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*Real Estate  
Guidelines for real estate  
salespeople - price  
advertising and  
underquoting*  
”

November 2007



## Disclaimer

Because this publication avoids the use of legal language, information about the law may have been summarised or expressed in general statements. This information should not be relied upon as a substitute for professional legal advice or reference to the actual legislation.

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# “Introduction”

These guidelines have been prepared by Consumer Affairs Victoria (CAV) to assist real estate salespeople to meet their obligations under the *Fair Trading Act 1999* (the FTA) and the *Estate Agents Act 1980* (the EAA) when advertising or providing information about the price of residential properties for sale.

Among other matters, these Acts prohibit salespeople from making representations about property prices that are false or misleading, or are likely to mislead or deceive. Underquoting the likely selling price of a property for sale to a prospective buyer is false and misleading and in breach of the FTA and the EAA.

In these guidelines a ‘salesperson’ means an estate agent or an agent’s representative who is involved in the sale or purchase of property within the terms of section 4 of the EAA. ‘Salespeople’ has the corresponding meaning.

The guidelines provide the basis for CAV to review the conduct of salespeople to assess their compliance with the false, misleading or deceptive conduct provisions of the FTA and the advertising and underquoting provisions of the EAA and regulations. There are substantial fines and civil consequences for contravention of these provisions.

In developing the guidelines, CAV has taken into account the guidelines prepared by the Australian Competition and Consumer Commission (ACCC) in conjunction with the Real Estate Institute of Australia, relating to the requirements of the *Commonwealth Trade Practices Act 1974* (the TPA); has taken into account the Real Estate Institute of Victoria (REIV) underquoting guidelines for public auctions and guidelines for private sales; and, has consulted with the Estate Agents Council and the REIV.

The guidelines set out below apply to the sale of residential property, regardless of the method of the sale (auction or private sale) or the way in which information about price is provided to the public. They provide a comprehensive listing of the principles that salespeople must follow in their daily practice in order to comply with the law.

## What is underquoting?

The guidelines cover a range of market conduct relevant to the practice of underquoting.

Underquoting occurs when a salesperson:

- advertises or advises a prospective buyer that a property is available for sale at an amount that is less than the vendor’s asking price or auction reserve price
- advertises or advises a prospective buyer of a price that is less than the salesperson’s current estimate of the likely selling price
- advertises or continues to advertise a price that is less than a genuine offer or expression of interest by a prospective buyer and previously refused by the vendor, or
- gives an inaccurate appraisal of the current market price of a property.

## Guidelines

The guidelines apply to salespeople who include a price or a price range in any advertising or marketing for the sale of residential property, or who give advice to prospective buyers on the price of such properties.

In these guidelines the ‘**vendor’s selling price**’ means the vendor’s asking price, the vendor’s auction reserve price or other price indicated to a salesperson as the price at which the vendor is prepared to sell their property. The vendor may give their selling price to a salesperson either verbally or in writing.

# Guidelines

- 1 When a vendor **has** provided a salesperson with a selling price, the price at which the property is advertised or marketed for sale **must not be less than** this price.

The price at which a property is advertised or marketed must be updated during the sales campaign to reflect any change in the vendor's selling price, including the amounts of any offers rejected by the vendor.

- 2 When a vendor **has not** provided a salesperson with a selling price, the price at which the property is advertised or marketed for sale **must not be less than** the salesperson's **current** estimate of the likely selling price for the property.

A salesperson's current estimate of the likely selling price must take into consideration the estimate given to a vendor and be **updated** for any changes in that estimate after the authority was signed. This means that the salesperson's estimate of the likely selling price must be current and up-to-date at the time it is used in any advertising or marketing.

The price at which a property is advertised or marketed must be updated during the sales campaign to reflect a salesperson's current estimate of the likely selling price and the amounts of any offers rejected by the vendor.

- 3 The '*estimated selling price*' that a salesperson gives to a vendor and which is included in an agency authority, **must not misrepresent** the price at which the salesperson genuinely believes the property may be sold.

An estimated selling price is determined by a salesperson based on their experience, skill and knowledge of the market. It must be a realistic estimate of the likely selling price of a property **at the time the agency authority is signed**. A salesperson must use the best information available at that time to make the estimate and, at a minimum, take into account the latest comparable property sales and price trends.

- 4 The price at which a property is advertised, marketed or quoted for sale may be either a single amount or a price range.

If a **single amount** is advertised or quoted, it must not be less than the vendor's selling price. Where the vendor has not provided a selling price, the price advertised must not be less than the salesperson's **current** estimate of the likely selling price for the property.

If a **price range** is advertised or quoted, the lowest amount in the range must not be less than the vendor's selling price. Where no vendor's selling price has been provided, then the lowest amount in the advertised price range must not be less than the salesperson's **current** estimate of the likely selling price for the property.

