

APPLICATION TO OBTAIN BENEFICIAL INTEREST - SECTION 24G

Seeking approval from the Commissioner under sections 24G (5) and 24G (9) for agents or sales representatives who wish to obtain a beneficial interest in land or a business

Information for Agents and Sales Representatives

This document provides important information for agents and sales representatives who wish to obtain beneficial interest in the property or business they are selling or have appraised on behalf of a client (vendor). For more information visit the Consumer and Business Services website at www.cbs.sa.gov.au.

What is a 'beneficial interest'?

By either purchasing the property themselves, or selling the property to an '**associate**' of theirs, an agent or sales representative is obtaining a beneficial interest in that property or business.

Obtaining an option to purchase land or a business or being granted a general power of appointment in respect of land or a business also constitutes obtaining a beneficial interest in the land or business. Other sorts of transactions could also constitute obtaining a beneficial interest in land or businesses contrary to section 24G.

Agents and sales representatives will need to seek their own legal advice as to how to deal with actual or potential conflict of interest situations and about whether a contemplated transaction could breach section 24G.

An **associate** of the agent or sales representative could be a:

- spouse or de facto partner
- parent or grandparent
- daughter or son or grandchild
- brother or sister
- employee or employer
- business partner
- corporation (if the agent or sale representative, or their relative, owns 10% or more of the shares of the corporation)
- trustee (if the agent or sales representative, or their relative, is a beneficiary of the trust)
- any person who will provide some benefit to the agent or sales representative connected with the subsequent sale of or dealing with the property.

It may be the case that both the sales representative and the agent will obtain beneficial interest. For example, where the sales representative is the purchaser they obtain a beneficial interest. The agent also obtains beneficial interest in this transaction as their associate (employee) obtains a beneficial interest. In this instance only one application form needs to be lodged to seek approval for both parties.

Application to obtain a beneficial interest

A agent or sales representative who wishes to obtain a beneficial interest in land or a business must first obtain the approval of the Commissioner under section 24G(5) of the *Land and Business (Sale and Conveyancing) Act 1994* (the Act).

The *onus is on the agent or sales representative* to demonstrate that the circumstances warrant a departure from the usual position that an agent or sales representative should not obtain a beneficial interest in land or business the agent is authorised to sell, or that the agent or sales representative has appraised.

The threshold for approval of an application under section 24G (5) is considerable and the circumstances in which it will be exercised will be fairly exceptional. The agent or sales representative should therefore provide reasons in the application as to why their particular circumstances warrant the approval of the application.

Application to obtain commission or expenses

A agent who obtains the approval of the Commissioner to obtain a beneficial interest in land or a business and who wishes to be paid the commission or expenses must also obtain the approval of the Commissioner under section 24G(9) to be paid the commission or expenses.

The *onus is on the agent* to demonstrate that the circumstances warrant a departure from the usual position that an agent who obtains a beneficial interest in land or a business is forbidden from demanding, receiving or retaining commission or expenses.

The threshold for approval of an application under section 24G (9) is considerable and the circumstances in which it will be exercised will be fairly exceptional. The agent should therefore provide reasons in the application as to why their particular circumstances warrant the approval of the commission or expenses.

The commission or expenses will be treated separately under section 24G(9) and will not be automatically approved even if the Commissioner has approved the obtaining of the beneficial interest under section 24G(5).

Public Auction

An alternative to the application process is to sell the property via public auction. The Commissioner's approval is not required as long as the auction satisfies the requirements of regulation 25(7);

"A public auction of land or a business satisfies the requirements of this subregulation if details of the auction have been advertised, at least once per week over a period of at least 2 consecutive weeks immediately before the auction, in a newspaper circulating generally throughout the State or the area in which the land or business is situated".

