



**it's
about
the
house.**

Advice from Consumer and Business Services
about buying or selling a home.



Government of South Australia
Attorney-General's Department

Contents

Buying a home

Location! Location! 2

Sorting out your finances 3

Open inspections 3

When you've found the right one 5

Enjoyment, safety and value checklist 5

Land title 5

Making the purchase 6

Private treaty sale 6

Making an offer 6

Sale by auction 6

Buying off the plan 6

Rent-to-buy schemes or 'wrapping' 7

Form 1 statement 7

Sales contract 8

Contract terms and conditions 8

Other things to check 10

Selling a home

Type of sale 14

Selling a property yourself 15

Selling with an agent 15

Choosing an agent 15

Selling price 15

Sales agency agreements 16

Marketing and advertising 17

Withdrawal from sale 17

Extending a sales agency agreement 17

Once you've signed a contract 10

Insurance 10

Cooling-off 10

Buying property with another person 11

Recently built or renovated 11

Conveyancing 11

It's settlement 12

Cancelling the contract 12

Rates and taxes 12

Pre-settlement inspection 12

Stamp duty 12

Memorandum of Transfer 12

Taking possession 12

Title Insurance 12

Making the sale 18

Open inspections 18

Form 1 18

Receiving offers 19

Auctions 19

The sales contract 20

After the contract is signed 20

Cooling-off 20

Settlement 20

Disputes and complaints 20

Contacts 21

The information contained in this booklet is intended as a guide only and is not a comprehensive account of the law or a substitute for professional advice. Although the information in this booklet has been researched and presented with due care, Consumer and Business Services accepts no responsibility for any errors or omission which may have occurred within the publication.



Buying a home

Buying a home is one of the biggest financial decisions you make. Managed well, it can be a rewarding experience and a good investment.

When buying a home:

- > work out what you need and can afford before you commit to buying
- > understand your rights
- > shop around and ask questions
- > don't rush your decision making
- > be prepared to negotiate
- > read everything before you sign anything.

Location! Location!

When considering a property, remember to think about your personal needs. Do you need to be close to schools and public transport? Would you like to be close to shops, parks or recreation centres? Commercial premises in the area may also affect your decision.

Work out if you can afford a home in the areas you've chosen by checking real estate advertisements, recent sales and auction results.

Popular real estate websites offer advanced search options so that you only see properties that match your needs. Most sites offer lots of photographs and some can give you a virtual tour of a property.

Real estate agents can be very helpful, but remember they are being paid by and working for the vendor – not you as a buyer.

Sorting out your finances

You could waste a lot of time and energy looking at properties you can't afford. Before you start looking, decide how much you want to spend and make sure you will feel comfortable about your financial situation after the purchase.

It pays to be cautious when it comes to credit. Always ask questions about fees and charges and study the fine print on all contracts, brochures and information leaflets. Think about how repayments will affect your standard of living. Remember to plan for future commitments or changes in circumstances.

For more information visit moneysmart.gov.au

First home owner grants and incentives

There may be government incentives available to first home buyers – eg a one-off payment or assistance for low income earners. Contact Revenue SA or Housing SA to find out about incentives and if you are eligible.

Open inspections

Go to as many open inspections as you can to help you decide the style of home you prefer, what is important to you in a home and what you can live without.

Consider:

- > home size – whether you need a unit, apartment or a house
- > how many bedrooms you need
- > how your needs may change over time
- > yard size – low or high maintenance gardens, and outdoor living areas
- > whether you want an older or newer house
- > the cost and time for any renovations needed
- > council regulations on renovations or extensions.

Property searches

The South Australian Integrated Land Information System (SAILIS) can give you information about properties, such as:

- copies of titles
- property valuation details
- survey plans and survey information
- building details search.

A search fee is payable for some services. Visit sailis.sa.gov.au

When you've found the right one

When you find a home you like, take your time and be thorough with your inspection. Ask the agent about any restrictions such as easements or caveats that could affect how you alter or use the property.

Keep an eye out for sign of potential structural problems like:

- > cracked walls (inside or outside)
- > sloping floors
- > damp brick walls
- > mouldy walls, lifting tiles, peeling paint or pools of water in wet areas
- > blisters or bubbles on paintwork
- > sagging roof framing, or cracked or broken roof tiles.

See page 9 for information about building and pest inspections.