- 5 Before advertising the price of a property for sale, a salesperson should obtain:

- (a) the vendor's written approval of the price or range at which a property is to be advertised or marketed for sale, and
- (b) the vendor's written confirmation that they will consider offers at that price or for all prices within that range.

# Guidelines

6 Where a prospective buyer asks a salesperson for their opinion of the selling price, the salesperson must not give a price that **is less than** the vendor's selling price. Where no vendor's selling price has been provided, a salesperson must not give a price that is **less than** the salesperson's **current** estimate of the likely selling price. (This guideline applies to advice given to prospective buyers during the marketing campaign, and to property sales where no price is advertised or included in the marketing materials.)

7 Price advertising, marketing and advice must be updated for any genuine offers on price which are rejected by a vendor during a sales campaign.

Updating must occur, in particular, when a vendor rejects a price in a written offer or a written expression of interest\* that:

- a) is higher than an advertised or quoted price that is a single amount, or
- (b) is higher than the lowest amount in a range, when a range is advertised or quoted.

Updating is not necessary when:

- (a) a vendor subsequently changes their mind and will consider a lower price, or
- (b) a vendor rejects an offer, not on the basis of price but because other terms were unacceptable to the vendor, or
- (c) a buyer exercises their cooling-off rights, or
- (d) a buyer withdraws an offer, or
- (e) a buyer rescinds a contract.

A salesperson is also responsible for ensuring that advertising, marketing and advice is not misleading when verbal offers and verbal expressions of interest are rejected by a vendor.

*\*Note: A written expression of interest is any statement in writing from a prospective buyer that includes a price and that is intended to gauge the vendor's reaction.*

8 CAV will interpret any price that is quoted in any advertising, marketing or advice provided in relation to a property for sale, to be based on either the **vendor's selling price** or the **salesperson's estimated selling price**.

This applies to a price that is stated as a single amount or as a price range, regardless of the terminology used to describe that price or range.

**For an explanation of each guideline refer to the explanatory notes on page 5.**

## Advertising practices

The following advertising practices and similar methods of price advertising are **not** supported by CAV. In most instances these practices are misleading as they refer to a price at which the vendor would not be prepared to sell their property and/or a price that the salesperson does not believe the property would be sold.

Advertising practice	Comment
<p><b>X</b> Buyer enquiry range or estimated selling range</p>	<p>Where the lowest amount in such ranges falls below the agent's estimated selling price and/or the vendor's selling price, the practice is misleading and constitutes underquoting.</p>
<p><b>X</b> Nearest offer, near offer, best offer</p>	<p>This practice is misleading except in the situation where a vendor will only consider offers <b>at or below</b> the price stated in the advertising or marketing materials. A salesperson must be able to provide evidence of the vendor's willingness to consider such offers, if requested to do so by CAV.</p>
<p><b>X</b> Opening bid, estimated opening bid</p>	<p>Quoting an opening bid or an estimated opening bid in advertising is misleading and constitutes underquoting if it is not a price at which the vendor will consider selling their property. If a reserve price has been set by the vendor, the 'advertised opening bid' should not be below this amount. If no reserve price has been set, the 'advertised opening bid' is the salesperson's estimated selling price for the purposes of section 47A of the EAA and must be updated to be a current market price.</p>
<p><b>X</b> Price plus (+), over, in excess of (&gt;), from, quoting greater than, expect over, offers invited from</p>	<p>These practices are misleading:</p> <ul style="list-style-type: none"> <li>• because the vendor and the salesperson expect the property to sell for more than the advertised starting price for offers; and</li> <li>• where no information is provided to prospective buyers about the extra amount that is required for an offer to be considered by the vendor.</li> </ul>

# “ Explanatory notes ”

The following notes provide additional information to assist salespeople to interpret the guidelines and should be read in conjunction with the relevant guideline.