Information/documents that must be supplied with this application

- Completed **Application Form** (please ensure that all sections are completed correctly).
- Completed **Statutory Declarations** from the agent/sales representative, the vendor, the purchaser and the valuer.
- Copy of the **Sale Contract**. If the sale does go ahead without approval, the agent and/or sales representative will have committed an offence. Serious penalties apply. Where the contract is assignable (i.e., the sale contract is in the purchaser's name *and/or nominee*), approval will not be granted.
- Copy of the **Sales Agency Agreement** with any subsequent agreement variations (not required if the sale is for a business).
- Details of all offers made and evidence of **written offers** (written offers not required if the sale is for a business).
- Copy of the **Certificate of Title** (not required if the sale is for a business unless land is involved).
- Details of the **marketing plan** and evidence of promotional activities (e.g., number of open/private inspections, publication of advertisements, newspaper invoices and accounts, flyers, etc). Also include information about any previous marketing of the land/business by a different agent or privately (if relevant).
- Copy of the **Valuation Report** from a qualified valuer who has been approved by the Commissioner (this report is not required if the sale is for a business).
 - o A list of approved valuers is available at www.cbs.sa.gov.au.
 - o The valuation report must be paid for by the agent, the sales representative or the associate (purchaser).
 - o The Commissioner may deny the application if a valuation report has not been arranged and a copy has not been given to the vendor. This report must be independent and free from influence (i.e. the valuer must not know the proposed purchaser's offer).
- Documentary evidence of the commission that has been agreed to by the vendor and evidence of expenses paid for by the agent (e.g., newspaper invoices/accounts) if commission/expenses are being sought.

The application cannot be assessed without all the required documentation.

How long does the application process take?

Applications are considered carefully and may take several weeks from receipt of all information before the application is finalised. This may affect the settlement date for the parties so it is important the agent/sales representative let the vendor know this before a contract is signed.

For more information

In person Customer Service Centre 91 Grenfell Street ADELAIDE SA 5000	Post Licensing and Registration GPO Box 1719 ADELAIDE SA 5001	Email enquiries occupational@sa.gov.au NOTE: applications cannot be lodged electronically as originals are required.	More information www.cbs.sa.gov.au 24G enquiries only Phone: (08) 8207 2038
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Contact Details

Registered agent - individual or company

Registration Number: RLA _____ **Client Id** _____

Surname / Company name: _____

Full given names: _____

Postal Address: _____

Daytime phone number _____ Email _____

Manager's details

Where the agent is a company, the details of the manager of the corporation who is a registered agent needs to be provided here.

Registration Number: RLA _____ **Client Id** _____

Surname: _____

Full given names: _____

Postal Address: _____

Daytime phone number _____ Email _____

Registered sales representative handling the sale

Registration Number:
RLA/RSR _____ **Client Id** _____

Surname: _____

Full given names: _____

Postal Address: _____

Daytime phone number _____ Email _____

Who will obtain the beneficial interest? (please complete for all applicable)

Sales Representative Name: _____

Relationship to purchaser: _____
e.g. self, sibling, parent, partner etc.

Agent Name: _____

Relationship to purchaser: _____
e.g. self, employer, etc.

Sale Details

Property information

Land for which approval is sought is situated at:

Address _____
_____ Postcode: _____

As described in the whole/part of Certificate of Title Register Volume _____ Portfolio _____

If the sale is for a business, the business known as: _____

Authority to sell and/or appraisal details

Is the agent authorised to sell the land/business Y / N* Sales agency agreement/s attached

Did the agent/sales representative appraise the land/business Y / N Appraisal information attached

Date of appraisal _____ Appraisal price \$ _____

Vendor advised of the price on or around (date): _____

*If the agent is not authorised to sell the property but will obtain beneficial interest by virtue of having provided an appraisal, Listing Information is not required - please go to the next page of the application.

