

1990 - No. 738

AUCTIONEERS AND AGENTS ACT 1941 - REGULATION

(Relating to the terms and service of agency agreements
and to the inspection of commercial property
by licensees)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Auctioneers and Agents Act 1941, has been pleased to make the Regulation set forth hereunder.

JOE SCHIPP
Minister for Housing.

Commencement

1. This Regulation commences on 3 December 1990.

Amendments

2. The Auctioneers and Agents Regulations are amended:
 - (a) by omitting Regulation 71 and by inserting instead the following Regulation:

Agency agreements - prescribed terms

71. (1) For the purposes of section 42AA (1) of the Act, the prescribed terms in relation to any agreement specified in clauses (2)-(9) are, subject to those clauses:

- (a) a term specifying the period of the duration of the agreement or, where there is no such period, specifying

the manner in which the agreement may be terminated by a party to the agreement; and

- (b) a term specifying:
 - (i) the circumstances in which the licensee is entitled to remuneration for services performed under the agreement; and
 - (ii) the amount of the remuneration or the way in which it is to be calculated; and
 - (iii) when the remuneration is due and payable; and
- (c) if the agreement is for any service that is not described as an excepted service in clause (2), the following term:

THIS FEE HAS BEEN NEGOTIATED BETWEEN
THE PARTIES TO THE AGREEMENT

- (d) if the licensee is to be entitled to any sum or reimbursement for expenses or charges incurred by the licensee, a term specifying that the licensee is so entitled, the circumstances in which the licensee is so entitled and when the sum or reimbursement is due and payable; and
- (e) a term containing a warranty by the principal that the principal has authority to enter into the agreement with the licensee.

(2) For the purposes of clause (1) (c), the following are **excepted services**:

- (a) any service relating to arbitration;
- (b) any service in respect of commercial land, being land used or intended to be used solely or principally for commercial, business or industrial purposes, but not including land used or intended to be used solely or principally for agricultural or pastoral purposes;
- (c) any service (other than effecting a letting of holiday accommodation pursuant to a management agreement in respect of residential property, within the meaning of the Auctioneers and Agents (Remuneration) Regulation 1981.

(3) The term prescribed by clause (1) (c):

- (a) must appear in the agreement immediately after the term fixing the remuneration of the agent; and

(b) must be immediately followed by the words:

(Both the agent and the principal should initial the above term)

(4) For the purposes of section 42AA (1) of the Act, in addition to the terms prescribed by clause (1), the prescribed terms in relation to an agreement in respect of the sale of land **(otherwise than by auction)** are:

- (a) if a prospective purchaser of the land is to be entitled to inspect the land, a term specifying that a prospective purchaser is so entitled and the circumstances in which such an inspection is to be made; and
- (b) if the sale of the land is to be advertised or otherwise promoted, a term specifying that the sale of the land is to be advertised or otherwise promoted and the manner in which it is to be advertised or otherwise promoted; and
- (c) a term specifying whether or not the licensee is authorised to sell the land on behalf of the principal and, if so authorised, the limitations on that authority and
- (d) if the licensee has undertaken to perform any other services in connection with the sale, a term specifying that the licensee has so undertaken and particulars of those services; and
- (e) if the land is residential property (as defined in Division 8 of Part 4 of the Conveyancing Act 1919), a term specifying that the licensee cannot act on behalf of the principal in respect of the sale of residential property unless the licensee has a copy of the proposed contract of sale in respect of that property available for inspection.

(5) For the purposes of section 42AA (1) of the Act, in addition to the terms prescribed by clause (1), the prescribed terms in relation to an agreement in respect of the **sale of land by auction** are:

- (a) if a prospective purchaser of the land is to be entitled to inspect the land, a term specifying that a prospective purchaser is so entitled and the circumstances in which such an inspection is to be made; and

- (b) if the sale of the land is to be advertised or otherwise promoted, a term specifying that the sale of the land is to be advertised or otherwise promoted and the manner in which it is to be advertised or otherwise promoted; and
- (c) a term specifying whether or not the licensee is authorised to sell the land on behalf of the principal and, if so authorised, the limitations on that authority, including the minimum price (if any) for the land at which the licensee is authorised to sell the land; and
- (d) if the licensee has undertaken to perform any other services in connection with the sale, a term specifying that the licensee has so undertaken and particulars of those services; and
- (e) if the land is residential property (as defined in Division 8 of Part 4 of the Conveyancing Act 1919), a term specifying that the licensee cannot act on behalf of the principal in respect of the sale of residential property unless the licensee has a copy of the proposed contract of sale in respect of that property available for inspection.

