### Overview

1. Who do the underquoting laws apply to?

The underquoting laws apply to estate agents and agents’ representatives engaged to sell residential property in Victoria.

The laws do not apply to individuals and developers selling their own property without the assistance of an agent; however, they must comply with the *Sale of Land Act 1962* and the Australian Consumer Law, which prohibit false and misleading representations about the price of property for sale.

1. What property sales do the underquoting laws apply to?

The underquoting laws apply to the sale of:

* any type of residential property, including new and established homes, off-the-plan sales, and house and land packages, and
* residential property anywhere in Victoria, including rural areas.

The laws do not apply to the:

* sale of rural property – that is, property used for primary production, such as farming and mining
* sale of commercial and industrial property, such as offices, shops, warehouses and factories.

You must still comply with the Australian Consumer Law when selling any property – residential, rural, commercial or industrial.

1. What do I have to do?

If you sign a sales authority:

* your estimated selling price must be reasonable and take into account the three most comparable property sales to the property for sale, unless this information is not available within the specified times and distances
* you must prepare a Statement of Information in the approved form, and make it available at open for inspections, upon request from prospective buyers and with any internet advertising
* your advertised price must be either a single amount or a price range of up to 10 per cent and cannot have any qualifying words or symbols, such as ‘offers above’, ‘from’, or ‘+’.

1. How do I determine whether a property is a ‘residential property’?

Residential property is real estate that is used, or intended to be used, for residential purposes. It does not include real estate that is used primarily for the purposes of industry, commerce or primary production.

As it is the use or intended use of the property that is relevant, a property’s zoning (such as falling in a residential zone as defined in the Victorian Planning Provisions) is not a determinative factor when determining whether a property is a ‘residential property’.

As a general rule, ‘residential property’ includes an existing dwelling, or vacant land where a dwelling is or may be permitted – such as a suburban lot in a residential zone, or a home on a hobby farm. In contrast, properties not captured include those used primarily for industry, commerce or primary production – such as a factory, motel or farm – regardless of whether those properties also include or could include a dwelling.

1. What records do I have to keep, and for how long?

You must keep a copy of all sales authorities and Statements of Information forms for **seven years**.

1. What if the seller doesn’t agree with my estimated selling price?

You should explain to the seller that the estimated selling price is your estimate of the likely selling price of the property, based on the legal requirements of the underquoting laws. You must not change your estimated selling price based on what the seller thinks the price should be.

The seller may set an asking price for their property, which you must take into consideration when setting the indicative selling price to be included in the Statement of Information.

1. What do I have to do if my estimated selling price changes?

You must change or revise your estimated selling price if you know, or could reasonably be expected to know, that it has ceased to be reasonable. For example, this may occur because you are aware that there is a new, more comparable property sale, or because of buyer interest in the property.

To change your estimated selling price, you must:

* notify the seller in writing with the details, and update your estimated selling price in the sales authority as soon as practicable
* update the indicative selling price in the Statement of Information, if it is lower than your updated estimated selling price, and
* update or remove advertising that includes a price that is lower than your updated estimated selling price.

There is no prescribed form for notifying the seller about the revision of the estimated sales price. However, the written notice must state:

* that the estimate contained in the engagement or appointment has ceased to be reasonable
* why you believe that estimate has ceased to be reasonable
* that you propose to revise the estimate contained in the engagement or appointment, and
* the amount of that revised estimate.

The sales authority must be updated in writing as soon as practicable after notifying the seller in writing of the details detailed above.

**Indicative selling price**

1. What is the indicative selling price?

The indicative selling price is the price you must include in the Statement of Information **(see Question 11)** as a price guide for the property for sale.

It can be either a single price or a price range where the difference between the upper and lower amounts is not more than 10 per cent.

The indicative selling price, or the lower limit of the indicative selling price range, must not be less than:

* the seller’s asking price
* the agent’s estimated selling price, or
* a written offer rejected by the seller because it is too low. **(See Question 27)**

1. How do I set the indicative selling price?

**Example 1**

If your **estimated selling price range** is $500,000 to $550,000 and the seller has not provided an asking price, or has not rejecteda written offer, the **indicative selling price** would be:

* $500,000 or more (if a single amount), or
* $500,000 to $550,000, or any 10 per cent range with a lower limit of $500,000 or more.

