

# McGrath



## COMPLIANCE & TRAINING MANUAL

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# 1 CONTINUING PROFESSIONAL DEVELOPMENT

## 1.1 Compulsory Topics for NSW CPD Requirements

NSW CPD requirements have changed – as of 23 March, 2020.

Class 1 and Class 2 licence holders must complete six (6) hours of Continuing Professional Development each CPD year [3 hours of Elective and 3 hours of Compulsory CPD training].

The NSW CPD requirements are no longer related to an agent's licence renewal date; and "CPD Points" are no longer required – "CPD hours" are what count!

Compulsory CPD can only be provided by Approved Providers – and MRT Training is one of the Approved Providers (see the list on NSW Fair Trading website)

Please make sure you have a careful read of the information in the "Description" section below for more detailed information about the new NSW CPD requirements.

NSW CPD requirements changed in 2020 with new rules introduced by NSW Fair Trading on 23rd March. CPD obligations are no longer tied to the agent's licence renewal date.

Instead, the "CPD year" goes from 23 March 2020 until 22 March 2021. It is also measured in hours now, and not points.

All licensed Agents (both Class 1 and Class 2) are required to complete six (6) hours of CPD before 22 March, 2021. Class 1 Licence holders will be required to complete an additional three (3) hours of training on business-related topics in the next year of this new system – and each year thereafter.

Class 1 and Class 2 holders need to complete 3 hours of "Elective CPD" and 3 hours of "Compulsory CPD" before 22 March 2021. There is no longer a need to meet the old criteria for 12 points, in place prior to 23 March 2020.

If agents have "points" accrued from before the 23rd March, 2020, those points can be transferred towards the NSW CPD requirements for Elective hours at the rate of 3 points per hour.

The Elective CPD is any training undertaken that fits under the heading of "property practice" – and agents are required to keep their own records of compliance. There is no longer a requirement to have CPD certificates issued by an RTO for the Elective CPD.

1.2 Log Book/ Record Book

To assist with this, here are 2 Log Book/Record pages that can be used to assist with the record keeping:

CPD 2020 Class 1 & 2 Log Book

Licensed Agent Name: \_\_\_\_\_ Class 1  Class 2   
 Licence #: \_\_\_\_\_

To meet compliance requirements each licensed agent (Class 1 and Class 2) MUST complete three (3) hours of Compulsory Topics (prescribed by NSW Fair Trading) AND three (3) hours of Elective CPD Topics (as noted below).

*N.B. Class 1 licence holders will need to do an additional three (3) hours of business-related CPD training in the 2<sup>nd</sup> year of this system (i.e. 2021-2022).*

**COMPULSORY CPD**

Date	Topic	Approved Training Provider (ATP)	How delivered	# minutes	Certificate rec'd
	Property & Stock Agents Act 2002			60	
	Rules of Conduct			60	
	Risk Management			60	

**ELECTIVE CPD**

Date	Topic	Delivered by	Where/how delivered	# minutes	Evidence attached

Logbook and supporting evidence provided to L-I-C on \_\_\_\_/\_\_\_\_/202\_\_ L-I-C  
 signature \_\_\_\_\_

CPD 2020 Assistant Agent CPD Record Book

Assistant Agent Name: \_\_\_\_\_ COR # \_\_\_\_\_

To meet compliance requirements each Assistant Agent MUST complete AT LEAST three (3) Units of Competence from one of the relevant Certificate IV training packages outlined below.

The Statement of Attainment must be issued by the RTO before 22/03/2020, and attached to this Record.

*N.B. All Assistant Agents must have completed their Certificate IV course and been issued with the Class 2 licence within four (4) years, or they will be required to leave the industry for at least 1 year.*

<b>CPP40307</b>	24 req'd		<b>CPP41419</b>	18 req'd	
Unit Code	Date Completed	RTO	Unit Code	Date Completed	RTO
<b>Core Units</b>			<b>Core Units</b>		
CPPDSM4007A			CPPREP4001		
CPPDSM4008A			CPPREP4002		
CPPDSM4080A			CPPREP4003		
CPPDSM4009B			CPPREP4004		
CPPDSM4015B			CPPREP4005		
<b>Electives (19)</b>			<b>Group A</b>		
CPPDSM4001A			CPPREP4101		
CPPDSM4003A			CPPREP4102		
CPPDSM4004A			CPPREP4103		
CPPDSM4005A			CPPREP4104		
CPPDSM4006A			CPPREP4105		
CPPDSM4010A			<b>Group B</b>		
CPPDSM4011A			CPPREP4121		
CPPDSM4012A			CPPREP4122		
CPPDSM4013A			CPPREP4123		
CPPDSM4014A			CPPREP4124		
CPPDSM4016A			CPPREP4125		
CPPDSM4017A			<b>Electives (+3)</b>		
CPPDSM4018A					
CPPDSM4019A					
CPPDSM4020A					
CPPDSM4022A					
CPPDSM4049A					
CPPDSM4056A					
BSBLED401A					
BSBRKG304B					
BSBSMB406A					

SOA provided to L-I-C on \_\_\_\_/\_\_\_\_/202\_\_ L-I-C signature \_\_\_\_\_

The Compulsory CPD topics are set by NSW Fair Trading and must be delivered by an Approved Provider.

MRT Training is “an approved provider” for the NSW CPD requirements.

The three (3) topics specified by NSW Fair Trading for this first CPD year are (a) the new Legislation (Residential Tenancy Act, and Property & Stock Agents Act), (b) the Rules of Conduct, and (c) Risk Management.

Certificate of Registration holders (Assistant Agents) are required to be completing their studies towards having their full licence.

In order to meet their CPD obligations, Assistant Agents must complete at least three (3) units per year until they have completed the relevant Certificate IV course to gain the full Class 2 Licence.

This must be completed within 4 years, or those Assistant Agents will be required to “leave the industry” for one year.



# Supervision Guidelines

## 1. Licensee in charge

- 1.1. A principal licensee must:
  - 1.1.1. ensure that no part of the business is left unsupervised by a licensee in charge
  - 1.1.2. ensure that no more than one licensee in charge is in charge of any one particular part of the business at any time,
  - 1.1.3. ensure that any licensee in charge who is permanently or temporarily unable to properly carry out their duties due to illness, leave or some other reason, is replaced by an appropriate class 1 licence holder such that there remains a licensee in charge appointed at all times,
  - 1.1.4. prepare and maintain a document as part of the operational procedures that clearly identifies each licensee in charge relating to the business, the dates on which they were the licensee in charge and, if the licensee has appointed more than one licensee in charge, the part of the business that each person is in charge of, including which trust accounts the person is in charge of; and
  - 1.1.5. ensure that details of every licensee in charge employed by the principal licensee, including the dates they commenced and finished being a licensee in charge, are notified to the Secretary in accordance with [section 31\(3\)](#) of the Act. This includes notifying the Secretary of address of each place of business at which the person discharges their duties as a licensee in charge of the business.

## 2. Requirement to prepare occupational procedures

- 2.1. A principal licensee must prepare and maintain operational procedures for the purposes of providing adequate supervision of business processes and employee conduct across the entirety of their business.
- 2.2. A principal licensee must ensure all operational procedures of the business are reviewed at least once each calendar year to ensure they are sufficiently robust and comply with the law.
- 2.3. A principal licensee must ensure all persons engaged in the business are familiar with and comply with all operational procedures.
- 2.4. A licensee must comply with all operational procedures of the business they are engaged in.

## 3. Trust account procedures

- 3.1. A principal licensee who employs a licensee in charge must:
  - 3.1.1. ensure that each trust account maintained in accordance with [Part 7](#) of the Act by the principal licensee, in connection with their business as a licensee, has only one licensee in charge who is responsible for and able to authorise withdrawal of money from that account, and
  - 3.1.2. prepare and maintain a document that clearly identifies each licensee in charge and the trust account/s for which they are responsible.
- 3.2. A principal licensee must prepare and maintain written procedures for the review of trust accounts and daily or next day banking practices with respect to the receipt of trust money.
- 3.3. Without limiting clause 3.2, the written procedures must ensure:
  - 3.3.1. that each trust account has only one licensee in charge who can authorise the withdrawal of trust money from that account, and details of the relevant licensee in

- 3.3.2. charge and trust account have been recorded for each trust account, a review of trust account transactions is conducted at least once per calendar month,
  - 3.3.3. the amounts deposited into and withdrawn from the trust account have been verified using the relevant financial institution's records as source documents,
  - 3.3.4. all persons who have access to the trust account system have separate logins, and their passwords are not shared with anyone,
  - 3.3.5. any adjustments shown in an end of month reconciliation can be explained with evidence,
  - 3.3.6. there are processes for obtaining and documenting the express authorisation of a licensee in charge to withdraw trust funds in accordance with the Regulation,
  - 3.3.7. rental and sales money is paid into the appropriate trust accounts, and
  - 3.3.8. rental money owing to a landlord under a residential tenancy agreement (less any authorised expenses) is paid to the landlord at the end of each calendar month, unless instructed otherwise by the landlord.
- 3.4. A licensee in charge must maintain a record of all cash transactions which includes, at a minimum:
- 3.4.1. the cash amount received,
  - 3.4.2. the name of the person who received the cash from the payer,
  - 3.4.3. the name of the person who prepared the daily banking of those funds,
  - 3.4.4. the name of the person who deposited the funds in trust at the financial institution, and
  - 3.4.5. the trust account details.