Enjoyment, safety and value checklist – Form R3

The vendor or agent must have available a buyer's information notice (form R3) which is a checklist of things that could affect your enjoyment, safety or value of the property – eg asbestos, septic tank or close to a live music venue. The checklist also prompts you to find out about things like energy efficiency, rain water connections and possible illegal additions.

Land title

In South Australia, there are three main types of property titles:

- > Torrens title – a certificate of title exists for every separate piece of land. If you buy a home on its own block of land it is likely to be Torrens title. The certificate shows the volume and folio number, ownership details, easements and encumbrances including mortgages, leases and other interests in the land.
- > Strata title – divides land into units and common property. The unit boundaries are usually defined by parts of the building – ie walls, floors and ceilings. All owners are responsible for the common property. A strata corporation administers and maintains the common property and all unit owners are automatically members of the corporation. New strata plans ceased on 1 June 2009. New divisions are now community title.
- > Community title – divides land into lots and common property.

- In a community scheme, lots are defined by surveyed land measurements. Each lot owner is responsible for maintaining and insuring any structure on their own lot.
- In a community strata scheme, boundaries are defined by structures (usually parts of the building). The structure itself is common property and is maintained by the corporation.

Strata or community titles can have restrictions on making alterations and keeping pets. You may be responsible for the cost and maintenance of common areas such as gardens and parking areas.

The agent or owner should have copies of the title and any documents that show restrictions or encumbrances on the land. A solicitor or conveyancer will be able to advise you on how the title will affect your ownership.

Making the purchase

Some people choose to sell a property themselves, others will engage an agent or other expert. The sale may be by private treaty or by auction.

Private treaty sale

A private treaty sale is when the vendor sets a price for the property and interested buyers can put in an offer. The vendor price does not need to be disclosed to potential buyers. The vendor negotiates (often through an agent) with potential buyers until an agreement is reached.

Agents will usually:

- > take your details and tell you about properties you might be interested in buying
- > answer any questions about listed properties
- > arrange inspections
- > provide a copy of a Form 1 (vendor's statement) if you ask for it
- > pass on your offer to the seller
- > organise for the contract to be signed.

Agents, auctioneers and sales representatives must be registered and carry a photographic registration card.

Making an offer

Your offer must be in writing and signed, using the form that the agent gives you. The agent may tell you someone else has made an offer. You can ask them to confirm this in writing, but the agent does not have to tell you the amount of another offer. All copies of signed offers must be kept by agents, for Consumer and Business Services to inspect if there is a complaint.

Consider if you will offer a lower price and negotiate up, or offer your best price first. The vendor may accept another offer without giving you a chance to increase your offer. In some cases, the vendor will not negotiate at all.

You can arrange for a solicitor, conveyancer or buyer's advocate to negotiate on your behalf (usually for a fee) if you do not feel confident negotiating with the selling agent.

Your offer is not binding until a sale contract is signed.

Sale by auction

The vendor will set a reserve price – the lowest price they are prepared to accept – but it is up to the bidders to determine the price they are prepared to pay.

If you wish to bid you must register as a bidder, by giving the agent your details and providing proof of identity. If you don't feel comfortable about bidding, you can arrange for someone else to bid on your behalf. They will need to register by providing their details, their proof of identity and a document (signed by you) authorising them to bid for you.

The vendor, or a person acting on their behalf, cannot bid at the auction. This is called 'dummy bidding' and has a maximum fine of \$20,000. However, the vendor is allowed up to three 'vendor bids' which are made by the auctioneer. They must be less than the reserve price and must be clearly announced as a vendor bid.

The vendor's statement, or Form 1 (see page 7) and a buyers information notice (Form R3) must be available:

- > at the auctioneer's office or the vendor's agent, at least three business days before the auction
- > at the auction site, at least 30 minutes before the auction is due to start.

The agent must tell potential buyers where and when they can view the Form 1. They could do this by newspaper advertisement, in promotional material or on the 'for sale' signboard.

The auction ends when the highest bid has been made. If bidding does not reach the reserve price the vendor may decide to:

- > not sell the house
- > negotiate a sale with any of the bidders
- > place the home for sale on the open market.

Contract documents are normally signed and a deposit paid on the day of the auction. There is no cooling-off period for auction sales.

Any inspections should be conducted before the auction – eg building or pest inspection. And any special conditions must be approved when you register for the auction – eg deposit size, settlement date.

Buying off the plan

Sometimes properties are advertised for sale before they are built. You may save money buying off the plan, but there are some risks. Read the contract terms carefully and get independent legal advice to make sure you understand the risks.

