

REIQ Fact Sheet

Residential - Sales



Use of price representations in relation to residential auction sales and no price sales

When marketing a residential property:

- which is, or may be, offered for sale by auction (“auction property”); or
- which is, on a seller’s instructions, offered for sale without a price;

the REIQ recommends that real estate agents, salespeople and auctioneers (collectively “real estate agents”) comply with the recommendations set out in this document.

Recommendations

1. Do not make any written or verbal representations about the likely selling price of the property, or the price range in which the property is likely to sell for.

Examples of price representations include (but are not limited to) the following:

“Offers from \$500,000”

“Offers above \$500,000”

“Buyers in the \$500,000 - \$550,000 range should inspect”

2. Do not make any written or verbal representations which indicate, or may indicate, whether the seller has set a reserve price for the property.

Examples include (but are not limited to) the following:

“No reserve”

“The property will be sold to the highest bidder on the day”

“Seller will no longer be living at the property after the auction”

3. Where a reserve price exists, do not make any written or verbal representations which may disclose or indicate the actual reserve price for the property.

What is a written or verbal representation?

Written price representations can be made in various mediums such as print media advertising, internet advertising and in promotional material (eg. brochures). Verbal price representations can be made over the telephone and at open inspections.

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Can I provide a comparative market analysis (“CMA”) or a written explanation of market worth?

A real estate agent must always act in the best interests of their client. In connection with this principle, real estate agents should conduct their marketing campaigns with a view to achieving the highest and best selling price for a client’s property.

The REIQ recommends that real estate agents consult their clients about whether to provide potential buyers with copies of either of the following documents (whichever was prepared by the real estate agent and provided to the client):

- a copy of the CMA for the subject property
- the written explanation showing how the market worth of the property was determined

This consultation process should involve a proper analysis of the potential benefits and disadvantages associated with the provision of the above information to a potential buyer. This will allow a seller to make an informed decision on this matter. File notes should be maintained for evidentiary purposes.

Provided that a seller’s written instructions are obtained beforehand, a real estate agent may provide either one of the above types of information to a potential buyer (whichever was given to the client).

Why has REIQ developed these recommendations?

These best practice recommendations have been developed with a view to risk minimisation for real estate agents.

If a seller has instructed a real estate agent not to disclose the price at which the property is to be offered for sale, real estate agents must comply with this direction. Failure to do so may result in a breach of agency claim. Additionally, real estate agents may contravene the *Property Agents and Motor Dealers Act 2000* (“PAMD Act”) by engaging in conduct against the seller’s instructions in relation to this.

Real estate agents may also face claims from consumers where price representations have been made by real estate agents. Depending on the circumstances, consumers may allege that a real estate agent has engaged in misleading and deceptive conduct by making price representations which did not accurately reflect the seller’s actual asking price, or the ultimate sale price for the property.

Real estate agents should also bear in mind that sections 574B and 574D of the PAMD Act govern the provision of information which may be provided by real estate agents about residential properties that:

- are, or may be, offered for sale by auction
- are to be offered for sale without a price

Real estate agents may face significant penalties of up to \$54,000 for breaches of the relevant provisions of the PAMD Act. Independent legal advice should be sought by persons seeking specific advice on any aspect of the legislation.