#### **4. Identification check for the purposes of fraud prevention**

- 4.1. A principal licensee must prepare and maintain written procedures for the verification of the identity of a party with whom it is proposed to enter an agency agreement.
- 4.2. Without limiting clause 4.1, the written procedures must provide for the following:
- 4.2.1 a process to verify that the identity of a person entering an agency agreement is the owner of the property that is subject to the agreement or, the person has the legal right to act on behalf of the owner,
  - 4.2.2 if applicable, in the case of a person who has the legal right to act on behalf of the owner — where that person is not listed on the certificate of title, the original or a certified copy of the document which confers the power of sale or management on that person must be sighted, and a copy of the document must be retained,
  - 4.2.3 if applicable, where there is no mortgagee listed on the certificate of title, written confirmation of the power of sale or management is sought from all registered owners listed on the title,
  - 4.2.4 where it is not possible to comply with clause 4.2.3, a reasonable attempt must be made to verify the power of sale or management with the registered owner of the property and a record retained of each attempt,
  - 4.2.5 a record must be kept of all documentation relied upon to verify an individual's identity,
  - 4.2.6 the confirmation of identity check must meet all provisions of clause 4.3 of the supervision guidelines.
- 4.3. In verifying the identity of a person, a licensee must sight an original or certified copy of:
- 4.3.1 a primary proof of identity document,
  - 4.3.2 two secondary proof of identity documents, and
  - 4.3.3 a document providing proof of legal ownership of the property.
  - 4.3.4 in the case of the sale of a business, only 4.3.1 and 4.3.2 apply.
- 4.4. For the purposes of clause 4.3, a primary proof of identity document is:

- 4.4.1 a current Australian driver's licence, or
  - 4.4.2 a current photo card issued by a State or Territory Government agency, or
  - 4.4.3 a current Australian passport, or
  - 4.4.4 a current non-Australian passport.
- 4.5 For the purposes of clause 4.3, a secondary proof of identity document is:
- 4.5.1 a current Medicare card, or
  - 4.5.2 a current credit card, or
  - 4.5.3 a current passbook or an account statement from a bank, building society or credit union up to one year old, or
  - 4.5.4 an electoral enrolment card or evidence of enrolment not more than two years old, or
  - 4.5.5 a gas, electricity or council rates bill up to one year old, or
  - 4.5.6 a water rates notice up to one year old.
- 4.6 For the purposes of clause 4.3, a document that is proof of legal ownership of the property is:
- 4.6.1 the certificate of title for the property, or
  - 4.6.2 a current council rates notice up to one year old, or
  - 4.6.3 a land valuation notice up to one year old, or
  - 4.6.4 a National Vendor Declaration concerning the relevant livestock.
- 4.7 In verifying a proof of identity document, a licensee must ensure:
- 4.7.1 the documents are legible and appear not to have been altered in any way, and
  - 4.7.2 there is no discrepancy between the information collected by a licensee and the information contained in the documents, other than a discrepancy that can be explained and supported with evidence, and
  - 4.7.3 the photograph contained in photographic identification documents is a true likeness to the person whose identity is being verified.

## **5. Ongoing dealings with parties to an agency agreement**

- 5.1. A principal licensee must prepare and maintain written procedures that ensure all communication during the provision of services under an agency agreement is with the owner of the property or the person with the legal right to act on the owner's behalf.
- 5.2. Without limiting clause 5.1, the written procedures for ongoing communication must ensure:
  - 5.2.1. persons engaged in the business only use contact details held on the file which have been confirmed to belong to the person who is party to the agency agreement,
  - 5.2.2. if a party to the agency agreement requests to change their contact or bank details, the change of details is confirmed, via an alternative contact method to the way in which the request originated with all parties to the agency agreement.

## **6. Sale of residential property – selling price and other representations**

- 6.1. Clause 6 is only applicable to the sale of residential property.
- 6.2. A principal licensee must prepare and maintain written procedures for substantiating any estimated selling price, as defined in [section 72](#) of the Act, that has been provided to a seller or prospective buyer of residential property.
- 6.3. Without limiting clause 6.2, the written procedures must ensure that the following factors have been considered when determining the estimated selling price:
  - 6.3.1. any sales of comparable properties,
  - 6.3.2. feedback from potential purchasers,
  - 6.3.3. any current or relevant valuations provided in respect of the property,
  - 6.3.4. the characteristics and features of the property,

- 6.3.5. the methods used to market the property,
  - 6.3.6. any other available factor that may affect the estimated selling price.
- 6.4. A licensee must retain a record of information that demonstrates how the estimated selling price was determined to be reasonable.
- 6.5. A licensee must ensure that the estimated selling price is reviewed at least weekly to confirm it remains a reasonable estimated selling price.
- 6.6. When changes are made to an estimated selling price, a licensee must ensure:
- 6.6.1. the change is communicated in writing to the vendor with evidence of how they estimated the revised estimated selling price as soon as practicable, and
  - 6.6.2. the relevant agency agreement is amended to reflect the revised estimated selling price.
- 6.7. Where there is a difference between the estimated selling price and the actual selling price, a licensee must be able to demonstrate that the difference was reasonable in the circumstances.
- 6.8. A licensee must ensure that any price statement made by a person engaged in the business is consistent with:
- 6.8.1. the vendor's instructions, and
  - 6.8.2. is not lower than the estimated selling price.
- 6.9. Where a vendor instructs a person engaged in a licensee's business not to disclose a selling price, a licensee must ensure that the estimated selling price or any other selling price is not disclosed to potential buyers in writing or verbally by any person engaged in the business.
- 6.10. Where a licensee is responsible for managing the sale of a multi-unit or multi-lot property under an agency agreement, they must comply with the following:
- 6.10.1. If any price indication is given, it must include the estimated selling prices for the lowest and highest priced properties in each property category expressed by:
    - a. providing the price ranges for each category, with the low end of the range being the estimated selling price of the lowest priced property in the category and the higher end of the range being the most expensive property in that category; or
    - b. stating the estimated selling price in the agency agreement of the lowest and highest priced properties for each property category
  - 6.10.2. Any collective marketing of residential units or lots that include a price indication must also advise prospective buyers that there are multiple properties within each category of varying prices
  - 6.10.3. All advertising and marketing must be updated to reflect the value of the current lowest priced lot or unit available.
- 6.11. A principal licensee must prepare and maintain written procedures that ensure all persons engaged in the business who are involved in the sales process are aware of, and meet, the following requirements:
- 6.11.1. All advertising material must accurately describe the property concerned and the information provided complies with the relevant agency agreement and legislative requirements in the Act, the Australian Consumer Law under the [Competition and Consumer Act 2010](#) (Cth).
  - 6.11.2. All conflicts of interest must be properly disclosed, as required by [Division 4 of Part 3](#) of the Act, to the clients, and where appropriate, any prospective buyers,
  - 6.11.3. The listing agent engaged to sell the property must be aware of the restrictions on obtaining a beneficial interest in the property.

## 7. Complaints handling procedures

- 7.1. A principal licensee must prepare and maintain written complaint handling procedures.
- 7.2. Without limiting clause 7.1, the written procedures must provide that:
  - 7.2.1. all complaints and the actions taken by the business in response to the complaint are recorded in a register and retained for at least 3 years from the date of receipt or resolution of the complaint, whichever is later, and
  - 7.2.2. complaints relating to financial transactions are reported to a licensee in charge as soon as practicable and are to be supervised directly by that licensee in charge.

## 8. Employee supervision

- 8.1. A principal licensee must prepare and maintain written procedures outlining the respective roles and responsibilities of licensees and certificate holders in relation to the preparation and signing of agency agreements, franchising agreements and agency agreements under which two or more licensed agents act in conjunction.
- 8.2. A licensee in charge is responsible for verifying:
  - 8.2.1. all persons engaged in the business have completed all continuing professional development they are required to undertake according to the Secretary's requirements issued and notified to licensees and certificate holders under [section 20](#) of the Act,
  - 8.2.2. the applicable work experience requirements in accordance with the [Property and Stock Agents \(Qualifications\) Order 2019](#) have been met, and
  - 8.2.3. the length of time an individual has been engaged by the agency.

## 9. Gifts and benefits register

- 9.1. A principal licensee must prepare and maintain a register of all gifts and benefits received by persons engaged in the business in accordance with [section 53F](#) of the Act.

## THE LAW

As a general principle, the Agent must act in the best interest of the Principal and, importantly, stand in the shoes of the Principal.

If the Agent receives a gift or benefit while acting for the Principal, that gift or benefit is rightfully the property of the Principal. However, the Agent can earn and retain a benefit if the Agent discloses full details of the gift or benefit to the Principal and the Principal consents to the Agent keeping that gift or benefit.

