

Version No. 003
Sale of Land Regulations 2005

S.R. No. 28/2005

Version incorporating amendments as at 30 June 2008

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1 Objectives

The objectives of these Regulations are—

- (a) to regulate the conduct of public auctions of land; and
- (b) to prescribe standard rules for the conduct of public auctions of land; and
- (c) to prescribe information statements that must be made available for inspection at public auctions of land.

2 Authorising provision

These Regulations are made under section 48 of the **Sale of Land Act 1962**.

3 Commencement

These Regulations come into operation on 1 July 2005.

4 Revocation

The Sale of Land Regulations 2004¹ are **revoked**.

5 Standard rules for the conduct of auctions for the sale of land

- (1) A public auction for the sale of land must be conducted in accordance with the rules set out in Schedule 1 unless subregulation (2), (3) or (4) applies.

- (2) A public auction for the sale of land must be conducted in accordance with the rules set out in Schedule 2 if there are 2 co-owners of the land and one of the co-owners intends to bid to purchase the interest of the other co-owner in the land.
- (3) A public auction for the sale of land must be conducted in accordance with the rules set out in Schedule 3 if there are more than 2 co-owners of the land and one or more (but not all) of the co-owners intend to bid to purchase the interest of the other co-owner or co-owners in the land.
- (4) A public auction for the sale of land must be conducted in accordance with the rules set out in Schedule 4 if there are 2 or more co-owners of the land and each of the co-owners intends to bid to purchase the interest of the other co-owner or co-owners in the land.

6 How information relating to the auction is to be made available

- (1) The auctioneer of land at a public auction to which regulation 5(1) applies must ensure that, in addition to the requirements of section 43 of the **Sale of Land Act 1962**, the following items are available for public inspection a reasonable time before the auction starts and in any case not less than 30 minutes before the auction starts—
 - (a) the rules set out in Schedule 1; and
 - (b) the information in Schedule 5; and
 - (c) any other conditions applying to the auction.

Penalty: 5 penalty units.

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- (2) The auctioneer of land at a public auction to which regulation 5(2) applies must ensure that, in addition to the requirements of section 43 of the **Sale of Land Act 1962**, the following items are available for public inspection a reasonable time before the auction starts and in any case not less than 30 minutes before the auction starts—
- (a) the rules set out in Schedule 2; and
 - (b) the information in Schedule 5; and
 - (c) any other conditions applying to the auction.

Penalty: 5 penalty units.

- (3) The auctioneer of land at a public auction to which regulation 5(3) applies must ensure that, in addition to the requirements of section 43 of the **Sale of Land Act 1962**, the following items are available for public inspection a reasonable time before the auction starts and in any case not less than 30 minutes before the auction starts—
- (a) the rules set out in Schedule 3; and
 - (b) the information in Schedule 5; and
 - (c) any other conditions applying to the auction.

Penalty: 5 penalty units.

- (4) The auctioneer of land at a public auction to which regulation 5(4) applies must ensure that, in addition to the requirements of section 43 of the **Sale of Land Act 1962**, the following items are available for public inspection a reasonable time before the auction starts and in any case not less than 30 minutes before the auction starts—
- (a) the rules set out in Schedule 4; and
 - (b) the information in Schedule 5; and
 - (c) any other conditions applying to the auction.

Penalty: 5 penalty units.

- (5) The auctioneer of land at a public auction must ensure that the rules set out in Schedule 1, 2, 3 or 4 that are made available at the auction are printed or typed—
- (a) in plain text in a font of at least 20 point; and
 - (b) in a form that is easily legible; and
 - (c) in a manner that provides a clear contrast between the typeface of the rules and the background on which they are printed or typed.

Penalty: 5 penalty units.

- (6) The auctioneer of land at a public auction to which the rules set out in Schedule 1 apply must ensure that it is made clear which of the 2 alternatives to rule 1 in Schedule 1 is to apply at the auction.

Penalty: 5 penalty units.

7 Auctioneer to provide certain information orally before bidding starts

- (1) Before accepting any bid at a public auction for the sale of land, the auctioneer of the land must audibly state—
- (a) that the auction will be conducted in accordance with the rules and any additional conditions that were made available for inspection before the start of the auction; and
 - (aa) that the auction rules prohibit an auctioneer from accepting bids or offers for a property after the property has been knocked down to the successful bidder; and
 - (b) that the auctioneer must indicate bidders on request; and

Reg. 7(1)(aa)
inserted by
S.R. No.
47/2008 reg. 5.