**Example 2**

If your **estimated selling price range** is $500,000 to $550,000, but the **seller’s asking price** is $570,000, the **indicative selling price** would be:

* $570,000 or more (if a single amount), or
* $570,000 to $627,000, or any 10 per cent range with a lower limit of $570,000 or more.

**Example 3**

If you **estimated selling price range** is $500,000 to $550,000, but the **seller’s asking price** is $530,000, the **indicative selling price would be:**

* $530,000 or more (if a single amount), or
* $530,000 to $583,000 or any 10 per cent range with a lower limit of $530,000 or more.

1. When do I have to update the indicative selling price?

You must update the indicative selling price in the Statement of Information, if:

* you change your estimated selling price
* the seller changes their asking price, or
* the seller rejects a written offer because the price is too low

and that price is higher than the indicative selling price.

**Statements of Information**

1. What is a Statement of Information?

The Statement of Information is a pricing fact sheet that you must prepare for every residential property you are engaged to sell in Victoria.

The Statement of Information must include:

* an indicative selling price for the property **(see Question 8)**
* details of the three most comparable property sales to the property for sale, and
* the median selling price for the suburb – this can be for a period of between three to 12 consecutive months, and must not be more than six months old. You can use any source to determine the median price. You must state the period and source of the median price in the Statement of Information.

The Statement of Information must be:

* displayed at all open for inspections
* included with any internet advertising, and
* given to prospective buyers within two business days of their request.

There are **four** Statement of Information forms. Each is for a particular type of property sale:

* Single residential property located in the Melbourne metropolitan area
* Single residential property located outside the Melbourne metropolitan area
* Multiple residential properties located in the Melbourne metropolitan area
* Multiple residential properties located outside the Melbourne metropolitan area

You can download these forms from **consumer.vic.gov.au/underquoting**

1. How do I include a Statement of Information with internet advertising?

It is up to you to decide how to do this. For example, you can include the Statement of Information in the text of the advertisement or attach it to the advertisement.

Consumer Affairs Victoria is aware that some social media platforms have technical constraints preventing the use of hyperlinks and pictures in certain circumstances which can prevent a Statement of Information from being included with the advertisement. Accordingly:

1. where a social media advertisement is the primary advertisement/online listing for the property, a Statement of Information must be included with the advertisement;
2. where a social media advertisement is a secondary advisement (ie is intended for the viewer to click-through to a primary listing on another website), a statement of information should be included with the advertisement, typically either:
   * 1. a link to the primary advertisement; or
     2. as an image in the gallery of a social media post (For example: Instagram posts referring to a specific property could include an SOI as one of the images).
3. where it is not technically feasible to include a Statement of Information, a text reference to the primary advertisement should be included where possible. For example: ‘More information about this property, including the Statement of Information, can be found on our website at example.com’.

1. Can I design my own Statement of Information?

No. You must use the statements of information approved by the Director of Consumer Affairs **(see Question 11).**

You must not alter the wording, sequence or layout of information in any way. However, you may add an additional page or pages containing further information or branding, such as a branded cover page, or a further page containing extra details about the comparable properties.

You can also use a Statement of Information prepared by a supplier as long as the wording, sequencing and layout of information is the same as the approved form and not altered in any way.

1. What should I write in the “property type” box in the median sale price section of the Statement of Information?

In the “property type” box, you must specify the type of residential property to which the median selling price included in the statement relates. Depending on how the median sale price was calculated, the property types may include (for example):

* **House:**This is a stand-alone dwelling with its own private grounds.
* **Semi-detached, row or terrace house, townhouse:** Dwellings with private grounds and no other dwelling above or below them. They are either attached in some structural way to one or more dwellings or are separated from neighbouring dwellings by less than half a metre.
* **Flat, unit or apartment:**Includes all dwellings in blocks of flats, units or apartments. These dwellings do not have their own private grounds and usually share a common entrance foyer or stairwell.
* **Vacant land:** land where a dwelling (or dwellings) is permitted, or may be permitted, but does not currently exist – such as a suburban lot in a residential zone, or a home on a hobby farm.