[Section 53F\(1\)](#) of the [Property and Stock Agents Act](#) prohibits an Agent from requesting or accepting a gift or other benefit in circumstances that may reasonably be considered to give rise to a conflict of interest.

There are, however, circumstances where the Agent does not have to disclose the request or receipt of a gift or benefit to the Principal; for example, anything provided by the Agent's employer, anything provided in accordance with the terms of an agency agreement or from a client as a gift in gratitude for services provided under an agency agreement, if the gift or benefit is of a kind prescribed by the [Property and Stock Agents Regulation](#) or anything with a value less than the prescribed amount in the [Property and Stock Agents Act](#) (see [section 53F\(2\)\(c\)](#) and [section 53F\(2\)\(d\)](#)).

[Schedule 1](#), clause 21 of the [Property and Stock Agents Regulation](#) imposes a limit of \$60 on the value of gifts and benefits. Therefore, if the individual gift or benefit does not exceed \$60, the Agent can request or accept that gift or benefit without disclosing it to the Principal.

## AGENCY POLICY

The Licensee-in-charge will create and maintain a [Gifts and Benefits Register](#) and this register will be made available to all Agents and other employees of the Agency and those engaged in the Business.

All Agents and other employees of the Agency and those engaged in the Business will record all gifts and benefits in the [Gifts and Benefits Register](#).

All Agents, and other employees of the Agency and those engaged in the business will not request or accept gifts or benefits without first checking to see whether they are able to do so under section 53F of the *Property and Stock Agents Act 2002* (NSW).

All gifts or benefits requested or accepted must first be approved by the licensee in charge.

GIFTS AND BENEFITS REGISTER	
<i>Gift or benefit #1</i>	
Date gift or benefit requested or received:	
Name of person requesting or receiving gift or benefit:	
Description of gift or benefit:	
Estimated value of gift or benefit:	
Name of person giving gift or benefit:	
Contact details of person giving gift or benefit:	
Relationship of person giving gift or benefit to Agent/Agency:	
Can Agent legal request or accept gift or benefit?	
Approved by Licensee-in-charge: (Y/N)	

## 10. Record keeping

10.1. A licensee in charge must maintain records showing evidence of:

- 10.1.1. regular reviews of operational procedures, and
- 10.1.2. any non-compliance with the operational procedures by persons engaged in the business

10.2 A licensee in charge must be able to produce all documentation relevant to clauses 1-10 of these supervision guidelines to an authorised office in accordance with [section 105](#) of the Act.

10.3 All records relevant to clauses 1-10 must be kept for at least 3 years.

RECORD KEEPING CHECKLIST	
Are records kept of all transactions?	Yes
Are records in English?	Yes
Are all records kept for three years?	Yes
Are all records kept at the registered office of the Licensee-in-charge in a safe storage facility?	Yes

Is an annual review of record keeping requirements diarised and a reminder triggered to action the review?	Yes
<b>Sales transactions</b>	
Does every property for sale have a separate file?	Yes
<b>A minimum of 3 sales files per month will be reviewed for the following:</b>	
Do the records contain the following information for sales transactions?	
• File number	Property address
• Vendor's name	Yes
• Vendor's contact details	Yes
• Property sold	Yes
• Copy of Agency Agreement	Yes
• Start date of Agency Agreement	Yes
• Expiry date of Agency Agreement	Yes
• Estimated Selling Price (including <a href="#">Estimated Selling Price Checklist</a> and relevant information in support)	Yes
• Revised Estimated Selling Price (including weekly <a href="#">Revised Estimated Selling Price Checklist</a> and relevant information in support)	Yes
• Any Vendor instructions not to disclose the Estimated Selling Price	Yes
• Relevant correspondence	Yes
• Price statements (verbally or in writing) made to prospective Purch	Yes
• Approved marketing and advertisements (including the <a href="#">False, Misleading and Deceptive Conduct Checklist</a> )	Yes
• Purchaser's name	Yes
• Purchaser's contact details	Yes
• Date of exchange	Yes
• Date of settlement	Yes
• Relevant correspondence	Yes
• Price statements (verbally or in writing) made to prospective Purchasers	Yes

• Sales file compliance checklist completed	Yes
<b><i>Property management transactions</i></b>	
Does every property under management have a separate file?	Yes
<b>A minimum of 3 property management files per month will be reviewed for the following:</b>	
Do the records contain the following information for property management transactions?	
• File number	Property address
• Landlord's name	yes
• Landlord's contact details	yes
• Landlord's contact details for inclusion in the Residential Tenancy Agreement?	yes
• Property leased	yes
• Copy of the Agency Agreement	yes
• Start date of Agency Agreement	yes
• Expiry date of Agency Agreement	yes
• Date of each tenancy	yes
• Contact details of each tenant	yes
<b><i>Trust Accounts transactions</i></b>	
Have the following reviews been undertaken?	
• Cash transactions reconciled against cash book entries	yes
• Licensee-in-charge authority for three random withdrawals	yes
• Monthly trial balance for accuracy	yes
• Monthly bank reconciliation to confirm it is in balance	yes
• Any change of bank account details have been verified?	yes

### 3 ESTIMATED SELLING PRICE

Buying a property is the biggest financial investment most people will ever make.

When dealing in the residential property market, sellers (vendors) and potential buyers (purchasers) should be able to expect a real estate agent to market property ethically and professionally.

Potential buyers can spend money and time investigating properties based on the advertised or stated value. There can be significant consumer detriment if that value was not a reasonable estimate of its likely selling price.

To help protect consumers from underquoting the law requires agents to do the following:

- make reasonable estimates of selling prices and never make a statement or publish a price *lower* than these estimates
- advise the seller of the evidence the agent relied on to make an estimate or revised estimate
- revise the estimated selling price if an agent becomes aware it has ceased to be a reasonable estimate, notify the seller in writing, amend the agency agreement and take steps to ensure they do not communicate any price information lower than their revised estimated selling price.

Agents are strongly encouraged to regularly review their operational procedures to ensure they are sufficiently robust and comply with the law.



#### ***Property, Stock and Business Agents Act 2002***

The *Property, Stock and Business Agents Act 2002* (the Act) is the primary law regulating the property industry in NSW. Under the Act, it is an offence to underquote the price of a property being marketed, whether in advertising or in any verbal or written representation (statement) made to a potential buyer.

The underquoting requirements **do not apply** to rural land, commercial property or other types of property.

An agent is underquoting the selling price of a residential property by making or publishing a statement about its price that is less than their reasonable estimate of the property's likely selling price.

## 3.1 Estimated Selling Price



### The relevant law on the estimated selling price

Under the *Property, Stock and Business Agents Act 2002*, agents must follow these requirements when setting or revising an estimated selling price:

- The **estimated selling price for a residential property** means the price or price range specified in the agency agreement for the sale of the property as the agent's estimate of the likely selling price of the property (section 72(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 estimated selling price (section 72A(1))\*.
- The estimated selling price 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% of the lowest price (section 72A(2)).
- A real estate agent must **not publish** or cause to be published an **advertisement** in relation to the sale of 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 (section 73(2))\*.
- 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 (section 72A(3))\*.
- 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:
  - notifying the other party in the agency agreement, in writing, of the revised estimated selling price, and
  - amending the agency agreement (section 72A(4))\*.
- A real estate agent must, as soon as practicable after revising the estimated selling price, 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 (section 73(3))\*.
- A real estate agent must, before or when specifying an estimated selling price or revising an estimated selling price, provide the seller or potential seller of the property with **evidence of the reasonableness** of the estimated selling price (section 72A(5))\*.
- The NSW Fair Trading Commissioner may by written notice to an agent require the agent to provide evidence of the reasonableness of any estimate of the selling price of residential property made by the agent in a statement:
  - verbally or in writing to a seller or potential seller of the property, or
  - in an advertisement in respect of the property that is published or caused to be published by the agent, or
  - verbally or in writing to a person as a potential buyer of the property (section 74(1)).

An agent who fails to comply with a notice under section 74(1) within the period for compliance specified in the notice is guilty of an offence (section 74(2))\*.

\* A maximum penalty of 200 penalty units (currently \$22,000) applies for breaching this law.

### 3.2 What is an 'estimated selling price'?

The Act requires real estate agents to include an 'estimated selling price' in agency agreements.

The estimated selling price is the agent's **reasonable estimate of the likely selling price** for the property. This is expressed either as a single price or a price range, but only if the highest price in the price range exceeds the lowest price by not more than 10%.

For example, expressing a price range of '\$800,000 to \$880,000' is allowed. However, '\$800,000 to \$900,000' is **not allowed** as the higher figure of \$900,000 exceeds the lower figure of \$800,000 by more than 10%. If an agent publishes or states the selling price as a price range, then it is an underquoting offence if the published or stated price is lower than the lowest price in the agent's estimated price range.

The Act also now **bans the use of phrases, terms or symbols like 'offers above', 'offers over' or '+'** with a price or price range. For example it is **not allowed** to advertise a property as being '\$800,000 plus' or, 'offers over \$800,000' or, '\$800,000 +'. However, using phrases or terms like 'price guide', 'guide', 'auction guide', 'bidding guide', 'estimate' or 'price estimate' **are allowed** if the published or stated price figure or price range complies with the Act's other requirements.

