



New South Wales

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

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The objects of this Bill are as follows:

- (a) to require a real estate agent to include in an agency agreement for the sale of residential property the agent's reasonable estimate of the likely selling price of the property (the *estimated selling price*), and to provide evidence for that estimate to the vendor,
- (b) to ensure that the estimated selling price remains a reasonable estimate of the likely selling price of the property (including provision for the revising of the estimated selling price if required),
- (c) to prohibit the publishing of advertisements in relation to residential property:
  - (i) that state a selling price that is less than the estimated selling price, or
  - (ii) that offer a property for sale by reference to "offers above", "offers over" or any other similar statement,
- (d) to prohibit a real estate agent, or an agent's employee, from representing to a buyer or prospective buyer a likely selling price that is less than the estimated selling price for the property and to provide for a court to order that any fees or commission payable to the agent in relation to the sale of such a property are to be forfeited to the Property Services Compensation Fund,
- (e) to require a real estate agent to keep a record of any quotes given by the agent in the course of marketing a residential property.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

### **Schedule 1      Amendment of Property, Stock and Business Agents Act 2002 No 66**

**Schedule 1 [2]** replaces sections 72 and 73 of the *Property, Stock and Business Agents Act 2002* with proposed sections 72–73B.

**Proposed section 72** defines certain terms and phrases that are used in the proposed sections.

**Proposed section 72A** gives effect to the object set out in paragraphs (a) and (b) of the Overview above.

**Proposed section 73** gives effect to the object set out in paragraph (c) of the Overview above.

**Proposed section 73A** gives effect to the object set out in paragraph (d) of the Overview above.

**Proposed section 73B** gives effect to the object set out in paragraph (e) of the Overview above.

**Schedule 1 [1] and [3]** make consequential amendments.

**Schedule 1 [4] and [5]** make provision for matters of a savings or transitional nature.



New South Wales

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

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New South Wales

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

No. , 2015

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## A Bill for

An Act to amend the *Property, Stock and Business Agents Act 2002* to make further provision with respect to underquoting by real estate agents; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Property, Stock and Business Agents Amendment (Underquoting Prohibition) Act 2015</i> .	3
	4
<b>2 Commencement</b>	5
This Act commences on a day or days to be appointed by proclamation.	6

<b>Schedule 1</b>	<b>Amendment of Property, Stock and Business Agents Act 2002 No 66</b>	1
		2
<b>[1] Section 51 Publishing false or misleading advertisements</b>		3
Omit section 51 (3) (e). Insert instead:		4
(e) disseminated by means of a website, email or other electronic communication.		5 6
<b>[2] Sections 72–73B</b>		7
Omit sections 72 and 73. Insert instead:		8
<b>72 Definitions</b>		9
(1) In this Division:		10
<i>agency agreement</i> for the sale of residential property, includes an agency agreement for the sale of residential property by auction.		11 12
<i>estimated selling price</i> for a residential property, means the price or price range specified, under section 72A, in the agency agreement for the sale of the property as the agent’s estimate of the likely selling price of the property.		13 14 15
<i>publish</i> an advertisement means:		16
(a) insert the advertisement in any newspaper, periodical publication or other publication, or		17 18
(b) publicly exhibit the advertisement in, on, over or under any building, vehicle or place (whether or not a public place and whether on land or water), or in the air in view of persons being or passing in or on any street or public place, or		19 20 21 22
(c) include the advertisement in any document gratuitously sent or delivered to any person or thrown or left on premises occupied by any person, or		23 24 25
(d) broadcast the advertisement by radio or television, or		26
(e) disseminate the advertisement by a website, email or other electronic communication.		27 28
(2) For the purposes of this Division, a price is less than an estimated selling price that is expressed as a price range if it is lower than the lowest price in the range.		29 30
(3) For the purposes of this Division, a statement is made in the course of marketing a residential property if the statement is made:		31 32
(a) in an advertisement, or in arranging an advertisement, in respect of the property that is published or caused to be published by the agent, or		33 34
(b) to any person (orally or in writing) in connection with the proposed sale of the property.		35 36
<b>72A Estimated selling price in agency agreement for sale of residential property</b>		37
(1) A real estate agent must not enter into an agency agreement with a person for the sale of residential property unless the agreement includes the agent’s estimate of the likely selling price of the property.		38 39 40
(2) A real estate agent’s estimate of the likely selling price of a property may be expressed as a price range, but only if the highest price in the price range exceeds the lowest price by not more than 10 per cent of the lowest price.		41 42 43

