

# Vendor Bids at Auctions

## Information Sheet

This information sheet provides guidance on what the “vendor bids at auctions” changes to the Fair Trading Act 1986 means for licensees. The new legislation came into effect on 18 December 2013.

### Background

The Fair Trading Act 1986 was amended at the end of 2013, clarifying the law on vendor bids at auctions. This change includes auctions for the sale of land. Under limited conditions vendor bids are still allowed, however they need to be properly made or they risk being a false and misleading representation and falling foul of the Fair Trading Act 1986.

This change takes consumer protection a step further as the Fair Trading Act 1986 already prohibits misleading and deceptive conduct in trade.

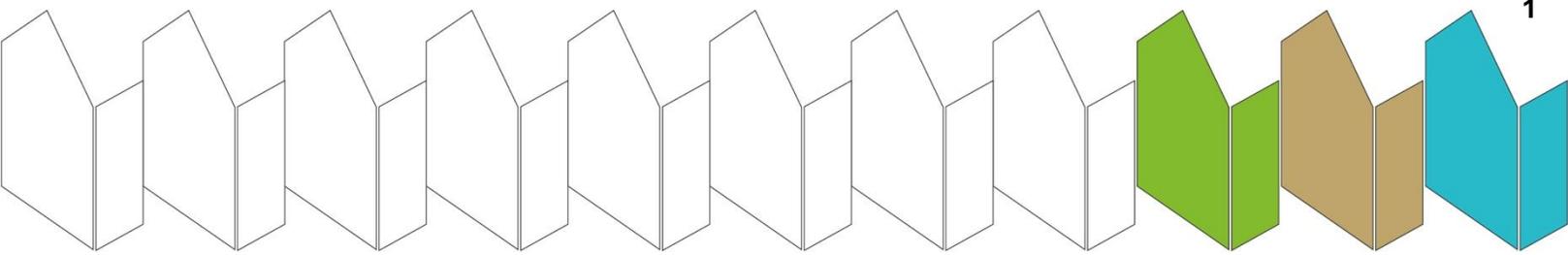
The Fair Trading Act is enforced by the Commerce Commission.

### What is a vendor bid?

A vendor bid is a type of bid at an auction which is made on behalf of the vendor. It is usually made by the auctioneer. The auctioneer may use a phrase such as ‘The bid is with me’ – to indicate they are about to make a vendor bid.

A vendor bid is often used by the auctioneer as a tactic:

- ✓ To start the bidding or keep the bids moving
- ✓ To persuade buyers to raise their bids so they are closer to the price the vendor is prepared to accept (the reserve price)



## Why has the law changed?

Vendor bids have sometimes been used to artificially inflate the price that is reported if a property is passed in at auction below the reserve price. This can inflate the price expectations for a future auction, despite there being no genuine bids at that price.

The issue with vendor bids is that genuine bidders who do not understand the vendor bid process or what its purpose is, may be deceived into thinking that a genuine bid has been made. In this situation the vendor bid is little different from a dummy or shill bid which is and remains fraudulent and illegal.

The law has changed to address this situation and to prevent a vendor bid being used in this way.

## Will vendor bids still be allowed?

Yes, but only in restricted circumstances. They may only be made if **all three** of the following conditions are met:

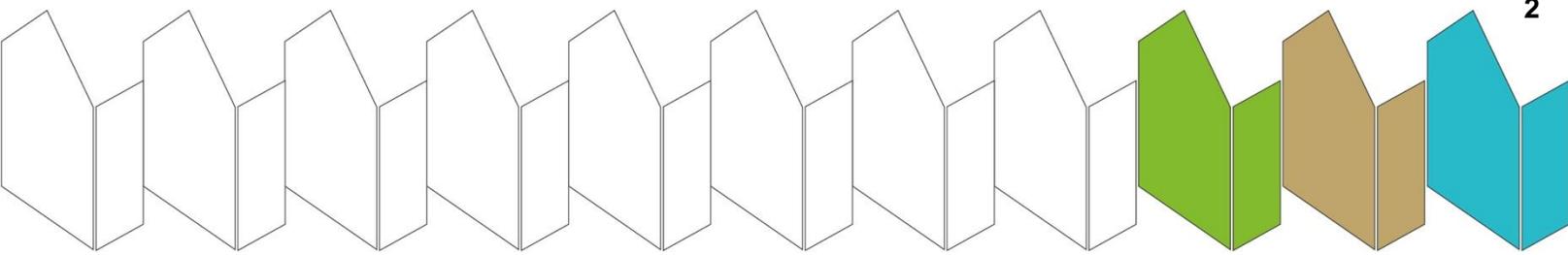
- ✓ The property at auction has a reserve price
- ✓ The reserve price has not been reached
- ✓ The bid is clearly identified by the auctioneer as a vendor bid, and

## What won't be allowed?

### Dummy or shill bids

These are bids that are made by people who appear to be genuine bidders but are in fact being made on behalf of the vendor to persuade genuine bidders to raise their bid.