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- (c) that the law—
- (i) prohibits false bids; and
 - (ii) prohibits major disruptions by bidders; and
 - (iii) prohibits bidders attempting to prevent others from bidding; and
 - (iv) provides for fines for this conduct.

Penalty: 10 penalty units.

- (2) If the rules set out in Schedule 1 apply to a public auction of land and those rules permit the auctioneer to bid on behalf of the vendor, the auctioneer must, in addition to the requirements in subregulation (1), before accepting any bid audibly state—
- (a) the words the auctioneer will use to indicate during the auction that he or she is making a bid on behalf of the vendor; and
 - (b) that by law only the auctioneer can make a vendor bid.

Penalty: 10 penalty units.

- (3) If the rules set out in Schedule 1 apply to a public auction of land and those rules do not permit the auctioneer to bid on behalf of the vendor, the auctioneer of the land must, in addition to the requirements in subregulation (1), before accepting any bid at the auction audibly state that the rules for the conduct of the auction do not permit the making of a bid on behalf of the vendor.

Penalty: 10 penalty units.

- (4) If the rules set out in Schedule 2 apply to a public auction of land, the auctioneer must, in addition to the requirements set out in subregulation (1), before accepting any bid audibly state—
- (a) that one of the vendors (or their representative) intends to make a bid to purchase the land; and
 - (b) that only the auctioneer can make a vendor bid on behalf of the vendor who is not bidding to purchase the land; and
 - (c) the words the auctioneer will use to indicate during the auction that he or she is making a bid on behalf of the vendor who is not bidding to purchase the land.

Penalty: 10 penalty units.

- (5) If the rules set out in Schedule 3 apply to a public auction of land, the auctioneer must, in addition to the requirements set out in subregulation (1), before accepting any bid audibly state—
- (a) that one or more but not all of the vendors (or their representatives) intends to make a bid to purchase the land; and
 - (b) that only the auctioneer can make a vendor bid on behalf of a vendor who is not bidding to purchase the land; and
 - (c) the words the auctioneer will use to indicate during the auction that he or she is making a bid on behalf of the vendor who is not bidding to purchase the land.

Penalty: 10 penalty units.

(6) If the rules set out in Schedule 4 apply to a public auction of land, the auctioneer must, in addition to the requirements set out in subregulation (1), before accepting any bid audibly state—

- (a) that each of the vendors (or their representatives) intend to bid to purchase the land; and
- (b) that no vendor bids will be made by the auctioneer.

Penalty: 10 penalty units.

8 Auctioneer must indicate bidders on request

The auctioneer of land at a public auction must, if asked to do so by a person attending the auction, indicate the person who made a bid before taking another bid.

Penalty: 10 penalty units.

SCHEDULES

SCHEDULE 1

Regulations 5, 6, 7

GENERAL RULES FOR THE CONDUCT OF PUBLIC AUCTIONS OF LAND

*1. No bids may be made on behalf of the vendor of the land.

OR

*1. The auctioneer may make one or more bids on behalf of the vendor of the land at any time during the auction.

[*One of these alternatives must be deleted]

2. The auctioneer may refuse any bid.

3. The auctioneer may determine the amount by which the bidding is to be advanced.

4. The auctioneer may withdraw the property from sale at any time.

5. The auctioneer may refer a bid to the vendor at any time before the conclusion of the auction.

6. In the event of a dispute concerning a bid, the auctioneer may re-submit the property for sale at the last undisputed bid or start the bidding again.

Sch. 1 rule 7
substituted by
S.R. No.
47/2008 reg. 6.

7. The auctioneer must not accept any bid or offer for a property that is made after the property has been knocked down to the successful bidder, unless the vendor or successful bidder at the auction refuses to sign the contract of sale following the auction.

Sch. 1 rule 8
inserted by
S.R. No.
47/2008 reg. 6.

8. If a reserve price has been set for the property and the property is passed in below that reserve price, the vendor will first negotiate with the highest bidder for the purchase of the property.

