



Property, Stock and Business Agents Amendment (Underquoting Prohibition) Bill 2015 (Proof)

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PROPERTY, STOCK AND BUSINESS AGENTS AMENDMENT (UNDERQUOTING PROHIBITION) BILL 2015

Page: 42

Second Reading

The Hon. JOHN AJAKA (Minister for Ageing, Minister for Disability Services, and Minister for Multiculturalism) [6.35 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The Government is pleased to introduce the Property, Stock and Business Agents Amendment (Underquoting Prohibition) Bill 2015.

On 7 March 2015 the Premier announced that a re-elected Liberal and Nationals Government would reform the law in relation to real estate underquoting to better reflect community expectations.

This bill gives effect to this commitment.

The real estate industry is an integral and important sector of our economy and our community and the majority of real estate agents act professionally and honestly.

The provisions of this bill will provide NSW Fair Trading with the necessary powers to crack down on those members of the industry who are lowering public confidence and integrity of the whole industry by not doing the right thing.

Underquoting occurs when an agent provides a price guide to a prospective purchaser that is not the estimated selling price stated in the agreement with the vendor.

While the provisions of the current Act prohibit this practice, they lack rigour and have an unnecessarily high evidentiary burden, which makes it difficult to prosecute the offence.

Indeed, there has been no successful prosecution under the Act since its inception 13 years ago.

This bill address these outstanding concerns by providing clarity about when underquoting occurs and giving force to the offence provisions, increasing consumer certainty and ensuring agents know their obligations.

This Government is committed to working in partnership with the real estate industry to drive higher standards and greater professionalism.

As a first step, a Real Estate and Property Division has been established within Fair Trading with a dedicated Assistant Commissioner, who is leading the work on increasing professional standards among real estate agents through an industry reference group.

This bill is the product of that partnership.

Key industry stakeholders such as the Real Estate Institute of NSW [REINSW], the Estate Agents Co-operative [EAC] and the Australian Livestock and Property Agents Association [ALPAA] have been engaged throughout the process and provided input and advice in the development of these reforms.

I would like to thank the REINSW, the EAC and ALPAA for their valuable contributions.

We will continue to work with these peak bodies over the coming months to conduct a thorough review of training standards across the industry, and to raise the standard in complaints handling, compliance audits and management of trust accounts.

This specialist area within Fair Trading will help the Government provide a comprehensive and cohesive approach to real estate matters and deal quickly and effectively with current and emerging industry issues.

In this regard, it is clear that underquoting is a significant current industry issue that is the source of concern for many people.

Buying a property is one of the biggest financial decisions most people will ever make. Consumers rightfully expect when they turn up on auction day that, having conducted their due diligence on the property, they are operating in a fair and equitable marketplace.

The surging property market and high sales prices, particularly in Sydney, have led to confusion and scepticism among consumers about the accuracy of advertised property prices.

While it is not possible, nor desirable, to curtail the market forces that are driving increasing sale prices for vendors, deliberate underquoting is a grossly unfair and unethical practice.

It gives potential purchasers an unrealistic impression that a property might be in their price range. This is a costly exercise.

If a property price guide is artificially low, people spend money on building and pest inspection reports or strata reports, believing the property is in their price range.

Estimates of the total costs involved range from \$250 to more than \$1,000 per property and if this happens to the same people for a number of properties, these costs can mount up.

The amendments in this bill will strengthen provisions contained within the Act to prohibit the practice of underquoting, sending a clear message to all industry participants.

The bill does this by:

- o requiring agents to provide evidence of their estimated selling price to the vendor and this estimate must be stated in the agency agreement,
- o requiring that the estimated selling price must be based on reasonable grounds and must be updated during the sales campaign if market circumstances change,
- o providing that an agent cannot quote a price that is less than the estimated selling price provided in the agency agreement when marketing a property,
- o prohibiting advertisements and representations that say "offers over" or "offers above" or any similar statement, and
- o requiring that agents keep records of prices quoted on a property, verbally or in writing.

The reforms include penalties of up to \$22,000, plus forfeiture of any commission or fees from the sale.

I will now talk through the amendments in some detail.

The estimated selling price must be included in the agreement and must be based on evidence, which must be provided to the vendor when the agency agreement is entered into.

This can be a single price, or a price range, however if an agent uses a price range, the upper end of the range cannot exceed the lower end by more than 10 per cent.

It will be illegal for agents to advertise or market a property for a price that is less than the estimated selling price in the vendor agency agreement. If the estimated selling price is a price range, the advertised price cannot be less than the lower price in the price range.