Guideline	Explanatory note
1	<p>Price is an essential piece of information about the property for prospective buyers. Buyers must be confident that they have the appropriate information to make informed decisions. When advertising or providing advice on price, failure to fully disclose the relevant pricing information is misleading.</p> <p>It is good estate agency practice to obtain the vendor's selling price and to include that price in the agency authority to sell at the time it is signed. A vendor may provide advice about their selling price, or changes to that price, at any time during the sales campaign.</p> <p>The vendor's selling price is the minimum price at which the property is advertised for sale. Advertising a property for sale at a price that is less than the vendor's selling price is false and misleading because it leads prospective buyers into believing that the property is available for sale at a price that is less than the price at which the vendor is prepared to sell. Such advertising is in breach of the FTA and the EAA.</p> <p>A salesperson must not collude with, advise, or otherwise influence a vendor to set a price which underestimates the likely selling price for their property. Where the vendor's selling price is less than the salesperson's current estimate of the likely selling price and the vendor is not prepared to sell at the lower price, it is false and misleading for a salesperson to advertise a property for sale at that lower price.</p> <p>A salesperson must ensure that any pricing information provided to a prospective buyer, or to the public generally, is at all times adequate and up to date.</p>
2	<p>When a vendor has <b>not</b> nominated a selling price and a price is to be included in any advertising or marketing, the salesperson's estimate of the likely selling price becomes the guide to the price at which the property should be advertised for sale.</p> <p>The salesperson's estimated selling price as given to the vendor and included in the agency authority is the <b>starting point</b> for determining the advertised price in these circumstances. Section 47A of the EAA requires a salesperson to give a vendor an estimated selling price, which may be a single amount or a range where the extent of the range does not exceed 10 per cent of the lower limit of the range, and to include the estimate in the agency authority to sell. Under section 47C of the EAA the advertised sales price must not be less than the salesperson's estimated selling price or range quoted to the vendor. For example, where the estimated selling price range is \$300,000 to \$330,000 the price at which the property is advertised for sale must not be less than \$300,000. This price is the lowest advertising price under the EAA.</p>

Guideline	Explanatory note
2 continued	<p>The advertised price, however, must be a <b>current market</b> price at the time it is quoted. Therefore, it must also take into account any subsequent changes to the salesperson's estimate such as price trends and movements as seen through more recent sales.</p> <p>The salesperson must be able to justify their estimated selling price and the advertised price if challenged.</p>
3	<p>The salesperson's estimated selling price is the price quoted to a vendor. In the salesperson's opinion it is the likely selling price based on the market conditions at the time the authority is signed. Under the EAA it is a price that a willing but not anxious buyer would be prepared to pay for the property. It may be a single price or range (of not more than 10 per cent from the lowest amount) within which they believe realistically that the property may sell, based on the information available at the time the estimate is made.</p> <p>While a salesperson should use their expert knowledge of the market to assist the vendor to set a realistic price or range for the sale of their property, the vendor's expectations should not influence the salesperson's opinion of their estimated selling price. A salesperson must not overstate or understate an estimated selling price.</p> <p>Advertising that is based on an estimated selling price that is inaccurate is misleading and constitutes underquoting. Salespeople must have documentation available to justify their estimates.</p>
4	<p>It is misleading for an advertised price range to include a price at which the property is not likely to be sold.</p> <p>Wherever possible a salesperson should obtain from a vendor their likely selling price. This price is the guide to the lowest amount in the advertised price or price range – the advertised price or range should not fall below the vendor's selling price.</p> <p>A salesperson's estimated selling price only becomes a guide for the advertised price range where no vendor's selling price has been given. In these circumstances the price range advertised by a salesperson must not fall below their <b>current</b> estimate of the likely selling price. For the purposes of advertising, a salesperson's estimated selling price should be updated to avoid being misleading.</p> <p>The appropriate percentage difference between the top and the lowest amounts in an advertised price range will vary depending on what the property is worth and the market conditions. An advertised price range that is too wide has the potential to risk being misleading to prospective buyers.</p>
5	<p>While the vendor's auction reserve or asking price should be included in the agency authority at the time it is signed, it is also good agency practice to obtain:</p> <ul style="list-style-type: none"> <li>• the vendor's written approval of any advertising, in particular, the price to be used for advertising, and</li> <li>• the vendor's written confirmation that they will consider offers at the advertised price or within the advertised price range.</li> </ul> <p>Obtaining the vendor's written approval avoids future disputes and ensures that the advertised price is in line with the vendor's expectations and instructions. It also assists the estate agent in charge of an agency to meet their obligations under the FTA and the EAA to ensure that advertising is accurate. Under section 42 of the EAA the estate agent in charge of the agency is liable for ensuring that any advertising by the agency does not include any false or misleading statements or representations.</p>

