

Queensland



Subordinate Legislation 2001 No. 118

Property Agents and Motor Dealers Act 2000

PROPERTY AGENTS AND MOTOR DEALERS (AUCTIONEERING PRACTICE CODE OF CONDUCT) REGULATION 2001

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1 Short title

This regulation may be cited as the *Property Agents and Motor Dealers (Auctioneering Practice Code of Conduct) Regulation 2001*.

2 Commencement

This regulation commences on 1 August 2001.

3 Code of conduct

The code of conduct in the schedule is the code of conduct about auctioneering practice prescribed for the Act, section 231.¹

¹ Act, section 231 (Code of conduct)

SCHEDULE

AUCTIONEERING PRACTICE CODE OF CONDUCT

section 3

PART 1—PRELIMINARY

1 Title

This code of conduct may be cited as the *Auctioneering Practice Code of Conduct*.

2 Object

(1) The object of this code is to increase the accountability of auctioneers for their actions in carrying on the business of an auctioneer.

(2) The object is to be achieved by—

- (a) setting conduct standards for auctioneers; and
- (b) establishing principles for fair trading in auctioneering practice; and
- (c) providing for a system of complaint resolution for complaints about auctioneering practice.

3 Definitions

In this code—

“**auctioneer**” includes a trainee auctioneer.

“**client**” means a person who appoints an auctioneer to sell, attempt to sell, offer to sell or resell any property by way of auction.

“**customer**” means a person with whom an auctioneer deals on behalf of a client.

SCHEDULE (continued)

“**holiday purposes**” has the meaning given by the *Residential Tenancies Act 1994*, section 21.²

4 Compliance with code

(1) This code contains provisions with which an auctioneer must comply.³

(2) This code overrides an instruction or request that does not comply with the code from a client or, if the auctioneer is an employee, from the auctioneer’s employer.

PART 2—GENERAL RULES OF CONDUCT

5 Knowledge of Act and code

An auctioneer must have a reasonable knowledge and understanding of the Act and this code.

6 Fiduciary obligations

An auctioneer must comply with a fiduciary obligation incurred as an auctioneer.

7 Honesty, fairness and professionalism

(1) An auctioneer must act honestly, fairly and professionally in the conduct of an auctioneering practice.

2 *Residential Tenancies Act 1994*, section 21 (Premises used for holidays)

3 Contravention of this code is a ground for—

- starting disciplinary proceedings under the Act, section 496
- obtaining an injunction under the Act, section 565
- seeking an undertaking under the Act, section 569.

SCHEDULE (continued)

(2) Without limiting subsection (1), an auctioneer must treat a customer honestly and fairly.

8 Skill, care and diligence

(1) An auctioneer must exercise reasonable skill, care and diligence in the conduct of an auctioneering practice.

(2) An auctioneer must complete all work for a client as soon as is reasonably practicable.

9 Auctioneer to act in client's best interests

An auctioneer must act in a client's best interests unless it is unlawful or unreasonable to do so.

10 Auctioneer to act in accordance with client's instructions

(1) An auctioneer must act in accordance with a client's instructions unless it is contrary to this code or otherwise unlawful to do so.

Example—

An auctioneer must not market, or advertise or offer to sell, property on terms different from the terms authorised by the client.

(2) However, the price at which an auctioneer offers to sell property must be in accordance with the client's written instructions.

11 Auctioneer to keep client informed of developments

(1) An auctioneer appointed to sell property for a client must keep the client informed of any significant development or issue in relation to the property.

(2) Without limiting subsection (1), an auctioneer must immediately communicate to the client each expression of interest, whether written or oral, about the sale of the property.

(3) However, subsection (2) does not apply if the client has directed otherwise in writing.

SCHEDULE (continued)

12 Auctioneer to ensure employees comply with Act and code

(1) An auctioneer who is a principal licensee must take reasonable steps to ensure a registered employee of the auctioneer complies with the Act and this code in relation to the auctioneer's business.

