

PARLIAMENT OF VICTORIA

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**Estate Agents Amendment (Underquoting)  
Bill 2016**

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# PARLIAMENT OF VICTORIA

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Introduced in the Assembly

## **Estate Agents Amendment (Underquoting) Bill 2016**

A Bill for an Act to amend the **Estate Agents Act 1980** to introduce measures to address underquoting in the sale of residential property and for other purposes.

**The Parliament of Victoria enacts:**

### **1 Purposes**

The main purposes of this Act are to amend the **Estate Agents Act 1980**—

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- (a) to further provide for how estate agents are to determine estimated selling prices for residential property they are engaged or appointed to sell; and
- (b) to provide for the revision of those estimates; and

- 5
- (c) to require estate agents to produce statements of information for residential property that they have been engaged or appointed to sell; and
- 10
- (d) to create new offences in relation to stating selling prices in the marketing of residential property; and
- (e) to enable the Director of Consumer Affairs Victoria to give notices to estate agents requiring them to provide the Director with information or documents; and
- (f) to enable courts to require estate agents to pay commission received as a result of the new offences to the Victorian Property Fund.

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## 2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 July 2017, it comes into operation on that day.
- 20

## 3 Principal Act

In this Act, the **Estate Agents Act 1980** is called the Principal Act.

## 4 Definitions

25 In section 4(1) of the Principal Act—

- (a) for the definition of *residential property substitute*—
- 30 "*residential property* means real estate that is used, or intended to be used, for residential purposes but does not include real estate that is used primarily for the purposes of industry, commerce or primary production;"

(b) **insert** the following definition—

*"statement of information* means a statement prepared under section 47AF;"

5           **5 Section 47A substituted**

For section 47A of the Principal Act **substitute**—

**"47A Seller must be given estimated selling price**

- 10           (1) Before obtaining a person's signature to an engagement or appointment to sell residential property on behalf of the person, an estate agent or an agent's representative employed by the agent must ensure that the engagement or appointment contains an estimate of the selling price of the residential property that—
- 15                           (a) is expressed as—
- (i) a single amount; or
- 20   (ii) a price range where the difference between the upper and lower limits of the range does not exceed 10 per cent of the amount of the lower limit of the range; and
- 25                           (b) is set out in a form approved by the Director.
- Penalty: 200 penalty units.
- (2) Nothing in this section requires the estimate of a selling price and the seller's reserve price to be the same amount.

**47AB Estimated selling price must be reasonable**

5 An estate agent or agent's representative employed by the agent must ensure that the estimate of the selling price contained in an engagement or appointment to sell residential property is—

- (a) reasonable; and
- 10 (b) determined in accordance with section 47AC.

Penalty: 200 penalty units.

**47AC Determination of estimated selling price**

15 (1) In determining the estimate of the selling price contained in an engagement or appointment to sell residential property, the agent or agent's representative must take into account the sale prices of the 3 comparable properties that the agent or representative reasonably considers to be most comparable to the residential property that have been—

- 20 (a) sold within the preceding 6 months, if the residential property is located within the Melbourne metropolitan area; or
- 25 (b) sold within the preceding 18 months, if the residential property is not located within the Melbourne metropolitan area.

30 (2) In determining which comparable properties are the 3 most comparable properties for the purposes of subsection (1), the estate agent or agent's representative must have regard to—

- 5
- (a) the standard and condition of the properties; and
  - (b) the location of the properties; and
  - (c) the dates on which the properties were sold; and
  - (d) any guidelines issued by the Director under section 47AD.
- 10
- (3) Subsection (1) does not apply if the agent or representative reasonably believes that fewer than 3 comparable properties were sold—
- (a) within the preceding 6 months, if the residential property is located within the Melbourne metropolitan area; or
  - (b) within the preceding 18 months, if the residential property is not located within the Melbourne metropolitan area.
- 15
- (4) For the purposes of this section, a residential property is a comparable property if—
- (a) it is of a similar standard or condition to the residential property for which an estimate of the selling price is being determined (the *first property*); and
  - (b) it is located—
- 20
- (i) within a 2 kilometre radius of the first property, if the first property is located within the Melbourne metropolitan area; or
  - (ii) within a 5 kilometre radius of the first property, if the first property is not located within the Melbourne metropolitan area.
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(5) In this section—

*Melbourne metropolitan area* means the area determined by the Director for the purposes of this section.