(6) For the purposes of section 42AA (1) of the Act, in addition to the terms prescribed by clause (1), the prescribed terms in relation to an agreement in respect of **the leasing of an interest in land** are:

- (a) if a prospective lessee of the interest in land is to be entitled to inspect the land, a term specifying that a prospective lessee is so entitled and the circumstances in which such an inspection is to be made; and
- (b) if the leasing of the interest is to be advertised or otherwise promoted, a term specifying that the leasing of the interest is to be advertised or otherwise promoted and the manner in which it is to be advertised or otherwise promoted; and
- (c) a term specifying whether or not the licensee is authorised to lease the interest in the land on behalf of the principal and, if so authorised, the limitations on that authority; and

- (d) if the licensee is to be required to seek references from a prospective lessee of the interest, a term specifying that the licensee is so required; and
- (e) if the licensee is to be required to receive or dispose of rental bonds in relation to the leasing, a term specifying that the licensee is so required and the procedure to be adopted for the receipt or disposal; and
- (f) if the licensee has undertaken to perform any other services in connection with the leasing, a term specifying that the licensee has so undertaken and particulars of those services.

(7) For the purposes of section 42AA (1) of the Act, in addition to the terms prescribed by clause (1), the prescribed terms in relation to an agreement in respect of **the management of property** are:

- (a) a term containing particulars of the extent of the authority of the licensee to act as agent on behalf of the principal in the management of the property, including whether or not there is any limitation on the authority of the licensee:
 - (i) to enter and sign a lease agreement in respect of the property on behalf of the principal; or
 - (ii) to effect repairs to, or maintain, the property or engage the services of skilled tradesmen in relation thereto; or
 - (iii) to pay disbursements or expenses in connection with services performed by him on behalf of the principal; and
- (b) if a prospective tenant is to be entitled to inspect the property, a term specifying that a prospective tenant is so entitled and the circumstances in which such an inspection is to be made; and
- (c) if the letting and re-letting of the property is to be advertised or otherwise promoted, a term specifying that the letting and re-letting of the property is to be advertised or otherwise promoted and the manner in which it is to be advertised or otherwise promoted; and

- (d) if the licensee is to be required to seek references from a prospective tenant of the property, a term specifying that the licensee is so required; and
- (e) if the licensee is to be required to receive or dispose of rental bonds in relation to the leasing of the property, a term specifying that the licensee is so required and the procedure to be adopted for the receipt or disposal; and
- (f) a term specifying the manner in which and the frequency at which the licensee is required to account to the principal in relation to money received on behalf of the principal; and
- (g) if the licensee has undertaken to perform any other services in connection with the management of the property, a term specifying that the licensee has so undertaken and particulars of those services.

(8) For the purposes of section 42AA (1) of the Act, in addition to the terms prescribed by clause (1), the prescribed terms in relation to an agreement in respect of **the sale of a business** are:

- (a) a term specifying whether or not a prospective purchaser of the business is entitled to inspect the business premises (if any) and the records, documents and books of account relating to the business and, if so entitled, the circumstances in which the inspection is to be made; and
- (b) if the sale of the business is to be advertised or otherwise promoted, a term specifying that the sale of the business is to be advertised or otherwise promoted and the manner in which it is to be advertised or otherwise promoted; and
- (c) if the licensee has undertaken to perform any other services in connection with the sale, a term specifying that the licensee has so undertaken and particulars of those services.