Questions to ask:

- > Are there any preconditions to this contract becoming binding?

- > What are my rights to change my mind and get out of the contract? When do those rights end?
- > Can the developer or I make any changes to the home after I have signed the contract?
- > Has development approval been granted? What happens if approval is not given, or if the plans have to be changed to get approval?
- > Is this a community scheme? If so, what are the details of the scheme and what are the by-laws?
- > Who owns the land?
- > Who is building the property?
- > Will it be completed on time? What are my rights if it is not?
- > When do I have to pay the deposit? When is the balance due?
- > Can the price change after I have signed the contract?

Rent-to-buy schemes or 'wrapping'

'Rent-to-buy schemes' are common in other states and are often promoted at property seminars. They are also known as 'wrapping' or 'lease-options' with the property sold by instalments on a rent-to-buy contract. These schemes often target buyers that do not qualify for loans with home loan providers.

'Rent-to-buy schemes' are risky. Ownership doesn't pass to you until all money has been paid. The contract may



state that you will lose any money you've already paid if you fail to make a payment on time. In South Australia, contracts for the purchase of real estate by instalment are not legally binding. Seek legal advice before entering a rent-to-buy contract.

Form 1 statement

A Form 1 statement is a legal document. It provides information about the property's title, mortgages on the property, easements, zoning and outgoings eg water rates. It does not include information about:

- > encroachments
- > the condition of any buildings

- > whether they comply with building regulations
- > if measurements on the title are accurate.

It is your responsibility to find out about anything not covered in the statement. Your solicitor or registered conveyancer can help you.

The Form 1 is signed by the vendor and made available to interested buyers. The Form 1 must be factually accurate and complete. You may be able to withdraw from the sale, or take legal action, if information is incorrect or insufficient.

Sales contract

The contract outlines all the terms and conditions of the sale. You can make a contract subject to an event – eg getting finance, if you need time to finalise things.

The contract will include details such as:

- > name and address of the vendor
- > your name and address
- > details of the land for sale
- > chattels included and excluded from the sale
- > sale price (including GST if applicable)
- > deposits
- > settlement date
- > exceptions
- > tenancy details (if applicable)
- > any conditions of the sale (including finance conditions).

You can include a condition that the vendor must sign the contract by a certain date. If the contract is not signed by that date, the contract will not be valid.

Read the contract and make sure you understand it before signing. Once the contract is signed by you and the vendor and the Form 1 is provided to you, the cooling-off period (two clear business days) will begin. When the cooling off period ends and any conditions in the contract have been met, the contract becomes legally binding.

Contract terms and conditions

Chattels

Chattels are things that don’t form part of the real estate that could be included in the sale. Chattels excluded from the sale

may also be listed on the contract – eg TV aerial. Generally, all movable items such as personal effects, furniture and garden ornaments are excluded unless specified.

If you want to buy any chattel, ask for the item to be noted in the contract. If the vendor wants to take any chattel that is affixed to the property, include a condition in the contract that the vendor repairs any damage caused by the removal and that the surface is restored – eg matching paint.

Deposit

Sometimes the agent can ask you for a deposit (\$100 maximum) when you make an offer. This holding deposit will be given back to you if the offer is not accepted. However, if you sign a contract and then ‘cool off’ within the cooling-off period, the vendor can keep your holding deposit.

A further deposit is paid when the cooling-off period ends or on auction day. The amount is negotiable but may be as much as 10%. You can negotiate a lower amount before auction or arrange to provide a bank guarantee.

Be wary of paying a big deposit if the vendor isn’t using an agent. By law, the agent must pay the deposit into a trust account.

You cannot simply ‘change your mind’ after the cooling-off period has finished as you will potentially have breached the contract and could lose your deposit. Unless the vendor has breached the contract in some way you may be required to pay further compensation and should seek legal advice prior to making any decisions.

Easements

An easement is a right over land, granted to a third party, usually for underground pipes or wiring. It is common for blocks of land in major land developments to have easements for stormwater or sewerage pipes. Easements should be noted on the Form 1 and certificate of title. You cannot



faults. They may also check things such as electrical wiring, plumbing and roof spaces.

Ask the consultant what will be checked, as not all consultants will examine things such as air conditioners or termite activity. A separate specialised inspection may be needed. Ask for a written quote and contract outlining the scope and price.

The consultant will provide a written report identifying faults in the property, whether they can be repaired and the likely cost of repairs. The report may also highlight any unsafe or unauthorised renovations and extensions. You may be able to use this report to negotiate conditions in the contract as well as the price. There will be a cost for the report, but in the end it could save you thousands of dollars.

