

Harcourts

Pre-Auction Offer Procedure

STEP A1: Before commencing

A1.1 The Seller must confirm to the Licensee that:

- (a) they wish to sell their property at auction and an auction date has been set for the property; and
- (b) they wish to accept pre-auction offers to be conducted in accordance with the standard Harcourts **Pre-auction Offer Procedure** as set out in this document.

STEP A2: Licensee to explain standard Harcourts pre-auction offer procedure to seller

A2.1 The Licensee must thoroughly explain and discuss the meaning and implications of the Harcourts **Pre-auction Offer Procedure** clearly to the Seller (taking into account the Seller's particular circumstances) before the Seller signs the Harcourts **Agency Agreement** and the **Pre-auction Offer Acknowledgement**.

A2.2 The Licensee must advise the Seller that:

- (a) they cannot withdraw their property from the brought-forward auction if they sign a **Pre-auction Offer** (an offer made by a potential purchaser using the REINZ Auction Agreement) because to do so would mean that the property did not sell for a higher price at the brought-forward auction and therefore the condition in the **Pre-auction Offer** is satisfied; and
- (b) they cannot change the reserve price once the **Pre-auction Offer** is signed by them.

A2.3 Before the Seller signs the Harcourts **Agency Agreement** and the **Pre-auction Offer Acknowledgement**, the Licensee must recommend that the Seller seek independent legal, technical, or other advice on the documentation.

A2.4 By initialling the Client Acknowledgements section of the Harcourts **Agency Agreement** relating to pre-auction offers and signing the **Pre-auction Offer Acknowledgement**, the Seller is agreeing that:

- (a) the Licensee has clearly explained the Harcourts **Pre-auction Offer Procedure** to the Seller; and
- (b) they have received a copy of the Harcourts **Pre-auction Offer Procedure** which includes the **Pre-auction Offer Acknowledgement**; and
- (c) they have understood their rights and obligations under the Harcourts **Pre-auction Offer Procedure**; and
- (d) they shall be bound by the terms contained in the Harcourts **Pre-auction Offer Procedure**, including that they cannot withdraw their property from the brought-forward auction if they sign a **Pre-auction Offer**.

STEP A3: Licensee to explain standard Harcourts pre-auction offer procedure to purchaser

- A3.1 The Licensee must thoroughly explain and discuss the meaning and implications of the Harcourts **Pre-auction Offer Procedure** clearly to a prospective purchaser (taking into account the purchaser's particular circumstances) before the purchaser signs the **Pre-auction Offer Acknowledgement**.

STEP A4: Purchaser's pre-auction offer

- A4.1 When discussing the terms of the purchaser's pre-auction offer, the Licensee must ensure that the **Pre-auction Offer** is prepared using the REINZ Auction Agreement and includes the following clauses:

- (a) the purchase price; and
- (b) a deposit equal to 10% of the purchase price immediately payable to the Licensee in non-reversible cleared funds upon the **Pre-auction Offer** being declared unconditional at the brought-forward auction; and
- (c) a condition precedent inserted under the Further Terms of Sale stating that the **Pre-auction Offer** is conditional on the property not being sold at the brought-forward auction for an amount higher than the purchase price in the **Pre-auction Offer**. If a higher bid is made and accepted at the brought-forward auction then the condition is not satisfied and the **Pre-auction Offer** is automatically cancelled.

A4.2 Below we set out the suggested clause to be inserted into the Further Terms of Sale:

“21.0 Pre-auction Offer Condition

- 21.1 This Agreement is conditional upon the Vendor (Seller) not receiving a bid at the brought-forward auction at a purchase price higher than the purchase price set out in this Agreement. If no higher bid is received (and accepted), this Agreement shall become unconditional. If a higher bid is received (and accepted), this Agreement shall be automatically cancelled.**
- 21.2 The Vendor agrees that the time and the date of the auction shall be brought forward to a time and a date that is a minimum of 48 hours (which includes at least one (1) full working day) from the time and date the Vendor signs this Agreement.**
- 21.3 As soon as is reasonably practicable on the next working day following the brought-forward auction having been completed, the Vendor shall notify the Purchaser in writing as to whether or not the condition in clause 21.1 has been satisfied.**
- 21.4 For the avoidance of doubt, this pre-auction offer condition must be satisfied before this Agreement becomes contractually binding on the parties.”**