(9) For the purposes of section 42AA (1) of the Act, in addition to the terms prescribed by clause (1), the prescribed terms in relation to an agreement in respect of **the sale by auction of goods** are:

- (a) if a prospective purchaser of the goods is to be entitled to inspect the goods, a term specifying that the

prospective purchaser is so entitled and the circumstances in which such an inspection is to be made; and

- (b) if the sale of the goods is to be advertised or otherwise promoted, a term specifying that the sale of the goods is to be advertised or otherwise promoted and the manner in which it is to be advertised or otherwise promoted; and
- (c) a term specifying whether or not the licensee is authorised to sell the goods on behalf of the principal and, if so authorised, the limitations on that authority, including the minimum price (if any) for the goods at which the licensee is authorised to sell the goods; and
- (d) if the licensee has undertaken to perform any other services in connection with the sale, a term specifying that the licensee has so undertaken and particulars of those services; and
- (e) a term specifying whether or not the licensee is responsible for the safekeeping of the goods and whether or not insurance of the goods is required to be effected by the licensee; and
- (f) a term specifying the time within which and the manner in which the licensee is required to account for the proceeds of the sale of the goods to the principal.

(b) by inserting at the end of Regulation 72 the following clause:

(2) Pursuant to Section 42AA (2) of the Act, an agreement is prescribed as an agreement to which section 42AA (1) of the Act does not apply if:

- (a) the agreement is solely for the performance of services that relate only to commercial land, being land used or intended to be used solely or principally for commercial, business or industrial purposes, but not including land used or intended to be used solely or principally for agricultural or pastoral purposes; and
- (b) the agreement is in writing and signed by or on behalf of the licensee and the person for whom the services are to be performed; and

- (c) the agreement is subject to terms specifying:
 - (i) the period for which the agreement is to be in force or, where there is no such period, the manner in which the agreement may be terminated by a party to the agreement; and
 - (ii) the circumstances in which the licensee is entitled to remuneration for services performed under the agreement; and
 - (iii) the amount of the remuneration or the way in which it is to be calculated; and
 - (iv) when the remuneration is due and payable; and
 - (v) a warranty by the principal that the principal has authority to enter into the agreement with the licensee; and
- (d) as well as providing the proposed agreement signed by or on behalf of the licensee for signature by or on behalf of the person for whom the services are to be performed, the licensee served a copy of the agreement on that person before it was signed by or on behalf of that person.

(3) A document is not prevented from being a copy of an agreement for the purposes of clause (2) merely because it does not show any one or more of the following:

- (a) a signature or seal of a party to the agreement (other than of the licensee) or any particular relating to such a signature or seal;
- (b) a signature of a witness to the agreement or any particular relating to attestation;
- (c) the date of the agreement or any other date inserted into the agreement before it was signed by or on behalf of the person for whom the services are to be performed.

(e) by inserting at the end of Rule 3 in Schedule 2 the following subclause:

(2) This rule does not apply to a sale of commercial property, being property used or intended to be used solely or principally for commercial, business or industrial purposes, but not including property used or intended to be used solely or principally for agricultural or pastoral purposes.

EXPLANATORY NOTE

The object of this Regulation is to amend the Auctioneers and Agents Regulations so as:

- (a) to restate the prescribed terms for agency agreements between licensees and their principals in such a way that only such terms as are seen as being necessary must always be included in particular kinds of agreements (and consequently to allow other prescribed terms that are not appropriate in a particular case to be crossed out of a printed form or otherwise omitted); and
- (b) to require a term to be inserted in an agency agreement for the sale of residential property by auction that requires a licensee to have a copy of the proposed contract for sale available for inspection; and
- (c) to allow a copy of a proposed agency agreement relating to commercial property (as defined in the Regulation) to be served, on a person for whom an agent intends to act, before the agreement is signed by or on behalf of the person (so that it will not be necessary in such cases for a copy of the agreement to be served on the person within 48 hours of its being signed by or on behalf of the person); and
- (d) to remove the restriction that presently requires a licensee to conduct a preliminary physical inspection of any such commercial property before acting for a person on its sale.