Example—

An auctioneer in whose business the supervisor to employee ratio is so low that supervisors can have little knowledge of what staff are doing or how they are performing their work may need to employ more supervisors.

(2) An auctioneer who is an employed licensee in charge of an auctioneer's business at a place of business must take reasonable steps to ensure a registered employee at the place complies with the Act and this code in relation to the business.

(3) This section applies only to the extent that the Act, section 206(1)⁴ does not already require an auctioneer to take the steps mentioned in the section.

13 Representations by employees

An auctioneer must take reasonable steps to ensure that an employee of the auctioneer—

- (a) does not falsely represent that the employee is the holder of a licence in relation to auctioneering, or falsely use a title that suggests the employee is the holder of a licence; or
- (b) whether licensed under the Act or not, does not represent that the employee is the person in effective control of the auctioneer's business, or use a title that suggests the employee is the person in effective control of the business.

⁴ Act, section 206 (Responsibility for acts and omissions of trainee auctioneers)

SCHEDULE (continued)

14 Fraudulent or misleading conduct

An auctioneer must not engage in conduct that is fraudulent or misleading in the conduct of an auctioneering practice.⁵

Example—

An auctioneer must not mislead or deceive a client, or participants in an auction, by using dummy bidders or false or nonexistent bids.

15 High pressure tactics, harassment or unconscionable conduct

An auctioneer must not engage in high pressure tactics, harassment or unconscionable conduct in the conduct of an auctioneering practice.

Examples of harassment—

1. Using, or getting a third party to use, threatening or intimidating language or behaviour towards a client or customer.
2. Engaging in conduct that would make an ordinary person feel unwillingly compelled to comply with an auctioneer's request or demand.

Examples of unconscionable conduct—

1. Taking unfair advantage of an auctioneer's superior bargaining position relative to a client or customer.
2. Requiring a client or customer to comply with conditions that are not reasonably necessary for the protection of an auctioneer's legitimate interests.
3. If it is reasonably apparent that a client or customer can not understand relevant documents, taking unfair advantage of the client's or customer's lack of understanding.
4. Exerting undue influence or pressure on, or using unfair tactics against, a client or customer or a person acting for a client or customer.

16 Claiming membership or endorsement

An auctioneer must not falsely claim to be a member of, or endorsed by, an organisation or association.

⁵ Engaging in conduct of this nature or other unlawful conduct could lead to a prosecution under the Act, for example see section 574 (False representations about property).

SCHEDULE (continued)

17 Conflict of duty or interest

An auctioneer must not accept an appointment to act, or continue to act, as an auctioneer for a client if doing so will place the auctioneer's duty or interests in conflict with the client's interests.

18 Soliciting through false or misleading advertisements or communications

An auctioneer must not solicit clients or customers through advertisements or other communications the auctioneer knows are false or misleading.

Example—

Knowingly giving a prospective client an overestimate of the likely selling price of property.

PART 3—RULES SPECIFIC TO AUCTIONEERS

Division 1—General

19 Prior appointment of another auctioneer or agent

(1) Before accepting an appointment to sell a property for a client, an auctioneer must take reasonable steps to find out whether the client has already appointed another auctioneer or real estate agent under a sole or exclusive agency for the sale.

(2) The auctioneer (the “**new auctioneer**”) must not solicit or accept the appointment if—

- (a) the auctioneer knows, or should know, that the appointment of a another auctioneer or a real estate agent (the “**existing auctioneer or agent**”) for the sale is in force; and
- (b) the client may have to pay the following if there is a sale—
 - (i) a commission under each appointment;

SCHEDULE (continued)

- (ii) damages for breach of contract under the existing auctioneer's or agent's appointment.

(3) However, subsection (2) does not apply if, before the client signs the new auctioneer's appointment, the new auctioneer gives the client a written statement that, if the client appoints the new auctioneer and there is a sale, the client may have to pay the following—

- (a) a commission under each appointment;
- (b) damages for breach of contract under the existing auctioneer's or agent's appointment.