Listing Information

Listing date _____ Advertised Price \$ _____

Number of offers _____ Highest Offer \$ _____

Property marketed for: _____ Days/weeks/months Purchase Price \$ _____

Purchaser details

It is proposed that the land/business be sold to the purchaser(s) named below:

Purchaser 1

Surname: _____

Full given names: _____

Postal Address: _____

Daytime phone number _____ Email _____

Purchaser 2

Surname: _____

Full given names: _____

Postal Address: _____

Daytime phone number _____ Email _____

Purchaser 3

Surname: _____

Full given names: _____

Postal Address: _____

Daytime phone number _____ Email _____

Vendor Details

Vendor 1

Surname: _____

Full given names: _____

Postal Address: _____

Daytime phone number _____ Email _____

Vendor 2

Surname: _____

Full given names: _____

Postal Address: _____

Daytime phone number _____ Email _____

Vendor 3

Surname: _____

Full given names: _____

Postal Address: _____

Daytime phone number _____ Email _____

Registered agent/sales representative to complete

To be completed by the sales representative handling the sale or who conducted an appraisal

When did the proposed purchaser first express and interest in the land/business? _____

When was the relationship disclosed to the vendor? _____

What price representations have been made to the public in relation to the land/business?

What price representations have been made to the proposed purchaser(s)?

How long has the land/business been on the market? Include any previous marketing of the land/business by a different agent or privately, if relevant

What has been the level of interest in the land/business?

- Low (i.e. 1-5 enquiries) medium (6 - 10 enquiries) high (11 or more)

Has any information/details been disclosed to the proposed purchaser(s) about the land/business that may conflict with the agent's duty of care to the vendor?

YES / NO (please circle one) If **YES**, please give details

In what way is the sale to the proposed purchaser(s) in the vendor's interest?

Please state the reasons that would entitle the agent/sales representative to obtain the beneficial interest

STATUTORY DECLARATION - AGENT

Oaths Act 1936

This declaration is to be completed by the Agent. If the Agent is a body corporate the declaration is to be completed by the Manager or Director of the body corporate.

I, (full name)

of (address)

in the occupation of (occupation)

do solemnly and sincerely declare that I am the agent / manager / director named in this application and to the best of my knowledge, the contents of the information provided in this application are true and correct and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1936*.

Making a false declaration is an offence under the *Oaths Act 1936* and under the *Land and Business (Sale and Conveyancing) Act 1994*, which carries significant penalties.

You must sign this declaration in the presence of a witness

.....
(signature of the agent / manager / director)

This section to be completed by the witness

Declared at

..... (suburb or town)

in the State of South Australia, on the

.....
(day) (month) (year)

.....
(signature of witness - Justice of the Peace or Commissioner for Taking Affidavits)

Printed full name, initials, I.D. number and qualification to witness this Statutory Declaration

STATUTORY DECLARATION - SALES REPRESENTATIVE

Oaths Act 1936

This declaration is to be completed by the Sales Representative handling the sale or who conducted the appraisal.

I, (full name)

of (address)

in the occupation of (occupation)

do solemnly and sincerely declare that I am the sales representative named in this application and to the best of my knowledge, the contents of the information provided in this application are true and correct and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1936*.

Making a false declaration is an offence under the *Oaths Act 1936* and under the *Land and Business (Sale and Conveyancing) Act 1994*, which carries significant penalties.

You must sign this declaration in the presence of a witness

.....
(signature of sales representative handling the sale)

This section to be completed by the witness

Declared at

..... (suburb or town)

in the State of South Australia, on the

.....
(day) (month) (year)

.....
(signature of witness - Justice of the Peace or Commissioner for Taking Affidavits)

Printed full name, initials, I.D. number and qualification to witness this Statutory Declaration

Vendor(s) to complete

WARNING: Your agent and/or sales representative or an associate of your agent and/or sales representative such as a relative, employee or business partner, has offered to buy your land/business. This means your agent/sales representative will obtain a beneficial interest in the land or business. This is prohibited by law unless approved by the Commissioner

Agents/sales representatives who wish to obtain a beneficial interest in land or a business must obtain the Commissioner's approval before the sale can proceed. Your agent/sales representative wishes to apply to the Commissioner to obtain that permission.

