around 10% of the purchase price, however you may seek to negotiate a lesser amount with the agent before the auction.

If the property is passed in at auction and if you made a bid at the auction then any sale contract you enter into before midnight on the same day as the auction, as a result of further negotiations with the vendor, is not subject to a cooling-off period.

## Your privacy

The agent is not permitted to disclose information on the bidders register to anyone unless required to by an authorised person under the Fair Trading Act 1987.

Disclaimer: This publication is a plain language guide to your rights and responsibilities. It must not be relied upon as legal advice. For more information please refer to the appropriate legislation or seek independent legal advice.

# Form R5

## Collusive practices

Collusive practices at auctions of land or a business

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

Land and Business (Sale and Conveyancing) Regulations 2010 regulation 28

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: At auctions of land or businesses this form must be made available for perusal by members of the public for at least 30 minutes immediately before the auction is due to commence.

# Form R6

---

## Warning notice to purchaser

Agent acting on behalf of vendor and purchaser  
Land and Business (Sale and Conveyancing) Act 1994 section 24F

It is generally prohibited for an agent to act on behalf of both the vendor and purchaser of the same land or business at the same time. The Land and Business (Sale and Conveyancing) Act 1994 states that an agent will be subject to a maximum penalty of \$20,000 if they do act on behalf of both a vendor and purchaser at the same time. However, special circumstances may arise where this can happen without penalty. If the following circumstances apply to you, then the agent may act on your behalf if they firstly give you this warning notice and you acknowledge receipt of it by signing below.

The specific circumstances occur when:

- the agent negotiates the sale of land or a business on behalf of a person, the vendor, and
- the purchase of the land or business is made subject to sale of some other property or business by you, the purchaser, and
- the agent acts on behalf of you, the purchaser, in the sale of the other land or business.

In order for an agent to act on your behalf you must complete a sales agency agreement with the agent. If your proposed purchase of the vendor's land or business falls through, you may still be required to comply with certain obligations under the sales agency agreement, including the payment of fees. This will depend on the wording of the agreement. If you are unsure about your obligations under a sales agency agreement you should consult an independent legal advisor.

Name of agent

Signature of agent

I, *name of purchaser*, noting that the circumstances described in this notice apply to me, acknowledge receipt of this form before authorising the agent to act on my behalf.

Signature of purchaser

Date     /     /

# Form R7

---

## Warning notice

Financial and Investment Advice

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.

NOTE: 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:

- in the case of oral advice - immediately before giving the advice, give the person warning of the matters set out in this Form orally, prefaced by the words "I am legally required to give you this warning"; or
- 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 this Form, printed or typewritten in not smaller than 12-point type.

# Public auction of real *property*

## Terms and conditions

1. The Auctioneer presents the Property for sale by auction  
The Auctioneer, as authorised by the Agent acting for the Vendor, presents the Property for sale by auction on behalf of the Vendor. An offer to purchase the Property may be made by any person present in person or by proxy or representative ("Bidder") by making a bid at auction, subject to these Terms.
2. Bidders are bound by these Terms  
By bidding at auction, a Bidder agrees to be bound by these Terms.
3. Vendor's reserve price  
The Vendor's reserve price ("Reserve Price") will be as recorded in the Auction Record.  
In the event that the Reserve Price is not reached at auction, the Auctioneer and/or the Agent shall attempt to negotiate immediately with the highest Bidder to sell the property and if no agreement is reached, the Auctioneer and/or Agent will attempt to negotiate with other Bidders and then with any other interested parties.
4. Vendor may withdraw the Property from sale  
The Vendor may at any time before the Property is sold at auction:  
withdraw the Property from sale; or  
consolidate, divide, or otherwise alter the organisation or arrangement of the Property in any way deemed convenient by the Auctioneer.
5. Cooling-off rights do not apply  
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 at the auction (whether in person or by their proxy or representative).
6. Registration of Bidders (Residential land only)
  - 6.1 To make a bid at an auction for residential land (as defined in the Land and Business (Sale and Conveyancing) Act 1994), a person must be registered in the bidders register.
  - 6.2 To be entered into the bidders register, the person must satisfy the Agent as to the person's identity through providing proof of identity in the required form (through the provision of a driver's licence, passport, credit/debit card, utilities account or similar documentation).
  - 6.3 Where a person intends to bid on the property as a proxy or representative of another person ("Proxy Bidder"), the person intending to bid must produce a signed authority from the other person or entity authorising them to bid on their behalf.
  - 6.4 A person making a bid must do so by displaying their bidding number, obtained through the Bidder registration process.
7. Bidding at auction
  - 7.1 Proxies and representatives at auction  
If the Proxy Bidder is the successful bidder at auction and the Purchaser is not present to sign the Contract of Sale immediately following the auction, then the Proxy Bidder will be required to sign the Contract of Sale.
  - 7.2 Bidder offers to purchase the Property  
With each bid at auction, a Bidder makes an unconditional offer to purchase the Property which may be accepted by the Auctioneer.
  - 7.3 Vendor may bid at auction  
The Auctioneer may make bids on behalf of the Vendor but if the auction is for residential land (as defined in the Land and Business (Sale and Conveyancing) Act 1994) the Auctioneer may not make more than 3 such bids and only for amounts below the reserve price. Where a Vendor bid is made by the Auctioneer, the Auctioneer will audibly announce the bid as a "vendor's bid".
  - 7.4 Advancement of bids  
The bidding increments during the course of the auction will be accepted at the discretion of the Auctioneer.
  - 7.5 Auctioneer may refuse any bid  
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 doing so.
  - 7.6 Bids are binding  
A bid accepted by the Auctioneer is binding on the Bidder and may not be withdrawn.
  - 7.7 Disputes concerning bids  
If there is a dispute concerning bids made at auction ("Dispute") where the Dispute arises before or after the fall of the hammer or some similar indication that the Property is sold ("Fall of Hammer"), then the Auctioneer will decide the Dispute in a way that he or she deems appropriate. The decision of the Auctioneer is final and gives rise to no claim by any person against another.

