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27 February 2015

Dear Mr Harris,

**REINSW Submission**  
**Draft Guidelines – Underquoting Property Prices**

We refer to your email of 17 February 2015 and the attached draft Underquoting Property Prices Guidelines (the **draft Guidelines**).

As you may know, the Real Estate Institute of NSW (**REINSW** or the **Institute**) is the largest professional association of real estate agents and other property professionals in New South Wales and as such the Institute appreciates the opportunity to comment on the draft Guidelines.

**General comments**

The issue of underquoting has been a source of much misunderstanding over the years. Frequently, unsuccessful purchasers mistakenly believe underquoting has occurred when in fact the price achieved for a property may have been due to rising market conditions or a successful marketing campaign conducted by the agent. Underquoting allegations tend to decrease during a flat market.

The typical case where underquoting clearly occurs is where the advertised price is lower than the estimated selling price set out in the agency agreement. There are a variety of more complicated scenarios where it is not so clear and where consumers can become confused.

Purchasers also tend to mistake the concepts of estimated selling price and ultimate selling price. There are a variety of factors which can influence the final selling price for a property. These include type and length of the marketing campaign, the economic conditions, seasonal factors, the method of sale, the motivations of the vendor and the drivers of the particular ultimate purchaser.

REINSW is of the view that the statutory provisions in the *Property, Stock and Business Agents Act 2002* (**PSBA Act**) are clear and that there is no need for further regulation in this area. The issues arise from a lack of understanding by both agents and consumers.

There seems to be a belief that further regulating and issuing guidelines will prevent the practice from occurring. It is important to resist the temptation to further regulate and complicate the process. The legislation is clear and it is a matter of educating agents and consumers about what is and is not underquoting. It is submitted that the over-regulation of this issue in South Australia and Victoria has resulted in further confusion and complication rather than the intended guidance and clarification. The Institute is opposed to percentage ranges as used in other jurisdictions.

It is submitted that a very small percentage of agents are involved in underquoting practices and accordingly in breach of the PSBA Act. Some do so knowingly (similar to the case of motorists ignoring speed signs) and others do so because they are not aware of their obligations under the PSBA Act. The solution in the former case is better policing and, in the latter, education and awareness.

Since the current legislation was enacted REINSW is not aware of any instances where the maximum penalty has been imposed. More typically fines on the range of \$1,100 to \$2,200 have been applied ( $\frac{1}{20}$ <sup>th</sup> to  $\frac{1}{10}$ <sup>th</sup> of the possible maximum).

### **Comments on the draft Guidelines**

The Institute appreciates the opportunity to review the draft Guidelines and provides the following comments, primarily in respect of the section headed “Estimating the Selling Price” on page 2 of the draft Guidelines:

1. In respect of the first bullet point - it is submitted the agent’s estimate provided in the agency agreement is the estimate of the selling price, rather than a factor to be considered in providing the estimate. Therefore this bullet point should be removed.
2. In respect of the fifth bullet point – it is submitted that taking into account the vendor’s expectations can be problematic as frequently vendors have expectations which are more optimistic than the realistic market estimate.

In addition, the reserve price for the auction is often set on the day of the auction, when the general sentiment from the marketing campaign is more apparent. Therefore the reserve price cannot be taken into account when providing the original estimate. By that time it may not be practical to update any published price estimates.

3. In respect of the sixth bullet point – it is submitted the agent cannot realistically take into account feedback from potential purchasers when providing the agent’s estimated selling price in the agency agreement. Purchaser feedback can be a factor in updating price estimates.

Also, purchaser feedback can vary quite a lot – at what point or how frequently should the price guide be updated?

4. The seventh bullet point relating to valuations should specify current valuations, as the market can change within a matter of weeks or months. Many valuations are now desk valuations and are done without the benefit of actually viewing the property.
5. A range of other matters should be listed as matters to be taken into account when estimating the selling price, including the property characteristics, the market conditions in the location where the property is situated, the selling prices for comparable properties in the area, the motivations and circumstances of the vendor, the vendor’s wishes as to the method of marketing and sale and any “material facts” pertaining to the property.

6. It should also be recognised that the final selling price can differ from the originally estimated price in a variety of circumstances where the agent has acted fairly and honestly and where there is no breach of the PSBA Act, including due to economic and/or seasonal factors.

## **Conclusion**

As noted above, the Institute considers that the obligations of the agent are clear under the current PSBA Act and that no further regulation is desirable. For the most part, agents comply with their obligations. Consumers can misconstrue certain circumstances as non-compliance due to lack of consumer awareness.

It is submitted that the solution to this issue lies in greater education for both consumers and agents and better policing.

REINSW is committed to providing quality continuing education and regular updates to its members. We look forward doing so in conjunction with Fair Trading NSW at the upcoming Roadshow.

Thank you for the opportunity to contribute on this issue.

Yours faithfully,



Tim McKibbin  
**Chief Executive Officer**  
**Real Estate Institute of NSW**