

UNDERQUOTING CRACKDOWN

One of the biggest bugbears with the real estate industry is the issue of underquoting. How much of a problem is it, and what can people do to protect themselves? **ANGELA YOUNG**

An act of underquoting is said to take place when a real estate agent understates the estimated selling price of a property when marketing it. Legislation covering the issue varies throughout the country (and is non-existent in some states), and there's also a great deal of debate and confusion about how far the problem stretches and what can be done.

The subject has been all over the news headlines this year, particularly in New South Wales where several agents have been hauled before the courts, including Bresic Whitney, accused of advertising two properties – one in Double Bay and one in Surry Hills – at prices below the written estimates given to sellers. While the results of this case have yet to be finalised at the time of print, agents breaking the rules in NSW face fines of up to \$22,000.

Interestingly, in the state of Victoria it's extremely hard for an agent to actually break the rules, thanks to a legal loophole allowing vendors to set a reserve price on the day of the auction itself, effectively reducing the status of any earlier amounts suggested to simply initial appraisals that agents can't be held accountable for.

At the other end of the legislation scale is South Australia, where vendors must specify exactly what price they're looking for, which can prove restrictive to sellers. In the hazy middle ground sits Queensland, where agents are unable to offer buyers a price quote at all if selling by auction, leaving many completely in the dark.

Real Estate Institute of Queensland

CEO Antonia Mercorella believes the sunshine state's process helps prevent some of the issues seen in other states.

"Underquoting's a problem for other states that we don't seriously face in Queensland," she says, "largely due to the success of the *Property Occupations Act* (2014), which limits agents from revealing indicative prices ahead of a property's auction.

"This is the point of difference in the legislation between Queensland and the southern states and it serves to keep the auction process transparent and honest.

"We can see, in the 10 months since the introduction of the Act, that the legislation's succeeding in protecting the interests of the consumer, and of the profession.

"The proof is in the pudding," Mercorella adds. "In Queensland, we're not aware of any underquoting prosecutions since the introduction of the new legislation."

■ A CURIOUS PROBLEM

For Miriam Sandkuhler, director of Victoria buyers' agency Property Mavens, it's an ongoing issue and a major one, too.

"Underquoting wastes time, money and the emotional energy of buyers who expect to pay a certain price and are blown out of the water at auction," she says.

"Understandably, many buyers are simply unwilling to trust estate agent quoted prices provided prior to auction. While some agents don't agree with change, the public abhor the lack of



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MIRIAM SANDKUHLER

transparency and misleading practices that some agents use, to the detriment of all other agents and consumers.”

Sandkuhler finds the reason behind the concept – to stimulate false hope among buyers in order to increase bidder numbers at auctions and therefore create an impression of competition – incomprehensible.

“If common sense prevailed, agents would quote accurately to attract those who have the funds to buy the property at auction, rather than attracting buyers who don't have the money the vendor's seeking,” she says.

“Sadly, common sense isn't that common and agents foolishly think that consumers can be fobbed off by saying substantial price variances are merely the result of a hot market or foreign investment.”

While there may of course be some

truth to this – all the experts I spoke to pointed to the fact that, particularly in the hot markets of Sydney and Melbourne right now, there are occasions when bidders are pushing prices way beyond any sensible predictions – it's certainly not always the case.

A dead giveaway that deliberate underquoting has taken place is when the price quoted is reached during an

auction and the property is not put on the market, often being passed in at well over the supposed minimum.

“It particularly annoys buyers who've paid for building, pest, strata and valuation inspections,” Empire buyers' agent Chris Gray explains, “as it might cost them \$300 to \$1,300 and they don't even get to bid at auction.”

Nevertheless, he says, it's still worth

doing three or four sets of reports: “Even if it costs you \$5,000, as it’s a fraction of the purchase price it protects you from overpaying or buying into a strata or building with \$50,000+ problems.”

■ **DON'T BE SILENT**

If you suspect an agent has been deceptive with his prices, Sandkuhler says it’s important to speak out.

“Formally complain to your local authority and, importantly, your local member of parliament,” she advises. “Consumer Affairs Victoria and NSW Fair Trading only receive 200 or so formal complaints a year, so government is slow to act and change legislation.

“If they and your local member were to be bombarded with thousands of complaints a year, they’d take it far more seriously and take faster action.”

Take care with your complaints, however. As Gray points out, it can be unwise to get agents offside.

“If you shout and scream at an agent and stand up for what’s right, then unfortunately the agent will be very wary of you and probably won’t deal with you again, so it’s very hard for buyers to do anything.”

One thing you can do is simply ignore whatever price the agent is quoting, undertake your own due diligence, and find out for yourself what the property is worth, using comparable sales as well as making the most of the wealth of online data available.

“Looking at recent relevant and comparable sales of no older than two to three months will give you a more accurate picture of what to expect at auction,” Astute Buyers Advocates’ David Melatti says.

“Of course, you can never predict a runaway auction, with homebuyers’ emotions, frustrations and ego all kicking in, especially whipped up by an expert auctioneer.

“Emotionally detaching yourself from the process is crucial,” he adds. “Selling agents are trained in the field of emotional intimidation!”

