

AUCTION CODE OF CONDUCT

1 OBJECT OF CODE

1.1 THE OBJECTS OF THIS CODE ARE TO:

- (a) Regulate and standardise the procedures of members of REIWA when conducting auctions.
- (b) Provide consumer protection for both sellers and buyers in the auction process.

1.2 THE OBJECTS OF THIS CODE SET OUT IN CLAUSE 1.1 ABOVE SHALL BE ACHIEVED BY:

- (a) Real Estate Agents, Real Estate Sales Representatives and Auctioneers adhering to the terms of this Code of Conduct.
- (b) REIWA enforcing this Code of Conduct with respect to the actions of its members.
- (c) REIWA providing education to its members about this Code of Conduct and, in particular, compliance with its terms.
- (d) REIWA promoting to the public the existence of this Code of Conduct, its terms and the method by which consumers may lodge complaints with REIWA about any breaches of the Code by members of REIWA.
- (e) REIWA reviewing on a regular basis the efficacy of this Code of Conduct in providing consumer protection in the auction process and, where necessary, amending the terms of the Code to enhance the effectiveness by which the Code meets its stipulated objects.

2 INTERPRETATION

IN THIS CODE:

“agent” means a person representing another and/or acting on that other person’s behalf.

“auction” means the selling of any property of any kind or description whatsoever by any mode whereby the highest, lowest, or any bidder is the purchaser, or whereby the first who claims the property submitted for sale at a certain price named by the person acting as Auctioneer is the purchaser, or whereby there is a competition for the purchase of any property in any way commonly known and understood to be by way of auction.

“Auctioneer” means any person who:

- (a) sells or attempts to sell or offers for sale or resale any property, whether the property of the Auctioneer or of any other person, by way of auction; and
- (b) is licensed as an Auctioneer pursuant to section 6 of the Auction Sales Act, 1973.

“Person” includes a public body, company or association or body of persons, corporate or unincorporate.

“the public” means the general community considered as a whole including, but not limited to, buyers and sellers of property at auctions.

“Real Estate Agent” means a person licensed as a Real Estate Agent pursuant to the terms of the Real Estate and Business Agents Act, 1978 and who has been appointed by a seller to sell a particular property at auction.

“Real Estate Sales Representative” means a person registered as a Real Estate Sales Representative pursuant to the terms of the Real Estate and Business Agents Act, 1978.

“Seller” is the person who is selling a property the subject of an auction.

3 GENERAL CONDUCT OF REAL ESTATE AGENTS, REAL ESTATE SALES REPRESENTATIVES & AUCTIONEERS

In addition to the obligations placed upon Real Estate Agents, Real Estate Sales Representatives and Auctioneers pursuant to the provisions of the REIWA Members' Codes of Practice, as set out in clause 7 below:

- 3.1 Real Estate Agents, Real Estate Sales Representatives and Auctioneers acting in relation to auctions must at all times act with honesty and fairness when dealing with members of the public.
- 3.2 Real Estate Agents, Real Estate Sales Representatives and Auctioneers acting in relation to auctions must at no time:
 - (a) act in an unconscionable manner;
 - (b) unduly harass or coerce any member of the Public; or
 - (c) apply sales pressure to any member of the Public that, in all the circumstances, is unfair.¹

4 BEFORE THE AUCTION

- 4.1 Real Estate Agents shall not advertise a property as being for sale by auction unless there is intended to be a genuine auction and unless a legally valid written authority to auction form has been duly executed by or on behalf of the Seller.
- 4.2 Prior to any auction the Real Estate Agent appointed by a Seller to sell the particular property by auction shall make available for inspection to any person who so requests the terms and conditions under which the sale of the property by auction will be undertaken.
- 4.3 If applicable, the Real Estate Agent shall specify in the terms and conditions of sale referred to in clause 4.2 above that the Seller reserves the right to bid for the property either personally or through an agent and shall identify the number of those reserved bids.
- 4.4 The Real Estate Agent shall make this Code of Conduct available for inspection prior to the auction by providing copies of this Code to any person to whom the Real Estate Agent gives a copy of the terms and conditions of the auction.
- 4.5 If the seller so instructs, the Real Estate Agent must inform the Public in all advertising devised by the Real Estate Agent with respect to the property that offers for the property may be considered prior to the Auction.