If the house has recently been renovated or extended, check with the local council to make sure a building permit was obtained. Illegal alterations could become your responsibility.

Also check for proof of ongoing termite inspections. If no proof exists, ask a licensed pest controller for a termite report. If buying at auction you will need to arrange a building and pest inspection before the auction day.

build a solid structure over an easement without approval. If you do, and they want access to the easement, you may be required to remove the structure at your own expense.

Encumbrances

An encumbrance sets out the rules for what you can and cannot do with the land. For example, you may not be allowed to put a metal fence or a galvanised shed on the property. Make sure you read and understand any encumbrance before you sign the contract.

Tenants

If tenants currently live there, the lease period and details must be recorded in the Form 1. Depending on the rental agreement you may be able to seek vacant possession as a condition of sale, but you must record the condition in the contract. For more information about residential tenancies contact Consumer and Business Services on 131 882 or visit sa.gov.au/tenancy/renters

Conditions

You can negotiate with the vendor to make the sale subject to certain conditions – eg satisfactory finance, sale of an existing property, satisfactory building inspection or pre-settlement inspection. You should talk to a solicitor or conveyancer about the need for and how to note conditions. For example, stating ‘subject to finance’ does not automatically imply a lending institution of your choice, or the amount.

An auction contract of sale is generally unconditional. However, some terms eg deposit amount or settlement date could be negotiated through the agent before the auction.

Building and pest inspection

You could make the sale subject to a satisfactory building inspection report. Ask an independent and appropriately skilled building consultant, surveyor or architect to provide a building report. They will know what to look for and can see through cosmetic improvements covering up



Once you've signed a contract

Other things to check

Asbestos used in house construction

Asbestos products were commonly used when building South Australian homes. However, all new uses of asbestos products have been banned in Australia since 2003 due to health concerns.

Asbestos cannot affect your health unless you breathe in fibres that have been released into the air. As long as asbestos products are not disturbed, your health should not be at risk.

Any work activity that could produce asbestos dust – eg demolition, renovation, cutting, sanding or drilling – should only be done using the right safety procedures. Removal of asbestos product should only be done by a licensed asbestos removalist.

For advice and information about asbestos visit www.asbestos.sa.gov.au.

Swimming pool safety

If you are buying a home with a swimming pool there are some safety issues to keep in mind:

- > The pool shell needs to be waterproof and have no cracks or other defects.
- > Skimmer boxes (which are part of the filter system) for older pools have caused serious injuries. If a person can sit in the box, or there appears to be damage to it, you should replace it before using the pool.
- > There must be a continuous safety barrier (eg a fence) which restricts access to the pool by young children. Gates should close properly.

The local council is responsible for enforcing safety requirements for above-ground and in-ground pools.

Checking boundaries

The agent (or solicitor or conveyancer) should give you a copy of the title certificate or strata/community plan so you can check that all measurements and boundaries are correct, and that fences and structures do not encroach onto neighbouring land.

Insurance

The property might not be covered by the vendor's insurance once a contract is signed. Arrange building insurance, effective from the date of signing the contract. Your lending institution will usually need you to take out insurance on the property to safeguard their interest as mortgagee.

Cooling-off

Private sale

In South Australia, you have a cooling off period in which to conduct further inspections or reconsider the purchase. The Form 1 gives details about cooling off. No reason for cooling off has to be given.

The cooling-off period expires at the end of the second clear business day after:

- > the contract was made (if you received the Form 1 prior to making the contract), or
- > the Form 1 was given to you (if you received the Form 1 after making the contract).

You cannot cool off once settlement has occurred.

If the property is to be auctioned

There is no cooling off period if you buy at auction. However, if you make a successful offer before the auction, a cooling-off period does apply unless you waive that right. Get independent legal advice before you waive any rights. You

also have no right to cool off if you buy after the auction and on the same day the auction was held.

Buying property with another person

If you are buying with another person you must decide whether to hold the land as:

- > a 'joint tenant', where each person owns all of the property jointly and there is one title containing the names of all owners. If one of them dies, the property automatically passes to the other(s).

or

- > 'tenants in common', where each party holds a set share of the whole property. Tenants in common can sell their shares or leave them to someone in their will.

Seek professional advice from a solicitor or conveyancer if you are unsure about these forms of ownership.