Sometimes an agency agreement will relate to the sale of either multi-lot subdivisions or a new development where there are multiple properties available of varying size and price within the development. In such cases, the agent may include an attached schedule of the lots with their individual prices, or the properties available with their features (primarily bedroom numbers) and a price for each. Any prices included in the schedule cannot be less than the estimated selling price for each unit/lot.

### 3.3 What is a reasonable estimate?

A reasonable estimate will ultimately depend on the particular circumstances of each property.

The estimated selling price that an agent determines should be made following a careful consideration of factors that will affect the selling price.

Agents should exercise professional skill, care and diligence in determining the estimated selling price as NSW Fair Trading can require an agent to provide evidence that supports their estimated selling price.

### 3.4 How might an agent make a reasonable estimate?

When determining a reasonable estimate of the selling price of a property, an agent should take into account:

- the specific factors that will influence the expected sale price
- any sales of comparable properties
- feedback from potential purchasers
- any current or relevant valuations provided in respect of the property
- the characteristics and features of the property, such as its size and location, including the existence of any 'material facts'
- the methods used to market the property.

This list is provided as general guidance only and is not exhaustive.

### 3.5 Evidence for determining an estimated selling price

Agents must provide the seller with the evidence of how they reached an estimated selling price for the residential property.

Agents should record relevant information that would allow them to show how they determined a particular selling price estimate to be a reasonable estimate.

Agents should keep file notes and all information relied upon to determine a property's estimated selling price. For example, agents should keep file notes on:

- **Comparable sales**  
This may include how such sales compare, any variations between the properties and how that may affect the estimate, and any changes in the market since the comparable properties were sold.
- **Market conditions**  
This may include interest rates, the general state of the economy and the general state of the real estate market in the area where the property is located.
- **The property's features**  
This may include how close it is to services, the property's general condition and location, its views, size and features of the land and any other feature likely to inform the estimated price.
- **Other relevant information**  
This may include any restrictions on the land, rezoning or other uses for the land, length of settlement and any other factors which may affect the estimated price.

This list is provided as general guidance only and is not exhaustive. For example, notes should be made and kept on file of further discussions with the seller, if there is a relevant change in local market factors, or if the response to the marketing campaign suggests a need to revise the estimated selling price from the one originally set out in the agency agreement.

File notes on how an agent determined a reasonable estimated selling price may also be used if the NSW Fair Trading Commissioner writes to an agent requiring them to substantiate any statements they make about an estimated selling price of a residential property.



### 3.6 Revising the estimated selling price

While a property is being marketed, changes in the residential property market or feedback from potential buyers may indicate that the advertised selling price is no longer a reasonable estimate of the likely selling price. In such circumstances, real estate agents must **revise** the estimated selling price.

An agent does not need the seller's permission before revising the estimated selling price to ensure it remains a reasonable estimate.

It would not be realistic to expect agents to revise the estimated selling price every day. However, given changing market conditions, offers made and other relevant factors, real estate agencies should review selling prices weekly and consider if the estimates remain reasonable.

If the estimated selling price is revised, then the agent must:

- notify the seller in writing about the new single price or price range that is the revised estimated selling price
- provide the seller with evidence of how they estimated the revised price
- amend the agency agreement.

Once the estimated selling price is revised an agent must take all reasonable steps, as soon as is practical, to change or withdraw any advertisement displaying a selling price that is less than the revised estimated selling price.

In the case of hard copy advertising material, such as newspapers or posted flyers that are in public circulation, or information emailed to potential buyers before the estimated selling price was revised, it would not be reasonable to expect agents to try to recover all of that material.

However, agents should ensure that any new advertisements contain a selling price or price range that complies with the Act.

Unlike traditional hardcopy advertisements, online advertisements are published on an ongoing basis. Agents should therefore ensure any online price statement remains consistent with their reasonable estimate of the selling price throughout the period it is available to the public.



### 3.7 What if the seller wants a price different to the agent's estimated selling price?

The estimated selling price does not need to reflect the seller's expectations on price. What the law requires is an agent to determine an estimated selling price using their professional skills and market knowledge.

Agents should make the seller aware that they cannot quote a price that is less than the estimated selling price when marketing the property in advertisements or through representations.

### 3.8 Does an agent have to disclose any selling price to a potential buyer?

If a seller instruct an agent not to reveal any price, then an agent is not required to disclose the estimated selling price or any price to potential buyers, be it in advertising, in writing or verbally.

However, if a statement about the selling price is made or published, it must not be less than the estimated selling price in the agency agreement.

### 3.9 What if the eventual sale price is higher than the estimated selling price?

Agents are expected to provide a reasonable estimate of the likely selling price and in many property sales this estimate will be close to the final sale price. However, variations can occur due to factors which may be unknown to the agent; for example interest rate movements, unusually high levels of buyer interest, or factors outside of their control (such as for unique properties which can be difficult to value).

Regardless of the type of property, or what occurs during the marketing period, agents and their employees must act fairly and responsibly in their dealings with buyers and sellers.

This means that, if requested, agents should be able to provide evidence to NSW Fair Trading which demonstrates that the difference between the estimated selling price and the eventual sale price was reasonable in the circumstances. Also, agents must be able to demonstrate that any changes to the estimated sale price were communicated to all parties (seller and potential buyers) as they occurred



## 4 VARIATIONS TO THE AGENTS ESTIMATE OF PRICE

### POLICY

Documentation is necessary if the agents' estimated price guide needs to be adjusted throughout the campaign. The estimated selling price may vary higher or lower, dependent on the current market conditions.

### PROCEDURE

Where a price guide is required to be adjusted lower than the estimate on your agency agreement, the estimate must first be discussed, adjusted and then confirmed in writing by both the agent and vendor.

- The 'Variation to Agents True Estimates Selling Price' should be completed and signed by both the agent and vendor
- The completed form should be uploaded to the documents section on Agent Box
- The Agency Agreement should be updated to reflect the price change and re-uploaded to the system
- New comparable sales will need to support the variation. These will need to be updated in the system, including file notes
- The sales/compliance manager is required to approve the new estimate in Agent Box
- File notes containing reasons 'why' must be made, including details of all factors that contributed to the variation

The price guide can then be amended across all marketing elements to adhere to the amended Estimated Selling Price. An agent cannot advertise the property below the amended Estimated Selling Price. This includes verbally quoting and/or making a suggestive statement.

**KEEP ALL PRICE QUOTING IN A REGISTER/AGENTBOX/SPREADSHEET – WHATEVER IS EASIER FOR YOU WITH THE BELOW RECORDED INFORMATION**

## B Real estate agents to keep records of quotes

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 price range, must make a written record of the statement in accordance with subsection (2).

A real estate agent must ensure that any person engaged by the real estate agent who makes a statement, in the course of marketing a residential property, of a kind referred to in subsection (1) makes a written record in accordance with subsection (2).



It is a defence to a prosecution for an offence under subsection (1A) if the real estate agent establishes that the real estate agent took all reasonable precautions against committing the offence.



The record of the statement must—

- (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

be kept at the real estate agent's principal place of business for at least 3 years.

**MAXIMUM PENALTY—200 PENALTY UNITS.**

{date}

{insert vendors name}  
{insert street address}  
{insert suburb}  
{insert state & postcode}

Dear {insert vendors name}

**Re: Variation of the Agents' True Estimate of Price as required by The Property Stock & Business Agents Act 2002**

**Property Address: {insert full property address}**

This letter confirms that you have been notified of a change to the **true estimated selling price** of your property. This change has occurred since signing the Exclusive Agency Agreement, due to factors discussed with you previously.

Further we confirm that from today McGrath will adjust and publish the new estimated selling price which was recalculated using the Office of Fair Trading Estimated Selling Price Guidelines.

The agents' True estimated selling price was adjusted to:

The Price at which the property is to be advertised is adjusted to: \_\_\_\_\_ and will be made visible on all marketing material.

Kind Regards,

Agents Name  
Real Estate Agent  
McGrath Estate Agents  
M Agents mobile  
F office fax number  
E Agents email address

### **There are also requirements under the Australian Consumer Law (ACL) that an agent must follow.**

These requirements prohibit unfair practices and misleading or deceptive conduct. The ACL also makes it an offence to provide false or misleading representations about the price, quality or standard of a property.



#### **These may include representations about the price or price range at which:**

- an agent believed the property would sell
- the market valued the property
- a seller was prepared to sell
- a seller had instructed the agent to sell
- a seller has rejected an offer.



To comply with the ACL, agents must follow the seller's instructions on price and then ensure any selling price in advertising, print or a statement accurately reflects the seller's price instructions.

## 6 What is a representation and what is an advertisement?



### 6.1 Representations

A representation is a statement or claim that a person relies on in deciding to act in a certain way. For example, a potential buyer may rely on an agent's statement or claim that a property is likely to sell for a certain price when deciding to purchase property reports or make an offer on the property.

The representation can be made by an agent or the agent's employee during the course of marketing the residential property for sale.

NSW Fair Trading's Misrepresentation Guidelines provide more guidance on making representations and are available on our website.