5 AT THE AUCTION

- 5.1 The terms and conditions of any auction sale shall be on display and available for inspection together with this Code at the auction. Any portion of the terms and conditions relating to the description of the property shall be read aloud by the Auctioneer appointed to conduct the auction of the property at the commencement of that auction.
- 5.2 Before commencement of the bidding for a property, the Auctioneer shall announce whether the Seller is selling with a reserve price. It shall not be necessary for that reserve price to be disclosed to bidders.
- 5.3 If the Seller has reserved the right to bid for the property either personally or through an agent:
 - (a) the Auctioneer shall announce prior to the commencement of the bidding that the Seller has so reserved the right to bid and shall at that time specify whether the Auctioneer, the seller or some other person on behalf of the seller will be making those bids;
 - (b) where the Auctioneer has been appointed to bid on behalf of the Seller all bids made on behalf of the Seller shall be so made by the Auctioneer and notice of that fact shall be given prior to the commencement of the bidding for the property;

¹ Examples of where the provisions of clause 3.2 may be breached would include:

- (a) where bids are accepted from persons who are known to be suffering from dementia, intoxicated or confused as to the nature of the auction process.
- (b) where unreasonable pressure is placed on a seller to set a reserve price that is well below the known market price, particularly where the seller is known to be suffering from a disability.
- (c) the canvassing of potential buyers to attend an auction or to make a bid at an auction, by telephoning the buyers at an unreasonable hour or with unreasonable frequency.
- (d) belittling, berating or embarrassing a bidder during the conducting of an auction.
- (e) disguising onerous terms in contracts by the use of fine print or complex language.
- (f) providing advice as to the terms of a contract of sale to a potential bidder/buyer or advice as to the terms of an authority to auction to a seller without mentioning or adequately describing the obligations placed upon the consumer by the contracts concerned.

5 AT THE AUCTION continued

- (c) where the Seller or some person other than the Auctioneer shall be bidding on behalf of the Seller the Auctioneer shall identify that person prior to the commencement of the bidding for the property;
 - (d) the Auctioneer shall announce prior to the commencement of bidding for the property the maximum number of bids which will or may be made during the auction by the Seller or by any person on behalf of the Seller;
 - (e) the Auctioneer shall announce, contemporaneously with any bid being made by or on behalf of a seller the fact that the bid has been so made by or on behalf of the seller;
 - (f) neither the Real Estate Agent nor any salesperson engaged by the Real Estate Agent shall make or assist any other person to make any bid on behalf of the Seller in contravention of any announcement by the Auctioneer under clause 5.3.
- 5.4 If a property is to be sold at an auction without reserve no bid shall be made by or on behalf of the Seller and no Real Estate Agent or Auctioneer may in any way encourage or be a party to such a bid at the auction provided that this clause shall not apply to any auction where a court has ordered to the effect that the particular auction shall take place without reserve.
- 5.5 The Auctioneer shall ensure that the amount of any bid is clearly stated.
- 5.6 The Auctioneer shall resolve any disputed bid in accordance with the terms and conditions of sale governing the auction.
- 5.7 When any person asks the Auctioneer whether the current bid was a bid made by or on behalf of the Seller, the Auctioneer MUST respond by advising whether or not the bid was made by or on behalf of the Seller.
- 5.8 Under no circumstances may a bid made on behalf of the Seller by an Auctioneer or a Real Estate Agent be at or in excess of any Seller's reserve price.
- 5.9 The Auctioneer shall always clearly announce when the property is about to be sold under the hammer.

6 DUMMY BIDDING

- 6.1 Dummy bidding is fictitious or false bidding at an auction by non-genuine bidders in the audience with no real intention to buy the property and any Auctioneer or Real Estate Agent who encourages or is a party to such bidding is in breach of this Code PROVIDED that nothing in this clause prevents an Auctioneer or agent from encouraging or being a party to bidding by or on behalf of a Seller as provided for in this code.

