



PUBLIC TRUSTEE AND GUARDIAN

POLICY

DOCUMENT PROPERTIES	
Name of Policy	Auctioneers bidding at auctions
PTG Policy Number	2017-10
Versions	21 July 2016
Endorsed by SLG	21 July 2016
Authorised by	Andrew Taylor, Public Trustee and Guardian
Date for review (plus three years)	21 July 2019

LEGISLATION

S.9(1) *Public Trustee and Guardian Act 1985* (the Act) - provides the authority for the Public Trustee and Guardian to appoint a person to be agent of the Public Trustee and Guardian (PTG_.

S.9(2) of the Act provides that a person who is appointed as an agent is subject to the direction, control, supervision and inspection of PTG in all matters relating to the business for which the person is appointed.

DEFINITION/S

Agent - A person/organisation appointed by PTG under authority of the Act to undertake services on behalf of PTG e.g. PTG may appoint another Public Trustee to undertake the sale of a property and associated conveyancing in another jurisdiction. Additionally, an agent might be a solicitor appointed by PTG to act on behalf of PTG in a client matter.

Service Provider - Has a similar meaning to Agent. This term is commonly used to refer to persons/organisations subject to a Code of Conduct engaged by PTG to provide services to its clients. Typically this might include tradespersons, real estate agents, furniture removalists etc.

POLICY

PTG has established a Code of Conduct for Service Providers. This Code requires a prospective service provider to make a declaration in a form provided (copy attached). The declaration includes a statement as follows -

“To act with honesty, integrity, and fairness and refrain from acting in a manner that would constitute a conflict of interest and declare to PTG any such potential conflict. (PTG will not agree to a request by an agent to bid or obtain a beneficial interest in property that they have been engaged to sell).

The effect of this is that, where PTG engages an agent to market/sell a property by auction on a client’s behalf, it is not, in the first instance, appropriate that an employee of the same agent/agency or a relative of the agent (a related party) bids at the auction.

PTG is concerned about the ethics of such a practice and the potential conflict of interest that arises between the agent's role as a service provider to PTG and at the same time having a personal interest in the outcome.

PTG has taken legal advice in respect to this practice. The advice provided is as follows -

The agent should in the first instance disclose that a related party or a related party with a pecuniary interest in a company is a potential bidder at the auction. The advice further stated that it would be inappropriate to allow the person to bid, or to allow the auctioneer to conduct the auction.

Whilst it is not in PTG's interest to exclude a bidder who might offer the highest price on the day, an auction is a much more transparent form of sale to say a tender or single select. In that sense it is very hard to see how the actual process on the day could be influenced unfairly by the auctioneer in favour of that bidder.

However, it is foreseeable that the auctioneer could have conducted the marketing and advertising campaign in a manner that was designed to artificially push down interest in the land. This, theoretically, might allow the related party to buy the property for less than the highest price if the marketing were done properly.

Such action by the auctioneer would be a breach of their duty to PTG as a client and a breach of Schedule 8 of the *Agents Regulations 2003* (with respect to fiduciary duties). These would be serious matters potentially resulting in loss of agent's licence or criminal sanctions.

In the event of any evidence of this activity, PTG should cancel the auction and the agreement with the agent, remove the agent from PTG's Service Provider register and conduct the marketing campaign afresh.

Subject to that risk, the legal advice did not see any reason why the agent could not conduct the auction and allow the person to bid.

The conclusion then is that, where a related party bidder is disclosed by the agent selling, PTG need not take any action, other than to advise the agent that the disclosure has been noted and, notwithstanding, be instructed to undertake the auction and may register and accept bids from the related party.

END OF POLICY