20 Conjunction sales

(1) Before accepting an appointment to sell property for a client, an auctioneer must—

- (a) explain to the client general issues about a sale conducted in conjunction with other auctioneers or real estate agents (a “**conjunction sale**”), and the issues about a conjunction sale relevant to the particular sale if it were to be a conjunction sale; and
- (b) disclose to the client the auctioneer's policy about conjunction sales, including the percentage apportionment of commission between the auctioneer and another auctioneer or agent.

(2) Before agreeing with another auctioneer or real estate agent to conduct a conjunction sale, the auctioneer must—

- (a) disclose to the client the name of the other auctioneer or agent with whom the auctioneer proposes to act; and
- (b) advise the other auctioneer or agent of the client's instructions for the sale.

(3) An auctioneer must conduct a sale in conjunction with another auctioneer or agent if the client authorises a conjunction sale.

SCHEDULE (continued)

21 Opportunity to obtain independent advice or representation

An auctioneer must give a client a genuine opportunity to obtain independent professional advice or representation before the client appoints the auctioneer.

22 Advice about market price

(1) An auctioneer, in attempting to obtain an appointment to sell a property, must not knowingly mislead a person about the property's market price.

(2) If an auctioneer gives a person an opinion about the market price for property, the auctioneer must not accept instructions from the person to act as an auctioneer for the sale of the property unless the auctioneer has given the person a written statement of the material facts that the auctioneer has taken into account in forming an opinion about the property's market price.

(3) An auctioneer appointed to sell property must keep the client informed, in accordance with the client's instructions, if any, of the auctioneer's opinion about the current market price of the property.

(4) Also, the auctioneer must tell the client if the auctioneer considers the selling price of property expected by the client is substantially more or less than the market price of the property.

23 Notifying managing agent of appointment to sell

If an auctioneer accepts an appointment to sell property that is a place of residence or business that is tenanted, the auctioneer must immediately give written notice of the appointment to any agent responsible for managing the property.

24 Finding out or verifying ownership and property description

An auctioneer appointed to sell property must take reasonable steps to find out or verify the property's ownership and property description.

SCHEDULE (continued)

25 Finding out or verifying material facts

(1) An auctioneer appointed to sell property must take reasonable steps to find out or verify the facts material to the sale that a prudent auctioneer would have found out or verified to avoid error, omission, exaggeration or misrepresentation.

(2) The steps must be taken before the auctioneer lists the property and afterwards as the occasion arises.

26 Auctioneer to encourage disclosure by client

An auctioneer must, at the time of obtaining an appointment to sell property for a client and at all later times, encourage the client to disclose to the auctioneer all relevant facts about the property.

27 Disclosure to customer that auctioneer is the client's auctioneer

(1) An auctioneer must ensure a customer is aware the auctioneer is acting for the client.

(2) An auctioneer must not induce or allow a customer to believe that the auctioneer is acting for the customer.

(3) An auctioneer must warn a customer, as soon as possible, that any information disclosed to the auctioneer may be disclosed to the auctioneer's client.

28 Referral to service provider

(1) An auctioneer who refers a client or customer to a service provider must not falsely represent to the client or customer that the service provider is independent of the auctioneer.

(2) For subsection (1), a service provider is “**independent**” of an auctioneer if—

- (a) the auctioneer receives no rebate, discount, commission or benefit for referring a client or customer to the service provider; and

SCHEDULE (continued)

- (b) the auctioneer does not have a personal or commercial relationship with the service provider.

Examples of relationships for paragraph (b)—

1. A family relationship.
2. A business relationship other than a casual business relationship.
3. A fiduciary relationship.
4. A relationship in which 1 person is accustomed, or obliged, to act in accordance with the directions, instructions or wishes of the other person.

(3) If the service provider is not independent of the auctioneer, the auctioneer must disclose to the client or customer—

- (a) the nature of any relationship, whether personal or commercial, the auctioneer has with the service provider; and
- (b) the nature and value of any rebate, discount, commission or benefit the auctioneer may receive, or expects to receive, by referring the client or customer to the service provider.