Recently built or renovated

If you buy a house that was built or renovated within the last five years some warranties can transfer to you. Ask for a copy of the certificate of building indemnity insurance given to the owner when the work was done. This will protect you if the builder dies, disappears or becomes bankrupt in the five years after the work was completed.

If the building or renovations were coordinated by the owner (where the owner contracted directly with builders and tradespeople) make sure you get a list of the traders so you can track their warranties if needed.

Conveyancing

It is highly recommended that you organise a solicitor or conveyancer so that you can get professional legal advice about your rights and responsibilities under the contract before signing it or before the cooling off period ends. A conveyancer will ensure that the property is transferred from the vendor to you legally and financially.

A conveyancer will:

- > offer you advice about the contract and Form 1
- > check on outstanding charges and calculate the rates and taxes you need to pay
- > calculate the total amount needed to meet all expenses
- > consult with your lending institution about the progress of your loan application
- > arrange for payment, on your behalf, of stamp duty and other transactions
- > search and prepare documentation and represent you in the preparation and settlement of your transaction.



It's settlement

Settlement is usually four to six weeks after contracts are signed, but can be negotiated between you and the vendor. The settlement date is recorded in the contract. At settlement the balance of the purchase price is paid and you receive the title to the property. This is an official process done by your legal and financial representatives.

Cancelling the contract

If the cooling-off period has ended, and subject to any relevant special conditions, the contract is binding. If you wish to get out of the contract, even before settlement, you may have to pay compensation to the vendor. The amount is usually based on the cost to re-sell the house, including any loss on the subsequent sale. Read your contract carefully to understand what could happen if you break the contract. If you do not want to go ahead with it, you should get independent legal advice as soon as possible.

Rates and taxes

At settlement all costs such as rates will be adjusted between the vendor and you. The vendor is responsible for rates up until and including the day of settlement. You are responsible from the day after settlement.

Pre-settlement inspection

The vendor must hand over the property in the same condition as when you signed the contract. You can inspect the house at any reasonable time, if you stated in the contract that the sale was subject to a pre-settlement inspection.

Stamp duty

Stamp duty is a state government tax. Some stamp duty exemptions or concessions may apply. Contact Revenue SA on 8226 3750 for details or visit revenuesa.sa.gov.au

A stamp duty calculator is included on the website to help you estimate the amount.

Memorandum of Transfer

A Memorandum of Transfer is the document that transfers the land from the vendor to you. It is lodged with the Lands Titles Office by your solicitor or conveyancer at settlement.

Taking possession

After settlement you can arrange to pick up the keys to your new home! If you wish to access the property beforehand you may be able to negotiate this with the vendor through their solicitor or conveyancer.

Title Insurance

Taking out a Title Insurance Policy when making possibly the single biggest investment of your life should be considered. For a single premium, title insurance protects against claims for various unknown and (disclosed) known risks that threaten ownership and use (including structures) of the property until its resale.

Proving your identity

You will need to have a face-to-face interview where you must show legal documents (such as a passport and driver's licence) to prove your identity. This can be done through your solicitor or conveyancer, or contact the Land Services Group sa.gov.au/landservices for further information.



Selling a home

Selling a home is a very big decision and it's important that you understand your rights and how to exercise them.

Type of sale

You can sell your property yourself or hire an agent to negotiate a sale by private treaty or by auction. Researching the market and talking to other people about their experiences can help you work out what will work best for you.

Selling a property yourself

If you choose to sell your property without an agent, you may save money as you don't have to pay any agent's commission. Inspect similar properties and get recent sales figures for similar properties in your area.

You will need to do the searches required under the *Land and Business (Sale and Conveyancing) Act 1994* and fill out the vendor statement. You will also need to arrange and pay for your own advertising, be available to answer phone calls from potential buyers and conduct your own open inspections to show them the property.

It is a good idea to ask people to put an offer in writing, including counter offers. The contract must be in writing for it to be legally valid. You should get legal advice about the contract, Form 1 (vendor's statement) and any other legal documentation. Your solicitor or conveyancer can assist with preparing the contract and vendor statement as well as obtaining the required searches.

Selling with an agent

The agent will charge a fee for service. This may be as commission (eg percentage of the sale price), a set fee or a combination of both.

The agent should always act in your best interest and operate with good business practices.

You can expect the agent to:

- > give an estimated selling price for your property
- > advise on the type of sale (private treaty or auction)
- > advertise and market the property, and give you a marketing plan
- > organise and attend open house and other inspections
- > attract potential buyers
- > pass on offers to you
- > if selling by auction, organise and conduct the auction or arrange an auctioneer
- > prepare and arrange signing of the contract.