STEP A5: Opportunity for purchaser to obtain legal advice

- A5.1 Before the purchaser signs the Harcourts **Pre-auction Offer Acknowledgement** and the **Pre-auction Offer**, the Licensee must recommend that the purchaser seek independent legal, technical, or other advice on the documentation.
- A5.2 By signing the **Pre-auction Offer Acknowledgement**, the purchaser is agreeing that:
- (a) the Licensee has clearly explained the Harcourts **Pre-auction Offer Procedure** to the purchaser; and
 - (b) they have received a copy of the Harcourts **Pre-auction Offer Procedure** which includes the **Pre-auction Offer Acknowledgement**; and
 - (c) they have understood their rights and obligations under the Harcourts **Pre-auction Offer Procedure**; and
 - (d) they shall be bound by the terms contained in the Harcourts **Pre-auction Offer Procedure**.
- A5.3 Once the purchaser has either taken independent professional advice or waived their right to do so, the purchaser should contemporaneously sign:
- (a) the **Pre-auction Offer Acknowledgement**; and
 - (b) the **Pre-auction Offer**.

STEP A6: Presenting offer to seller

- A6.1 Prior to presenting the **Pre-auction Offer** to the Seller the Licensee must explain to the Seller that:
- (a) the **Pre-auction Offer** is conditional on the outcome of the brought-forward auction; and
 - (b) a conditional agreement for sale and purchase of the property is formed when the Seller signs the **Pre-auction Offer**; and
 - (c) by signing the **Pre-auction Offer** the Seller is bound to sell their property to the purchaser if a higher bid is not received at the brought-forward auction.
- A6.2 The Licensee should also remind the Seller that:
- (a) they cannot withdraw their property from the brought-forward auction if they sign a **Pre-auction Offer** because to do so would mean that the property did not sell for a higher price at the brought-forward auction and therefore the condition in the **Pre-auction Offer** is satisfied; and
 - (b) they cannot change the reserve price once the **Pre-auction Offer** is signed by them.

A6.3 The Seller is presented with the **Pre-auction Offer**. The Licensee must confirm to the Seller that the purchaser has agreed to the Harcourts **Pre-auction Offer Procedure**.

STEP A7: Opportunity for seller to obtain legal advice

A7.1 Before the Seller signs the **Pre-auction Offer**, the Licensee must recommend that the Seller seek independent legal, technical, or other advice on the agreement.

A7.2 If the Seller is unwilling to accept the **Pre-auction Offer** the purchaser is informed.

A7.3 If the Seller is willing to accept the **Pre-auction Offer**, the Seller must:

- (a) (before signing the **Pre-auction Offer**) complete the time and date of the brought-forward auction and re-sign the **Pre-auction Offer Acknowledgement** to confirm their agreement to be bound by the Harcourts **Pre-auction Offer Procedure**; and
- (b) sign and date the **Pre-auction Offer**.

STEP A8: Informing purchaser of next steps

A8.1 The Licensee shall inform the purchaser that:

- (a) the Seller has accepted the purchaser's **Pre-auction Offer** which means that the purchaser cannot withdraw its offer;
- (b) the Harcourts **Pre-auction Offer Procedure** has been agreed to by the Seller, which means the auction will be brought forward; and
- (c) the agreement is conditional on the property not selling for a higher price at the brought-forward auction; and
- (d) the purchaser may attend the brought-forward auction and may bid; and
- (e) the reserve price will be set at a price that is equivalent to the purchase price in the **Pre-auction Offer**; and
- (f) the purchase price in the **Pre-auction Offer** is not a bid and will not be treated as a bid at the auction. It is a separate agreement which will be cancelled if the condition in the **Pre-auction Offer** is not satisfied (i.e. the property is sold at a higher price at the brought-forward auction within the required time).

STEP A9: Informing prospective purchasers

A9.1 The Licensee then contacts all other parties who have expressed an interest in purchasing the property. These prospective purchasers are advised that:

- (a) the Seller has a conditional agreement to sell the property;

- (b) the auction date has been bought forward and the prospective purchaser can bid at the auction;
- (c) unless the property is sold at a higher price at the brought-forward auction the property will be sold pursuant to the **Pre-auction Offer**. The Licensee shall not disclose the purchase price contained in the **Pre-auction Offer** to any party.