(4) In this section—

“**client**” includes a prospective client.

“**service provider**” means a provider of professional services associated with the sale of property.

29 Goods and services

(1) An auctioneer must obtain a client’s written approval before ordering goods or services if the price of the goods or services is more than the amount authorised to be incurred by the auctioneer’s appointment.

(2) An auctioneer must take reasonable steps to ensure goods or services obtained for a client are at a competitive price.

30 Inducing breach of contract

An auctioneer must not induce, or attempt to induce, a breach of, or an interference with, a contract between a client and a customer.

SCHEDULE (continued)

Example—

An auctioneer must not induce a customer to breach a contract with a client to get the customer to enter immediately into a contract with another of the auctioneer's clients.

31 Duty to obtain maximum sale price

An auctioneer must obtain the maximum sale price for a client's property.

32 Registration of bidders

(1) An auctioneer must use the auctioneer's best endeavours to register all bidders at an auction.

(2) A bidder is "**registered**" at an auction if—

- (a) the bidder gives the auctioneer the bidder's name and address; and
- (b) the bidder produces to the auctioneer satisfactory evidence of the bidder's identity; and
- (c) the auctioneer records the bidder's name and address.

(3) The auctioneer must keep a record of the bidder's name and address until the auctioneer's appointment as auctioneer ends.

33 Failure to receive deposit

An auctioneer acting as a deposit holder under a contract—

- (a) must inform the client in writing if the time under the contract for payment of the deposit has passed without the deposit being received by the auctioneer; and
- (b) must not accept any late payment of the deposit unless—
 - (i) the client has been informed under paragraph (a); and
 - (ii) the client gives written instructions to accept late payment of the deposit.

SCHEDULE (continued)

Division 2—Consignment selling

34 Application of div 2

This division applies only to an auctioneer who has been asked by a client to sell the client's used motor vehicle on consignment.

35 Auctioneer to open trust account

Before an auctioneer starts selling used motor vehicles on consignment, the auctioneer must open a trust account into which to deposit proceeds of sales on behalf of the auctioneer's clients.

36 Insurance

Before acting for a client, an auctioneer must—

- (a) tell the client that the client is responsible for insuring the used motor vehicle against loss or damage; and
- (b) obtain the client's written acknowledgement of the advice.

37 Auctioneer's obligations in relation to client's motor vehicle

An auctioneer acting for a client must ensure that—

- (a) the client's motor vehicle is properly secured and reasonably protected from damage; and
- (b) no parts are removed from the vehicle without the client's written authorisation.

38 Notice to customer

Before selling a used motor vehicle on consignment, an auctioneer must give a customer of the auctioneer written notice—

- (a) that the motor vehicle is being sold on consignment; and
- (b) that there is no statutory warranty or cooling-off period under the Act in relation to the motor vehicle.

SCHEDULE (continued)

Division 3—Use, disclosure and recording of information

39 Confidentiality

(1) An auctioneer must not use or disclose confidential information about a client or customer obtained while acting for the client or dealing with the customer.

(2) Subsection (1) does not apply to information—

- (a) used or disclosed for a purpose authorised in writing by the client or customer; or
- (b) that must be lawfully used or disclosed.

Example of when information must be lawfully used or disclosed—

To comply with legal process.

(3) In this section—

“**auctioneer**” includes a former auctioneer.

“**client**” includes a former client.

“**customer**” includes a former customer.

40 Recording of information

(1) An auctioneer who gives information about a client or customer for recording in a public document or in a database relating to customers must—

- (a) ensure the information is accurate; and
- (b) ensure the information, if adverse to the client or customer, relates to a matter that is not trivial or is not a minor breach of a tenancy agreement; and

Example of matters that are not trivial—

The termination of a tenancy because of any of the following—

- damage to premises
- injury to a person lawfully entitled to enter or remain on premises
- objectionable behaviour

SCHEDULE (continued)

- an unremedied or repeated breach of a term of the tenancy
 - breach of an order of a court or tribunal relating to the tenancy.
- (c) take reasonable steps to disclose the information to the client or customer; and
- (d) give the client or customer a reasonable opportunity to review the information; and
- (e) ensure the client or customer is informed about how the information may be used; and
- (f) immediately amend the information if the client or customer provides evidence that the information is inaccurate.