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**47AD Director may issue guidelines**

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(1) The Director may issue guidelines relating to matters to which estate agents and agents' representatives must have regard in determining which residential properties are most comparable to residential property being sold.

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(2) The Director may, by notice published on the Internet site of Consumer Affairs Victoria, determine the Melbourne metropolitan area for the purposes of section 47AC.

(3) The Director must ensure that any guidelines issued under subsection (1) are published on the Internet site of Consumer Affairs Victoria.

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**47AE Revision of estimated selling price**

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(1) If an estate agent or agent's representative knows, or could reasonably be expected to know, that an estimate contained in an engagement or appointment to sell residential property has ceased to be a reasonable estimate of the selling price of the residential property, the agent or representative must notify the seller in writing, stating—

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(a) that the estimate contained in the engagement or appointment has ceased to be reasonable; and

- 5
- (b) why the agent or representative believes that estimate has ceased to be reasonable; and
  - (c) that the agent or representative proposes to revise the estimate contained in the engagement or appointment; and
  - (d) the amount of that revised estimate.

Penalty: 200 penalty units.

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- (2) As soon as practicable after the agent or representative notifies the seller of residential property under subsection (1), the agent or representative must revise the engagement or appointment to sell the residential property so that the estimate of the selling price complies with sections 47AB and 47AC.

Penalty: 200 penalty units.

**47AF Statements of information**

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- 25
- (1) If an estate agent is engaged or appointed to sell any residential property, the agent or an agent's representative employed by the agent must prepare a statement of information for the residential property.
  - (2) A statement of information must—
    - (a) include an indicative selling price for the residential property that is expressed as—
      - (i) a single amount; or

- 5 (ii) a price range where the difference between the upper and lower limits of the range does not exceed 10 per cent of the amount of the lower limit of the range; and
- (b) include the median selling price for residential property—
- 10 (i) sold in the same suburb in which the residential property is located; and
- 15 (ii) sold during a period of not less than 3 consecutive months and not more than 12 consecutive months ending not more than 6 months before the information statement is prepared; and
- (c) specify the type of residential property to which the median selling price included in the statement relates; and
- 20 **Example**
- A statement of information may specify that the median selling price included in the statement relates to houses or units.
- 25 (d) include the period described in paragraph (b)(ii) used to determine the median selling price included in the statement; and
- 30 (e) if the agent or representative took the sale price of 3 comparable properties into account in accordance with section 47AC in determining the estimate of the selling price—include the address, sale price and date of sale of those properties; and

- 5 (f) if the agent or representative did not take the sale price of 3 comparable properties into account in accordance with section 47AC—state that the agent or representative believes that fewer than 3 comparable properties were sold within the relevant period; and
- (g) be in a form approved by the Director.
- 10 (3) For the purposes of subsection (2)(a), an indicative selling price or, if the indicative selling price is expressed as a range, the lower limit of that range must not be less than any of the following—
- 15 (a) if the estimate of the selling price contained in the engagement or appointment to sell the residential property is expressed as a single amount—that amount;
- 20 (b) if the estimate of the selling price contained in the engagement or appointment to sell the residential property is expressed as a price range—the lower limit of that range;
- 25 (c) the price proposed in any written offer to purchase the residential property that the agent or representative knows, or could reasonably be expected to know, that the seller has rejected unless the offer was rejected for a reason other than because the price proposed in the offer was too low;
- 30 (d) any amount that the seller has advised (whether orally or in writing) the agent or representative is the amount that the seller will accept as the selling price for the residential property or, if the seller
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subsequently revises the amount, the revised amount.

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- (4) The agent or representative must ensure that a statement of information that complies with subsection (2) is displayed at any inspection of the residential property by members of the public.

Penalty: 200 penalty units.

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- (5) The agent or representative must ensure that a statement of information that complies with subsection (2) is included with any advertisement for the sale of the residential property published by or on behalf of the agent or representative on any Internet site during the period that the residential property is offered for sale.

Penalty: 200 penalty units.

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- (6) The agent or representative must ensure that, on the request of a prospective purchaser of the residential property, a statement of information that complies with subsection (2) is provided to the prospective purchaser within 2 business days.

Penalty: 200 penalty units.

- 20
- (7) The agent or representative must keep a copy of a statement of information prepared for the purposes of this section and any revised version of the statement."

