

## Advice Notes - Underquoting

The Property Agents Board regulates conduct of property agents within Tasmania.

These advice notes were developed to assist property agents understand their obligations related to estimating the likely selling price and marketing property for sale. They apply to all property agents, meaning all real estate agents, property managers, general auctioneers and property representatives.

### What is Underquoting?

Underquoting occurs where the property agent deliberately misleads prospective purchasers about the likely selling price of a property they have for sale.

Any misrepresentation of the expected price a property will sell for in advertising or marketing material, or discussions with prospective purchasers can be illegal. This is because the practice of misleading or deceptive conduct<sup>1</sup> is a breach of Australia's consumer laws and by misleading prospective purchasers about a property's price is a clear example of this type of conduct. Further, a property agent must not represent in any way to someone else anything that the agent knows is false or misleading in relation to the letting or sale of property<sup>2</sup>.

Specific examples of underquoting may include where the property agent advertises, or advises potential purchasers of a price for the property that is below the known market value of the property, taking into consideration recent sales of comparable properties in that area or deliberately advertising a property at a price that the property agent knows that the vendor is unwilling to accept.

Property agents have an obligation to provide an accurate opinion of the market price of a property and if this changes to update the advertised price, or price guide accordingly. Further, the property agent must inform their client if, in his or her opinion, the price the client is prepared to accept on the listing of a property is less than the fair market value of the property.<sup>3</sup>

### What is an estimated likely selling price?

The estimated likely selling price is the property agent's reasonable estimate of the likely selling price for the property.

A reasonable estimate will ultimately depend on the particular circumstances of each property. The estimated selling price that a property agent determines should be made following careful consideration of factors that will affect the selling price.

As a general guide, the factors that may influence the expected sale price may include; sales of comparable properties; feedback from potential purchasers; current or relevant valuations provided in respect of the property; the characteristics and features of the property such as its size and location; the existence of any "material facts", or the methods used to market the property.

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<sup>1</sup> Australian Consumer Law Section 18

<sup>2</sup> Property Agents and Land Transactions Act 2016 - Section 56

<sup>3</sup> Code of Conduct Rule 9 (e)

Property agents are expected to provide a reasonable estimate of the likely selling price and in many property sales this estimate will be close to the final sale price. However, variations can occur due to factors which may be unknown to the property agent, for example interest rate movements, unusually high levels of buyer interest, or factors outside of their control, such as unique properties which can be difficult to value.

Regardless of the type of property or what occurs during the marketing period, a property agent should be able to provide evidence which demonstrates that the difference between the estimated selling price and the eventual sale price was reasonable in the circumstances.

Property agents are expected to act in their client's best interest but to also act fairly, honestly and in a reasonable manner towards their customers<sup>4</sup>.

### **Ways to avoid underquoting when marketing residential property**

The estimated selling price is a reasonable estimate of the likely selling price for the property after considering comparable sales, market conditions, the property's features and other relevant information.

### **Advertising Price**

- if a property is on the market and the vendor rejects an unconditional offer then the advertised price must be increased to that of the rejected offer.
- if a property is on the market and the vendor rejects a conditional offer then the advertised price can remain unchanged.

### **Other States and Territories**

Other States have introduced specific legislation to combat underquoting practices.

### **Conclusions**

The purpose of these guidelines is to provide guidance to property agents with respect to their responsibilities and obligations related to estimating the likely selling price and marketing property for sale.

Ultimately, it is a property agent's responsibility to comply with the requirements of Australian Consumer Law as well as the *Property Agents and Land Transactions Act 2016* and the conduct rules in the Code of Conduct. If you are unsure whether your action will breach the Code of Conduct, you should err on the side of caution. As a property agent you should ensure that you understand the professional conduct rules that apply to you, and act honestly and with integrity at all times.

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<sup>4</sup> Code of Conduct – Rule 8