

# Estate Agents and Sale of Land Acts (Amendment) Act 2003

Fact Sheet  
**Estate Agents**



*Frequently asked questions to help estate agents understand and implement changes to the legislation*



## What is the *Estate Agents and Sale of Land Acts (Amendment) Act 2003*?

It is an Act, which amends the *Estate Agents Act 1980* and the *Sale of Land Act 1962*. These Acts regulate the licensing and operation of estate agents and agents' representatives and the sale of land including sale by auction.

## Why was the legislation changed?

Changes to the *Estate Agents Act 1980* and the *Sale of Land Act 1962* are the result of a government review and consultation with industry and consumer groups.

The amendments enhance transparency and the protection provided to consumers when buying and selling real estate.

## When do changes to the legislation come into operation?

The major provisions come into operation on 1 February 2004.

## How will consumers be made aware of changes in the legislation?

A guidebook, available from 1 February 2004, informs consumers of their rights and responsibilities when buying and selling real estate.

## What are the penalties for breaches of the new provisions?

Penalties for breaches of the new legislation vary from up to \$24,000 for an individual to \$60,000 for a corporation.

## How will the conduct of an auction change?

A written copy of the prescribed auction rules and information statement and any additional auction conditions must be made available for inspection, prior to commencement of the auction.

Dummy or fictitious bids are prohibited under any circumstances.

Vendor bids are permitted, but only by the auctioneer and only where;

- allowed by the auction rules, and
- the auctioneer announces before the auction starts that they are permitted, and
- the auctioneer announces before, or at the time of making a vendor bid, that it is a vendor bid.

Any person at an auction may ask the auctioneer in good faith, a reasonable number of questions about the property, the contract of sale or the rules of the auction.

When asked, an auctioneer must indicate who made a bid.

An intending bidder, or anyone acting on their behalf, cannot harass, or interfere with another bidder or do anything to prevent or disrupt an auction in any way.

If a property is passed in on a vendor's bid, then an agent must not state that amount in advertising and marketing, without disclosing that it was a vendor bid.

## Need more information?

Go to the **Consumer Affairs Victoria website** at [www.consumer.vic.gov.au](http://www.consumer.vic.gov.au)

## Quick Tip

*Penalties for breaches of the new legislation vary from up to \$24,000 for an individual to \$60,000 for a corporation.*

*A guidebook, available from 1 February 2004, informs consumers of their rights and responsibilities when buying and selling real estate.*

**Quick Tip**

*It is illegal for an agent to retain a rebate that they may receive for advertising or other expenses paid on behalf of the client.*

*The Director of Consumer Affairs Victoria has the right to require an agent to justify their estimated selling price.*

## Does a buyer have a right to compensation?

Yes. Under the amendments a buyer has the additional right to apply to the Victorian Civil Administrative Tribunal (VCAT) for damages where he or she has suffered a loss as a result of breaches of the auction provisions. A claim for damages must be made within two years of the auction.

## Have cooling -off' rights changed?

Yes. The \$250,000 cap on the right to 'cool- off' for non- auction residential property sales has been removed. This means the cooling-off entitlement will apply, regardless of the sale price of the property unless it is an exempt sale. The list of exempt sales has not changed.

## Can an agent retain any rebate?

No. It is illegal for an agent to retain a rebate that they may receive for advertising or other expenses paid on behalf of the client. This applies to all outgoings including any advance payments made by the client. Any discount, benefit or rebate received must be passed on to the client.

## Can an agent retain non-monetary rebates?

No. If non- monetary rebates are obtained, then the monetary value must be passed directly to the client. If the exact value of the benefit is not known estimation must be made.

## Does a rebate statement still need to be included in the authority to sell?

Yes, a rebate statement must be included in the authority to sell even when no rebates are expected.

## What is an Estimated Selling Price?

This is an agent's estimate of the selling price of a property. An agent must record an estimated selling price on the authority to sell, before obtaining the vendor's signature. It can be stated as either a single amount or a price range. If recorded as a price range, the difference between the top and bottom figures must not exceed 10 percent of the bottom figure i.e. \$400,000-\$440,000. The estimated selling price is not a sworn valuation or guaranteed sale price. The Director of Consumer Affairs Victoria has the right to require an agent to justify their estimated selling price.

