
REIA Guidelines to the Trade Practices Act (TPA)

Auctions

Prepared in collaboration with the ACCC

ACCC Statement of Concern

The key for understanding the difference between legal and illegal bidding under the Trade Practices Act (TPA) is not one of vendor versus 'dummy' bidding, or bidding below versus above the reserve price, but rather whether other potential bidders are liable to be misled that a bid is genuine when it is not. Any bid that is not a genuine bid made by or on behalf of an intending purchaser is likely to mislead other bidders unless effective steps are taken to ensure that bidders are not misled. Full disclosure made to all prospective bidders both at the commencement of an auction and prior to each relevant bid would be such a step. In doing so, care must be taken to ensure that such disclosure is not rendered ineffective by it being disguised by the expressions used or by the way they are given. For example, expressions such as 'the bid is with me' that may not be understood by inexperienced bidders would not amount to effective disclosure.

Dummy bidding at auction involves an agent, or a person acting on the agent's behalf, making bids on a property, on an undisclosed basis, as if they are genuinely interested in purchasing the property, in order to artificially inflate the price of the property. The ACCC considers all vendor bidding to be misleading unless fully disclosed both at the start of the auction and at the time of the bid. The ACCC is concerned that such practices may mislead genuine bidders for the property. The ACCC would be concerned about such conduct regardless of whether it was organised by agents, auctioneers or vendors.

REIA Guidelines

Whilst there is no national statutory code of practice that applies to the regulation of auctions in the real estate industry, the TPA (and the Fair Trading Acts in each state and territory) will apply to any misleading or deceptive practice in the conduct of auctions. Further, some individual states in Australia have introduced regulations that apply to the conducting of auctions in those states, and some state Real Estate Institutes have introduced codes of practice for auctions. Real estate agents should ensure that those Acts, statutory regulations and any codes implemented by state Institutes are complied with at all times. In addition, the REIA provides the following guidelines with respect to the avoiding of misleading or deceptive conduct in relation to auctions:

- Dummy bidding is fictitious or false bidding at an auction by non-genuine bidders in the audience with no real intention to buy the property. Such conduct is misleading or deceptive and shall not be engaged in by agents or auctioneers.
- When properly declared, vendor bidding is a legal and ethical process. Vendor bidding (the practice of counter-bids being made by or on behalf of a vendor to ensure a property reaches a reserve price at which it can be sold) that is not fully disclosed to bidders is also likely to mislead or deceive other bidders and thus contravene the TPA and other legislation. Consequently, the following procedures must be followed at all times.
- The fact that bids are being made by or on behalf of a vendor and the identity of the person making such bids must be announced by the auctioneer both at the commencement of the auction and contemporaneously with each such bid being made, and in a form and manner that will be understood by all potential bidders.

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- Where state law limits the number of vendor bids, the auctioneer shall announce prior to the commencement of bidding for a property the maximum number of bids which will or may be made during the auction by or on behalf of the vendor.
 - Where state law makes no specific provisions, no agent or sales person engaged by an agent shall make or assist any other person in making a bid on behalf of the seller unless those bids have been identified in the manner referred to in these guidelines.
 - No agent or auctioneer shall permit a bid to be made by or on behalf of a vendor at or in excess of the vendor's reserve price. Further, if a property is being sold at auction without a reserve price being set by the vendor, no agent or auctioneer shall allow any bid to be made by or on behalf of a vendor.
 - A real estate agent shall not provide a potential purchaser of a property to be sold by auction an estimate of the value of that property; or advice as to the amount that the vendor might be prepared to sell the property for; when the real estate agent is aware that the value or amount referred to by that real estate agent is less than the reserve price that the seller has set for that auction, unless instructed otherwise by the vendor.