

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.

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Residential and rural property auctions

You will not be able to bid at an auction of residential and rural property in NSW unless you give the selling agent your name and address and show proof of your identity. Your details will be recorded by the agent in the Bidders Record and at the auction you will be given a bidder's number. Registering for an auction does not mean you must bid. Registering simply gives you the right to bid.

Who needs to register?

If you are bidding to buy the property jointly with another person, for example, a spouse or partner, only one of you needs to register.

You need to register if you are bidding for another person or a company, and you need to show the agent a letter of authority from them, authorising you to bid on their behalf. This also applies if you are bidding on behalf of someone on the telephone.

If you are bidding for another person the letter of authority must include the person's name, address and the number on their proof of identity (eg. driver's licence).

If you are bidding for a company the letter of authority must be on the company letterhead and the ABN will be recorded in the Bidders Record as the company's proof of identity.

Proof of identity

To register, you must present a card or document issued by government or a financial institution, that shows your name and address, for example:

- driver's licence or learner's permit
- vehicle registration paper
- council rates notice.

If you do not have this kind of proof of identity, you can use two documents that together show your name and address.

One must show your name and be issued by a government or financial institution, for example:

- passport
- Medicare card
- ATM/Eftpos card
- credit card or store card
- birth certificate
- citizenship papers.

The other must show your address, for example:

- utilities bill (eg. gas, electricity, telephone)
- real estate rental agreement
- statutory declaration stating your address.

Certified copies of documents are not acceptable as proof of identity. Proof of identity documents can be produced electronically if the agent consents. For example, emailing a photo or PDF of a proof of identity document. Producing documents via an audio-visual link, such as holding up documents during a Zoom chat is not permitted.

When to register

You can register with the selling agent at any time prior to the auction, such as when you inspect the property, or on the day itself.

If you pre-register, you will still need to show the agent your proof of identity on auction day. The agent will then give you your bidder's number.

What happens at registration

The agent will write your name, address and the number of your proof of identity in the Bidders Record and, if you are bidding for someone else or a company, their name, address and proof of identity details. The agent will then give you your bidder's number, which must be displayed when you bid.

What if I arrive at the auction late?

If you arrive after the auction has started and wish to bid, you will need to quickly find the agent and register or present your proof of identity, if you have pre-registered.

If you need to make a bid immediately, hold up your hand to let the auctioneer know you are going to make a bid after you have registered.

As soon as you have a bidder's number, the auctioneer can accept your bids. Return your bidder's number to the agent after the auction.

Your privacy

The agent is not permitted to show the Bidders Record to anyone, including the property owner. Only an authorised person from NSW Fair Trading is permitted to see the Bidders Record.

The agent must store the Bidders Record securely and cannot use it for any purpose.

Auction conditions

This auction is being conducted under certain conditions that are set by law.

The auctioneer will have these conditions on display before the auction so that you can read them. The auction conditions include:

- the highest bidder is the purchaser, subject to any reserve price
- the auctioneer is entitled to make one bid only on behalf of the seller
- before the auction, the auctioneer must announce that the auctioneer is permitted to make one bid on behalf of the seller
- the auctioneer must announce immediately before, or in the process of making the bid, that he/she is making a vendor bid
- the auctioneer can refuse a bid that is not in the interests of the seller
- the auctioneer has no authority to accept a late bid, that is, a bid after the fall of the hammer
- if there is a disputed bid, the auctioneer is the sole arbitrator and makes the final decision
- the successful buyer's name must be given to the auctioneer as soon as possible.

Auctions may be conducted by any means, for example in person or electronically.

Successful bids

If you are the successful bidder, you must sign the sale contract and pay a deposit on the spot, usually ten per cent of the purchase price. There is no cooling-off period when you buy at auction.

After the exchange of contracts, your solicitor or conveyancer will carry out various searches on the property. Your solicitor and the seller's legal representative will then arrange for settlement at which time you must pay the balance of the purchase price.

Dummy bidding and collusion

It is illegal to make dummy bids at an auction.

The seller of the property is entitled to have one bid made on their behalf by the auctioneer. When the seller's bid is made the auctioneer must announce it as a vendor bid.

If you make dummy bids for the seller, you may be prosecuted and fined up to \$55,000. The property seller who asked you to bid can also be fined up to \$55,000, as can the agent and the auctioneer if they were involved in the arrangement.

It is an offence to collude with someone to interfere with free and open competition at the auction. This offence carries a maximum fine of \$55,000.

Co-owners and executors

A co-owner, executor or administrator or someone bidding on their behalf, may make more than one bid to purchase the property as long as:

- this is outlined in the auction conditions
- the auctioneer has announced this before the start of bidding at the auction
- the auctioneer announces before the start of the auction, the bidder registration number of any co-owner, executor, administrator, or someone bidding on their behalf.

Next Buying investment properties

<https://www.fairtrading.nsw.gov.au/housing-and-property/buying-and-selling-property/buying-a-property/bidders-guide>

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