

Underquoting quick guide

New underquoting laws commenced on 1 January 2016. Do you understand your obligations? Here's a quick guide on the top five changes you need to know about.

1 Determine the estimated selling price

Under the *Property, Stock and Business Agents Act 2002*, you are required to include an estimated selling price in your agency agreements. This estimated selling price is your reasonable estimate of the likely selling price for the property. You can express it either as a single price or a price range. If you use a price range, the highest price in the price range cannot exceed the lowest price by more than 10 per cent.

What is a reasonable estimate will depend on the particular circumstances of each property. So your estimated selling price should only be determined after careful consideration of the unique factors that will affect the selling price of the property, and based on your knowledge, experience and professional skills.

3 Use the right terminology

The Act now bans the use of phrases such as 'offers above' and 'offers over' when stating or publishing the estimated selling price. It also bans the use of any similar words or symbols. However you can use phrases such as 'price guide', 'auction guide', 'bidding guide' or 'price estimate', as long as your published or stated price or price range complies with the Act's other requirements.

5 Record selling price statements

You are now required to keep a written record of any and all prices you have quoted in relation to the property. These written records will assist you to demonstrate that you have not quoted a price that is lower than your estimated selling price.

This new requirement means that you may have to change some of your business practices. While not currently required by the Act, you should consider including the names of the people who you have communicated with about the property's likely selling price or price range. This will help if you are investigated by NSW Fair Trading.

At an open house, you're likely to speak to a number of potential buyers and may provide the same information to everyone attending the inspection. If this is the case, you can simply make a single record of the uniform information provided. However, if you have a conversation with an individual over the phone or face to face, then you must make an individual written record of the information conveyed. ♦

2 Evidence the estimated selling price

You must provide the seller with evidence of how you reached the estimated selling price for the property. You must also record and keep on file any and all relevant information that shows how you determined the estimated selling price to be reasonable.

Remember to keep file notes on things such as comparable sales, market conditions, the property's features and any other relevant information. This is important because your file notes may be used by NSW Fair Trading to substantiate your estimated selling price.

4 Regularly revise the estimated selling price

During the course of the marketing campaign, market changes or feedback from potential buyers may indicate that the estimated selling price is no longer a reasonable estimate of the likely selling price. If this is the case, you must revise the estimated selling price. NSW Fair Trading advise that you should review your estimated selling price on a weekly basis and consider if the estimate is still reasonable.

If you do revise the estimated selling price, you must give written notice to the seller of the revised estimated selling price (whether that be a single price or price range) and provide them with evidence to support the reasonableness of your revised estimated selling price. You'll also need to amend the agency agreement to reflect the revised estimated selling price.

To assist you to comply with your new obligations, REINSW has prepared a *Notice of Revised Estimated Selling Price*, which is available via REI Forms Live and at reinsw.com.au. If you complete the notice correctly and serve it at the correct time, you will have satisfied your obligations.

And don't forget that you will need to take all reasonable steps, as soon as practicable after revising the estimated selling price, to change or withdraw any advertisement or marketing material displaying a selling price that is different to the revised estimated selling price.

Underquoting Guidelines

NSW Fair Trading has released the *Underquoting Guidelines for Residential Property* to assist agents in understanding their obligations in relation to underquoting. Download a copy of the guidelines at fairtrading.nsw.gov.au

The information in this article was drawn from the NSW Fair Trading Underquoting Guidelines for Residential Property (dated December 2015).

For more information on underquoting please visit reinsw.com.au