



Queensland

Property Agents and Motor Dealers (Auctioneering Practice) Amendment Bill 2004



Queensland

Property Agents and Motor Dealers (Auctioneering Practice) Amendment Bill 2004

Contents

		Page
Part 1	Preliminary	
1	Short title	4
2	Commencement	4
Part 2	Amendment of Property Agents and Motor Dealers Act 2000	
3	Act amended in pt 2	4
4	Insertion of new chs 11A and 11B	4
	Chapter 11A Auctions of residential property or rural land	
373A	Restrictions on bidding by or on behalf of seller or auctioneer	4
373B	Bidders record	5
373C	Bids may only be taken from registered bidders	6
373D	Details for bidders record to be established by proof of identity	7
373E	Confidentiality of bidders record	8
	Chapter 11B General provisions about auctions of land	
373F	Collusive practices at auction sales of land	8
373G	False entry in auction record	10
373H	Successful bidder at auction to supply information, and auctioneer to give notice that information must be supplied	11
5	Insertion of new s 602A	12
602A	Amendment of regulation by Property Agents and Motor Dealers (Auctioneering Practice) Amendment Act 2004 does not affect powers of Governor in Council	12

*Property Agents and Motor Dealers (Auctioneering
Practice) Amendment Bill 2004*

Part 3	Amendment of Property Agents and Motor Dealers (Auctioneering Practice Code of Conduct) Regulation 2001	
6	Act amended in pt 3	13
7	Insertion of new s 2A	13
	2A Notes	13
8	Insertion of note	13
9	Omission of sch, s 32 (Registration of bidders)	13

2004

A Bill

for

An Act to amend the *Property Agents and Motor Dealers Act 2000*, and for other purposes

*Property Agents and Motor Dealers (Auctioneering
Practice) Amendment Bill 2004*

The Parliament of Queensland enacts— 1

Part 1 Preliminary 2

Clause 1 Short title 3

This Act may be cited as the *Property Agents and Motor
Dealers (Auctioneering Practice) Amendment Act 2004*. 4
5

Clause 2 Commencement 6

This Act commences on 1 July 2005. 7

**Part 2 Amendment of Property Agents
and Motor Dealers Act 2000** 8
9

Clause 3 Act amended in pt 2 10

This part amends the *Property Agents and Motor Dealers
Act 2000*. 11
12

Clause 4 Insertion of new chs 11A and 11B 13

After section 373— 14

insert— 15

**‘Chapter 11A Auctions of residential property
or rural land** 16
17

**‘373A Restrictions on bidding by or on behalf of seller or
auctioneer** 18
19

‘(1) A sale by auction of residential property or rural land must be 20
notified in the terms of sale to be subject to the right by the 21

*Property Agents and Motor Dealers (Auctioneering
Practice) Amendment Bill 2004*

seller or by any person on behalf of the seller or auctioneer to make 1 bid, and only 1 bid.	1 2
‘(2) At a sale by auction of residential property or rural land—	3
(a) the seller or any person on behalf of the seller or auctioneer must not bid unless the right to bid has been notified in the terms of sale; and	4 5 6
(b) the seller or any person on behalf of the seller or auctioneer must not make more than 1 bid, and must not make any bid if any of them has already bid; and	7 8 9
(c) the auctioneer must not take from the seller or any person on behalf of the seller or auctioneer any bid knowing that the bid contravenes paragraph (a) or (b); and	10 11 12 13
(d) when the auctioneer takes a bid from the seller or any person on behalf of the seller or auctioneer, the auctioneer must, as soon as the bid is taken, clearly state that the bid is a bid by the seller or a person on behalf of the seller or auctioneer.	14 15 16 17 18
Maximum penalty for subsection (2)—200 penalty units.	19
‘373B Bidders record	20
‘(1) Before residential property or rural land is offered for sale by auction, a record (the <i>bidders record</i>) must be made of the persons who are entitled to bid at the auction.	21 22 23
‘(2) The auctioneer appointed for the sale must make the bidders record unless a real estate agent, or pastoral house, appointed for the sale or acting on the auctioneer’s behalf has made the bidders record.	24 25 26 27
Maximum penalty—200 penalty units.	28
‘(3) The following information about each person who is entitled to bid at the auction must be entered in the bidders record—	29 30
(a) the relevant details of the person;	31
(b) the identifying number allocated to the person for the purpose of identifying the person at the auction;	32 33