STEP A10: Before the brought-forward auction

A10.1 Before the brought-forward auction:

- (a) The Seller must sign a **Reserve Price Form**. The reserve price must be equivalent to the purchase price in the **Pre-auction Offer** and the Seller cannot change the reserve price once the **Pre-auction Offer** is signed.
- (b) The Licensee must advise the Seller, the purchaser, and any potential purchasers that:
 - (i) an auction starts when the auctioneer invites the first bid from potential participants;
 - (ii) an auction ends when the auctioneer makes it clear that bidding is closed or announces that the property has sold;
 - (iii) any bid at an auction may be withdrawn before the end of the auction; and
 - (iv) the Seller will not withdraw their property from the brought-forward auction.

STEP A11: The brought-forward auction

A11.1 The auctioneer will announce the purchase price in the **Pre-auction Offer** prior to the start of the brought-forward auction as being at an acceptable level to the Seller (**not** as an opening bid) and then commences the brought-forward auction by inviting bids from potential participants. Prospective purchasers including the purchaser may bid.

A11.2 If the auctioneer closes the brought-forward auction and the property is sold for a price over the reserve price:

- (a) the **Pre-auction Offer** is at an end; and
- (b) a new REINZ Auction Agreement is signed with the successful bidder at the end of the brought-forward auction. If the winning bid is by the purchaser, then a new REINZ Auction Agreement is signed to include the winning bid as the new purchase price and the **Pre-auction Offer** is at an end as the condition is not satisfied.

A11.3 If the auctioneer closes the brought-forward auction and has not received and accepted any bids, then the **Pre-auction Offer** becomes unconditional and the auctioneer will announce that the brought-forward auction is at an end.

Harcourts

Pre-Auction Offer Acknowledgement

Property

Seller

.....

Purchaser

.....

Acknowledgement

By signing this **Pre-auction Offer Acknowledgement**, the Seller and the purchaser both acknowledge that:

1. the Seller wishes to accept pre-auction offers to be conducted in accordance with the standard Harcourts **Pre-auction Offer Procedure**; and
2. the purchaser wishes to make a pre-auction offer in accordance with the Harcourts standard **Pre-auction Offer Procedure**; and
3. the Licensee has thoroughly explained and discussed the meaning and implications of the Harcourts **Pre-auction Offer Procedure** clearly to the Seller and to the purchaser; and
4. the Seller and the purchaser understand their rights and obligations under the Harcourts **Pre-auction Offer Procedure**; and
5. the Seller and the purchaser agree to be bound by the terms contained in the Harcourts **Pre-auction Offer Procedure**; and
6. the Licensee has recommended that the Seller and the purchaser seek independent legal, technical, or other advice on the documentation prior to signing any documents, and the parties have either taken such advice or have waived their rights to do so; and Initials here:
7. the purchaser confirms that the **Pre-auction Offer** has been signed and includes:
 - (a) the purchase price; and

- (b) immediate payment of the deposit (equivalent to 10% of the purchase price) to the Licensee in non-reversible cleared funds upon the **Pre-auction Offer** being declared unconditional at the brought-forward auction; and
 - (c) the Pre-auction Offer Condition set out in Step A4.2 above; and
8. once the **Pre-auction Offer** is signed by the Seller:
- (a) the **Pre-auction Offer** remains conditional upon the outcome of the brought-forward auction; and
 - (b) the Seller is bound to sell their property to the purchaser if a higher price is not received at the brought-forward auction; and
 - (c) the Seller cannot withdraw their property from auction; and
 - (d) the Seller cannot change the reserve price (which must be equivalent to the purchase price); and
 - (e) the purchase price in the **Pre-auction Offer** is not a bid; and
 - (f) the purchaser may attend the auction and may bid; and
9. the brought-forward auction details:

brought-forward auction shall be held at _____ am/pm
 on the _____ day of _____
 (being a minimum of 48 hours including 1 full working day from the Seller signing the **Pre-auction Offer**.)

Dated this _____ day of _____ 20_____

Signed by the **Seller**: _____

Print Name: _____
Trustee/Director/Authorised Signatory

Print Name: _____
Trustee/Director/Authorised Signatory

Signed by the **Purchaser**: _____

Print Name: _____
Trustee/Director/Authorised Signatory

Print Name: _____
Trustee/Director/Authorised Signatory

Print Name: _____
Trustee/Director/Authorised Signatory

Print Name: _____
Trustee/Director/Authorised Signatory