(3)	A real estate agent must ensure that the estimated selling price of a residential property is, and remains, a reasonable estimate of the likely selling price of the property.	1 2 3
(4)	A real estate agent must ensure that the estimated selling price is revised if it ceases to be a reasonable estimate of the likely selling price of a property, by:	4 5
(a)	notifying the other party to the agency agreement, in writing, of the revised estimated selling price, and	6 7
(b)	amending the agency agreement.	8
(5)	A real estate agent must, before or when specifying an estimated selling price or revising an estimated selling price, provide the seller or prospective seller of the property with evidence of the reasonableness of the estimated selling price.	9 10 11 12
(6)	A real estate agent who fails to comply with subsection (1), (3), (4) or (5) is guilty of an offence. Maximum penalty: 200 penalty units.	13 14 15
<b>73</b>	<b>Underquoting in advertisements for residential property</b>	16
(1)	A real estate agent must not publish or cause to be published an advertisement in relation to the sale of a residential property that indicates or suggests a selling price for the property that is less than the estimated selling price for the property. Maximum penalty: 200 penalty units.	17 18 19 20 21
(2)	A real estate agent must not publish or cause to be published an advertisement in relation to the sale of a residential property that includes the phrase “offers above” or “offers over” (or similar symbols or words in any language) a specified selling price or price range. Maximum penalty: 200 penalty units.	22 23 24 25 26
(3)	A real estate agent must, as soon as practicable after revising the estimated selling price for a residential property, take all reasonable steps to amend or retract any advertisement published in relation to the property that includes an advertised selling price for the property that is less than the revised estimated selling price. Maximum penalty: 200 penalty units.	27 28 29 30 31 32
<b>73A</b>	<b>Underquoting in representations by real estate agents</b>	33
(1)	A real estate agent acting pursuant to an agency agreement for the sale of residential property or an agent’s employee must not, by a statement made in the course of marketing the property, represent to a buyer or prospective buyer that the property is likely to be sold for a price that is less than the estimated selling price for the property. Maximum penalty: 200 penalty units.	34 35 36 37 38 39
(2)	In addition to any penalty that it imposes under this section, a court may order that a person found guilty of an offence under this section is to pay to the credit of the Compensation Fund the whole or any part of any fees or commission paid to the real estate agent in relation to the sale of the property concerned.	40 41 42 43
<b>73B</b>	<b>Real estate agents to keep record of quotes</b>	44
(1)	A real estate agent who makes a statement in the course of marketing a residential property to a buyer, prospective buyer, seller or prospective seller that the property is likely to be sold for a specified price or within a specified	45 46 47

price range, must make a written record of the statement in accordance with subsection (2).	1
Maximum penalty: 200 penalty units.	2
(2) The record of the statement must:	3
(a) contain the address of the property concerned, the price or price range, the date and time of the representation and any other information that is prescribed by the regulations for the purposes of this section, and	4
(b) be kept at the real estate agent's principal place of business for at least 3 years.	5
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<b>[3] Sections 75 and 76</b>	10
Omit the sections.	11
<b>[4] Schedule 1 Savings and transitional provisions</b>	12
Insert at the end of clause 1 (1):	13
any other Act that amends this Act	14
<b>[5] Schedule 1, Part 5</b>	15
Insert after clause 26:	16
<b>Part 5 Provisions consequent on enactment of Property, Stock and Business Agents Amendment (Underquoting Prohibition) Act 2015</b>	17
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	19
<b>27 Definitions</b>	20
In this Part:	21
<i>2015 amending Act</i> means the <i>Property, Stock and Business Agents Amendment (Underquoting Prohibition) Act 2015</i> .	22
<i>existing agency agreement</i> means an agency agreement for the sale of residential property entered into before the commencement of Schedule 1 [2] to the 2015 amending Act.	23
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<b>28 Continuation of existing Division</b>	27
Except as provided by clause 29, Division 3 of Part 5 of the Act (as in force immediately before the commencement of Schedule 1 [2] to the 2015 amending Act) continues to apply in relation to any act, matter or thing done in accordance with an existing agency agreement.	28
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<b>29 Estimated selling price in existing agency agreements for the sale of residential property</b>	32
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(1) Sections 73 and 73A (as substituted and inserted, respectively, by the 2015 amending Act) extend to any act, matter or thing done after the commencement of those sections in connection with the sale of a residential property in accordance with an existing agency agreement.	34
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(2) An estimate of the likely selling price or price range of residential property, however described, specified in an existing agency agreement is, for the purposes of the application of those sections by subclause (1), taken to be an estimated selling price for the property.	38
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- (3) A real estate agent may, in accordance with section 72A (as inserted by the 2015 amending Act), revise an amount that is taken to be an estimated selling price. 1  
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