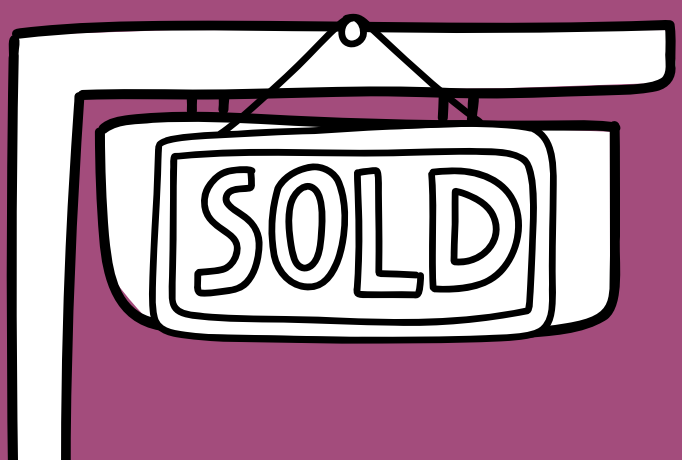
Tips for selling a home





Government of South Australia
Consumer and Business Services

Tips for selling a home

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

Here we provide some general information and resources to help you with the selling process.

Before you put your home on the market, think about whether potential buyers are more likely to be families, retired people, first-home buyers or developers. You might consider carrying out repairs and upgrades to make your property more appealing to potential buyers.

When weighing up any repairs or upgrades, consider the cost compared to any increase in the selling price. Your decision will also help you set realistic timeframes to carry out any maintenance work or styling with temporary furniture and homewares.

Some agents offer services to help your home look its best – e.g. painting, gardening or styling. But remember, you will likely be charged for these services.



Disclaimer: This document is not an exhaustive guide. It does not constitute legal, conveyancing or financial advice. We strongly recommend property owners seek their own independent advice for each stage in the process of selling a home.

Decide how you want to sell the property

Selling a property can be complex and time-consuming, which is why most people hire an agent.

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.

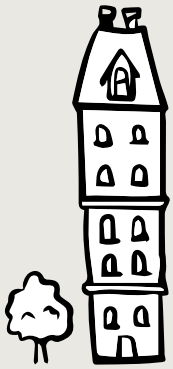
It's recommended you employ a qualified conveyancer or solicitor to help you meet all the legal requirements, including:

- filling out the Form 1 (also called a vendor's statement – see page 8)
- preparing the contract – which must be in writing for it to be legally valid.

You would also need to:

- arrange your own advertising – consider where you will advertise and the cost
- arrange any other promotions – e.g. taking photos, making a video, creating/printing brochures – and whether you'll organise these yourself or hire professional services
- be available to answer phone calls from potential buyers
- conduct open inspections to show potential buyers your property
- ensure you make the buyer's information notice (form R3) available to potential buyers.

It's a good idea to ask people to put offers in writing, including counter offers.



You can choose to sell your property by offer/private treaty or by auction, but for an auction you would need to hire an auctioneer as only a registered auctioneer can sell a property by auction.

Setting a price

Research property sales in the area to help you set a realistic selling price.

Consider:

- the median prices of properties sold in South Australia by suburb
- the asking price of similar homes – check listings on online real estate portals and individual real estate websites
- recent sales figures for similar properties in your area.

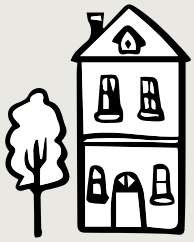
Selling with an agent

Agents charge a fee for service. This may be as commission (e.g. percentage of the sale price), a set fee or a combination of both.

You can expect your agent to:

- give an estimated selling price for your property
- advise on the type of sale (private treaty or auction)
- give you a marketing plan outlining how they'll advertise and market the property
- 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.

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



Your agent, their sales reps and associates – for example, a close family member – can purchase your property at public auction, as long as the auction has been prominently advertised for at least 2 consecutive weeks before the auction takes place. But they are not allowed to buy your property by making a private treaty offer unless they have been given approval by Consumer and Business Services (CBS). Approval is only granted in exceptional circumstances.