Your agent must not receive a beneficial interest. This means they are not allowed to buy your house by private treaty, either personally or through an associate – eg an employee or family member. If they wish to buy the house they must apply to the Commissioner for Consumer Affairs.

The Commissioner will carefully consider the application, and exemptions are only granted in exceptional circumstances.

Choosing an agent

Get advice from at least three agents to help you decide on the right person to sell your home. Agents, including companies that are agents, must be registered with Consumer and Business Services (CBS). You can check whether the land agent or company is registered at cbs.sa.gov.au

Agents and sales reps must carry a registration card (this can be a physical or digital registration card).

Before the agent can act for you, you will need to enter into a written contract with them (this is called a sales agency agreement). See page 16 for more information.

Selling price

You will want to get the best price possible for your property. But if you set the price too high it may take a long time to find a buyer, or the property may not sell at all. There are also rules around setting and promoting the selling price.

When you liaise with agents to consider contracting their services, they will give you an estimated selling price for your property. They must give you recent sales statistics of similar properties and any other information to show how they worked out their estimate of the selling price.



When you sign a sales agency agreement with an agent, their genuine estimate of the selling price must be included in the agreement.

To help you decide on the lowest price you are prepared to accept, you should:

- > use an agent's estimated selling price as a guide
- > research and get to know sale prices in your area
- > consider seeking a valuation by an independent, qualified valuer.

It is important to be realistic and not allow emotion to cloud your judgment. This will help you avoid the risk of buying another property based on unrealistic expectations of the selling price of your property.

Once you have set your selling price:

- > For auction sales, you can't increase your acceptable selling price in the sales agency agreement.
- > For private treaty sales, you can change the price, but this will affect any promotion of the sales price.

More information about the rules for promoting a price to potential buyers is provided in the section 'Marketing and advertising' on page 17.

Sales agency agreements

There must be a signed written agreement (sales agency agreement) between you and the agent, authorising them to act for you. Before you sign, the agent must give you a guide which explains your rights and obligations under the agreement. The agent must give you a copy of the agreement once signed, or within 48 hours if you both agree.

The sales agreement must state:

- > the method of sale (auction or private treaty)
- > the duration of the agreement
- > how the agreement may be terminated
- > marketing strategy and associated fees
- > agent's commission rate
- > services to be charged separately and their cost (eg advertising)
- > the nature and amount of any commissions, rebates or discounts the agent will receive in relation to separate services
- > the agent's estimated selling price (expressed as a single figure - price ranges or words cannot be used).
- > the price you would accept for the sale of the property.

Any fees and terms of the agreement may be negotiated. For example, there could be a commission penalty if the final selling price is less than the estimated sale price, or a bonus if the final price is higher.

Once signed by you and the agent the agreement is legally binding. There is no right to cancel it, unless both parties agree or either party breaches their duties under the agreement. Keep a copy and refer to it if you have any questions about your rights or obligations or if any problems arise.

Any changes to the agreement must be in writing and signed by you and the agent. However, you cannot increase the acceptable selling price for auction sales.

There are two main types of agency agreements:

- > sole agency agreements
- > general (or open listing) agreements.

Sole agency agreements

Sole agency agreements are the most common type of agreement. This will give the agent the exclusive right to sell your property and they will be entitled to the agreed commission. Even if you end up

selling the house yourself, you will normally still have to pay the agent their agreed commission.

General or open listing agreements

For a general open agency agreement, the agent is only entitled to the commission if they sell the property. Depending on the terms of the agreement, you can open list your property with several agents and you can cancel the agreement at any time by giving them written notice. Most agents will not offer a general agency agreement, because they may be left with the marketing costs if another agent sells the home.

Marketing and advertising

Check what an agent will charge for marketing your property. Some agents charge a low commission rate but charge more for marketing and advertising. You may be charged the up-front cost of advertising with a particular publication, but agents usually get a rebate as they place large numbers of advertisements.

Ask the agent about the rebate amount they expect to receive. The agent cannot profit from these expenses. They may issue a refund or adjust the amount you pay at the end of the sale.

Any information you give the agent about your property must be factual and up-to-date. It is illegal to misrepresent a property for sale orally, in writing or with photographs. If a buyer can show that a property has been misrepresented, they could take legal action.

The price that you and the agent state in the sales agency agreement will affect how the property is marketed. Agents must not promote a price that is less than the agent's estimated selling price or your acceptable selling price.

