

13 May 2016

**Consumer Property Law Review
Policy and Legislation Branch
Consumer Affairs Victoria
GPO Box 123
MELBOURNE VIC 3001**

By email: consumerpropertylawreview@justice.vic.gov.au

Dear Sir/Madam,

**re: Consumer Property Acts Review - Issues Paper N°3
Sale of land and business**

I refer to the above and respectfully submit:

Item 1.2 Misleading and deceptive statements about sale of land

Advertisements with price ranges should be prohibited in the marketing of properties listed for private sale. For private sales estate agents should be required to publish on a single figure asking price.

It is bait advertising and misleading and deceptive conduct when estate agents advertise a price range, eg. \$700,000 - \$770,000 if the vendor is not prepared to sell at the lower figure.

It is well known in agency practice that price range advertising has become vogue in recent years with rogue agents who want to "suck in" prospective buyers knowing that their vendors have advised that they will not sell at the lower price quoted.

The practice is often used by agents who have deliberately over quoted an estimated selling price to a prospective vendor to win their business.

Deliberate overquoting is lying to prospective vendors, and cheating conduct against their professional competitor agents when trying to win a vendor's listing.

Nobody wants to deal with liars and cheats in any aspects of our lives and rogue agents who lie and cheat are a dark stain our profession.

Item 2. Auctions

Radical and simple change is urgently needed if Victoria wants to preserve the integrity of its real estate auction system.

The current auction system predicated on deceit by rogue agents to win a listing by overquoting to a vendor, and then further deceit by underquoting to prospective buyers cannot expect to have a sustainable future.

To improve the transparency and integrity of auctions estate agents should be required to publish their vendor's reserve price in all auction advertising.

Our auction system for selling real estate has served very well for many years.

However, during the past 20 years the trickery and insidious ploys by many agents to overquote to vendors and underquote to purchasers has brought the trustworthiness of all agents and the auction system into disrepute.

Underquoting, also known as bait advertising, has become a systemic and entrenched industry practice and neither Consumer Affairs Victoria or the Real Estate Institute of Victoria have been able to adequately control the practice under current laws and professional codes of practice.

Auctions have always been a balance between integrity and street theatre, but the balance has got out of control and thousands of people are being duped every week, particularly in Melbourne's active auction suburbs, by the subterfuge and creative vocabulary used by too many agents to smokescreen the prices they know their vendors really want.

Many agents are spooked by the idea of increased transparency. They think it will destroy auctions. Many of these are the same agents who said twelve years ago that banning dummy bids would destroy the auction system. It didn't.

If we can make the auction process totally transparent, many more buyers will be encouraged to attend and buy at auctions, which can only be a positive outcome for our vendor clients.

The best way to fix quoting problems would be for the Government to legislate that vendors and their agents publish either a reserve price, or an estimated selling price range where the lower figure must be the reserve price.

If reserve prices were required to be published then purchasers would not waste their time at inspections or their money on building, pest and legal reports etc., if the reserve was out of their price range.

Vendors' price expectations would be self-regulated because they wouldn't want to waste their money on expensive advertising campaigns if their own reserves were unrealistic.

Published reserves could be decreased during a sale campaign if buyer interest is weak, but not increased.

If buyer interest is strong there is no need to increase the reserve, as the final price will be determined by buyers, as it should be, competing in open transparent competition.

The role of agents should be to use their skills and reputations in marketing, product knowledge and customer service etc., to attract the maximum number of qualified prospective purchasers to auctions, to compete in a fair and transparent process to achieve the best result for their vendor clients.

Auctioneers should be left to their proper role to practice their craft encouraging and facilitating bidding, but with the control of prices bid clearly with the purchasers.

Auctions promoted with an advertised realistic reserve price do work.

I have been auctioneering for over 40 years and over the past 12 years have conducted about 100 declared reserve price auctions for residential, commercial and rural properties, and achieved sales in all price ranges from \$127,500 up to \$3,500,000.