## 6 False representation to seller or prospective seller

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In section 47B of the Principal Act, for "real estate" (where twice occurring) **substitute** "residential property".

**7 False representation to prospective buyer**

(1) For the heading to 47C of the Principal Act  
**substitute—**

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**"47C False representation to prospective purchaser".**

(2) In section 47C(1) of the Principal Act, for  
"real estate" **substitute** "residential property".

(3) For section 47C(2) of the Principal Act  
**substitute—**

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(2) In making any statement while marketing  
the residential property, the agent or  
representative must not state as a selling  
price or likely selling price of the residential  
property a price that is—

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(a) less than the estimated selling price  
contained in the engagement or  
appointment; or

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(b) if the estimated selling price contained  
in the engagement or appointment is  
expressed as a price range—less than  
the lower limit of that range.

Penalty: 200 penalty units.

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(2A) In making any statement while marketing  
the residential property, the agent or  
representative must not state as a selling  
price or likely selling price of the residential  
property a price or price range that is  
modified by words or symbols.

Penalty: 200 penalty units.

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**Example**

Examples of words or symbols that may modify a  
price or price range are—"from", "over", "starting at"  
or "+".

5 (2B) In making any statement while marketing the residential property, the agent or representative must not state as a selling price or likely selling price of the residential property a price range where the difference between the upper and lower limits of the range exceeds 10 per cent of the amount of the lower limit of the range.

Penalty: 200 penalty units.

10 (2C) In making any statement while marketing the residential property, the agent or representative must not state as a selling price or likely selling price of the residential property—

15 (a) a price; or

(b) a price range with a lower limit—

20 that the agent or representative knows, or could reasonably be expected to know, is less than the price proposed in any written offer to purchase the residential property that the seller has rejected.

Penalty: 200 penalty units.

25 (2D) Within one business day after the estimate of the selling price of the residential property is revised under section 47AE, the agent or representative must take all reasonable steps—

30 (a) to remove any advertisement for the residential property published on any Internet site that contains a selling price or likely selling price that is lower than the revised estimate; or

(b) to amend such an advertisement so that the selling price or likely selling price in the advertisement is not lower than the revised estimate.

5 Penalty: 200 penalty units.

(2E) As soon as practicable after the estimate of the selling price of the residential property is revised under section 47AE, the agent or representative must take all reasonable steps—

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(a) to remove any advertisement for the residential property, other than advertisements published on any Internet site, that contains a selling price or likely selling price that is lower than the revised estimate; or

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(b) to amend such an advertisement so that the selling price or likely selling price in the advertisement is not lower than the revised estimate.

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Penalty: 200 penalty units.

(2F) Within one business day of becoming aware that the seller has rejected a written offer to purchase the residential property, the agent or representative must take all reasonable steps—

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(a) to remove any advertisement for the residential property published on any Internet site that contains a selling price or likely selling price that is lower than the price proposed in the rejected offer; or

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(b) to amend such an advertisement so that the selling price or likely selling price in the advertisement is not lower than the price proposed in the rejected offer.

5 Penalty: 200 penalty units.

(2G) As soon as practicable after becoming aware that the seller has rejected a written offer to purchase the residential property, the agent or representative must take all reasonable steps—

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(a) to remove any advertisement for the residential property, other than advertisements published on any Internet site, that contains a selling price or likely selling price that is lower than the price proposed in the rejected offer; or

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(b) to amend such an advertisement so that the selling price or likely selling price in the advertisement is not lower than the price proposed in the rejected offer.

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Penalty: 200 penalty units.

(2H) Subsections (2C), (2F) and (2G) do not apply if the seller rejected the offer to purchase the residential property for a reason other than because the price proposed in the offer was too low.'

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(4) In section 47C(3) of the Principal Act, for "real estate" (wherever occurring) **substitute** "residential property".