For auction sales, you cannot increase the acceptable selling price in the sales agency agreement.

For private treaty sales, you can change the acceptable selling price. This must be recorded, dated and signed by you and your agent in the sales agency agreement.



If you increase your price then you will need to increase the price you promote to potential buyers. If you lower your price you can lower the price you promote.

Withdrawal from sale

With sole agency agreements, if you withdraw your property from sale before your agreement with an agent has ended, there may be a clause in the contract that requires you to pay a cancellation fee. If you cancel a contract early and list the property with another agent there may be consequences. For example, you may have to pay commission to the first agent even though a second agent sold the property. If the agreement with an agent expires or is terminated, the agent may still be entitled to commission if the property is sold to a buyer who was introduced by them. Seek legal advice if you want to terminate an agreement.

Extending a sales agency agreement

A sales agency agreement can be extended for 90 days if:

- > the agent gives you a Notice of Expiry within 14 days of the original agreement expiry date, and
- > the extension is recorded in writing, signed and dated by you and the agent.

If the agent gives you this notice you can:

- > give the agent written notice that you do not wish to extend the agreement.
- > agree to extend the agreement (for 90 days)
- > do nothing in which case the agreement is extended automatically (up to 180 days in total).

The agreement can only be extended once. After that, a new agreement needs to be made. During the extension period, you can end the agreement by giving the agent at least 7 days' notice in writing. No reason needs to be specified.

Making the sale

To get the best price for your property, make the time and effort to present it in the best way possible. Some agents offer a service to help with decorating, painting, gardening etc to have your home looking its best. But remember, this is a service that you will likely be charged for.

Open inspections

Advertising will include the times your property is open for inspection. This will usually be for 30 to 45 minutes once a week. Buyers may wish to arrange an alternative inspection appointment.

Your agent may ask whether you wish to make it a condition of entry that potential buyers give the agent their contact details. This may help protect against theft, but can also deter people from inspecting your house as they do not wish further contact from the agent.

Lock all your valuables away and hide from view anything you don't want the public to see.

While you will want to present your property in the best possible light, you must not cover up, misrepresent or in any way mislead a buyer about the true nature of your property.

Form 1

The buyer must be given a Form 1 statement (vendor's statement) setting out the cooling-off rights and important information about the property eg title details, mortgages on the property and zoning. Your agent will need to certify that the statement is complete and accurate.

If you are selling the house yourself but the buyer has an agent acting for them, their agent must certify that the Form 1 you provide is complete and accurate.

If neither of you have an agent, it is your responsibility to make the inquiries as required by law. You will be responsible to ensure that the statement is complete and accurate.

The Form 1 must:

- > for a private treaty sale – be given to the buyer at least 10 clear days before settlement
- > for an auction sale – available at the auctioneer or agent's place of business for three business days immediately prior to the auction and at the place of auction for 30 minutes immediately prior to the auction.

Your agent must take reasonable steps to advise prospective purchasers where and when the Form 1 can be inspected. See page 18 for more information.

The Form 1 must be accurate when it is given to the buyer. If there are any changes, a notice of amendment must be given to the buyer. This alters the buyer's cooling-off rights and gives them a further two clear business days from service of the amended notice.

Receiving offers

All offers from interested buyers must be in writing, on a particular form, and signed by the person making the offer.

You can choose to:

- > accept the offer – the agent will then prepare the contract of sale
- > reject the offer
- > ask your agent to negotiate with the person to increase their offer.

An offer is not binding until a sale contract has been signed by all parties.

Auctions

Your agent will usually arrange the auctioneer for you. Auctioneers must be registered and carry their registration card issued by Consumer and Business Services. This can be a physical or digital registration card.

Before the auction you will need to set a reserve price in writing, which authorises the auctioneer to sell the property to the highest bidder at that price, or higher. The reserve must not be more than 110% of your acceptable selling price stated in the sales agency agreement. The agent must keep written records of the reserve.

By law, you cannot increase your acceptable selling price. If you wish to increase the acceptable price you must wait until the sales agency agreement has expired, or make a new agreement with a different agent.

The agent must keep a record of all bids made throughout the auction. It is an offence for you to 'dummy bid' or arrange someone to dummy bid, or for the auctioneer to knowingly take a dummy bid. However, you can have up to three 'vendor bids'. They must be announced by the auctioneer as vendor bids and must be less than the reserve price.