See **Question 15** for information on what to do if there is no relevant median price for a particular suburb or locality.

1. How do I complete a Statement of Information if there is no median price?

If there is no published median price for a suburb or locality **and** you are unable to calculate a median price, include the following note, or a note along substantially similar lines, in your Statement of Information:

**Important advice about the median sale price:** When this Statement of Information was prepared, publicly available information providing median sale prices of residential property in the suburb or locality in which the property offered for sale is situated, and our sales records (if any), did not provide a median sale price that met the requirements of section 47AF (2)(b) of the *Estate Agents Act 1980*.

If the property for sale is vacant land which is part of a residential development, consider whether a median price can be calculated as other blocks of land in the development are sold and, as required, update the Statement of Information for the property for sale.

If there is no publicly available median price, but you have sales records or other information that helps you to calculate a median price for the suburb or locality, you should calculate the median price and include it in the Statement of Information for the property for sale with the following note, or a note along substantially similar lines:

**Important advice about the median sale price:** The median sale price is provided to comply with section 47AF (2)(b) of the *Estate Agents Act 1980*. The median selling price for a residential property sold in the same suburb or locality in which the property offered for sale is located has been calculated on the sale prices of [insert number of sales] residential properties sold during the period specified by the section. Because of the small number of sales, the median selling price is unlikely to be meaningful statistically and should be considered accordingly.

1. How should a Statement of Information be displayed on mobile devices?

Statements of Information must be included with any advertisement for the sale of the residential property. Statements of Information must be displayed on mobile devices in a conspicuous fashion where the text of the statement can be easily read by the end user. Permissible methods of displaying Statements of Information on mobile devices include embedding SOIs within mobile applications and providing a link to a PDF or DOC format SOI.

1. When does the date on a Statement of Information need be updated?

Statements of Information must include the date on which the statement was prepared. This field must be updated whenever a change is made to the Statement of Information, such as when the indicative selling price or comparable properties are changed.

**Comparable sales**

1. What is a comparable property sale?

A comparable sale is a previously sold property that is in a similar condition or standard to the property currently for sale. The comparable property must also have been sold in the last:

* six months and be within two kilometres of the property for sale (if the property for sale is in the Melbourne metropolitan area)
* 18 months and within five kilometres of the property for sale (if the property for sale is outside the Melbourne metropolitan area).

Download the *Determination of Melbourne metropolitan area* from **consumer.vic.gov.au/underquoting**

As well as using the three most comparable property sales to determine your estimated selling price, you must provide details of these sales in the Statement of Information.

1. How do I select the comparable property sales?

To select the three most comparable property sales you must consider the:

* standard and condition of the properties
* location of the properties
* dates on which the properties were sold, and
* the ‘Guidelines for selecting comparable property sales – residential properties’ published on the Consumer Affairs Victoria website at **consumer.vic.gov.au/underquoting**

A property is considered ‘sold’ once the contract is signed by both the buyer and the seller. This allows you to consider the most recent comparable property sales when setting your estimated selling price and preparing the Statement of Information.

1. What if there are fewer than three comparable property sales?

If you reasonably believe that there are fewer than three comparable sales within the times and distances set by the underquoting laws, you are not required to:

* take into account comparable property sales when setting your estimated selling price, or
* include the details of comparable property sales in the Statement of Information.

If you reasonably believe that there are only one or two comparable sales, these may be listed in the Statement of Information. However, in addition to listing these properties, you must include the text of option B in the Statement of Information (that you believe fewer than three comparable properties were sold within the relevant time and distance).   
Regardless of whether you believe there are three or fewer comparable sales, your estimated selling price must be reasonable.