If an agent is found guilty of underquoting in representations about the selling price by a court of law, the agent may also lose their fees and commissions earned from the sale of an underquoted property. These fee and commission payments will go into the Property Services Compensation Fund.

### 6.2 Advertisements

The laws banning underquoting in advertisements or marketing material apply whether published:

- in print (in any publication) or electronically (for example email or on a website)
- on public display, or
- in a broadcast.

### 6.3 Marketing multi-unit residential property and multi-lot subdivisions

You must also comply with underquoting laws when acting as an agent for the collective sale of:

- multiple residential units (such as in a new development)
- multi-lot residential subdivisions.

The advertising options below can be used in these situations.

#### Providing a price indication

If any price indication is given, this must include the estimated selling prices for the lowest and highest priced properties in each property category (eg. studio, one bedroom, two bedroom etc.). This can be expressed in two ways, either:

- giving the price ranges for each category, with the low end of the range being the estimated selling price of the lowest priced unit in the category and the higher end of the range being the most expensive property in that category. For example: one bedroom units available - price range: \$550K-\$700K. In this example, \$550K represents the estimated selling price of the lowest priced one bedroom unit and \$700K is the estimated selling price of the highest priced one bedroom unit. This would need to be done for each category.
- stating the estimated selling price in the agency agreement of the lowest and highest priced units for each property category (instead of using the 'range method' above). For example: one bedroom units available - the lowest priced unit is \$550K, the highest priced unit is \$700K; two bedroom units available - the lowest priced unit is \$700K, the highest priced unit is \$900K.

This does not contravene the requirement related to estimated selling prices expressed as a range, which is for single properties not properties being marketed collectively. See: '*The relevant law on the estimated selling price*' in these guidelines.

**Price indications for multi-lot residential subdivisions must include the lowest priced lot and the highest priced lot.**

Any collective marketing of residential units/lots that includes a price indication should also advise prospective buyers that there are multiple properties within each category, of varying prices within that range.

To make sure underquoting does not occur, when the lowest priced unit/lot is sold, or the last of the lowest priced units in a particular category is sold, all advertising and marketing must be updated to reflect the value of the new lowest priced unit/lot available.



### **Not revealing any price indication**

Agents also have the option not to include any price information at all (in writing, verbally or in advertising) when marketing residential property or multi-lot subdivisions.

Potential buyers can be advised to contact the agent for further information. When contacted, any indication of price that the agent gives must not be less than the estimated selling price in the agency agreement.

# 7 Written Records of Selling price statements

## 7.1 The relevant law on written records

The requirements for written records on selling price statements under the *Property, Stock and Business Agents Act 2002* are as follows:

- A real estate agent who makes a statement in the course of marketing a residential property to a buyer, potential buyer, seller or potential seller that the property is likely to be sold for a specified price or within a specified price range must make a written record of the statement (section 73B(1))\*.
- The **record of the statement must contain:**
  - the address of the property concerned — the price or price range
  - the date and time of the representation
  - any other information that is prescribed by the regulations (section 73B(2)(a)).
- The record of the statement must be kept at a real estate agent's principal place of business for at least 3 years (section 73B(2)(b)).

\* A maximum penalty of 200 penalty units (currently \$22,000) applies for breaching this law.

Having accessible and accurate records allows agents to demonstrate they have not provided a price which is less than their estimated selling price. Keeping written records also enhances accountability and transparency and will assist NSW Fair Trading in investigating and resolving underquoting claims.

The requirements to keep written records could mean that real estate agencies need to change business practices.

While not currently required by the Regulation, agents should consider including the names of the people who they communicated with about a property's likely selling price or price range, as this may help if agents are investigated.

## 7.2 When should an agent make a written record?

At an open house, an agent is likely to speak to several potential buyers. If the agent is providing the same information to everyone attending the inspection, the agent may simply make a single record of information provided on the occasion.

If an agent just speaks to one or two individuals, either over the telephone or face-to-face, then they should make an individual record of the information they provided to those individuals.

## 7.3 This checklist is provided as general guidance to assist real estate agents in avoiding underquoting when marketing a

- The estimated selling price is a reasonable estimate of the likely selling price for the property, with the agent having considered comparable sales, market conditions, the property's features, and other relevant information.
- The estimated selling price is either a single price (such as \$800,000) or in a price range where the highest number does not exceed the lowest number by more than 10% (such as \$800,000 to \$880,000)
- The real estate agency has provided evidence to the potential seller of how the selling price was estimated.
- Marketing material shows the selling price as a single price or a price range that is not lower than the estimated selling price.
- Any statement on the likely selling price quotes a price that is not less than the estimated selling price

- The real estate agency has written records of any statements made to potential buyers about the likely selling price of the property.
- The estimated selling price has been revised if it no longer reflects a reasonable estimate of the likely selling price.
- The seller has been notified about the revised price in writing and the agency agreement has been amended with the revised estimated selling price.
- Advertisements have been withdrawn or changed (where possible) if the estimated selling price has been revised.

## 8 MATERIAL FACT

It is currently an offence for an agent to induce a person to enter into a contract or arrangement by concealing a material fact.

The new regulations specify the kinds of facts that an agent knows or should reasonably know and must disclose to a prospective purchaser. These include that the property:

- flooded from a natural weather event or was affected by bush fire in the last 5 years
- has significant health or safety risks
- is listed on the loose-fill asbestos insulation register
- has been the scene of a crime of murder or manslaughter in the last 5 years
- has been used for the production or supply of a prohibited drug or plant in the last 2 years
- is, or is a part of, a building that contains external combustible cladding to which:
  - o a fire safety order, or a notice of intention to issue a fire safety order, has been issued requiring the building to be rectified regarding the cladding
  - o a building product rectification order, or a notice of intention to issue a building product rectification order, has been issued requiring the building to be rectified regarding the cladding
  - o a development application or complying development certificate application has been lodged for rectification regarding the cladding.

The agent will be liable if they fail to disclose these facts, whether or not they intended to conceal them from the prospective purchaser, if they knew of the fact, or should have reasonably known about the fact.

## 9 COMPARABLE SALES

### POLICY

A minimum of three comparable sales is recommended (best practice). If the comparable sale does not directly relate to the subject property, a file notes to support the chosen comparable sale is required which states how this property relates to the subject property.

### PROCEDURE

When obtaining comparable sales, they should;

- Hold similar features ie: bedrooms, bathrooms, available car spaces, size, property type and land or property size.
- Recommended the property sold within 3 months, no more than 6 months. (Exceptions are made for unique properties if a file note is retained outlining how the estimated selling price was determined)
- Be within a 5km radius. (Exceptions are made for unique or rural properties if a file note is retained)
- Where direct comparable sales are not available, other sold results should be used to position the property with an extensive file note on how the estimated selling range was determined.

## 10 INVESTING THE DEPOSIT

### INVESTING THE DEPOSIT

**Important:** Deposits under \$250k WILL NOT BE INVESTED

Please check your letters are current outlining this information to your clients:

Given the current all time low interest rates – Macquarie Bank current interest rates are noted below.

As illustrated anything below \$250k earns 0.

Low Balance	High Balance	Interest Rate
\$0.00	\$49,999.00	0%
\$\$49,999.00	\$99,999.00	0%
\$99,999.00	\$249,999.00	0%
\$249,999.00	\$499,999.00	0.25%
\$499,999.00	+	0.50%

## Sales Inspection Report and Exclusive Agency Agreement

<b>Sale Property</b>	
Vendor's name _____	
Address _____	
_____	
Email _____	Mobile _____
<b>Solicitor's Firm</b>	
Contact name _____	Mobile _____
Address for Service _____	
Email _____	Telephone _____
<b>Agent</b>	
(in this Agreement referred to as "McGrath", unless otherwise indicated by the context)	
Agent's Estimated Selling Price (incl GST if any) _____	
Note the Estimated Selling Price is not a valuation and only the Agent's opinion.	
Agent's recommended method of Sale <input type="checkbox"/> Auction <input type="checkbox"/> Private Treaty <input type="checkbox"/> Expressions of Interest	
I instruct McGrath to market the Sale Property at _____ <input type="checkbox"/> OK to publish	
Any Special Instructions or Conditions _____	
Easements, covenants, defects, notices or orders that may affect the Property. <input type="checkbox"/> No <input type="checkbox"/> Yes	
Any fittings and fixtures to be included in the Sale as per the contract for sale	
Offered with <input type="checkbox"/> Vacant possession <input type="checkbox"/> Subject to existing tenancy	
<b>Signature of Agent</b> _____	<b>Date of Report</b> _____

### Appointment

- I am the Vendor of the Sale Property (the Property). I warrant that I have the authority to enter into this agreement. I appoint McGrath to submit the Property for sale by:
  - Auction on \_\_\_\_\_ or any other date agreed to in writing between the parties. I will provide a reserve price in writing prior to the commencement of the auction. If the Property does not sell at Auction, McGrath's appointment under this agreement will revert to an appointment to sell and market the Property by Private Treaty.
  - Private Treaty. The offering price for the Property will be \$ \_\_\_\_\_
  - Expressions of Interest closing 5:00 pm on \_\_\_\_\_
- I give McGrath exclusive rights to sell the Property commencing from the date of this agreement and expiring 90 days later (the **Exclusive Period**). After the Exclusive Period McGrath will remain as Non-exclusive agent unless either party cancels this agreement in writing (the **Non-exclusive Period**). If the Exclusive Period is for a fixed term exceeding 90 days, then I may terminate this agreement by giving 30 days' notice in writing to McGrath at any time after the end of the first 90 days (this termination does not apply where the contract for sale provides for the construction of a new dwelling on the land by the vendor).