As part of the application, you, as the vendor, will be required to complete this part of the form. But before you complete and sign this part of the form, you must be satisfied that you have been fully informed of the beneficial interest to be obtained by the agent/sales representative and understand the relationship between the purchaser of your property or business and the agent/sales representative. For example, if there is to be a profit or benefit from development or sale of the land, you, as the vendor, should be informed of this and have an opportunity to decide whether you should obtain that benefit yourself and not the purchaser. The agent/sales representative are also obliged to arrange at his or her cost a written valuation report of your property (not required for the sale of a business) and provide you with a copy of that report so that you can make a fully informed decision about market value of your property and the purchaser's offer.

The Commissioner must also be satisfied that you fully understand and have been fully informed of the details of the beneficial interest to be obtained by the agent/sales representative and that you have consented to the transaction proceeding despite the existence of that conflict of interest.

The Commissioner has the discretion to grant or refuse the application. You should consider seeking independent legal advice before signing this form, especially if you have any doubts about the price offered or how the transaction was handled.

The vendor must ensure he or she has read and understood the purpose of the agent's or sales representative's application to seek the Commissioner's approval in relation to their land/business before completing and signing this form and Statutory Declaration.

This section to be completed by the vendor(s)

Please answer the following and complete the Statutory Declaration

State the identity and relationship of the purchaser(s) to the agent/sales representative

Name of purchaser :

Relationship to purchaser

When did the agent/sales representative disclose this relationship?

What is the purchase price offered by the purchaser(s)? \$

Did the agent/sales representative conduct an appraisal of your property or business? **YES / NO**

If **Yes**, What was the appraisal price?

If the appraisal was in writing, provide a copy.

Are you aware of any other offers for your land/business?

YES / NO (please circle one) If **YES**, give reasons for not accepting those offers

Has the agent/sales representative provided you with a copy of the valuation report? **YES / NO**

Who paid for the report? _____

When did you receive the report? _____

What is the market value stated in the report? _____

Do you believe the purchaser's offer is the best price for your land/business?

YES / NO (please circle one) Provide reasons

Has the agent/sales representative disclosed any benefits they may get in relation to the sale?

YES / NO (please circle one) If **YES**, what are those benefits?

Is there any other matter you would like the Commissioner to consider in relation to this application?

STATUTORY DECLARATION - VENDOR(S)

Vendor 1

Vendor 2

I,
(print full name/company name)

I,
(print full name/company name)

of
(address)

of
(address)

in the occupation of
.....
(vendor 1 - occupation)

in the occupation of
.....
(vendor 2 - occupation)

declare that:

- I am/we are aware of the purchaser's identity and relationship with the agent/sales representative;
- I am/we are satisfied the agent/sales representative has acted in my/our best interests; and
- I/we **CONSENT** to the agent/sales representative obtaining a beneficial interest in the land/business.

I/we do solemnly and sincerely declare that to the best of my/our knowledge, that the information I/we have provided in this application is true and correct and I/we make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1936*.

Making a false declaration is an offence under the *Oaths Act 1936*, and under the *Land and Business (Sale and Conveyancing) Act 1994*, which carry significant penalties.

You must sign this declaration in the presence of a witness

.....
(signature of vendor 1)

.....
(signature of vendor 2)

This section to be completed by the witness

Declared at

..... (suburb or town)

in the State of South Australia, on the

.....
(day) (month) (year)

.....
(signature of witness - Justice of the Peace or Commissioner for Taking Affidavits)

Printed full name, initials, I.D. number and qualification to witness this Statutory Declaration

STATUTORY DECLARATION - PURCHASER(S)

This section to be completed by the purchaser(s)

Purchaser 1

I,
(print full name/company name)

of
(address)

in the occupation of
.....
(purchaser 1 - occupation)

Purchaser 2

I,
(print full name/company name)

of
(address)

in the occupation of
.....
(purchaser 2 - occupation)

declare that:

- I am/we are the proposed purchaser(s) of the land/business;
- my/our **association** with the agent/sales representative (*strike out which is not applicable*)
is that of
(state relationship below e.g., employee, brother, sister, parent, business partner, etc)
or I am the agent/sales representative
.....(state which one)
- the agent/sales representative will not receive any benefits from me/us (financial or otherwise) for selling the property to me/us.

