

# Underquoting information for sellers

New underquoting laws start from **1 January 2016**.

If you engage an agent to sell **residential property** in NSW, these laws affect how they can market your property.

It is illegal for an agent to underquote a property price - indicating a price to buyers or sellers that is less than what their **estimated selling price** is for a property. The agent must record their estimated selling price in the agency agreement (the contract between the seller and the agent to sell a property).

Agents audited against the new underquoting requirements will need to demonstrate compliance with them. They will need to show that their selling price estimates were reasonable, up-to-date and evidence-based.

Be aware that the agent must give you certain information. This includes the reasons for their estimated selling price for your property. Learn more about how an agent can market your property and what an agent must tell you as a result of the new underquoting requirements.

## What to know before putting your property on the market

As the seller, you may choose to instruct an agent not to reveal the estimated selling price for your property to prospective buyers, but this means the agent can't reveal any price information (in advertising, in writing or verbally).

An agent should conduct a marketing campaign that promotes accurate information about the property to attract genuine interest from buyers. Be aware of **illegal marketing practices** (from 1 January 2016). An agent **must not** promote a price for your property as:

- \$XXX,000+

- 'offers over' or 'offers above' a certain amount (or any similar statements)
- if their estimate is a range, they can quote that range as long as the higher price does not exceed the lower price by more than 10% eg; \$500,000-\$550,000

Statements that use terms like 'offers above' can mislead buyers into thinking a property is within their range when an agent's estimated selling price could be much higher than the minimum 'acceptable' offer being promoted.

## What should I expect of my agent?

From 1 January 2016, if you engage an agent to sell a residential property in NSW, the agent must:

- include an estimated selling price for your property in the agency agreement and provide you with evidence for that estimate
- the estimate can be a single price or a price range as long as the higher price in the range is not greater than the lower price by more than 10%
- when entering into an agency agreement from 1 January 2016 - the agent must notify you in writing if they revise their estimate, provide evidence for that revision and amend the agency agreement (they do not need your consent to amend the agreement to include their revised estimate).

If the agent revises their estimated selling price they must take all reasonable steps as soon as is practical to **update any marketing** of the property with the revised estimated selling price.

If you are already in an agency agreement *before* 1 January 2016 that is still operating, then the agent:

- does not have to update the estimated selling price for your property in the agency agreement
- must still comply with all the other new obligations for not advertising or making statements about the likely selling price of the property that is less than their estimated selling price contained in the agency agreement - for more details refer to our Underquoting page for agents.

Learn how the underquoting laws apply to the sale of your property by referring to the questions and answers below. To explore the laws further, visit our Underquoting reforms page.

## Underquoting questions and answers for sellers

### Can the agent promote my property with 'offers above' a certain amount?

No, from 1 January 2016, this is against the law. Statements such as 'offers above' and 'offers over' and using symbols like '+' don't indicate to buyers the likely selling price. This can sometimes lead buyers to incorrectly believe that they can afford to buy a property. This is particularly misleading if the agent has judged in the agency agreement that the property's likely selling price is much higher than the minimum price included in advertisements or in statements made to potential purchasers.

The laws require that any advertised price or statement about the price **must not** be lower than the agent's estimated selling price recorded in the sales agreement. If you and your agent agree, you may decide not to make any statement about the likely selling price and not publish any price estimates. If so, prospective buyers will need to rely on other means to help inform them about the value of your property in the current market.

### What evidence should the agent give me on their estimated selling price?

An estimated selling price must be reasonable and based on the factors likely to impact on the sale price. Examples include comparable sales, location, architectural design, future use of the property such as zoning or rights of way, market demand, and seasonal and economic factors.

The agent must always provide you with evidence for their selling price estimate for your property. They also need to give you written notice if they revise their estimate, provide you with evidence of the reasonableness of the revision and amend the agency agreement to include their revised figure. They do not need your consent to amend the agency agreement with their revised estimate.

### Does the agent need my consent before changing the estimated selling price?

No. Under the laws, an agent must comply with the requirement to revise their estimated selling price if they receive evidence, such as market feedback, that changes their professional assessment of what your property is likely to sell for. They must advise you in writing that they have revised their estimate, provide you with evidence of the reasonableness of the revision and amend the agency agreement by including the revised estimated selling price.

If the agent revises their estimated selling price they must take all reasonable steps as soon as is practical to **update any marketing** of the property with the revised estimated selling price.

### What if the agent revises their estimate but the local newspaper has already gone to print?

Certain updates may not be possible but the agent must be able to demonstrate that they have made reasonable attempts to update any marketing material that no longer shows their reasonable estimated selling price.

In some circumstances, it may not be practical to retract published newspaper advertising, however, if there is an opportunity to update price information before it is printed they must do so as soon as is practical. They should

update any online marketing for the property as soon as possible.

### **Why is a price estimate that is given as a range limited to 10%?**

It is expected that a professional, experienced agent would be able to approximate a property's price within a 10% range for the vast majority of properties they are marketing.

For the estimated selling price of a property to give any meaningful information to consumers, it needs to be within certain limits. A range of between \$500,000 and \$900,000, for example, would be too wide for most consumers to assess whether the property is affordable to them.

While agents cannot be expected to predict exact sale prices, their profession is responsible for making informed assessments about a property's likely selling price.

### **Will agents have to tell buyers their estimated selling price?**

The agent is not required to disclose the estimated selling price to potential buyers, whether in advertising, in writing or verbally. This situation could arise if you instruct the agent not to reveal the estimated selling price.

The agent must disclose their estimated selling price in the agency agreement, and notify you if it changes. They must provide evidence for their initial assessment of the selling price and update you with any future evidence if they revise their estimate.

If a property is advertised with a price, the advertised price cannot be less than the estimated selling price in the agency agreement.

If you have an open house and the agent provides information regarding the price, again it cannot be less than the estimated selling price in the agency agreement.

### **What if I get different estimated selling prices from different agents?**

If you are comparing agents, it is possible to get some variation in different agents' estimated selling prices,

however all agents would all be relying on the similar evidence to formulate that estimate so the variation should not be significant.

Sellers should be careful when selecting an agent. They should be wary of choosing an agent just because their estimated selling price for the property was considerably higher than other estimates provided by competitors. This could indicate that the agent doesn't understand the market and that the estimate is not reasonable.

All agents must provide evidence that their estimate is reasonable and Fair Trading inspectors can demand that evidence. If it is found that the estimate isn't reasonable, based on the evidence, the agent is guilty of an offence.

### **What happens if the current property market changes?**

Market demand is just one factor agents need to take into account when determining the estimated selling price for property they are marketing. If there is a change then the agent will need to also look at any other evidence of the likely selling price of the property to decide whether they need to revise their estimated selling price. If they do revise their estimated selling price, they need to:

- advise the seller in writing and provide the evidence for making the revision
- amend the agency agreement with the revised estimated selling price.
- take all reasonable steps as soon as is practical to **update any marketing** of the property with the revised estimated selling price.

### **Will the new laws stop the market from functioning competitively?**

No. The underquoting laws are designed to ensure that buyers receive more accurate information. This should maintain competition between buyers who can afford the property, but stop misleading potential buyers into believing that a property is in their price range because an agent has underquoted their estimated selling price.

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