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**8 Section 47D substituted**

For section 47D of the Principal Act **substitute—**

**"47D Director may require substantiation**

- 5 (1) The Director may give an estate agent who is engaged or appointed to sell any residential property a written notice requiring the agent—
- 10 (a) to give information or produce documents to the Director to substantiate the reasonableness of one or more of the following—
- 15 (i) the estimate of the selling price of the residential property contained in the engagement or appointment to sell the residential property;
- 20 (ii) any revision under section 47AE(2) of the estimate contained in the engagement or appointment;
- 25 (iii) any advice provided to the seller or a purchaser or prospective purchaser by the agent or a representative employed by the agent, whether orally or in writing, in relation to the estimated selling price or the indicative selling price included in a statement of information;
- 30 (iv) any determination of the 3 most comparable residential properties for the purposes of section 47AC;

- 5 (v) any statement of the selling price  
or likely selling price of the  
residential property made by the  
agent or representative while  
marketing the residential property;  
and
- 10 (b) to give any other information or to  
produce any other document to the  
Director of a kind specified in the  
notice.
- (2) A notice given under subsection (1) must—
- 15 (a) specify the agent to whom the notice is  
given; and
- (b) specify the residential property to  
which the notice relates; and
- 20 (c) state the purposes for which the  
information or documents are required;  
and
- (d) state that the agent must, within 21 days  
after the notice is given—
- (i) comply with the notice; or
- (ii) apply for an extension under  
subsection (5); and
- 25 (e) explain that the agent may refuse or fail  
to give the information specified in the  
notice if the agent is a natural person  
and giving that information would tend  
to incriminate the agent.

30 **Note**  
Under section 70U, it is a reasonable excuse  
for a natural person to refuse or fail to give  
information if doing so would tend to  
incriminate the person. However, that excuse  
does not apply to the production of a document.

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- (3) A notice given under subsection (1) may—
- (a) apply to one or more engagement or appointment of the agent to sell residential property; and
  - (b) apply to one or more estimate of the selling price of residential property that the agent has been engaged or appointed to sell.
- (4) The agent must not, without reasonable excuse, fail to comply with a notice given under subsection (1) within—
- (a) 21 days after the agent is given the notice; or
  - (b) if the Director grants an extension under subsection (5)—the time specified in the extension.

Penalty: 200 penalty units.

**Note**

20 As an alternative to a charge under subsection (4), the Director may apply to a court under section 70WA for an order directing the agent to comply with the notice.

- 25 (5) On the application by the agent within 21 days after a notice under subsection (1) is given, the Director may in writing grant an extension of the time within which the agent must comply with the notice.

**Note**

30 The offence under section 70V of giving false or misleading information applies to information or documents required to be given or produced to the Director under this section."

**9 Protection against self-incrimination**

In section 70U(1) and (2) of the Principal Act, for "this Part" **substitute** "section 47D or this Part".

**10 Offence to give false or misleading information**

In section 70V of the Principal Act—

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- (a) in paragraph (a), after "information" **insert** "to the Director under section 47D or";
  - (b) in paragraph (b), after "document" **insert** "to the Director under section 47D or".

**11 Powers of court if requirement to produce information not complied with**

10 For section 70WA of the Principal Act **substitute—**

**"70WA Powers of court if requirement to produce information not complied with**

- 15
- (1) Subject to subsection (2), if the Director is satisfied that a person has failed, without reasonable excuse, to comply with a requirement under section 47D, 70C, 70D, 70F or 70S, the Director may apply to a court for an order directing the person to comply with the requirement.
  - 20 (2) The Director must not make an application under subsection (1) if the person to whom the failure relates has been charged with an offence against section 47D(4) or 70T.
  - 25 (3) On an application under subsection (1), the court may—
    - (a) order the person to comply with the requirement within a period specified in the order; and
    - 30 (b) make any other orders it considers appropriate.

5 (4) If a proceeding is brought under this section in relation to a failure to comply with a requirement, a person to whom the failure relates cannot be charged with an offence under section 47D(4) or 70T in respect of that failure."

**12 Profit to be forfeited in case of unlicensed trading etc.**

10 (1) For section 94A(1) of the Principal Act **substitute**—

"(1) This section applies if a Court finds an offence against section 12, 13, 29, 47A, 47AB, 47B or 47C(2) or (2C) proven against a person."

15 (2) For section 94A(2) of the Principal Act **substitute**—

"(2) In addition to any other penalty the Court may impose on the person, the Court may order the person to pay to the Fund any amount received by the person or owing to the person as commission or other consideration—

- 20 (a) while the offence was being committed;  
or  
25 (b) after the offence was committed."

**13 Repeal of amending Act**

This Act is **repealed** on 1 July 2018.

**Note**

30 The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

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## Endnotes

### 1 General information

See [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au) for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.