## Disclosures

15. In respect of any expenses incurred by me or by McGrath on my behalf pursuant to this agreement, McGrath discloses to me that they may receive the following rebates, discounts or commissions from third parties:

Name of Third Party	Estimated amount of Rebate, Discount or Commission
<b>Architype Marketing Pty Ltd (ABN 37 055 590 237)</b>	Volume based rebate between 0% and 17.5% used to subsidise marketing production costs.
<b>Oxygen Home Loans Pty Ltd (ABN 46 103 177 377)</b>	Between 0% and 23.75% of the upfront and trail commission received by Oxygen for any successful referral.

## Expenses

16. I agree that McGrath shall be entitled to reimbursement for the following expenses or charges incurred by them in connection with services provided under this Agreement. The services and amounts cannot be varied except with my agreement in writing.

Description of Expense	When Payable
<b>Marketing &amp; Auctioneer booking fee</b> (if applicable) I have approved a marketing program with expenses ( <b>Marketing Investment</b> ) as set out on the attached Marketing Schedule. I acknowledge that the marketing services will be provided by Architype Marketing Pty Ltd ABN 37 055 590 237 ( <b>McGrath Marketing</b> ) and authorise McGrath Marketing to provide marketing service	Payable on the date of this agreement unless otherwise agreed by McGrath. Despite anything else in this Agreement, I agree to pay all marketing expenses approved by me and expended regardless of whether the Property is sold. If the Property is not sold or completion of the sale does not take place, I agree to pay any outstanding marketing expenses on demand. The Auctioneer Fee (if applicable) is payable as part of the Marketing Investment, whether or not the Property is withdrawn from sale or sold before, at or after the auction.
	<b>Total \$</b>

### Payment for Marketing

I agree to the following method of payment for the Marketing Investment the amount of \$

**Payment Method**  EFT  Visa  Mastercard  Cheque  Other

Credit card payments will incur a 1.75% + 30 cents surcharge. EFT transfer to BSB: 182 222 AC:236449542

Cheque payable to Architype Marketing Pty Ltd

## Privacy Statement

17. McGrath Limited (ABN: 61 608 153 779) and its related bodies corporate (including but not limited to McGrath Oxygen Home Loans Pty Ltd (ACN 103 177 377) and Total Real Estate Training Pty Ltd (ACN 093 918 122)), franchisees, agents and brokers (McGrath) collect and handle your personal information in accordance with our Privacy Policy. If you provide us with your details, we may contact you about our property listing, promotions, and related products and services. We may use your personal information within McGrath and disclose it to our authorised representatives and service providers who act on our behalf, to fulfil the purpose for collecting your information. Our service providers may have servers located overseas such as in USA, Europe, Philippines and Japan, and you consent to these overseas disclosures. Without your information, we may not be able to provide you with services and you may miss out on receiving valuable information from us. We do not collect sensitive information about you unless you provide it to us voluntarily. You have a right to access your personal information that we hold and may ask us to correct this. Our Privacy Policy contains more detail on your rights and contact details for questions or complaints at mcgrath.com.au/privacy.

## Consumers Guide

18. I acknowledge that I have been provided with a copy of the approved Consumers Guide 'Agency Agreements for the Sale of Residential Property' before this agreement was entered into:

Yes Date \_\_\_\_\_  No

## Service of Agreement

19. I acknowledge being served with a copy of this agreement:

Yes Date \_\_\_\_\_  No

## Cooling Off Period

**COOLING OFF PERIOD: You (the vendor) have a cooling off period for this agreement. If you do not wish to continue with this agreement you can cancel it until 5pm on the next business day or Saturday.**

20. I acknowledge that I have a cooling off period under this Agreement. I have waived the cooling off period in writing:

Yes Date \_\_\_\_\_  No

**Proof of Identification**

21. I warrant that I am the Vendor of the Property and have shown the Agent a copy of the following documents

a.  Driver's Licence  Passport (provide one)

Document Type Eg. Australian Passport	Document Number	Date of issue (DD/MM/YYYY)	Expiry date (DD/MM/YYYY)	Place of issue	Original document sighted by (please print name)

b.  A current Medicare Card or  Credit Card and  Utilities bill  Water rates (provide two)

c.  A current rate notice up to 1 year old (provide one)

**Signature of Vendor**

**Date**

**Name of Vendor**

**Date**

**Signature of Agent**

**Date**

**Name of Agent**

**Date**

# Agency agreements

## for the sale of residential property

Selling a home is something many people do only once or twice in a lifetime, so it pays to do some homework before signing up with an agent to sell your property for you.

When you sign up with an agent, you enter into a legally binding contract. This fact sheet explains what your rights and responsibilities are under that contract.

You have a cooling-off period of 1 day starting from when you sign the agreement. You can cancel the agreement in this time if you are not happy with it (more information over the page).

### Choosing a real estate agent

To sell a home in New South Wales, an agent must have a real estate agent's licence issued by NSW Fair Trading. You should check the licence details of all agents you are thinking of using before signing up with your preferred choice. You can do a licence check online through the Fair Trading website or by calling 13 32 20.

To find the right agent for your needs, you should shop around. If possible, get the names of one or two agents from other home owners in your area who have recently sold. We suggest you talk to at least three agents and:

- make sure they have a valid licence
- get a list of all their fees
- find out if they have a good knowledge of your area
- ask if they adhere to a code of ethics.

### Signing up with an agent

Before the agent can market your property, they must sign a contract with you, called an 'agency agreement'. An agency agreement is a legally binding contract and it is important that you read and understand it.

If you are not sure about the agreement terms you should get legal advice.

Signing an agency agreement means that you authorise an agent to do certain things for you in relation to the

sale of your property, such as arranging advertising and inspections and receiving deposits from buyers. The agreement must specify what the agent is authorised to do for you and must state all commissions and any other costs you may be liable to pay.

### What is in the agency agreement

The agency agreement must state:

- the services the agent will provide for you
- the amounts of any fees or commission you agree to pay for those services
- the circumstances in which the agent is entitled to payment – for example, commission is usually payable only when the property is sold
- how and when payment is to be made – for example, whether the agent can deduct their commission from the deposit money paid by the buyer
- warnings about circumstances in which you might have to pay commission to more than one agent (see information on page 2 about the different types of agency agreement)
- from 1 March 2015 inclusive, a warning about the commission if the agreement includes a term that a commission is payable even if the sale of the property is not completed
- the extent of the agent's authority to act for you – for example, whether the agent is permitted to exchange a sale contract on your behalf or make changes to the sale contract
- the agent's estimated selling price for the property. The price may be a single price or a price range. Note: If a price range is used the highest price cannot exceed the lowest price by more than 10%. An agent is required to amend their estimated selling price if it is no longer reasonable, notify you in writing and amend the agency agreement. Your consent is not required to amend the agreement with the revised estimated selling price. The agent must provide you with evidence of the reasonableness of their estimated selling prices.

You have the right to negotiate with the agent about the terms and conditions of the agreement and to ask for any legally permitted changes to be made. Alterations made to the agreement need to be signed by all parties, except if the agent revises their estimated selling price for your property.

The NSW Fair Trading website contains more information about the estimated selling price and what an agent must do when advertising or making a statement about the likely selling price of your property to potential purchasers.

## Commission, fees and expenses

The amounts charged by agents are not set by law. You can negotiate with the agent about the amounts of any commissions, fees or other expenses that you may be required to pay. Before signing an agreement, it is a good idea to talk to a few agents and compare their prices. Ask each agent for a printed list of their fees and commission rates and the expenses they charge.

### Disclosure of rebates and discounts

The agency agreement may require you to pay the agent for certain expenses in relation to the sale of your home, such as advertising, auctioneer's fee, or any other services the agent may arrange for you, such as cleaning, decorating or landscaping.

Sometimes the amount the agent has to pay for the service is less than what you are being asked to pay. This can occur if the agent receives a commission or discount from the provider of the service for being a regular customer – for example, some newspapers pay a commission to the agency at the end of the year based on how much advertising was placed.

The agency agreement must state the amounts or estimated amounts of any such commissions or discounts and from whom they are received. You can negotiate with the agent about whether you should pay the full amount.

## Ending the agreement

The agency agreement usually has a specified period (a 'fixed term') during which the agreement cannot be ended unless you and the agent both agree. If the agreement is open ended (that is, it does not have a fixed term) it must state how the agreement can be

ended.

The length of any fixed term is negotiated between you and the agent, there is no minimum or maximum set term. The fixed term will depend on how long you and the agent think it will take to sell the property.