1. How do I determine comparable properties when there are undisclosed or unconfirmed sales?

You must use all data and information you have about recently sold properties to meet your obligations under section 47AC of the *Estate Agents Act 1980* (the Act). This includes the details of:

* undisclosed property sales (including the sale price),
* unconfirmed sales (ie properties that have sold, but the sale data of which has not yet been reported by the Valuer General of Victoria)

However, comparable properties should not include properties that are ‘under offer’ or ‘under contract’, as the sale process for the property has not yet finalised.

Your obligation under the Act to use all property sales information applies even if you:

* sold a property and your agency agreement or other verbal or written confidentiality agreement you entered into prohibits or restricts the use or disclosure of details of the sale
* are aware of a sale by another agent, regardless of any agreement that agent may have entered into that prohibits or restricts the use or disclosure of the details of the sale
* see the details of a sale in a property database, regardless of whether the sale is recorded as undisclosed or another similar description
* are acting for a seller who enters into a contract of sale that intends to restrict the seller (or buyer) from disclosing details of the sale.

This means that you cannot avoid your obligations under the Act regarding comparable property sales, by:

* entering into any confidentiality agreement with a seller or buyer (verbal or written) that restricts you from using or disclosing information about the sale of a property, or
* relying on a confidentiality agreement between a seller and a buyer (verbal or written) that restricts a seller or buyer from using or disclosing information about the sale of a property.

You are not breaching privacy laws by including details of comparable properties in the Statement of Information, as these details are already in the public domain and do not include any personal information.

**Advertising prices**

1. Do I have to advertise a price for a property for sale?

No. It is up to you to decide whether or not to include an advertised price for a property in either a print or internet advertisement. However, a Statement of Information, which includes the indicative selling price, must still be available with any internet advertising.

1. How do I advertise a price for a property for sale?

If you choose to advertise a price for a property for sale, the advertised price must be either a single amount or a range of up to 10 per cent. It must not contain any qualifying words or symbols, such as ‘offers above’, ‘from’, or ‘+’.

1. When do I have to update my advertising?

You must remove or update your advertising if your estimated selling price increases, or if the seller rejects a written offer that includes a higher price.

The advertised price must also comply with the Australian Consumer Law, and must not be false or misleading. This means that if the seller has provided you with a higher asking price, you must update all:

* internet advertising within one business day
* other advertising as soon as practicable.

1. What if the seller accepts an offer that is later withdrawn?

If the seller accepts an offer but the buyer later withdraws it, or exercises their cooling-off rights, the advertised price and the indicative selling price do not need to be updated, unless the seller gives you an asking price, or revises their existing asking price.

1. Listing properties on web-based advertising platforms and websites

The advertising requirements apply to any local or international website where a Victorian property is advertised for sale for, or on behalf of, an estate agent or agents’ representative. This includes, agency and franchisor websites, real estate advertising websites, and social media sites such as Facebook and Twitter.

The underquoting laws do not have specific provisions about the price that you should use to load a property listing on a web-based advertising platform. As a guide, you should use the indicative selling price, as this will not result in the listing being loaded in a price range that misrepresents the price of the property for sale.

**Written offers**

1. What is a written offer?

For the purposes of the underquoting laws, a written offer is an offer in any written format, such as email, letter or any other written communication, which states the price being offered and any other terms being proposed by a prospective buyer (if any) to purchase the property for sale.

A written offer is not limited to an offer by a prospective buyer contained in a contract of sale of real estate.

1. What if the seller rejects a written offer?

If the seller rejects a written offer because the price is too low, you must:

* update the indicative selling price in the Statement of Information if it is lower than the price in the rejected written offer, and
* update or remove any advertising that includes an advertised price that is lower than the price in the rejected written offer.

If the seller rejects a written offer due to the terms being unacceptable, but not the price, you do not need to update anything.

1. What if the seller does not want me to pass on an offer?

If the seller instructs you in writing that they do not want to be advised of any verbal or written offers to buy their property, you should tell the buyer of the seller’s wishes.

Any offer made by the buyer in this situation cannot be a rejected offer (for the purposes of the underquoting laws) because the offer would not have been considered by the seller.