Our experience is that buyers love the transparency and certainty of the price point at which a property will be “on the market”, and if the reserve price is set at a realistic amount, its publication acts like a buyer enquiry magnet.

The best auction system is one that has maximum public trust and transparency where prices are set by the market – that is, by purchasers, without artificial price manipulation by agents, auctioneers or vendors.

Professional agents must act in the best interests of their vendor clients and respond to what their purchasers want.

What purchasers want most of all is accurate pricing and transparency, not rubbery estimates or no advertised prices. eg. P.O.A. (Price on application)

A transparent auction model with published reserves where purchasers know the price point at which a property will be “on the market” would ensure a sustainable future for a trusted, fair and efficient auction selling system.

While agents have a primary obligation to their client vendors, they also have a responsibility for the integrity of the selling process because everyone must be satisfied for the system to be sustainable in the long term.

Publishing reserve prices is a reform that would be widely welcomed by nearly everybody from first-home buyers to the Reserve Bank and would enable the real estate market place to be much more accurately informed on market activity, sale prices and values.

If we accept and embrace a new system that has maximum integrity, in my opinion there is no doubt that the auction system will thrive and many more properties will be sold by auction.

Most agents who oppose the idea of a published reserve price auction model have never conducted an auction with a declared reserve price. To succeed in an environment with published reserves, many would need to develop new skills including learning how to speak truth to vendors and purchasers.

If a seller didn't like this fair auction model they wouldn't have to sell by auction and could opt for a traditional private sale method with a headline asking price as high as they like, or by expressions of interest.

For the right property, a properly organised, marketed and ethically conducted auction that has maximum transparency is undeniably the best, fairest and most efficient way for purchasers to buy and vendors to sell real estate.

It is interesting to note that the Land Development Agency of the ACT Government in Canberra are now selling land by auction with published reserve prices through private estate agencies.

Proposed new underquoting laws.

It is unlikely that the new quoting laws will stamp out underquoting as the reforms proposed are fundamentally flawed.

As long as vendors have the right to increase their reserve prices at any time up until they sign a contract, rogue agents working in cahoots with their vendor clients will be able to manipulate their quotes to conceal the prices they know their vendors want.

The proposed fact sheet of comparable sales will be easily able to be fudged by the listing of sales which purport to be comparable, but will not be and it will be impossible for CAV to check their comparability without employing a large team of experienced and qualified valuers to inspect the subject property and the so called comparable sales to determine the accuracy and credibility of the fact sheet sales.

Also for many properties there will be no comparable sales evidence available and most agents will not have knowledge of or access to all sales in a suburb to be able to determine their comparability. Many sales are also not reported.

The requirement to provide median sale price information in a suburb will be to provide useless information, as the median sale price is simply the middle sale when all sales in a suburb are sorted in price order from lowest price to highest price.

In many cases the median sale price will have no relevance to the value of a particular property.

The requirement to update a quoted price within one business day after receipt of a higher formal offer than a quoted price is also unlikely to work. Agents will not generally have available, or make available a formal Contract of Sale and Section 32 Vendor Statement signed by the vendor for a purchaser to be able to make a formal offer.

Item 2.4. Auctions on ANZAC Day

In respect to all that ANZAC Day represents the auctioning of real estate on ANZAC Day cheapens the professional image of the estate agency profession and should be prohibited.

Surely it is not too much to ask of estate agencies and their auction vendors that they restrain from scheduling auctions for the one Saturday in every six or seven years that ANZAC Day falls on a Saturday.

Members of the public who are up early to attend at dawn services and mid-morning services to pay their respects to war service veterans who have fought and died to defend our freedoms, don't need on such solemn occasions to be faced with agents (crass) auction today indicator boards and auction flags flying from dawn for auctions to be held later on ANZAC day.

Thank you for the opportunity to make this submission and if further opportunity is available to speak personally to any items, I would welcome the chance to do so.

Yours faithfully
KEATINGS REAL ESTATE PTY LTD



John Keating
MANAGING DIRECTOR

(Over 40 years experience in the Macedon Ranges area)

Proudly promoting totally transparent declared reserve price auctions