(2) This section does not apply to a customer renting premises if the right of occupancy of the premises is given for holiday purposes.

PART 4—PUBLICISING CODE

41 Publicity about code

(1) A auctioneer who is a principal licensee must prominently display a notice of the existence and availability of this code in the public area of each of the auctioneer's offices.

(2) If asked by a client or customer, a auctioneer must promptly tell the client or customer where to obtain a copy of this code.⁶

⁶ This code may be purchased from Goprint or accessed at www.legislation.qld.gov.au.

SCHEDULE (continued)

PART 5—COMPLAINT RESOLUTION

42 Principal licensee to have complaint handling procedure

(1) This section applies to an auctioneer who is a principal licensee.

(2) The auctioneer must have a reasonable, simple and easy to use procedure in place for handling complaints by clients or customers of the auctioneer.

(3) The auctioneer must have information readily available to inform clients and customers of the procedure.

(4) The information must include the following details—

- (a) how a complaint is to be made;
- (b) when a complaint must be in writing and when it may be oral;
- (c) the person who is to handle the complaint.

(5) The auctioneer must consider every complaint made by a client or customer and—

- (a) accept the complaint, whether wholly or partly; or
- (b) reject the complaint in writing.

(6) If the auctioneer accepts the complaint, whether wholly or partly, and restitution is required to be made to the client or customer (the “**complainant**”), the auctioneer must arrange for the restitution to be made—

- (a) within 7 days after accepting the complaint; or
- (b) if the auctioneer and the complainant agree, by a later day.

(7) If the auctioneer rejects the complaint, whether wholly or partly, the auctioneer must give the complainant written reasons for the rejection.

(8) The notice must be accompanied by a separate document containing—

- (a) a warning that there may be time restrictions on making a claim, including a claim against the fund under the Act;
- (b) a statement that the complainant should consider whether or not to seek legal advice; and

SCHEDULE (continued)

- (c) a statement that the complainant—
- (i) may seek mediation through the dispute resolution procedures of the Department of Justice and Attorney-General; or
 - (ii) may, depending on the nature and amount of the complaint, commence an action against the auctioneer in a small claims tribunal or a court; or
 - (iii) may contact the Office of Fair Trading which may commence disciplinary proceedings, or take other action, under the Act.

(9) The document may also include details about other ways available to the complainant to resolve the complaint.

Example of another way available to resolve the complaint—

An industry dispute resolution scheme may be available to the complainant because of the auctioneer's membership of an organisation.

(10) However, the document must state that participation in an industry dispute resolution scheme is voluntary.

43 Client to be notified of complaint and outcome

(1) This section applies if a complaint is made by an auctioneer's customer and the complaint is dealt with under the complaint handling procedure mentioned in section 41.

- (2) The auctioneer must notify the relevant client of—
- (a) the complaint made by the customer; and
 - (b) the final outcome of the complaint.

44 Compliance with complaint handling procedure

(1) A auctioneer must comply with the complaint handling procedure mentioned in section 41 and the final outcome of the complaint.

Examples of complying with final outcome of complaint—

1. If a auctioneer accepts a complaint that requires a matter to be rectified, the auctioneer must rectify the matter.

SCHEDULE (continued)

2. An auctioneer must comply with an agreement reached through mediation about the subject matter of the complaint.
 3. An auctioneer must comply with a court decision about the subject matter of the complaint.
- (2)** This section applies subject to any stay granted by a court.
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ENDNOTES

1. Made by the Governor in Council on 26 July 2001.
2. Notified in the gazette on 27 July 2001.
3. Laid before the Legislative Assembly on . . .
4. The administering agency is the Office of Fair Trading.