

Underquoting fact sheet

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.

2. 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.

3. 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 '+'.

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4. 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.**

5. 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**.

6. 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.

7. 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.