

10 March 2016

Consumer Property Acts Review  
Policy and Legislation Branch  
Consumer Affairs Victoria  
GPO Box 123  
Melbourne VIC 3001

Dear Sir/Madam

**RE: Conduct and Institutional Arrangements: Estate Agents.**

Thank you for the opportunity of allowing me to add my views to the forthcoming legislative changes. I am a licenced real estate agent and advocate on behalf of both vendors and buyers. As an advocate, I clearly see the issues on both sides of the coin.

I have presented my views in 2 parts. Firstly, section 2 of "Part A – Estate Agents & Conveyancers" and secondly, more importantly, my views on price quoting of property for sale either by Auction or Private Treaty.

**2 Conduct of estate agents:**

**Question:**

- 22** I believe that the regulation of 2008 is sufficient, unless there are any anomalies.
- 23/24** Should be clearly outlined and penalties in the form demerit points which, would affect a licence renewal.
- 25** All genuine "written" offers must always be conveyed to the seller.
- 26** I would believe that all agents would clearly outline to any seller all costs and commission associated with the selling of a property and the sellers obligation in not negotiating with another agent for the duration of the authority.  
As regard to the length of the exclusive period is concerned, I believe that a 60 & 30 day for a private treaty & auction respectively is ample, unless otherwise agreed to with a date by the seller. There may well be circumstances, where the preparation time to go to market may be in question.
- 27/28/29** I believe that any payment to a third party not associated with the selling agent must be disclosed on the authority. Penalties for not doing so, should be in the form demerit points, which would affect a licence renewal.
- 30** The commission sharing should be disclosed on an authority or separate statement, either at the time the seller signing the authority or if later, a new authority be signed by the seller with the disclosure showing.
- 31/32** All transactions, in these circumstances, should be governed by a registered sworn valuer to protect the interests of the seller.
- 33/34/35** I cannot accept that any arrangement such as mentioned should apply. It must be disclosed.

**Price Quoting – Auction or Private Treaty.**

I heard Minister Garrett speaking on radio regarding the problem of under quoting property for sale by either auction or private treaty. I believe the proposal the minister espoused will not work as it flawed with anomalies. This issue has been going since February 2008. It has never been policed.

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As I understand the Minister's proposal, agents will have to present a prospective seller with 3 similar priced properties which have been sold within the previous months, the median price for the suburb and most importantly, advertise the price with a range of 10% - the upper figure being no higher than 10% of the bottom figure e.g. \$500K - \$550K.

The first 2 proposals are not a real issue. If the property is in the Melbourne Metropolitan area, comparable properties are relatively easy to muster however, if the property is in regional or country Victoria that may well be a huge problem particularly, if it is rural or acreage as there may not be a comparable available nor, within close proximity to the proposed sale property. This could well misrepresent its true value. I believe there may have to be some discretion allowed in such cases. It can even happen in metro areas. More importantly, the issue I have is with the 10% range on quoting.

The problem arises when the agent presents the seller with their price appraisal e.g. \$500,000 - \$550,000. The seller believes their property is worth \$600,000 - \$660,000. The seller has arrived at that figure because the agent they have asked to appraise their property sold a similar one around the corner for \$580,000. The seller deduces that theirs is worth \$50,000 more because they believe theirs is a better property and therefore worth more.

The agent tries to explain, that the price obtained was due to competition between buyers, which caused the price to soar well above that figure, and that the agents appraisal for that vendor at the time of listing was also \$500,000 - \$550,000. Most of the offers were in the range of \$525K-\$550K. with 2 buyers pushing the price to the sale price. The seller remains forthright about his price. The agent has 3 alternatives:-

1. Walk away and lose a potential seller and let someone else have the listing?
2. Compromise themselves and take on the listing at \$600,000 - \$660,000, knowing that it is probably not going to sell and thereby have an unhappy seller? The property will sit around for months and then sell for less than it should.
3. List the property with a range of \$500,000 - \$660,000.

That range is the vicinity of 31.5%. It is the only fair way to market the property to buyers. What the agent is doing is stating to buyers, that if they are looking for a property within this range, then they should come and take a look. The agent is introducing buyers from \$500,000, the seller is trying to achieve the top end of \$660,000 however, the agent will submit all written offers for consideration. Any offer that is not accepted by the seller, the bottom of the price range should immediately be adjusted to reflect that price.

One of the issues when listing a property for sale is that the seller has provision to state their price on the authority. According to guidelines set out by Consumer affairs in February 2008, an agent could not advertise a property for less than the sellers' price. This would be detrimental to the seller obtaining a figure higher than that. In just about all cases, agents advise sellers to put "TBA".

One solution, particularly for an auction, would be for the seller to nominate a price range that they would consider as precursor to a price reserve on the day of the auction. It would mean that the auctioneer would need to announce publicly **"the property is on the market!"** This would overcome the problem of unhappy buyers particularly when a property is passed in at a price or announced that it is to be sold well in excess of the price range quoted. It would be easier for Consumer Affairs when checking paper work if such an issue arose after an auction. In those cases, the full weight of the law should fall upon them.

All properties when marketed should have either a fixed price or a range with a bottom & top price. No property should be marketed "\$.... +", "Offers over \$....", "Contact Agent", etc.

Yours faithfully,



**Ian Ryan**  
(Ian Ryan The Real Estate Advocate)