



REIV THE STANDARD
FOR SUCCESS

SUBMISSION

UNDERQUOTING DOCUMENTATION
REVIEW

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ABOUT REIV

The Real Estate Institute of Victoria has been the peak professional association for the Victorian real estate industry since 1936.

Over 2,000 real estate agencies in Victoria are members of the REIV. These members are located in city, rural and regional areas.

REIV member agencies employ more than 10,000 people in Victoria in a market which handles over \$100 billion of transactions totalling 30 per cent of GSP.

Members specialise in all facets of real estate, including: residential sales, commercial and industrial sales, auctions, business broking, buyers' agency, property management, owners' corporations management and valuations.

Introduction

The REIV is the peak association for the Victorian real estate industry, representing the majority of the state's licenced agents and agents' representatives.

The introduction and implementation of the Estate Agents Amendment (Underquoting) Act 2016 has been the single biggest change to industry practices in the past decade.

While the legislation was developed in consultation with the REIV, the Institute had very little input to the multiple Director-approved Statements of Information (SOIs) and other supporting documentation.

The REIV welcomes this review, which will improve the practical implementation of the legislation while providing greater clarity to both agents and consumers.

REIV Response

The following outcomes were gained from consultation with members of our Owners Corporation Chapter Committee.

LAYOUT OF SOIs

Addressing the lack of consistency with customised SOIs is crucial. Despite CAV guidelines specifically stating that customised SOIs “must not alter the wording, sequence or layout in any way”, there are numerous commercial forms that are non-compliant. This is in conflict with advice provided to the REIV by CAV prior to the introduction of the legislation, which resulted in the Institute substantially modifying its SOI form. Compliance with this requirement has severely compromised the REIV’s capacity to compete effectively with those commercial organisations that do not comply. More concerning is the fact that representatives from Consumer Affairs Victoria (CAV) have emailed some of these commercial organisations authorising these non-compliant SOIs. This is inconsistent with compliance letters received by a number of agents, which state that CAV does not authorise customised forms. The REIV has previously raised this matter directly with the Director of CAV, prior to the commencement of this review. Given the level of ambiguity in the market, the REIV suggests either strict enforcement - or the removal - of this requirement.

VACANT LAND

A number of impracticalities with the Director-approved SOIs emerged shortly after their introduction, including the lack of provision for an agent selling vacant land. The Director-approved SOIs assume that all residential property is either a house or a unit, overlooking the fact that land also falls within the Act’s definition of residential property. “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.” Disappointingly, this oversight was not addressed in a timely fashion with agents given mixed messages in how to deal with the SOI when selling vacant land. As there is no option for agents to select vacant land on the SOIs, CAV initially advised agents to alter the SOI in these circumstances and write in “vacant land” – an approach which contradicts the guidelines which state that agents “must not alter the wording, sequence or layout in any way”. The guidelines have since been revised to state

that agents should select the house or unit median based on what the land has approval for – “if the land has approval for a house, use the suburb or locality median for a house; if it has approval for a unit use the unit median price”. However, this process removes the relevance of the median price as it compares vastly different property classes. For an estate agent to indicate in an SOI that the median price for vacant land is comparable to the median price for either an established house or unit is engaging in misleading and deceptive conduct, contrary to Section 18 of the Australian Consumer Law. The reference to approval for a unit is also misleading as typically vacant land being sold with approval for a unit will have approval for multiple units. As such, the median price derived from the sales of established single units is irrelevant. The REIV considers it imperative that the multiple Director-approved SOIs are revised to make reference to vacant land, as well as house and unit.

LAND SIZE

Feedback from REIV members indicates land size is a fundamental factor when determining the value of a property and must be considered. While the CAV Guidelines place significant emphasis on the built improvements relative to the land, in a large number of instances the land is vastly more important in determining the likely selling price of a property. Larger land blocks with development potential will typically attract a higher price than a similar property which is not suitable for development. As such, the REIV considers it necessary that the underquoting guidelines reference comparable land size as well as the standard and condition of the property.

LARGE LAND BLOCKS

The REIV believes greater clarification as to what constitutes residential property is needed. At present, agents are unsure whether a large amount of land which is not in the category of a suburban block still falls within the definition of residential property. An example of this is 100 hectares of non-harvestable bushland containing a residence. Another common issue arising from the lack

of advice around determining a residential property is that agents are deciding whether the property is residential based on its zoning. Greater clarification in the guidelines on how to determine if a property is residential would assist agents and ensure SOIs are prepared for all residential properties.

COMPARABLES

Feedback from REIV members indicates the CAV guidelines for selecting comparable property sales do not provide appropriate direction for agents about how to set an estimated selling price when there are no, or insufficient, comparable sales. In addition, the REIV considers it crucial that available comparable sales be listed on the SOI even when there are less than three. One or two comparable sales will provide prospective purchasers with a greater understanding of how the agent arrived at the estimated selling price.

The existing guidelines also contain conflicting definitions of 'comparable property'. Paragraph five of the guidelines defines a comparable property as: "Under section 47AC (1) and (4) of the Act a comparable property is a property that is of a similar standard and condition to the property for sale." Whereas the definition in section 47AC (4) states: "For the purposes of this section, a residential property is a comparable property if – a) it is of similar standard or condition to the residential property for which an estimate of the selling price is being determined". For consistency purposes, the REIV suggests the same definition be adopted throughout the guidelines.

MEDIAN PRICES

The REIV does not support the mandatory inclusion of a median price in the SOI, as in many instances it has no relevance to the value of the subject property. Its presence on the SOI does not combat underquoting owing to the variability and unreliability of many median price sources, with significant differences between data providers. If the median price requirement is to be retained, the REIV would like to see greater regulation from CAV in terms of where median prices can be sourced.

SOI ADDRESSES

While there is an SOI specifically for use on the internet when selling a single residential property, a similar online

form doesn't exist for multiple residential properties. As the online version has no provision for the address of the property, the document becomes meaningless once printed as it is unclear to which property it relates. Given this is the only difference between the forms, this online statement is an unnecessary duplication and should be removed. The REIV is of the opinion that all SOIs must contain the address of the subject property.

REGIONAL

Input from the REIV's regional members suggests that underquoting legislation is irrelevant in areas beyond metropolitan Melbourne, where it is more likely that a property will sell below the quoted price. There is a substantial disparity in the relevance of underquoting legislation between metropolitan Melbourne, larger regional cities, other regional cities and townships in rural Victoria.

Summary

As a long-term advocate of real estate agents in Victoria, the REIV supports the new underquoting legislation and increased industry professionalism.

Modifying the multiple Director-approved Statements of Information and clarifying definitions in the guidelines will greatly improve the operation in practice of this important legislation.

The REIV thanks Consumer Affairs Victoria for the opportunity to provide feedback to this important review.

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