# Public auction of real *property*

## 7.8 Selection of the Purchaser and determination of the purchase price

A person accepted by the Auctioneer as having made the highest bid at or above the Reserve Price will be the Purchaser ("Purchaser") and that bid will be the purchase price ("Purchase Price"). The Auctioneer will not accept a bid made after the fall of the Auctioneer's hammer.

## 7.9 The Purchaser must pay the deposit and sign the Contract

Subject to the determination of any Dispute, unless otherwise agreed in writing and advised before commencement of the auction, the Purchaser, upon being acknowledged by the Auctioneer as the Purchaser must:

- 7.9.1 immediately complete all necessary details required by the Auctioneer to enter into a contract for the sale and purchase of the Property in the form of contract that is displayed by the Auctioneer at the auction ("Contract"); and
- 7.9.2 immediately pay to the Auctioneer a deposit equal to ten percent (10%) of the Purchase Price; and
- 7.9.3 complete the purchase of the Property in accordance with the terms and conditions contained in the Contract for the Purchase Price.

## 8. Auctioneer may sign the Contract

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 the Auctioneer's authority will be at the Auctioneer's discretion in the event of a breach by the Purchaser of any of the conditions of the auction. The party for whom the Auctioneer has signed the Contract is bound by the Contract.

## 9. Variations of Terms before auction

Where the Vendor has agreed in writing with a Bidder to vary these Terms or other conditions, before the Auction, then those variations will apply to that Bidder only.

## 10. Property may be re-auctioned

### 10.1 If the Purchaser fails:

- 10.1.1 to pay the deposit; or
- 10.1.2 to execute the Contract

(or both) immediately after the fall of the Auctioneer's hammer, then the Purchaser is deemed by the Auctioneer to have breached his or her obligation to complete the purchase of the Property.

### 10.2 Where clause 10.1 applies, the Auctioneer/Agent is authorised by the Vendor to terminate the Contract and;

- 10.2.1 re-auction the Property; or
- 10.2.2 to sell the Property by private treaty.

## 11. Vendor may sue Purchaser for damages

Notwithstanding clause 10.2, the Vendor may sue the Purchaser for damages for any failure to comply with these Terms and/or the Contract.

## 12. Holding over the auction

The Auctioneer may hold over the Property and re-offer it for auction at another time on the same day on terms and conditions as the Vendor may nominate.

## 13. Auctioneer may vary these Terms

Subject to legislative requirements, the Auctioneer is entitled to vary these Terms by announcement immediately before or during the auction including, but not limited to, advising registered bidders that any variations sought by them have been accepted by the Vendor.

## 14. Legal age of Purchaser

A bidder must be at least 18 years of age.

## 15. Foreign Investment Review Board Approval

A person who wishes to bid for or purchase the Property warrants that they do not require approval from the Foreign Investment Review Board (or any similar organisation) for the purchase herein.

A person who wishes to make a bid at the auction for the Property who requires approval from the Foreign Investment Review Board (or any similar organisation) for the purchase herein must make arrangements suitable to the Auctioneer before the auction.





**OUWENS CASSERLY**  
REAL ESTATE

Make it happen™

***p. 08 7070 6488 / e. enquiries@ocre.com.au***

*Offices: ADELAIDE / HENLEY BEACH / KENSINGTON / UNLEY / WILLUNGA*

***ocre.com.au***

*RLA 275403 / 286513 / 287057 / 268527 / 304568*

Printed on environmentally sustainable paper.