Mercorella takes a similar stance on the subject of background work.

“Ultimately, it comes down to doing your homework and being prepared,” she says. “Look into similar recent sales in the area and let those prices be your guide.

“If your agent can justify the price guide with facts and figures, and if

BEAT THE UNDERQUOTERS

Experts’ tips for avoiding the pitfalls

1. **Always bear in mind** that underquoting can and does take place.
2. **Build rapport with agents** – you’re more likely to hear the real story.
3. **Analyse comparable sales** – research like-for-like property.
4. **Ask for evidence** to support agents’ claims.
5. **Be realistic.**
6. **Engage a buyers’ agent.**
7. **If you learn you can’t afford** the property, stay away from the auction!

you’ve really researched the area well, it’s unlikely to be an issue.”

Metropole’s Michael Yardney also suggests that putting in the hard yards is critical.

“Search the internet, attend auctions, speak with a variety of estate agents and monitor auction results,” he says. “See what the final selling price is and how it compares to the quoted price range before auction.”

He also advises buyers to be realistic: “Use the agent’s estimated selling price as a guide only.”

Veronica Morgan, principal of Good Deeds Property Buyers and co-host of *Location Location Location Australia*, believes that everybody plays a part in the problem of underquoting.

“I think buyers play a part as well,” she says. “Buyers *expect* properties to be underquoted. So an agent that does quote accurately... the buyers look at them with suspicion and say, ‘Well, I’m not going to pay x per cent more than that’ for that property, so they don’t go taking contracts and doing their due diligence, and they don’t turn up to auction.

“Then it doesn’t sell, it gets advertised at a reasonable price, and they all race to it and fight over it the week after it goes to auction. I’ve seen this happen so many times, because they assume every agent’s the same, and they don’t make their own mind up.

“Then you get other agents that underquote, and everyone thinks ‘Okay, 10 per cent onto that, I’ll pay that’.

“It’s a tough one. You do get the agents trying to do the right thing and they’re not always doing the right thing by their vendors.”

Again, Morgan says your own research is key.

“Buyers have to make their own mind up in terms of what a property’s worth. There’s no point walking through an open house and hoping the agent’s going to tell you what it’s going to sell for... their goal is to generate competition, build interest in the property.

“For a buyer to take an agent at face value, they’re being naive at best, irresponsible at worst.”

Having seen the scenarios played out, Morgan has some pretty tough words.

“To be quite frank, [a lot of] buyers go to auction with wishful thinking, without having really done their due diligence on the topic,” she says.

“They go there and they get cranky with the agent, and I think ‘what were you doing taking advice from the selling agent who’s looking after the vendor anyway?’

“The selling agent’s selling the property, not looking after your interests. They’re just trying to get you to buy it. You’ve got to take responsibility for your own decisions.”

■ **TAKE CONTROL**

One sure-fire way to take control in this situation is to engage an experienced buyers’ agent to act on your behalf. After all, if the vendor is paying someone several thousand dollars to get the best price for his property, it makes sense for you to pay someone to work for you, making the most of their industry knowledge and expertise.

“I’ve had clients attempt to buy themselves yet continually miss out over a six-month period, while prices rose \$100,000 during that timeframe,” Sandkuhler says. “My fee to help them finally secure a property in this instance was only \$11,500, so it can often be false economy to think that by doing it yourself, without professional help, you’re saving yourself money.

“It can in fact cost you more.”

As buyers’ agents can act for you on auction day, it can really pay to have one handling your bidding, too.

Morgan recalls observing someone acting alone at an auction, and letting her concentration slip.

“I was at an auction last July for a property in Dulwich Hill,” she says, “and it was so insane. I opened the bidding at \$50,000 over reserve, thinking that that would be a strong bid trying to knock most people, if not everybody, out, and the next bid was \$50,000 on top of mine!



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MICHAEL YARDNEY

“I watched as two other bidders took it another \$165,000. Then the last bidder, the person who bought it, just as the hammer was about to fall, she increased her own bid! She was so not paying attention.”

Whether you opt for representation in the process or not, it's clear that learning all you can about a property's worth can protect against the scourge of underquoting.

As for the legalities of the situation, the states where the problem is most prominent – Victoria and NSW – can

certainly be said to be making an effort. A working party has been formed comprising the Real Estate Institute of Victoria and other interests, with a view to working out the best way forward (i.e. whether legislation needs to be introduced). Consumer Affairs Victoria is also currently investigating several agents for the practice of underquoting.

Over the border, NSW Fair Trading announced new guidelines in May outlining agents' responsibilities under the *Property, Stock and Business Agents Act 2002* when selling property. It also

recently issued a new *Underquoting Property Prices* guideline, and is working with industry members to finalise new rules. A new real estate division of NSW Fair Trading has been established, which Real Estate Institute of NSW president Malcolm Gunning has welcomed.

In the past, Gunning has been harsh in his criticism of the state government's handling of underquoting, describing it as “ineffective” and saying: “The industry has been tarnished by Fair Trading's failure to properly understand and address the problem.” ^{API}

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