*Property Agents and Motor Dealers (Auctioneering
Practice) Amendment Bill 2004*

(c)	any other information prescribed under a regulation.	1
‘(4)	The relevant details of the person are—	2
(a)	the person’s name and address and the number or other identifier of proof of identity for the person produced under section 373D; and	3 4 5
(b)	if a person is bidding on behalf of another person, the name and address of the other person and the number or other identifier of proof of identity for the other person produced under section 373D.	6 7 8 9
‘(5)	An auctioneer, real estate agent or pastoral house that makes a bidders record must—	10 11
(a)	keep the bidders record for at least 3 years; and	12
(b)	keep all the bidders records made by the auctioneer, real estate agent or pastoral house together, in the form of a register of bidders records.	13 14 15
	Maximum penalty—100 penalty units.	16
‘(6)	A regulation may be made about—	17
(a)	conferring an entitlement on a seller of residential property or rural land to inspect the bidders record for the sale; and	18 19 20
(b)	the way a bidders record is to be made or kept.	21
‘373C	Bids may only be taken from registered bidders	22
‘(1)	The auctioneer at a sale by auction of residential property or rural land must not take a bid from a person unless—	23 24
(a)	the relevant details of the person have been entered, before the bid is taken, in the bidders record for the auction under section 373B; and	25 26 27
(b)	the person is identified at the auction by the person displaying an identifying number allocated to the person for the purposes of the auction and recorded in the bidders record as the identifying number allocated to the person; and	28 29 30 31 32

*Property Agents and Motor Dealers (Auctioneering
Practice) Amendment Bill 2004*

(c) the auctioneer is in possession of the bidders record when the bid is taken.	1 2
Maximum penalty—100 penalty units.	3
‘(2) An auctioneer who refuses to take a bid from a person because of subsection (1) does not incur any liability as a result of the refusal.	4 5 6
‘(3) The taking of a bid in contravention of subsection (1) does not affect the validity of the bid, or its taking or acceptance, and the bid, and its taking or acceptance, are as valid as if subsection (1) had not been enacted.	7 8 9 10
‘373D Details for bidders record to be established by proof of identity	11 12
‘(1) An auctioneer, real estate agent or pastoral house must not enter a person’s name and address in a bidders record unless the person’s name and address are established by the production to the auctioneer, real estate agent or pastoral house of—	13 14 15 16 17
(a) proof of identity for the person; and	18
(b) if a person is bidding on behalf of another person, a letter of authority to bid on the person’s behalf specifying the person’s name and address and the number or other identifier of proof of identity for the person.	19 20 21 22 23
Maximum penalty—100 penalty units.	24
‘(2) The only proof of identity that may be used for a person for the purposes of an entry in a bidders record is—	25 26
(a) a motor vehicle driver’s licence issued in Australia that displays a photograph of the person; or	27 28
(b) an Australian passport; or	29
(c) any other proof of identity prescribed under a regulation.	30 31
‘(3) An auctioneer, real estate agent or pastoral house must not enter the relevant details, as defined in section 373B(4), of a person in a bidders record if the auctioneer, real estate agent	32 33 34

*Property Agents and Motor Dealers (Auctioneering
Practice) Amendment Bill 2004*

or pastoral house knows or has reasonable cause to suspect 1
that the details are false in a material particular. 2
Maximum penalty—100 penalty units. 3