If the highest bid does not reach the reserve, you could lower the reserve to the amount of the highest bid to sell the property. If you choose not to lower the reserve, the agent can try to negotiate with any of the bidders after the auction. If a sale is achieved in this way on the day of the auction, the purchaser will not have the right to cool off.

If the property still does not sell and is passed in, it can be placed on the market for sale by private treaty.

You may wish to attend a few auctions yourself so you get an understanding of how the process works.

The sales contract

For a private treaty sale, the buyer may make the contract subject to certain conditions. For example, the sale may be subject to a satisfactory building inspection, selling their existing house, or obtaining finance. You may prefer to accept a slightly lower offer if the contract is not subject to any conditions.

Talk to your agent about any appliances, furniture and personal effects you do not want included in the sale. Generally, items such as hard-wired kitchen appliances and curtains and blinds are included.

Set a settlement date in the sale contract (before the auction if the property is sold at auction). The settlement date is the date when the sale is finalised and the buyer can move into the property. The buyer, or bidders at auction, may want to negotiate the settlement date with you.

After the contract is signed

Cooling-off

A buyer is entitled to a cooling-off period of two clear business days during which they can withdraw from the sale without penalty. However, there is no cooling-off period if they are buying at auction.

The cooling-off period starts after the contract is signed, or the Form 1 is given, whichever comes last. It is against the law for an agent to be paid commission if a buyer cools off.

There is no cooling-off period for sellers so you will be bound by the contract for sale once you and the buyer sign it.

Settlement

Contact a conveyancer or solicitor to arrange settlement. A conveyancer will provide advice about your rights and responsibilities under the contract and Form 1, calculate the adjustment of rates and taxes, and prepare all the documents

necessary to complete the transaction and settlement. Your conveyancer will also liaise with the buyer's conveyancer and contact you and your financing institution (if relevant) regarding the final payment.

Proof of identity

You will need to have a face-to-face interview where you must produce documents (such as a passport and a driver's licence) to prove your identity. This can be done through your solicitor or conveyancer, or alternatively contact the Land Services Group sa.gov.au/landservices for further information.

Disputes and complaints

If you have a complaint, first try to resolve it with the agent. If that is unsuccessful, contact Consumer and Business Services on 131 882 for advice.

Contacts

Consumer and Business Services

91 Grenfell St
Adelaide SA 5000
Tel: 131 882
cbs.sa.gov.au

Legal Services Commission

159 Gawler Place
Adelaide SA 5000
Tel: 1300 366 424
lsc.sa.gov.au

Real estate and conveyancing professionals

Australian Institute of Conveyancers (SA) Inc

L3, 255 Pulteney St
Adelaide SA 5000
Tel: (08) 8359 2090
aicsa.com.au

Real Estate Institute of South Australia

REI House
249 Greenhill Road
Dulwich SA 5065
Tel: (08) 8366 4300
Email: reisa@reisa.com.au
reisa.com.au

Society of Auctioneers and Appraisers (SA) Inc.

22 Greenhill Rd
Wayville SA 5034
Tel: (08) 8372 7830
Email: society@auctioneers.com.au
auctioneers.com.au

Building and land advice

Archicentre

Tel: 1300 134 513
archicentreaustralia.com.au

Asbestos advice and information

asbestos.sa.gov.au

Australian Institute of Building Surveyors

Tel: 1300 312 427
aibs.com.au

Energy Advisory Service

ANZ Building, Level 8,
11 Waymouth Street
Adelaide SA 5000
Tel: (08) 8204 1888
Email: energyadvice@sa.gov.au
sa.gov.au/energy

Land Services and Lands Titles Office

Ground floor, 101 Grenfell Street
Adelaide SA 5000
Tel: (08) 8226 3983
Free call: (country only) 1800 648 176
Email: LSCustomerSupport@sa.gov.au
sa.gov.au/landservices

Local Government Association

148 Frome Street
Adelaide SA 5000
Tel: (08) 8224 2000
Email: lgasa@lga.sa.gov.au
lga.sa.gov.au

South Australian Integrated Land Information System (SAILIS)

(part of Land Services)
Tel: (08) 8226 3983
Email: LSCustomerSupport@sa.gov.au
sailis.sa.gov.au

Finance and fees

Homestart Finance

Level 5, 169 Pirie St
Adelaide SA 5000
Tel: 1300 636 878
homestart.com.au

Revenue SA

Tel: (08) 8226 3750
Email: revenuesa@sa.gov.au
revenuesa.sa.gov.au

