



Agents Opinion of Price and Commission

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In NSW, a real estate agent's opinion of price is a formal, evidence-based estimate of a property's likely market value, which must be included in the agency agreement, supported by comparable sales with "good reason" and updated weekly.

For residential property sales, agents must provide a reasonable estimated selling price (or a strict 10% range) in the agency agreement and back it up with documented evidence. That is, a CMA, with Agent notes supporting the comparables sales chosen. Agents are required to review the estimated selling price at least weekly to ensure it remains accurate, and they must advise the seller in writing if the price needs to be updated, with an explanation for the Revision of Estimated Selling Price. In NSW, agents must revise the estimated selling price (ESP) in writing to the vendor whenever market feedback or conditions render the initial estimate unreasonable, ensuring it reflects the true market value, in order to prevent underquoting. The agency agreement must be updated, and the agent must maintain evidence to support the new price estimate.

The remuneration of the agent in the Agency Agreement must also correspond to the agent's estimated opinion of price. For instance: If an

estimated selling price of \$1,000,000 to \$1,100,000 has been provided with a commission rate of 1.65% (including GST), then the remuneration should be articulated as \$16,500 to \$18,150. Conversely, stating the commission as 1.65% (inclusive of GST) for a sale price of \$1,200,000 is non-compliant and may be considered underquoting if reviewed by NSW Fair Trading. This is due to the inference that discussions regarding the higher price of \$1,200,000 have taken place. We frequently observe this practice at the College during our Agency Compliance Checks.

Whilst sliding scale commission schedules are permissible, an agent must ensure that the schedule reflects the guide provided in the agency agreement. For example: 1.65% (including GST) if sold for \$1,000,000 to \$1,100,000 and 1.70% (including GST) if sold for any amount over \$1,100,001. This remuneration reflects the guide on the agency agreement, while also providing an incentive should price expectations be exceeded.

An agency's sales files are one area of compliance that you can be assured will be checked in a regulatory audit by NSW Fair Trading. In reference to Supervision Guidelines issued on 1 July 2024 by the Strata and Property Services Commissioner and linked to Section 32



of the Property and Stock Agents Act 2002, it should be noted that there are three steps that should be followed just in relation to the estimated selling price of a property, as set out in your Supervision Guidelines:

1. A licensee must retain a record of information that demonstrates how the estimated selling price was determined to be reasonable. In an audit, one should expect NSW Fair Trading to see this record.
2. Whilst it is no longer a regulatory requirement to review prices on a weekly basis, a licensee must ensure that the estimated selling price is reviewed regularly and as required by market occurrences in order to confirm the estimated price remains a reasonable price.

When an agent reviews their estimated selling price, and there is no change to the selling price upon that review, a simple line to the vendor in your weekly communication with them to state something like: "A review of selling price has been conducted and no change to selling price has been made", will suffice.

3. When changes are made to an estimated selling price, a licensee must ensure:

- a. the change is communicated in writing to the vendor with evidence of how and why the estimated selling price was revised as soon as practicable, and
- b. the relevant agency agreement is amended to reflect the revised estimated selling price.

These are three straightforward steps that should be readily generated upon request by NSW Fair Trading. These guidelines are part of the broader NSW Fair Trading requirements aimed at preventing underquoting.

Always be attentive to the details when finalising your agency agreement to guarantee compliance. The best practice is to have it reviewed by another individual at the Agency, ideally the Licensee-In-Charge or their delegate. Additionally, ensure that the remuneration stated in your agency agreement accurately represents the opinion of price, and finally, confirm that your comparable sales include agent notes that are well justified.

Should your agency require a Compliance Check, please reach out to the College on 1300 88 48 10 or enquiries@acop.edu.au

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