Choosing an agent

It's worthwhile getting advice from at least 3 agents to help you decide on the right person to sell your home. Agents, including companies that are agents, and sales representatives must be registered with CBS. Check the public licence register.

Agents, sales reps and auctioneers must carry their registration when working. This can be a physical or digital registration card. The agent's registration number must also be displayed on any property advertisement.

Check what each agent will charge for marketing your property and their commission rate. Some agents charge a low commission rate but charge more for marketing and advertising.

Before an agent can act for you, you'll need to have a contract with them (see 'Sales agency agreement' on page 5 for more information).

Selling price

When liaising with agents to consider hiring their services, they can 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 the lowest price you are prepared to accept, you should:

- use the 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.

Don't 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've 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.

See the section 'Marketing and information for buyers' on page 7 for more information about the rules for promoting a price to potential buyers.

Sales agency agreement

Before an agent can sell your property, you must sign a contract with them called a sales agency agreement. Before you sign, the agent must give you a final sales agency agreement guide (form R1) which outlines your rights and obligations under the agreement, along with details of comparable sales or other information the agent has relied on to estimate the selling price.

The agent must give you a copy of the agreement once signed, or within 48 hours if you both agree.

The agreement must state:

- whether the property will be offered for sale by auction, private treaty or other method
- the duration of the agreement (cannot exceed 90 days)
- how the agreement may be terminated
- the agent's commission rate or fee and when they are entitled to receive this
- services to be charged separately and their cost (e.g. advertising)
- the nature and amount of any commissions, rebates or discounts the agent will receive for certain services
- the agent's estimated selling price (expressed as a single figure – price ranges cannot be used)
- the price you would accept for the sale of the property
- whether the agent has authority to accept an offer for the property on your behalf
- a statement warranting that the agent will comply with the *Land and Business (Sale and Conveyancing) Act 1994* and will act in your best interests.

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.

The agreement is legally binding once signed by you and the agent. It can only be cancelled if both parties agree or either party breaches 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 2 main types of agreements.

Sole agency agreement

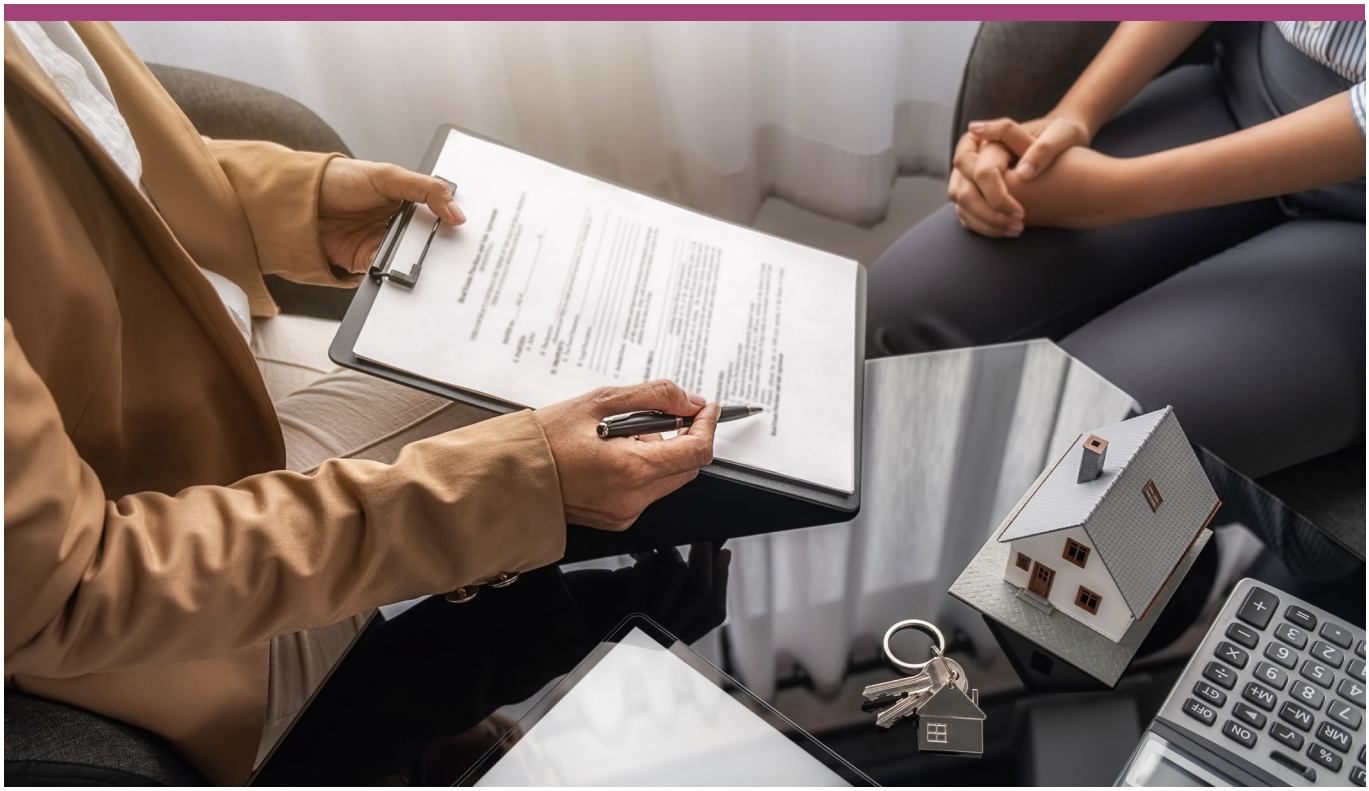
This is the most common type of agreement. This gives the agent the exclusive right to sell your property. The agent will be entitled to the agreed commission, even if you end up selling the house yourself.