If the fixed term is longer than 90 days, you can give the agent 30 days written notice to end the agreement after 90 days. Of course, if the fixed term has less than 30 days left to run, you can just give notice to end the agreement at the end of the fixed term – check your agreement to see how much notice you need to give. If you are not sure how to end the agreement, you should seek legal advice.

If you are not happy with an agent's services, it is important to properly end your agreement with them before signing up with another agent. Otherwise both agents may charge you commission when the property is sold.

## Types of agency agreements

There are several different kinds of agency agreements for the sale of residential property. It is important to be aware of the kind of agreement you sign, because it affects your rights and the amount of commission you may have to pay. You should discuss the agreement with a legal adviser if you are not sure about your rights. The following is an overview of the different types of agreements.

### Exclusive agency agreements

Exclusive agency agreements are commonly used for the sale of residential property. In this kind of agreement, you give exclusive rights to one agent to sell your property. This may entitle the agent to be paid commission if the property is sold during the fixed term of the agreement, even if the property is sold by you or by another agent. The agent may also be entitled to commission if the property later sells to a person who started negotiating for the property with the original agent.

### Sole agency agreements

This is similar to an exclusive agency agreement. You give rights to one agent to sell the property but you may find a buyer yourself. If you find a buyer who has not been introduced by the agent, then no commission is payable to the agent.

### General listing / Open agency agreement

This lets you list your property with a number of agents. You pay a commission to the agent who finds the buyer.

### Multiple listing

This occurs when you deal with an agent who is part of a network of agents working together to sell your home. It covers both auction and private treaty. You pay a commission to the agent you signed up with.

### Auction agency agreement

This is effectively an exclusive agency agreement where the property is listed for auction.

### Cooling-off period

The agency agreement becomes binding when the principal (that is, you as the owner/s [vendor/s] of the property, or someone who is legally acting for you) and the agent have signed it. There is then a cooling-off period of 1 business day during which you can cancel (or 'rescind') the agreement. Saturday is included for the purposes of the cooling-off period, but public holidays are not.

The cooling-off period starts when you sign the agreement and ends at 5pm on the next business day or Saturday. For example, if you sign the agreement on a Friday, the cooling-off period ends at 5pm on Saturday. If you sign up on Saturday, the cooling-off period would usually end at 5pm on Monday, unless that is a public holiday, in which case it will end at 5pm on Tuesday.

The cooling-off period gives you time to read the agreement, consider the terms you have agreed to, including the agent's fees, and get independent advice if you have concerns about any aspect of the agreement. Talk to the agent – they may be willing to change things in the agreement that you are not happy about.

### Cancelling the agreement during the cooling-off period

If you decide to cancel (or 'rescind') the agreement during the cooling-off period, you need to deliver a 'notice of rescission' to the agent.

This simply means giving the agent a written notice or letter which:

- is addressed to the agent (use their name as given in the agency agreement),
- states that you are rescinding the agreement, and
- is signed by you (and any other person named on the agreement as a principal [vendor]) or solicitor/s.

You can hand the notice to the agent in person, deliver it to or leave it at the agent's office or the agent's address as given in the agency agreement, email it to an address specified by the agent as an address to which emails to the agent must be sent, or fax it to the agent. Make sure to keep a copy for your records.

The agent cannot charge you any fees or costs in relation to an agreement that has been rescinded correctly. Any money you have already paid to the agent must be refunded to you.

### Waiving your cooling-off rights

If you are sure that you wish to go ahead with the agency agreement, you can waive, or forego, your right to a cooling-off period by signing a separate waiver form when you sign the agreement.

The cooling-off period can be waived only if the agent gave you the following documents at least 1 business day before you signed the agency agreement:

- a copy of the proposed (unsigned) agency agreement, and
- a copy of this fact sheet.

For example, on Thursday morning the agent gives you a copy of the unsigned agreement and this fact sheet, which you read and consider carefully. On Friday afternoon you sign the agency agreement and the waiver form. The agency agreement immediately becomes

binding and the agent can get to work on selling your home.

## The Contract of Sale

A residential property cannot be advertised for sale until a Contract of Sale has been prepared. The contract must contain a copy of the title documents, drainage diagram and the Zoning Certificate (s 149) issued by the local council. Property exclusions must also be included and a statement of the buyer's cooling-off rights must be attached.

If you are selling a residential property that has a swimming pool or spa, ensure it is compliant with the **Swimming Pools Act 1992**. For more information and to check your responsibilities, or to check if a property with a swimming/spa pool has a current certificate of compliance, visit the NSW Swimming Pool Register website at [www.swimmingpoolregister.nsw.gov.au](http://www.swimmingpoolregister.nsw.gov.au)

The draft contract must be available for inspection at the agent's office. It is important that you consult your solicitor or conveyancer about preparing the contract to make sure that everything is in order.

### Exchange of contracts

The contract exchange is a critical point in the sale process. Be aware of the following important conditions in the exchange of contracts:

- The buyer or seller is not legally bound until signed copies of the contract are exchanged.
- Buyers of residential property usually have a cooling-off period of 5 working days following the exchange of contracts during which they can withdraw from the sale.
- If the agent arranges exchange of contracts, the agent must give copies of the signed contract to each party or their solicitor or conveyancer within 2 business days.
- The cooling-off period can be waived, reduced or extended by negotiation.

- There is no cooling-off period for sellers. Once contracts have been exchanged, sellers are generally bound to complete the agreement.
- There is no cooling-off period when purchasing at auction.

## If you encounter problems

If an issue arises during the sale process that you are unhappy with, check your copy of the selling agency agreement to clarify your rights and obligations.

Try to sort out the problem by talking to the agent.

Make certain that any instructions you give the agent are in writing, and keep a copy. If you think the agent has charged a fee to which they are not entitled, or believe the fee charged is excessive, you can apply to the NSW Civil and Administrative Tribunal (NCAT) to settle the matter.

## Other tips

If you need further assistance to resolve a problem, consider the following:

- If your agent is a member of a professional association, contact that association. They can be helpful in resolving disputes.
- You can also seek legal advice from a solicitor or the Chamber Magistrate at your nearest Local Court.
- If your complaint concerns your solicitor, you can lodge a complaint with the Office of the Legal Services Commissioner.
- If your complaint concerns your conveyancer, you can lodge a complaint with NSW Fair Trading.

## More information

NSW Fair Trading can give you more information about the laws applying to property sales and agents. Contact Fair Trading on 13 32 20 or visit the Fair Trading website.

Property:.....Date of auction:.....

## DELIVERY OF SALE CONTRACTS & ACKNOWLEDGEMENT OF EXCHANGE

- Agents to deliver vendors completed contract copy

I/we confirm that I am/we are the vendors of this property and confirm our agreement for the sale, and exchange of contract for the sale of the property, today.

We also confirm our instructions to McGrath Estate Agents to deliver to our solicitor/conveyancer the executed contract in this matter.

- Vendor to deliver the completed contract copy.

I/we confirm that I am/we are the vendors of this property, and confirm our agreement for the sale and exchange of contracts today.

I/we agree to deliver the exchanged contract to our solicitor/conveyancer as soon as possible.

Vendor/s.....

Date.....

- 
- Agents to deliver purchaser's completed contract copy

I/we confirm that I am/we are the purchasers of the above property and that the contract for sale has been executed by me/us.

I/we confirm our instructions to McGrath Estate Agents to immediately deliver the contract executed by me/us to our solicitor/conveyancer, as soon as possible.

- Purchasers to deliver the completed contract copy

I/we, the purchaser/s of the above property acknowledge that the contracts for sale have been exchanged today.

I/we undertake to deliver to our solicitor/conveyancer the counterpart contract for sale as soon as possible.

Purchaser/s.....

Date.....

## Collection Notice

**1) Privacy Statement**

McGrath ("McGrath") complies with the Privacy Act 1988 (Cth) ("Privacy Act") as amended by the Privacy Amendment (Enhancing Privacy Protection) Act 2012 (Cth) ("Amendment Act") and has adopted a set of principles in its policy which is consistent with the Australian Privacy Principles as amended in March 2014 (APPs)

**2) What is Personal Information?**

Personal information is any information about you that identifies you, or information by which your identity can be reasonably determined, as well as information recording McGrath's dealings with you.

**3) Collecting personal information**

McGrath stores and uses your personal information collected from you at open for inspections for security purposes on behalf of our clients.

We collect your personal information directly from you in the course of our relationship with you. Information about you must only be collected by lawful and fair means and will only be used for the purposes of this agreement.

By providing your personal information, you grant McGrath permission to collect your personal information and use it as required by McGrath. Information may also be collected from you for the purposes of providing you with our services now, or in the future.

Any personal information received by McGrath provided by you (or not provided by you) will be treated in accordance with the APP.

Your personal information is dealt with by McGrath in accordance with this privacy policy.

**4) Disclosure of Personal Information**

In providing your personal information you consent to us collecting, storing and using your personal information in the manner set out above, and you consent to us disclosing your personal information to our related bodies corporate and each of their officers, contractors, employees and agents who may collect, store and use your personal information in the manner set out above.