SCHEDULE 2

Regulations 5, 6, 7

RULES FOR THE CONDUCT OF PUBLIC AUCTIONS OF LAND—ONE VENDOR INTENDS TO BID TO PURCHASE

1. The property at this auction is co-owned by two vendors.
One of the vendors intends to bid to purchase the property at this auction from their co-owner. That vendor may make bids personally, or through a representative, but not through the auctioneer.
Only the auctioneer can make a bid for the other vendor.
2. The auctioneer may refuse any bid.
3. The auctioneer may determine the amount by which the bidding is to be advanced.
4. The auctioneer may withdraw the property from sale at any time.
5. The auctioneer may refer a bid to the vendors at any time before the conclusion of the auction.
6. In the event of a dispute concerning a bid, the auctioneer may re-submit the property for sale at the last undisputed bid or start the bidding again.
7. The auctioneer must not accept any bid or offer for a property that is made after the property has been knocked down to the successful bidder, unless the vendor or successful bidder at the auction refuses to sign the contract of sale following the auction.
8. If a reserve price has been set for the property and the property is passed in below that reserve price, the vendor will first negotiate with the highest bidder for the purchase of the property.

Sch. 2 rule 7
substituted by
S.R. No.
47/2008 reg. 7.

Sch. 2 rule 8
inserted by
S.R. No.
47/2008 reg. 7.

SCHEDULE 3

Regulations 5, 6, 7

RULES FOR THE CONDUCT OF PUBLIC AUCTIONS OF LAND—SOME VENDORS INTEND TO BID TO PURCHASE

1. The property at this auction is co-owned by more than two vendors.

One or more (but not all) of the vendors intend to bid to purchase the property at this auction. They may make bids themselves, or through a representative, but not through the auctioneer.

Only the auctioneer can make a bid for a vendor not bidding to purchase the property.
2. The auctioneer may refuse any bid.
3. The auctioneer may determine the amount by which the bidding is to be advanced.
4. The auctioneer may withdraw the property from sale at any time.
5. The auctioneer may refer a bid to the vendors at any time before the conclusion of the auction.
6. In the event of a dispute concerning a bid, the auctioneer may re-submit the property for sale at the last undisputed bid or start the bidding again.
7. The auctioneer must not accept any bid or offer for a property that is made after the property has been knocked down to the successful bidder, unless the vendor or successful bidder at the auction refuses to sign the contract of sale following the auction.
8. If a reserve price has been set for the property and the property is passed in below that reserve price, the vendor will first negotiate with the highest bidder for the purchase of the property.

Sch. 3 rule 7 substituted by S.R. No. 47/2008 reg. 8.

Sch. 3 rule 8 inserted by S.R. No. 47/2008 reg. 8.

SCHEDULE 4

Regulations 5, 6, 7

RULES FOR THE CONDUCT OF PUBLIC AUCTIONS OF LAND—ALL VENDORS INTEND TO BID TO PURCHASE

1. The property at this auction is co-owned by two or more vendors.
Each of the vendors intends to bid to purchase the property at this auction. They may make bids themselves, or through a representative, but not through the auctioneer.
The auctioneer cannot make a bid at this auction.
2. The auctioneer may refuse any bid.
3. The auctioneer may determine the amount by which the bidding is to be advanced.
4. The auctioneer may withdraw the property from sale at any time.
5. The auctioneer may refer a bid to the vendors at any time before the conclusion of the auction.
6. In the event of a dispute concerning a bid, the auctioneer may re-submit the property for sale at the last undisputed bid or start the bidding again.
7. The auctioneer must not accept any bid or offer for a property that is made after the property has been knocked down to the successful bidder, unless the vendor or successful bidder at the auction refuses to sign the contract of sale following the auction.
8. If a reserve price has been set for the property and the property is passed in below that reserve price, the vendor will first negotiate with the highest bidder for the purchase of the property.

Sch. 4 rule 7
substituted by
S.R. No.
47/2008 reg. 9.

Sch. 4 rule 8
inserted by
S.R. No.
47/2008 reg. 9.

SCHEDULE 5

Regulation 6

INFORMATION CONCERNING THE CONDUCT OF PUBLIC AUCTIONS OF LAND

Meaning of Vendor

The vendor is the person who is selling the property that is being auctioned. There may be more than one vendor.

Where there are two or more vendors, they are selling the property as co-owners.