I/we do solemnly and sincerely declare that to the best of my/our knowledge, the above is true and correct and I/we make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1936*.

Making a false declaration is an offence under the *Oaths Act 1936*, and under the *Land and Business (Sale And Conveyancing) Act 1994*, which carry significant penalties.

You must sign this declaration in the presence of a witness

.....
(signature of purchaser 1)

.....
(signature of purchaser 2)

This section to be completed by the witness

Declared at (print suburb or town)

.....

in the State of South Australia, on the

.....
(day of) (month) (year)

.....
(signature of witness - Justice of the Peace or Commissioner for Taking Affidavits)

Printed full name, initials, I.D. number and qualification to witness this Statutory Declaration

STATUTORY DECLARATION - VALUER

This section to be completed by the land valuer

Important information

This Declaration *must* be completed by the land valuer who prepared the written valuation report for the land that is the subject of this application.

The valuation report must only be prepared by a person who is authorised to carry on business as a valuer under the *Land Valuers Act 1994* and who is **approved by the Commissioner**.

To preserve the independence of the valuation report, the valuer must not know (or attempt to find out) the offer made by the proposed purchaser.

I, of
(print full name) (address)

in the occupation of
(occupation)

declare that:

- I am a qualified and approved valuer
- I inspected and conducted a valuation of the land situated at (address)
on (date of valuation)
- It is my opinion the valuation of (amount) \$ is the fair market price for the land
- I prepared the valuation without knowledge of the offer made by the proposed purchaser
- I do not have any pecuniary interest in or with the parties associated with the sale transaction that could directly or indirectly be viewed as a conflict of interest.

I do solemnly and sincerely declare that to the best of my knowledge, the above is true and correct and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1936*.

Making a false declaration is an offence under the *Oaths Act 1936*, and under the *Land and Business (Sale and Conveyancing) Act 1994*, which carry significant penalties.

You must sign this declaration in the presence of a witness

.....
(signature of land valuer)

This section to be completed by the witness

Declared at (print suburb or town)
.....

in the State of South Australia, on the
.....
(day of) (month) (year)

.....
(signature of witness - Justice of the Peace or Commissioner for Taking Affidavits)

Printed full name, initials, I.D. number and qualification to witness this Statutory Declaration

APPLICATION TO OBTAIN COMMISSION and/or EXPENSES

Section 24G (9)
Land and Business (Sale and Conveyancing) Act 1994

This application to obtain commission or expenses will be treated separately from the application to obtain the beneficial interest. If you are not seeking commission or expenses you do not need to complete this section.

Commission or expenses are not automatically approved. The agent should provide reasons to justify the commission or expenses.

Agent to complete

Agents are prohibited from receiving, demanding or retaining commission or expenses where they have obtained a beneficial interest in the land or business the agent has been authorised to sell. Penalties apply.

I, the registered agent named in the application to obtain beneficial interest,

.....(print full name/company name),

wish to apply to the Commissioner to seek approval to obtain commission/expenses in relation to the transaction described in the application in accordance with section 24G (9) of the *Land and Business (Sale and Conveyancing) Act 1994*.

Commission

Amount being sought \$

Please provide reasons below that would entitle the agent to the commission

.....
.....
.....
.....

Expenses

Amount being sought \$

Please provide reasons below that would entitle the agent to the expenses

.....
.....
.....
.....

Please provide a detailed list of all expenses being sought and attach evidence of those expenses incurred (e.g. an account from a newspaper etc).

Agent to sign

..... (date)
(signature of agent or, if agent is a company, signature of nominated manager or director)