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## Guideline

## Explanatory note

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- 6 Any advice that a salesperson gives to prospective buyers about price, regardless of the form of that advice, should not be misleading or deceptive, be likely to mislead or deceive, or underquote the expected selling price for a property.
- A salesperson may be asked by a prospective buyer to give advice on price at any time during the marketing campaign. It is good agency practice to include a price in any advertising and marketing materials; if no price is advertised prospective buyers may be more likely to ask a salesperson for advice on price.
- A salesperson who chooses to respond to a request about price must not give a prospective buyer a price that does not reflect the vendor's expectations at the time. While every effort should be made to obtain the vendor's selling price, where this price is not known the salesperson's current estimate of the likely selling price is the basis for giving advice about price.
- Regardless of whether the vendor's selling price or the salesperson's estimated selling price is the basis of price advice, the price or range advised must be current to avoid being misleading. Price advice must be updated as noted above in Guideline and Explanatory Note 7 to take into consideration the most recent comparable sales, market trends and any offers that have been rejected by the vendor.
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- 7 Advertising and promotional material that continues to state a price that no longer reflects the vendor's selling price or, where relevant, the salesperson's current estimate of the likely selling price is misleading and in breach of both the FTA and the EAA.
- At a minimum, advertising must be updated for any rejected written offers and written expressions of interest\* (regardless of the form of the written offer/expression of interest) except where:
- the vendor has changed their mind and advised the salesperson that they will consider an offer at or below the rejected price
  - the buyer has cooled-off or otherwise withdrawn their offer, or
  - the buyer does not proceed with the sale.
- While the guidelines focus on rejected written offers and written expressions of interest, obligations and liabilities with regard to price advertising also arise for salespeople from the rejection of verbal offers/expressions of interest.
- Alternatively, where there is no vendor's selling price and the salesperson's estimated selling price has been used to advertise a property, that price should be updated as the salesperson's opinion of that price changes.
- \*A written expression of interest is any statement in writing from a prospective buyer that includes a price and that is intended to gauge the vendor's reaction.*
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- 8 Any price advertised or given in advice to a prospective buyer must reflect either: the vendor's current selling price, if such a price has been provided; or the salesperson's current estimated selling price, if no vendor's selling price has been provided.
- For the purposes of assessing compliance with section 47C of the EAA, CAV considers that any price stated in advertising or advice that is not based on the vendor's selling price, must be based on the salesperson's estimated selling price. This applies to all prices and ranges quoted in advertising or advice regardless of the name or term used by a salesperson to describe that price or range.
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# “ The law underpinning the guidelines ”

In the context of real estate services, including representations made in selling and advertising properties, the *Fair Trading Act 1999* (FTA) prohibits a salesperson from:

- engaging in conduct that is misleading or deceptive or is likely to mislead or deceive, (section 9)
- making false and misleading representations regarding the price of a property, (section 12), or
- making a representation that is false, misleading or deceptive about any detail or aspect of a property, (section 12).

Similar provisions exist in the Commonwealth *Trade Practices Act 1974* (TPA) which is enforced by the Australian Competition and Consumer Commission (ACCC).

A breach of section 9 of the FTA may result in a consumer taking civil action against a salesperson for a remedy, such as an injunction or compensation.

The penalty for a breach of section 12 of the FTA is a fine of up to 600 penalty units for an individual and up to 1200 penalty units for a corporation. Penalty units are updated on 1 July each year. The value of a penalty unit as at 1 July 2007 is \$110.12. In addition to a fine for a breach of section 12 of the FTA, an order may be made by a court:

- for compensation
- to make the whole or part of a contract void or unenforceable or to vary its terms, or
- for any other action to remedy the situation.

The TPA, which is enforced by the ACCC, has similar provisions in relation to misleading and deceptive conduct. Substantial fines and ancillary orders apply for breaches of the TPA.

With regard to the advertising and marketing of residential properties, the EAA:

- prohibits a salesperson from publishing or authorising the publication of advertising that is false or misleading, (section 42)
- prohibits a salesperson from advertising a property at a price that is less than their estimated selling price, (section 47C)
- requires a salesperson to set an estimated selling price that is a single figure or a range of not more than 10 per cent and to include that price in the agency authority to sell with the vendor, (section 47A), and
- requires that a salesperson's estimated selling price be a current and realistic market price for the property based on the information available at that time of making the estimate, (section 47A).

The penalties for breaches of these sections of the EAA are a fine of up to 25 penalty units for section 42 and a fine of up to 200 penalty units for section 47A and 47C. A consumer may also take civil action for monetary compensation.

The Estate Agents (Professional Conduct) Regulations 1997 (the Regulations) as well place obligations on salespeople with regard to price estimates and advertising. The Regulations require salespeople to:

- act fairly and honestly and to the best of their knowledge and ability, (regulation 6)
- not knowingly mislead or deceive prospective buyers involved in negotiations or in a transaction, (regulation 7)
- not offer a property for sale at a price that is lower than the price authorised by the vendor, (regulation 12)

- advise a vendor of what they consider to be the current market price for their property which has been determined using skill, care and diligence, (regulations 11 and 14), and
- not exaggerate the price of a property or conceal information from prospective buyers, (regulation 16).

The penalty for a breach of each of these regulations is a fine of up to 25 penalty units.

## Broader application

These guidelines have been developed specifically to address false and misleading price advertising practices and underquoting with regard to the sale of residential properties. However, because they are based on the legal requirements they apply equally to all types of property sales. The underpinning principles also apply to leasing transactions.

## Further information

For further information about these guidelines contact the Estate Agents Resolution Service at Consumer Affairs Victoria on 1300 737 030.



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