Dummy or shill bids were not previously allowed and remain illegal. People making dummy or shill bids never intend to purchase the property at auction.



#### **Vendor bidding at or over the reserve price**

The auctioneer (or anyone else acting for the vendor) will not be able to make a vendor bid at or over the reserve price. To do so will be a false or misleading representation under section 14A(2) of the Fair Trading Act 1986.

#### **Not identifying who is making the vendor bid**

If the vendor, their agent or anyone else makes a vendor bid they must clearly identify themselves.

The Commerce Commission has indicated that it must be clear to prospective purchasers that a vendor bid is being made. As good practice and to avoid any confusion, the auctioneer should state – “This is a vendor bid”, rather than using industry jargon such as “The bid is with me” or other language which may not be well understood.

#### **Referring to a vendor bid as the amount at which the property was passed in**

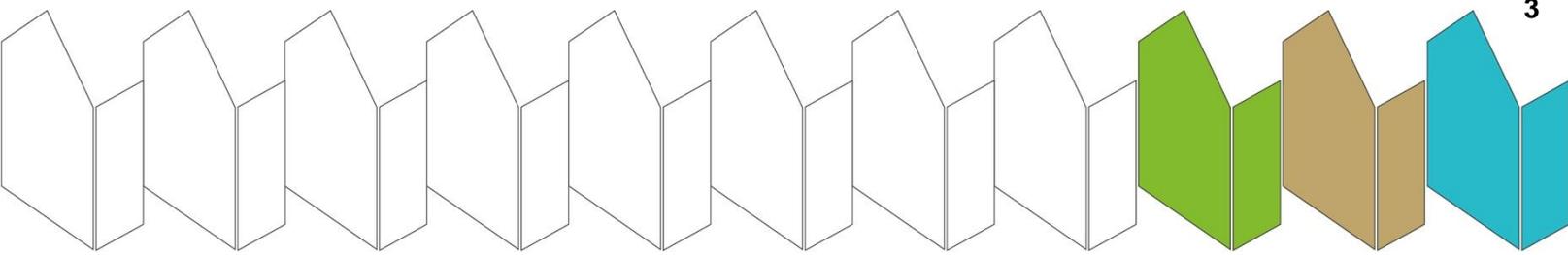
If the property is unsold at the end of an auction, a vendor bid cannot later be referred to as the amount at which the property was passed in. To do so would be a false or misleading representation under section 14A(4) of the Fair Trading Act 1986. The only amounts allowed to be quoted are bids from genuine prospective purchasers.

### **When did the new law come into force?**

The change to the legislation on vendor bids came into effect in December 2013.

### **Implications for your business**

If you and your staff sell properties by auction and you have used vendor bids in the past, you need to think about your business practices and how to comply with the new law. Vendor bids may only be made if all of the following three conditions are met:



- ✓ The property at auction has a reserve price
- ✓ The bid is clearly identified by the auctioneer as a vendor bid, and
- ✓ The reserve price has not been reached

If you employ an auctioneer or act as one yourself, you should consider whether you will need to implement any new processes, procedures or undertake staff training - to ensure that you comply with the law. You should also explain the law change to your clients.

## Relevant Section of the Fair Trading Act 1986

### Section 14A: When vendor bids are misrepresentations

(1) This section applies where property (being goods, services, or an interest in land) is offered for sale—

(a) by auction (as defined in section 36X); or

(b) by any other bidding process in which all bids are disclosed.

(2) The vendor of the property makes a false or misleading representation with respect to the price of the property if the vendor, or any agent acting on behalf of the vendor, makes a vendor bid for the property.

(3) However, subsection (2) does not apply if—

(a) there is a reserve price for the property; and

(b) the bid is made before the reserve price is reached and **is clearly identified as a vendor bid.**

(4) If property is unsold at the end of an auction or other bidding process referred to in subsection (1), any subsequent reference to a particular bid as being the amount at which the property was passed in is a false or misleading representation with respect to the price of the property if the bid was a vendor bid.

(5) In this section, **vendor bid** means a bid made by the vendor or any person (including an auctioneer) acting as agent for the vendor.

*Section 14A: inserted, on 18 December 2013, by **section 12** of the Fair Trading Amendment Act 2013 (2013 No 143).*

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