If you withdraw your property from sale before your agreement 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 and the second agent even though a second agent sold the property. Seek legal advice if you want to terminate an agreement.

General or open-listing agreement

With this 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 won't offer this type of agreement because they may be left with the marketing costs if another agent sells the home.



Marketing and information for buyers

You may be charged the up-front cost of advertising with a particular publication or online sales platform. But if selling with an agent, the agent usually gets 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, beyond what is disclosed in your sales agency agreement. They may issue a refund or adjust the amount you pay at the end of the sale.

If you plan to advertise the property yourself, consider how you will advertise and how much it will cost.

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

Promoting the price

Once you've set a minimum amount you'll accept for the property, this price doesn't need to be disclosed to potential buyers.

The price stated in the sales agency agreement will affect how the property is marketed. Agents must not promote a price that is less than their estimated selling price or your acceptable selling price (whichever is higher).

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

If you're selling a property yourself and advertise a price that is lower than you're willing to accept, a buyer could take legal action against you.

There are also legal requirements for the Form 1 (vendor's statement). *Read more on page 8.*



Form 1 – vendor's statement

A Form 1 statement (vendor's statement) must be prepared, setting out the buyer's cooling-off rights and important information about the property – such as title details, mortgages on the property, easements, zoning and outgoings – e.g. water rates.

If you're selling with an agent, your agent will need to certify that the statement is complete and accurate.

If you're selling the home yourself and the buyer has an agent acting for them, their agent must certify that the Form 1 you provide is complete and accurate. If neither you or the buyer has an agent, it's your responsibility to make the inquiries required by law and ensure the statement is complete and accurate.

The Form 1 must be accurate and complete when it's given to the buyer. The buyer may be able to withdraw from the sale, or take legal action, if information is incorrect or insufficient. 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 2 clear business days from service of the amended notice.

Your agent must take reasonable steps to advise prospective purchasers where and when the Form 1 can be inspected.



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 – be available at the auctioneer or agent's place of business for 3 business days prior to the auction and at the auction site for 30 minutes before the auction.

Recently built or renovated

If you're selling a house that was built or renovated within the last 5 years, some warranties can transfer to the new owner.

An interested purchaser may request a copy of the certificate of building indemnity insurance given to the first owner when the building work was completed. An interested purchaser may also request the details of the builder and/or tradespeople contracted if the building or renovations were coordinated by yourself as an owner builder.