‘373E Confidentiality of bidders record 4

- ‘(1) An auctioneer, real estate agent or pastoral house that makes a 5
bidders record, and any auctioneer to whom the contents of a 6
bidders record are disclosed under this part, must not— 7
- (a) disclose any information that the bidders record 8
contains, other than as authorised or required by this 9
Act; or 10
 - (b) use the bidders record or the information that it contains 11
for any purpose not authorised by this Act. 12
- Maximum penalty—100 penalty units. 13
- ‘(2) This section does not prevent the disclosure of information to 14
an inspector under a requirement imposed under this Act. 15

**‘Chapter 11B General provisions about 16
auctions of land 17**

‘373F Collusive practices at auction sales of land 18

- ‘(1) A person must not, in relation to the sale by auction of land, 19
by a collusive practice induce or attempt to induce any other 20
person— 21
- (a) to abstain from bidding generally; or 22
 - (b) to abstain from bidding for any particular lot; or 23
 - (c) to bid to a limited extent only; or 24
 - (d) to do anything else that might in any way prevent or tend 25
to prevent free and open competition. 26
- Maximum penalty—200 penalty units. 27

*Property Agents and Motor Dealers (Auctioneering
Practice) Amendment Bill 2004*

- ‘(2) A person must not as a result of a collusive practice, at a sale
by auction of any residential property or rural land—
- (a) abstain or agree to abstain from bidding generally; or
 - (b) abstain or agree to abstain from bidding for any
particular lot; or
 - (c) bid or agree to bid to a limited extent only; or
 - (d) do or agree to do anything else that might in any way
prevent or tend to prevent free and open competition.
- Maximum penalty—200 penalty units.
- ‘(3) An auctioneer must not sell land by auction unless a notice
complying with subsections (4) and (5) is given by the
auctioneer before the auction.
- Maximum penalty—20 penalty units.
- ‘(4) The notice must be in the following form with the notice
heading in a bold style—
- Penalty for collusive practices**
- It is an offence against the *Property Agents and Motor
Dealers Act 2000* for a person to do any of the following as a
result of a collusive practice, or to induce or attempt to induce
another person by a collusive practice to do any of the
following—
- (a) to abstain from bidding, or
 - (b) to bid to a limited extent only, or
 - (c) to do anything else that might prevent free and open
competition.
- Severe penalties may be imposed on persons convicted of
collusive practices.
- ‘(5) The notice must—
- (a) be clearly and legibly written;¹ and

¹ Under the *Acts Interpretation Act 1954*, section 36, “writing” includes any mode of representing or reproducing words in a visible form.

*Property Agents and Motor Dealers (Auctioneering
Practice) Amendment Bill 2004*

- (b) before and during the auction, be in a conspicuous position so as to be clearly visible to, and available for inspection by, anyone attending the auction.

‘(6) In this section—

collusive practice means a promise, express or implied, made by a person that if the person is the successful bidder at auction for land—

- (a) the person will give the person to whom the promise is made the right to elect to take over as purchaser through the auctioneer all or any of the land at the auction price; or
- (b) the ownership of all or any of the land will be decided by tossing or the drawing of lots or any other method.

‘373G False entry in auction record

‘(1) An auctioneer or an employee of an auctioneer must not knowingly enter, in any record kept or required to be kept by the auctioneer, as the purchaser of land sold by auction any name other than the name of the actual successful bidder for the land.

Maximum penalty for a first offence—

- (a) for an individual—20 penalty units; or
- (b) for a corporation—50 penalty units.

Maximum penalty for a second or subsequent offence—

- (a) for an individual—50 penalty units; or
- (b) for a corporation—100 penalty units.

‘(2) An auctioneer who employs a person who enters, in a record required to be kept by the auctioneer, as the purchaser of land sold by auction any name other than the name of the actual successful bidder for the land commits an offence.

Maximum penalty for a first offence—

- (a) for an individual—20 penalty units; or
- (b) for a corporation—50 penalty units.