In addition words like "offers over" or "offers above" or anything similar, such as a plus symbol, will not be allowed.

During consultation on the draft bill, we considered requiring that the price in agency agreements and property advertisements be exactly the same.

However, feedback from consultation was that this would unnecessarily curtail the rights of the vendor and that the aims of the bill could be achieved by requiring the price to be not less than the estimated selling price.

This means that if a vendor wants to pursue a higher price for a property, it can be advertised for a price above the estimate in the vendor agency agreement.

This is because the aim of the reforms is to prohibit the practice of underquoting, luring in potential buyers by advertising a lower price than the estimate.

The objective of the reforms is therefore met by ensuring the advertised and quoted price is not a lower price than the one which the agent has based on evidence from the market and which is contained in the agency agreement.

To enable effective compliance monitoring for the new measures, the changes will introduce strict liability. That is, NSW Fair Trading will not have to show that the agent "intended" to underquote.

It will simply be a matter of comparing the price in the agency agreement to that in any advertisement or given verbally to prospective clients.

This will remove the current difficulties with pursuing prosecution for an offence under the current provisions.

Agents will need to keep written records of any verbal price estimates given to potential sellers or buyers, providing clear evidence of any estimates offered.

A property can be on the market for some time and in that time the estimated selling price could change.

If there are grounds for revising the estimated selling price, the agent will have to notify the vendor and update the vendor agreement.

Agents will also be obligated to take all reasonable steps to update any marketing material to ensure it is consistent with the vendor agreement.

This obligation is a crucial element of the package. It provides the impetus to ensure that the estimated selling price remains accurate.

Reasonable grounds for revising the estimated selling price would be, for example, if sales or auction results for similar properties in a certain area have increased since marketing a property in a certain area.

These results would have a direct flow-on effect to the value of other properties in the same area that are still on the market.

As per the requirement when entering into the agency agreement with the vendor initially, agents will also need to substantiate what they believe a property may be worth by providing a vendor with evidence such as comparable selling price data for similar properties.

Good practice regarding the revision of estimated selling prices will be clarified in updated underquoting guidelines that will be developed by Fair Trading.

Agents will face fines of up to \$22,000 for failing to comply with the new laws. In addition to fines, if agents are found guilty of an offence, agents may also have to forfeit their commission and fees.

This money will be paid into the Property Services Compensation Fund managed by Fair Trading.

The compensation fund was established to help people who find themselves out of pocket as result of their dealings with an agent and other licensees under the Property, Stock and Business Agents Act.

Fair Trading will also establish an underquoting hotline so that members of the public can make complaints and provide "tip-offs" for Fair Trading to investigate.

Once these measures in the bill have been passed by Parliament, we will undertake further industry consultation on supporting regulations and revised underquoting guidelines.

We plan to complete the consultation process later this year so the industry and Government will be fully prepared for the implementation of the new laws at the beginning of 2016.

I want to emphasise that these new measures are not designed to stifle what is a very hot property market. Nor will they stop a property selling beyond its advertised price if competition is fierce.

Anyone who has been to a recent auction for residential property has probably seen firsthand how competitive this environment can be.

Fundamentally, the new underquoting laws are about transparency, accountability and disclosure of

accurate information.

They are also about creating a fair and level playing field for everyone.

Agents have access to comparable sales and should be in an informed position to provide an accurate market appraisal based on the current market values.

They also have details or lists of potential buyers whom they may have dealt with. The experience and knowledge of agents places them at a distinct advantage in their dealings with vendors and purchasers.

As the selling agent is the agent of the vendor, purchasers need to understand that the agent is acting for the vendor and promoting their interests.

In a hot property market, properties will often be sold for prices that exceed the best estimate of the selling price that the agent could possibly have foreseen. These reforms will not and should not try to curtail the market.

The aim of the reforms is to stamp out the dishonest practice of price baiting where potential purchasers are led to believe that the property will go for much less than the true estimate by the agent.

An important part of this reform will be an extensive information and education campaign for both agents and consumers.

An educated marketplace will help ensure that potential purchasers know their rights and the responsibilities of agents, and will assist agents in ensuring that they comply with the laws.

These new underquoting laws will go a long way towards improving confidence among homebuyers.

The Government will continue to work with the industry to maintain high professional standards across the State.

We have worked hard to ensure that the measures in the bill strike an appropriate and reasonable balance between protecting consumers while minimising the degree of regulatory intervention.

I commend this bill to the House.