7 CONSUMER/INDUSTRY AWARENESS AND REVIEW OF THE TERMS OF THIS CODE

- 7.1 REIWA shall promote the terms of this Code of Conduct to consumers and its members, and REIWA shall collect data with respect to the Code in accordance with procedures set out in its Part IV of the Trade Practices Act and Auction Code of Conduct Compliance Programme Manual.
- 7.2 REIWA shall review the terms of this Code of Conduct and the efficacy of its terms in providing consumer protection in accordance with the procedures set out in its Part IV of the Trade Practices Act and Auction Code of Conduct Compliance Programme.
- 7.3 Consumers and members of REIWA may access the Part IV of the Trade Practices Act and Auction Code of Conduct Compliance Programme by making written contact with the Personal Assistant to the Chief Executive Officer of REIWA or by visiting the REIWA internet site at www.reiwa.com.au.

8 THE REIWA MEMBERS' CODES OF PRACTICE

The following provisions are reproduced from clause 10 of the REIWA Members' Codes of Practice:

- 8.1 In any agency relationship, a member must act in the best interests of his or her principal except where it would be unreasonable or improper to do so.
- 8.2 In any agency relationship, a member must act in accordance with the instructions of his or her principal, except where it would be unreasonable to do so.
- 8.3 A member must act fairly and honestly.
- 8.4 A member must not knowingly engage in any misleading or deceptive conduct.
- 8.5 A member must not engage in any harsh or unconscionable conduct.
- 8.6 A member must act so as to exercise due skill, care and diligence.

9 BREACHES OF THIS CODE

- 9.1 Consumers and members of the real estate industry may lodge complaints with REIWA if they believe that a member of REIWA has breached any term of this Code of Conduct or the REIWA Member's Codes of Practice. Upon receipt of such a complaint REIWA will deal with that complaint in accordance with the terms of Article 41 of REIWA's Articles.
- 9.2 Extracts from Article 41 of REIWA's Articles are set out below:
 "EXPULSION AND SUSPENSION OF MEMBERSHIP AND DISCIPLINING OF MEMBERS
41. 41.1 A member may be expelled or suspended from the Institute should the Council or Executive Committee determine that:
- (a) ...
 - (b) ...
 - (c) ...
 - (d) the member has breached one or more of the rules, articles, codes, regulations or by-laws of the Institute.
- 41.2 Should:
- (a) the Institute receive a complaint from a member of the Institute, the Chief Executive Officer of the Institute, an agent who is not a member of the Institute or a member of the public that any of the events referred to in Article 41.1 has or may have occurred; or
 - (b) the Council or the Executive Committee of their own complaint consider that any of the events referred to in Article 41.1 has or may have occurred
- the Council or the Executive Committee must refer the matter to a Professional Standards Tribunal for hearing.
- 41.3 41.3.1 Professional Standards Tribunals shall be established from time to time by the Council or the Executive Committee and shall be made up of persons stipulated and selected by the Council:
- 41.3.2 Upon the hearing of a matter referred to a Professional Standards Tribunal pursuant to Article 41.2 the Tribunal shall have the power to:
- (a) impose the penalties prescribed in any articles, rules, codes, regulations or by-laws of the Institute in respect to any breaches thereof;
 - (b) impose monetary penalties of not more than \$10,000 for any breach of any articles, rules, codes, regulations or by-laws of the Institute;
 - (c) impose a reprimand;
 - (d) dismiss the matter without penalty and without recommendation of further action;
 - (e) recommend that the member be expelled or suspended from membership of the Institute; and/or
 - (f) order the restitution of any monies held or received by the member the subject of the hearing to the persons determined to be entitled to those monies.
- 41.3.3...
- 41.4 41.4.1 Should a Professional Standards Tribunal recommend in accordance with Articles 41.3.2 that a member be expelled or suspended from membership of the Institute the matter shall be referred back to the Council or the Executive Committee for determination.
- 41.4.2 ...
- 41.4.3 ...
- 41.5 ...
- 41.6 Any member who is expelled or suspended from membership of the Institute by the Council or the Executive Committee pursuant to Article 41 or who is penalised by a Professional Standards Tribunal pursuant to Articles 41.3.2(1), (b), (c) or (f) shall have a right of appeal against that expulsion, suspension or penalty in accordance with the provisions of Article 45 PROVIDED THAT if a member has been expelled or suspended the member shall remain under suspension until the determination of the appeal.
- 41.7 Expulsion of a member pursuant to Article 41 shall be deemed to not take effect until:
- (a) the date upon which any time given to appeal against the decision to expel expires pursuant to Article 45; or
 - (b) the date that notice of the determination of any such appeal is given to the member whichever is the later."