While your property is up for sale

Inspections

Opening your home for inspection gives potential buyers an opportunity to view the property. Inspections are usually for 30 to 45 minutes once or twice a week. 'Open inspections' can be arranged for certain dates and times, or inspections could be arranged by appointment. Inspection details can be included in advertising.

Lock all your valuables away and hide from view anything you don't want the public to see. Generally pets should not be at the property during inspections. Although there can be some exceptions – e.g. birds in aviaries.

You or your agent can record contact details for each person as they enter the property. This is a security precaution and helps in following up with interested buyers.

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

Extending a sales agency agreement

A sales agency agreement can be extended for up to 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 don't wish to extend the agreement
- agree to extend the agreement (for no longer than 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, if required, a new agreement will need 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

Receiving offers

All offers from interested buyers must be in writing, include particular details, and be 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 isn't binding until a sale contract has been signed by all parties.

Auctions

If selling via auction, your agent will usually arrange the auctioneer for you. Auctioneers must be registered and carry their registration card issued by CBS. This can be a physical or digital registration card.

Before the auction, you'll 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. A false or non-genuine bid is called a 'dummy' bid. It's 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 3 'vendor bids'. They must be announced by the auctioneer as vendor bids and must be less than the reserve price.

If the highest bid doesn't 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 doesn't 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 to get an understanding of how the process works.

The sales contract

The contract of sale can be signed once you've accepted an offer from a buyer or the highest auction bid has reached or exceeded your reserve price. Your agent will prepare the contract of sale. If you're selling the property yourself, a conveyancer or solicitor will be able to assist with this stage.

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

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

Record a settlement date in the sale contract. Settlement is when the property is legally transferred from your name to the buyer and the buyer can move into the property. If the property is to be auctioned, note the settlement date in the contract prior to the auction. The resulting buyer, or bidders at auction, may want to negotiate the settlement date with you afterwards.

After the contract is signed

Cooling-off

A buyer is entitled to a cooling-off period of 2 clear business days during which they can withdraw from the sale without penalty. However, there is no cooling-off period if they buy at auction.

The cooling-off period starts after the contract is signed, or the Form 1 is given, whichever comes last. It's 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

Settlement usually happens 4-12 weeks after the sales contract is signed. The settlement date is recorded in the contract. At settlement the balance of the purchase price is paid and possession of the property is handed to the buyer.

You'll need to organise a conveyancer or solicitor to represent you during this legal process. Most residential settlements in South Australia are done electronically.

A conveyancer will:

- provide advice about your rights and responsibilities under the contract and Form 1
- prepare all the documents necessary to complete settlement
- check and calculate all charges, rates and taxes you need to pay
- liaise with the buyer's conveyancer and contact you and your financing institution (if relevant) regarding the final payment
- arrange the Memorandum of Transfer – which transfers the land from you to the buyer – and lodge this document with Land Services SA.

Rates and taxes

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

Disputes and complaints

If you have a complaint, first try to resolve it with the agent. If that's unsuccessful, contact CBS on 131 882 for advice.



Helpful contacts

Consumer and Business Services

4-6 Chesser 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

RevenueSA

Tel: (08) 8372 7534

Email: contactus@revenuesa.sa.gov.au

revenuesa.sa.gov.au

Real estate and conveyancing professionals

Australian Institute of Conveyancers (SA)

L3, 255 Pulteney St, Adelaide SA 5000

Tel: (08) 8359 2090

aicsa.com.au

Real Estate Institute of South Australia

33 Dequetteville Tce, Kent Town SA 5067

Tel: (08) 8366 4300

Email: reisa@reisa.com.au

reisa.com.au

Society of Auctioneers and Appraisers (SA)

22 Greenhill Rd, Wayville SA 5034

Tel: (08) 8372 7830

Email: society@auctioneers.com.au

auctioneers.com.au

Land advice

Land Services and Lands Titles Office

Ground floor, 101 Grenfell Street,

Adelaide SA 5000

Tel: (08) 8226 3983

Free call: (landlines only) 1800 648 176

Email: lscustomersupport@sa.gov.au

landservices.com.au