



**Underquoting.....
it's still happening**

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Underquoting.....it's still happening

New legislation was introduced into the NSW property industry on 1 January 2016 in relation to the practice of “underquoting” of residential properties – that’s seven and a half years ago and it still amazes us at the College at how many agents are still confused about the concept.

So, this edition of the Chronicle will focus on one of the points on which we receive constant questions, and that is when you as an agent have a different opinion of price from your vendor.

NSW Fair Trading are regularly visiting agencies to check compliance with underquoting rules. Only a few months ago, they conducted 87 inspections in a month, with 15 of these inspections being undercover. Of these 87 inspections, 45 were of agents who were previously non-compliant and 66% of the 45 agencies were now found to be compliant, which was pleasing for Fair Trading. Fifty agencies were identified as being non-compliant with the underquoting rules with 28 of these agencies being fined. The most common breaches included:

- Lack of written records for verbal price representations
- Unreasonable estimated selling prices, and
- Failure to comply with licensee’s rules of

conduct and the supervision guidelines.

The main scenario that is posed by agents to us during training sessions is – if an agent has appraised a property at a price of \$800,000, and the vendor has instructed the agent to market the property at \$750,000 as they are in a rush to sell and will accept less than the agent’s opinion of price - is the agency at risk of breaching the underquoting rules within the Property and Stock Agents Act?

The obvious answer is yes they are breaching the underquoting rules and unfortunately the fines can be extensive, as seen from the compliance inspections conducted a few months ago.

The agent’s role within the appraisal process is to provide the vendor with an estimate of the property’s selling price, substantiated by comparable sales data for the geographic location.

While it will always be the vendor who decides what price they are willing to accept for their property, the agent is restricted in their advertising, which includes advertising materials presented online, in brochures and print media as well as the advertising being done when the agent discusses the property with any potential buyers. The agent is only able to discuss figures starting from the appraisal price and going up in a 10% range, and definitely not going below that appraisal figure.

Specifically, the Act states the following:

73 Underquoting in Advertisements for residential property

A real estate agent must not publish or cause to be published an advertisement in relation to the sale of a residential property that indicates or suggests a selling price for the property that is less than the estimated selling price for the property.

Maximum penalty: 200 penalty units.

73A Underquoting in representations by real estate agents

A real estate agent or any person engaged by a real estate agent must not, in the course of marketing a residential property, make any statement to any person that indicates or suggests that the property may be sold for a price that is less than the estimated selling price for the property.

(1A) A real estate agent must ensure that any person engaged by the real estate agent does not, in the course of marketing a residential property, make any statement to any person that indicates or suggests that the property may be sold for a price that is less than the estimated selling price for the property.

Even when instructed by the vendor, the agent cannot suggest to a purchaser that the vendor will, or may, take an amount for the property underneath the bottom figure in the appraisal conducted by the agent and represented in the agency agreement with the vendor.

So, in relation to the example above, you have appraised the property at \$800,000, and as the vendor has informed you that they require a quick sale and are willing to accept less – it would be prudent to offer the property with no price in the advertising and when speaking price, use phrases such as “my opinion of this property in relation to comparable properties is \$800,000 – but I can inform you that we have a very motivated vendor”. This makes it clear to any prospective purchaser that if they were to make an offer less than the \$800,000 that it would most likely be considered in a favourable manner.

There is a valuable lesson agents should take from this section of the Property and Stock Agents Act and that is to have clear and frank discussions about expectations and about the limits your agency has in place because of the legislation.

Rosy Sullivan
Director | College Principal

From the office

Our past fortnight has been filled with training events from licensing classes in Bendigo, whilst in Sydney we've had Commercial Sales & Leasing, Strata licensing and our new Buyer's Agency Practices module – not to mention our CPD classes both in-class and interactive webinars. Now, our trainers should be tired BUT NO, we have commenced the celebrations for ACOP's 20th anniversary as a Registered Training Organisation with a huge party in the city with over 200 guests from across the property and finance industries. And yes, of course there was a celebration cake. It was a night (and early morning) to remember. And to be expected, the celebrations will be shared with all our customers throughout our anniversary month of November – watch our marketing emails and social media posts.

Rosy and John also participated in a national fundraising event held in Melbourne this past week for the Cambodian Children's Fund, a charity that is very close to their hearts. John Roberts travelled to Melbourne as well for the event at the National Gallery where he was auctioneer and managed to extract significant funds from the almost 400 people in attendance. It has certainly been a huge fortnight for the extra-curricular activities of ACOP.

Our fortnight rounded off with just one birthday and whilst the birthday boy, our trainer Michael was actually in Bendigo running training – it didn't stop the team from celebrating the only way we know how, and that is with cake. And who says we can't have another cake next week when Michael is back in the office.

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