*Property Agents and Motor Dealers (Auctioneering
Practice) Amendment Bill 2004*

Maximum penalty for a second or subsequent offence—	1
(a) for an individual—50 penalty units; or	2
(b) for a corporation—100 penalty units.	3
‘(3) However, subsection (2) applies only if the auctioneer knew that a name other than the name of the actual successful bidder was entered.	4 5 6
‘(4) Subsection (5) applies if the actual successful bidder at a sale by auction of land, as soon as practicable after the auctioneer conducting the sale has indicated the actual successful bidder, but not later than the day of the sale, informs the auctioneer—	7 8 9 10
(a) that the bidder bid on behalf of another person; and	11
(b) of the name of the other person.	12
‘(5) The auctioneer or employee does not commit an offence against this section because of the name of the other person being entered in a record as purchaser of the land.	13 14 15
‘373H Successful bidder at auction to supply information, and auctioneer to give notice that information must be supplied	16 17 18
‘(1) The actual successful bidder at a sale by auction of land must, as soon as practicable after the auctioneer conducting the sale has indicated the actual successful bidder, but not later than the day of the sale, give the auctioneer or an employee of the auctioneer—	19 20 21 22 23
(a) the bidder’s name, if the bidder bid on his or her own behalf; or	24 25
(b) the name of the person on whose behalf the bidder bid, if the bidder bid on behalf of another person.	26 27
Maximum penalty—20 penalty units.	28
‘(2) An auctioneer must not sell land by auction unless a notice complying with subsections (3) and (4) is given by the auctioneer before the auction.	29 30 31
Maximum penalty—20 penalty units.	32

*Property Agents and Motor Dealers (Auctioneering
Practice) Amendment Bill 2004*

- ‘(3) The notice must be in the following form with the notice heading in a bold style—
- Successful bidders**
- The actual successful bidder at an auction sale must give to the auctioneer or an employee of the auctioneer—
- (a) the bidder’s name, or
 - (b) the name of the person on whose behalf the successful bid was made.
- ‘(4) The notice must—
- (a) be clearly and legibly written; and
 - (b) before and during the auction, be in a conspicuous position so as to be clearly visible to, and available for inspection by, anyone attending the auction.’.

- Clause 5 Insertion of new s 602A**
- Chapter 18, after section 602—
- insert—*
- ‘602A Amendment of regulation by Property Agents and Motor Dealers (Auctioneering Practice) Amendment Act 2004 does not affect powers of Governor in Council**
- ‘The amendment of the *Property Agents and Motor Dealers (Auctioneering Practice Code of Conduct) Regulation 2001* by the *Property Agents and Motor Dealers (Auctioneering Practice) Amendment Act 2004* does not affect the power of the Governor in Council to further amend the regulation or to repeal it.’.

*Property Agents and Motor Dealers (Auctioneering
Practice) Amendment Bill 2004*

Part 3	Amendment of Property Agents and Motor Dealers (Auctioneering Practice Code of Conduct) Regulation 2001	1 2 3 4
Clause 6	Act amended in pt 3	5
	This part amends the <i>Property Agents and Motor Dealers (Auctioneering Practice Code of Conduct) Regulation 2001</i> .	6 7
Clause 7	Insertion of new s 2A	8
	After section 2—	9
	<i>insert—</i>	10
‘2A	Notes	11
	‘A note in the text of this regulation is part of the regulation.’	12
Clause 8	Insertion of note	13
	Schedule, before section 1—	14
	<i>insert—</i>	15
	‘ <i>Note—</i>	16
	Chapters 11A (Auctions of residential property or rural land) and 11B (General provisions about auctions of land) of the Act contain further provisions about the conduct of auctioneers, and other provisions about auctions.’.	17 18 19 20
Clause 9	Omission of sch, s 32 (Registration of bidders)	21
	Schedule, section 32—	22
	<i>omit.</i>	23