

Auction laws

Information for real estate agents, stock and station agents and auctioneers

On 1 September 2003, the *Property, Stock and Business Agents Act 2002* and the *Property, Stock and Business Agents Regulation 2003* came into effect. The laws changed the way that auctions of residential property and rural land are conducted in New South Wales.

The changes were introduced in response to home sellers' and buyers' concerns about auctions. There are five main areas of change designed to increase consumers' confidence in buying and selling residential and rural property at auction:

1. Bidders must be given a copy of the *Bidder's guide* fact sheet.
2. Bidders must be registered and display a bidder number.
3. Sellers are limited to one bid only.
4. Falsely understating the expected selling price to buyers is prohibited.
5. Auctions can only be conducted by accredited auctioneers.

Registering bidders

Bidder's guide

NSW Fair Trading's fact sheet the *Bidder's guide* provides information for bidders including how to register, the kinds of proof of identity required, privacy rights and auction conditions.

The selling agent must try to ensure that all bidders receive a copy prior to the auction. Distribution to prospective buyers could take place at inspections.

The Bidders Record

For each auction, a Bidders Record must be made of the persons registered to bid at the auction. Each bidder must be given a bidder's number to display.

The Bidders Record can be made by:

- the selling agent, or
- another agent engaged to act in respect of the sale or acting for or on behalf of the auctioneer.

Entries may only be made in the Bidders Record by the agents involved and their employees.

IMPORTANT – The selling agent must try to ensure that all potential bidders receive a copy of the *Bidder's guide* prior to auction.

Details to be included in the Bidders Record

The Bidders Record must be in English and must include:

- the date and place of the auction
- the address of the property or properties being auctioned
- the name of the owner of the property at the time of the auction
- the names and licence numbers of the selling agent and the auctioneer
- each bidder's name, address, the identifying number of their proof of identity (see next page for more information) and the bidder number allocated to the person for the auction
- if the person registering is a licensed agent acting for a buyer – their licence number
- if the bidder is bidding on behalf of someone else, the other person's name, address and the identifying number of their proof of identity. This requirement does not apply if the person registering has a power of attorney to act for the other person – they can simply register to bid in their own right
- the highest bid accepted and vendor bid (if any).

A person who intends to bid on behalf of someone else will need to show the agent a letter of authority to bid for that person (unless they have power of attorney). The letter must include the person's name, address and identifying number of their proof of identity. The agent does not have to keep a copy of the letter. This also applies to 'telephone bidding'. Where a licensed person acting as a buyer's agent registers to bid, they may show their agency authority instead of a letter.

If the person is bidding for a company, the ABN must be recorded. The letter authorising the person to bid should be on the company letterhead.

If a couple is registering to bid and would be buying the property together, only one of them needs to register. This applies to any group of two or more people bidding to buy the property together.

If the hopeful buyer has brought a friend or family member to bid for them, the buyer should sign a letter authorising the other person to bid for them.

IMPORTANT – Details in the Bidders Record cannot be shown to anyone, including the seller.

Proof of identity

The proof of identity requirements have been made as flexible as possible.

The basic requirement is that the proof of identity must show the bidder's name and address and must be issued by a government authority or a financial institution. An Australian passport is an example of acceptable proof.

If the bidder does not have proof of identity which meets that requirement, they can provide two kinds of card or document, at least one of which was issued by a government authority or a financial institution and one which shows their address.

For example, if the bidder has a Medicare card, a birth certificate, ATM card or overseas document such as passport or driver's licence as their main proof of identity, they will also need something that shows their address, such as a utilities bill or a rental agreement. If they don't have anything showing their address, the regulations allow them to complete a statutory declaration stating their address.

IMPORTANT – If a couple is registering to bid and would be buying the property together, only one of them needs to register.

The bidder number

There are no set requirements about the form of the bidder numbers – this is left up to agents to decide.

The number could, for example, be printed or written on a paddle with a handle, or on a piece of cardboard or plastic or laminated paper.

The basic requirement is that the number can be clearly seen by the auctioneer. It is also important to make sure that each bidder has a different number.

Preregistering bidders before the auction day

Agents can pre-register bidders in advance of the auction to save time on the day.

This could be done when prospective buyers are inspecting the property, or any time prior to the auction. Agents could encourage prospective buyers to drop in or telephone the selling agent's office to register their intention to bid by giving their name and address.

