

AUCTIONEERS AND AGENTS (SALE OF LAND) AMENDMENT ACT 1990 No. 22

NEW SOUTH WALES



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**AUCTIONEERS AND AGENTS (SALE OF LAND) AMENDMENT
ACT 1990 No. 22**

NEW SOUTH WALES



Act No. 22, 1990

An Act to amend the Auctioneers and Agents Act 1941 in relation to the sale of residential property. [Assented to 14 June 1990]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Auctioneers and Agents (Sale of Land) Amendment Act 1990.

Commencement

2 This Act commences when the Conveyancing (Sale of Land) Amendment Act 1990 commences.

Amendment of Auctioneers and Agents Act 1941 No. 28

3. The Auctioneers and Agents Act 1941 is amended by omitting section 84AA and by inserting instead the following sections:

Proposed contract for sale of residential property

84AA. (1) In this section:

"**purchaser**" includes a grantee of an option;

"**residential property**" has the meaning given by section 66Q of the Conveyancing Act 1919.

(2) A licensee who, expressly or by implication:

- (a) indicates that residential property is for sale or is to be auctioned at any future time; or
- (b) offers to sell residential property; or
- (c) invites an offer to purchase residential property; or
- (d) indicates that a person may be willing to grant an option to purchase residential property,

is guilty of an offence unless the required documents are all available for inspection at the licensee's registered office by any prospective purchaser at all times at which an offer to purchase the property may be made (or at such other place or at such other times as may be prescribed by the regulations).

(3) For the purposes of this section, the required documents are:

- (a) a copy of the proposed contract for the sale of the property (excluding particulars of the purchaser and purchase price); and

- (b) the documents required by section 52A of the Conveyancing Act 1919 to be attached to the contract before signature by the purchaser, and
- (c) in the case of an option as referred to in subsection (2) (d) - a copy of the proposed option document (excluding particulars of the purchaser and consideration for the option).

(4) Without limiting subsection (2) (a), a licensee is to be taken to indicate that residential property is for sale if the licensee:

- (a) advertises or promotes the property in any way which, in the circumstances, may reasonably be taken to indicate that the property is or may be for sale; or
- (b) places a sign on or near the property which, in the circumstances, may reasonably be taken to indicate that the property is or may be for sale; or
- (c) advertises or in any way gives notice that the property is to be auctioned at any future time; or
- (d) places on display particulars or a description of, or a photograph, drawing or other representation of, the property in or on any premises, vehicle or place where the licensee conducts business as a licensee; or
- (e) shows the property to a prospective purchaser or gives the address of the property to a prospective purchaser,

or causes or permits any of the above to be done.

(5) This section does not apply in circumstances prescribed by the regulations.

Contracts for sale of residential property

84AB. (1) A licensee may fill up a proposed contract for the sale of residential property, by inserting details of the purchaser's name, address and description, the purchaser's solicitor's name and address, the purchase price and the date.

(2) A licensee may insert in or delete from a contract for the sale of residential property any description of any furnishings or chattels to be included with the sale of the property.

(3) A licensee may participate in the exchange or making of contracts for the sale of residential property, subject to subsection (4).

(4) If a prospective party to a proposed contract ~~for~~ the sale of residential property for whom a licensee acts in relation to the exchange or making of the contract notifies the licensee, or it is apparent from the proposed contract, that a solicitor is or will be acting for the party, the licensee may only participate in the exchange or making of the contract if expressly authorised to do so by the party or the solicitor.

(5) A licensee who exercises any function described in subsection (1), (2) or (3) on behalf of any person who is a party or a prospective party to any contract or proposed contract is liable to compensate that person for any loss, damage or expense suffered or incurred by that person as a result of any negligent act or omission, or any unauthorised action, of the licensee in the exercise of that function.

(6) A contract is not invalid merely because of the failure of a licensee to comply with subsection (4).

(7) A licensee may not charge a fee for anything authorised to be done under this section.

(8) Subsections (2) and (3) of section 117 of the Legal Profession Act 1987 do not apply to a licensee in relation to anything authorised to be done under this section.

(9) The enactment of this section is not to be taken to affect the existence or nature of any other functions or responsibilities of licensees that exist or may exist apart from this section.

Procedure following rescission

84AC. (1) This section applies where a contract for the sale of residential property or an option for the purchase of residential property is rescinded under Division 8 or 9 of Part 4 of the Conveyancing Act 1919, and a licensee holds money paid by the purchaser by way of deposit under or in relation to the contract or the proposed contract attached to the option.

(2) The licensee is authorised to pay to the vendor so much of the money as does not exceed the amount (if any) forfeited under section 66V or 66ZE of that Act, and receipt by the licensee of the

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original or a copy of an effective notice of rescission served by the purchaser under section 66U or 66ZD of that Act is sufficient authority for the licensee to make the payment to the vendor.

(3) The regulations may make provision for or with respect to authorising the licensee to pay to the purchaser the balance of the money.

(4) This section has effect despite anything in section 36.

(5) In this section:

"deposit" includes any amount paid by the purchaser in relation to the contract or the proposed contract attached to the option or on account of the purchase price of residential property;

"purchaser" includes a prospective purchaser, and also includes a grantee or prospective grantee of an option.

*[Minister's second reading speech made in -
Legislative Assembly on 21 November 1989
Legislative Council on 23 May 1990]*