**5) Dealing with us anonymously**

You have the option of not identifying yourself unless by law you are required to do so, or it is impracticable not to.

**6) Information is up-to-date**

It is important that the personal information we collect from you is accurate, complete and up-to-date. You can contact us at any time to access or update your personal information or to tell us that the information we hold about you is inaccurate or incomplete.

**7) Personal Information Security**

McGrath takes all reasonable precautions to safeguard your personal information from loss, misuse, unauthorised access, modification or disclosure and information is securely stored and access is restricted to authorised McGrath personnel only.

You may request access to any of your personal information, or request that McGrath remove any of your personal information it holds by sending a request to our privacy officer.

**8) Acknowledgement**

You acknowledge and agree that this consent is effective consent for the purposes of the Do Not Call Register Act 2006, Spam Act 2003 and Privacy Act 1988 and is deemed to be for an indefinite period (unless you advise us differently). If the information is not provided by you we may not be able to provide an effective service to you.

**9) Information and Complaints**

If you require more information, or have any complaints regarding how McGrath may have collected or used your personal information, you may contact McGrath in any of the following ways:

EDGECLIFF NSW 2027

Mail: The Privacy Officer  
McGrath  
191 New South Head Road

Phone: (02) 9386 3333  
Fax: (02) 9386 3344  
Email: [privacy@mcgrath.com.au](mailto:privacy@mcgrath.com.au)

# > HELPING BUSINESS GET BACK TO WORK



05 June 2020

## NSW COVID-19 Safety Plan

### Auction houses (including residential sales, tenancy open houses and saleyards)

We've developed this COVID-19 Safety Plan to help you create and maintain a safe environment for you, your workers and your customers.

Complete this plan in consultation with your workers, then share it with them. This will help slow the spread of COVID-19 and reassure your customers that they can safely visit your business. You may need to update the plan in the future, as restrictions and advice changes.

Businesses must follow the current COVID-19 Public Health Orders, and also manage risks to staff and other people in accordance with Work Health and Safety laws. For more information and specific advice for your industry go to [nsw.gov.au](http://nsw.gov.au)

BUSINESS DETAILS	
Business name:	McGrath
Plan completed by:	People and Culture
Approved by:	Eddie Law

## > REQUIREMENTS FOR BUSINESS

Requirements for your workplace and the actions you will put in place to keep your customers and workers safe

REQUIREMENTS	ACTIONS
<b>Wellbeing of staff and visitors</b>	
Exclude staff, customers and attendees who are unwell from the auction, open house or saleyard.	Track and trace sign in system in offices for staff and guests; Health declaration on system for staff and guests; General principles document outlining business expectations for coming to work must be compiled with distributed to all staff; Increased cleaning measures in all offices in compliance with safeworkaustralia, staff to report concerns to P&C if standards unsatisfactory; Building facilities management increased cleaning measures, must report poor standards to FOMs. Posters for safety at open houses/inspections distributed to all agents for placement off site; and Staff and customers who are unwell, have been in contact with a COVID patient or overseas in the last 14 days are not to enter properties or attend viewings.
Provide staff with information and training on COVID-19, including when to get tested, physical distancing and cleaning.	General principles documented has been distributed to staff and outlines business response and commitment to OHS obligations; Regular information updates from CEO and P&C in line with changing government restrictions; All FOMs certified in infectious disease training. All agents can access same training course should they want to. Agents to request hand sanitising products from FOM for viewings/open homes; and Agents to keep up to date with posters/signage for viewings from marketing or management.
Make staff aware of their leave entitlements if they are sick or required to self-isolate.	Pandemic leave option available on payroll system; Other leave entitlements available for use; Leave and infectious disease policies available; General principles document distributed encouraging stay at home in unwell; and Staff enquiries can be escalated to P&C.
Communicate and display conditions of entry (website, social media, digital newsletters and at entry points).	Conditions of entry signs and other signage available for all inspections, open homes and at all field offices; Company website has routine updates on COVID measures internally; Agents can approach marketing for custom signs should they be in the best interest of public safety at viewings/inspections; and Digital auctions introduced to reduce face to face participation.

(including residential sales, tenancy open houses and saleyards)

Physical distancing	
Indoor capacity must not exceed one person per 4 square metres. If the setting is outdoors, ensure 1.5 metres physical distancing is observed.	Space planning assessment to be conducted by agent. Must comply with 1.5 meters spacing per person; and Restrictions on amount of people in a property/space in line with social distancing parameters assessed by Agent.
Where reasonably practical, consider holding an auction outdoors or in a large indoor space. Consider strategies to avoid crowding.	Auctions done outdoors or on street to reduce crowding; Utilise additional agents to monitor and disperses crowds if needed; and Promote and drive online auctions and virtual viewings to minimize physical meeting.
For viewings, consider implementing a time-based booking system, with phone or online options, to limit the number of people entering the premises or waiting outside.	Agents plan and provide individual appointments for attending viewings. Group size is monitored; Registration of all attendees is mandatory including increased information requested; Agents to encourage virtual or online viewings; Hand sanitizing products must be available; and Inside properties reduce touch points of customers by keeping doors ajar and lights on.
Where practical, use separate doors for entry and exit. If there is on-site payment and/or collection, consider putting in place separate customer order and collection points.	Space planning assessment by Agent which includes flow of traffic in and out and optional diversions if the property supports it.
If seating is required, move or remove seating to comply with 1.5 metres of physical distance.	Agents to comply with social distancing in seated environment. Removing chairs to allow 1.5 spacing; Genuine concerns over public safety to be reported in real time to manager.
Develop strategies to reduce crowding wherever possible, such as markers on the floor or encouraging attendance of only registered or interested bidders (rather than observers).	Registered attendance only; Appointments with specific time slots per individual/couple; Promotion of virtual options such as online viewings/digital auctions; Signage must be kept current and visible for social distancing and illness for entry into properties; and Agent can refuse entry in customer appears unwell.
Where reasonably practical, ensure staff maintain 1.5 metres physical distancing at all times (including at meal breaks) and assign workers to specific work stations.	Field offices contain signs for social distancing in all meeting rooms, office floors and dining areas; Extra seating can be removed if failure to comply; and No more hot desking.
Use telephone or video for essential meetings where practical.	All staff have access to zoom, microsoft teams, skype for business. First priority for communication is virtually; IT open to suggestions on enhancing tech solutions.
Where reasonably practical, stagger start times and breaks for staff members to minimise the risk of close contact.	Core hours of operation are 10-4pm staff can stagger start as deemed appropriate outside of this window; Lunch breaks are flexible.
Review regular deliveries and request contactless delivery and invoicing where practical.	Managed and updated by FOM network.
Have strategies in place to manage gatherings that may occur immediately outside the premises.	Agents informed how to disperse crowds; Agents to work in groups for large auctions or similar events; For large uncontrolled gatherings Agents can contact the Police to disperse group (in interest of public safety). Extreme situations only.
Encourage tenants who want to be present during an open home to leave for a short period or stand in an open space (such as outside) to minimise contact and ensure you can comply with physical distancing requirements.	Agents to ask tenants to wait outside property in order to comply with social distancing. Public safety and staff welfare are paramount.

<b>Hygiene and cleaning</b>	
Adopt good hand hygiene practices.	Signage available for agents to use; Offices have associated signage in position; Agents and offices provided with sufficient sanitizing products; and Enhanced cleaning protocols across the business.
Ensure bathrooms are well stocked with hand soap and paper towels. Provide hand sanitiser at entry and exit points.	Bathrooms regularly checked and inventory assessed; Agents must have hand sanitizer for viewings more can be requested from FOMs; and Sanitizer signs at all viewings requesting individuals wash their hands on entry.
Clean areas frequented by staff or customers at least daily with detergent or disinfectant. Clean frequently touched areas and surfaces several times per day with a detergent or disinfectant solution or wipe.	Cleaners updated on enhanced cleaning and disinfectant measures across business; Staff concerns on cleanliness to be immediately escalated to manager and/or P&C.
Disinfectant solutions need to be maintained at an appropriate strength and used in accordance with the manufacturers' instructions.	Inventory monitored and replenished frequently; and Any concerns to be escalated to FOM, manager or P&C.
Staff are to wear gloves when cleaning and wash hands thoroughly before and after with soap and water.	<b>the Government cleaning regulations of all sites. FOM's are wiping down high touch point areas multiple times daily ie printers, door handles and so on</b>
Consider removing printed pamphlets, and instead providing relevant information through digital channels such as email or website.	
If onsite payment is required, limit the use of cash transactions by encouraging contactless payment options.	<b>offices; and</b>
If items are to be viewed, encourage visual inspection where practical. Provide hand washing facilities or hand sanitiser for customers to use before and after handling objects. Have detergent or disinfectant wipes available to wipe objects regularly, where practical.	

REQUIREMENTS	ACTIONS
<b>Record keeping</b>	
Keep a record of name and a mobile number or email address for all staff, customers and contractors for a period of at least 28 days. Ensure records are used only for the purposes of tracing COVID-19 infections and are stored confidentially and securely.	
Make your staff aware of the COVIDSafe app and its benefits to support contact tracing if required.	