Many of the details on the Bidders Record can also be filled out in advance, such as the property address and owner's name.

When pre-registered bidders arrive at the auction, agents will need to confirm it is the same person by checking their proof of identity. The prospective buyer can then be given their bidder number.

IMPORTANT – Each bidder must be given a different number.

Late arrivals

Potential buyers who arrive at the auction late are not prevented from bidding – but they will need to have a bidder number before the auctioneer can take their bids.

While it is up to agents to decide how they wish to deal with registering late bidders, the following suggestions may be helpful:

- a sign could be placed near the entrance to inform bidders that they need to register
- a registration table could be set up near the entrance
- agency staff could carry registration forms on a clipboard and approach late arrivals.

If a bidder arrives at the auction at the crucial point where it is necessary for their bid to be made immediately, they should be advised to raise their hand to indicate to the auctioneer that they wish to make a bid. It should only take a moment for an agency staff member to note the person's details from their proof of identity and hand them a bidder's number.

Multi-property auctions

The laws provide for several options for creating the Bidders Record for auctions which involve more than one property and/or multiple agents.

Where more than one property is offered for sale at an auction, a single Bidders Record may be created which lists the required details for each of the properties. Bidders would only need to register once, get one bidder number and would be able to bid for any of the listed properties.

Where a multi-property auction involves more than one selling agent:

- one Bidders Record may be created for all of the properties being auctioned, or
- each agent may create their own Bidders Record for the properties they are selling.

Depending on the size of the auction, it may be necessary to set up a number of registration tables.

The person responsible for organising the auction will need to make sure that only one series of bidder numbers is used for the auction.

Privacy of bidders' details

The Bidders Record is subject to strict confidentiality requirements.

Details in the Bidders Record can only be shown to NSW Fair Trading. An authorised investigator would make a written request to the agent to see the Bidders Record. It cannot be shown to the seller.

The information in the Bidders Record must not be used for any other purpose – it cannot be used to contact

bidders and the details it contains cannot be disclosed to anyone else, including the seller.

Keeping the Bidders Record

The Bidders Record is subject to the general record keeping requirements of the Act.

After a Bidders Record is created, the agent who was responsible for creating it must keep it in a secure place for at least 3 years and must keep all their Bidders Records together, in the form of a Register of Bidders Records.

The Bidders Record may be made directly on to computer at the auction or may be transferred to a computer later. Records may be kept on computer or on disks, as long as a hard copy can be given to NSW Fair Trading if required.

Where a single Bidders Record is made for an auction involving multiple agents, each agent's records will need to note the details of the agent who made and keeps the Bidders Record for that auction.

Auctioneers

An auctioneer must not accept a bid from a person unless they are registered in the Bidders Record for the auction and have been given a bidder number.

Auctioneers are not liable to the seller or any other person for refusing a bid from an unregistered person.

To protect sellers and buyers, a bid taken from an unregistered person, whether inadvertently or deliberately, is deemed to be valid. However, the auctioneer may be subject to disciplinary action by NSW Fair Trading and a fine of up to \$11,000.

It is an offence for an auctioneer to invent bids.

Only one bid may be made on behalf of the seller by the auctioneer. The seller's bid by the auctioneer cannot be used unless notice of the right to bid is notified in the conditions of sale, which must be clearly displayed and be available for inspection before the auction commences. When the seller's bid is made by the

auctioneer, the auctioneer must state that it is a 'vendor bid'.

A co-owner, executor, administrator or someone bidding on their behalf, may make more than one bid 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 the bidder registration number of any co-owner, executor, administrator, or someone bidding on their behalf.

IMPORTANT – Only one bid may be made by or on behalf of the seller. When the seller's bid is made, the auctioneer must state that it is a seller's bid.

Auctioneer licence accreditation

The law prohibits a real estate or stock and station agent from conducting property auctions unless their licence is accredited to authorise them to act as an auctioneer. The Commissioner for Fair Trading may accredit an agent's licence if satisfied that the holder is qualified and competent to conduct auctions in accordance with the legislation.

For more information about auctioneer accreditation, call the Licensing Unit of NSW Fair Trading on 9619 8733.

More information

For more information about the laws applying to property auctions and agents call NSW Fair Trading on 13 32 20 or go to www.fairtrading.nsw.gov.au