Bidding by Co-owners

Where there are two or more vendors of the property, one or some or all of them may bid to purchase the property from their co-owners. The vendor or vendors intending to bid to purchase the property can make these bids themselves, or through a representative, but not through the auctioneer.

Vendor bids

The law of Victoria allows vendors to choose to have bids made for them by the auctioneer. If this is the case, it will be stated as the first rule applying to the auction. However, these bids cannot be made for a co-owner intending to bid to purchase the property from their co-owner or co-owners.

The auctioneer can only make a vendor bid if—

- the auctioneer declares before bidding starts that he or she can make bids on behalf of a vendor, and states how these bids will be made; and
- the auctioneer states when making the bid that it is a bid for the vendors. The usual way for an auctioneer to indicate that he or she is making a vendor bid is to say "vendor bid" in making the bid.

What rules and conditions apply to the auction?

Different rules apply to an auction depending upon whether there are any co-owners intending to bid to purchase the property from their co-owners, and whether vendor bids can be made. The auctioneer must display the rules that apply at the auction.

It is possible that a vendor may choose to have additional conditions apply at the auction. This is only allowed if those additional conditions do not conflict with the rules that apply to the auction or any other legal requirement. The additional conditions are usually contained in the contract of sale.

Copies of the rules

The law requires that a copy of the rules and conditions that are to apply to a public auction of land be made available for public inspection a reasonable time before the auction starts and in any case not less than 30 minutes before the auction starts.

Questions

A person at a public auction of land may ask the auctioneer in good faith a reasonable number of questions about the property being sold, the contract of sale, the rules under which the auction is being conducted and the conduct of the auction.

Forbidden activities at auctions

The law forbids—

- any person bidding for a vendor other than—
 - the auctioneer (who can only make bids for a vendor who does not intend to purchase the property from their co-owner or co-owners); or
 - a representative of a vendor who is a co-owner of the property wishing to purchase the property from their co-owner or co-owners.

- the auctioneer taking any bid that he or she knows was made on behalf of the vendor, unless it is made by a vendor (or their representative) who is a co-owner wishing to purchase the property.
- the auctioneer acknowledging a bid if no bid was made.
- any person asking another person to bid on behalf of the vendor, other than a vendor who is a co-owner engaging a representative to bid for them.
- any person falsely claiming or falsely acknowledging that he or she made a bid.
- an intending bidder (or a person acting on behalf of an intending bidder) harassing or interfering with other bidders at a public auction of land.

Substantial penalties apply to any person who does any of the things in this list.

Who made the bid?

At any time during a public auction of land, a person at the auction may ask the auctioneer to indicate who made a bid. Once such a request has been made, the auctioneer is obliged by law to comply with such a request before taking another bid.

It is an offence to disrupt an auction

The law forbids an intending bidder or a person acting on behalf of an intending bidder from doing any thing with the intention of preventing or causing a major disruption to, or causing the cancellation of, a public auction of land.

The cooling off period does not apply to public auctions of land

If you purchase a property that has been offered for sale by public auction either at the auction or within 3 clear business days before or after the auction, there is no cooling off period.

What law applies

The information in this document is only intended as a brief summary of the law that applies to public auctions of land in Victoria. Most of the laws referred to in this document can be found in the **Sale of Land Act 1962** or the Sale of Land Regulations 2005. Copies of those laws can be found at the following web site: www.legislation.vic.gov.au under the title "LawToday".

ENDNOTES

1. General Information

The Sale of Land Regulations 2005, S.R. No. 28/2005 were made on 10 May 2005 by the Lieutenant-Governor, having assumed the administration of the government of the State, with the advice of the Executive Council, under section 48 of the **Sale of Land Act 1962**, No. 6975/1962 and came into operation on 1 July 2005: regulation 3.

The Sale of Land Regulations 2005 will sunset 10 years after the day of making on 10 May 2015 (see section 5 of the **Subordinate Legislation Act 1994**).

Sale of Land Regulations 2005

S.R. No. 28/2005

Endnotes

2. Table of Amendments

This Version incorporates amendments made to the Sale of Land Regulations 2005 by statutory rules, subordinate instruments and Acts.

Sale of Land Amendment Regulations 2008, S.R. No. 47/2008

Date of Making: 27.5.08

Date of Commencement: 30.6.08: reg. 3

3. Explanatory Details

¹ Reg. 4: S.R. No. 5/2004.