## Does the Estimated Selling Price have to be the same as the vendor's reserve price?

No. The vendor's reserve price can be set independently of the estimated selling price. It is advisable that the vendor use the agent's estimated selling price as a guide when setting their reserve. Whatever the vendor's reserve price, the agent must not advertise or quote to prospective buyers an amount below the estimated selling price or the lowest figure in the range, stated on the authority.

## Is it ok to over quote?

No. It is an offence for an agent to make false representation to a vendor, or prospective vendor, as to the estimated selling price of the property. This relates particularly to the practice of over quoting for the purposes of obtaining a listing.

## Is it ok to under quote?

No. An agent must not give an estimate of the selling price to a prospective buyer, that is lower than the estimated selling price, or the lowest figure in the range stated on the authority to sell. It is an offence to under quote to a prospective buyer the estimated selling price of a property, either orally or in writing.

## Have the rules about Commission Sharing changed?

Yes. An agent is now permitted to share a commission with any individuals outside their own agency. However in these circumstances, a 'Notice of Commission Sharing' must be given to the vendor before the authority is signed.

## Have licensing rules changed?

Yes. New requirements will come into operation which effect, in particular the eligibility of corporations to be granted a licence and the employment of agent's representatives.

## Have the licensing eligibility requirements for a corporation changed?

Yes. There have been some changes to the requirements regarding Directors and shareholders. They include:

- Agents' representatives are no longer restricted in the amount of shares they can hold in a corporation.
- At least one of the Directors of a corporation must be a licensed estate agent. This replaces the requirement that not less than half of all Directors must be licensed estate agents. The requirement that every Director engaged in the agency business be licensed estate agent remains. As a result, the restriction on an agents' representative being a Director will continue until July 2005.
- All Directors must meet the probity requirements set down in the Act. Where a Director of a corporation, or the corporation itself is ineligible to hold a licence, the corporation must apply to the Business Licensing Authority for permission to continue to hold its licence.

## Have the responsibilities of the principal estate agent and Officer In Effective Control changed?

Yes, they have been strengthened. It is now an offence for a person to prevent or hinder the principal estate agent or Officer In Effective Control from managing and controlling the daily business of the estate agency.

## How do the changes affect the employment of agents' representatives?

An agent's representative or a licensed estate agent employee, may now be employed by more than one agent, except where they are employed as a branch manager or in the case of a licensed estate agent, the Officer In Effective control of a corporation.

The requirements relating to an estate agent employer sighting a police check for a prospective agent's representative have changed. The employer may now sight a police records check that is not more than six months old before an agent's representative commences employment. If a police records check is more than six months old, the agent's representative may still be employed provided the estate agent employer;

- Receives a statutory declaration before the agent's representative commences work stating that he or she has not been found guilty of a disqualifying criminal offence; and
- Sights a police record check that is not more than six weeks old, within six weeks of the agent's representative commencing employment.

Where an agent's representative becomes ineligible, they may be allowed to continue employment for up to thirty days. If they wish to work for a longer period they must apply for permission from the Business Licensing Authority.

**Important  
Licensing rules  
have changed.**

Date of issue  
Dec 2003

## Have the rules relating to agents purchasing listed properties or businesses changed?

Yes. The conditions have been tightened so that an application by an estate agent or agent's representative to directly or indirectly purchase a property or business listed by their agency, must be made in writing to the Director of Consumer Affairs Victoria and written approval received, prior to the contract of sale being signed.

An agent can no longer use the defence that they acted honestly and reasonably and that the vendor was not disadvantaged.

## How have rules about Trust Accounts changed?

On becoming aware of unidentified money, an agent has until the end of the next business day to deposit it into their trust account. If after 12 months the money has not been identified it must be processed under the *Unclaimed Moneys Act 1962*.

To take into account modern accounting software, a duplicate copy of a receipt is not required to be given out, if an electronic record was made upon payment. A receipt is not required if an electronic record of payment by cheque or electronic funds transfer is made, unless requested.

Eligibility criteria for auditors of agent's trust accounts will be similar to those for auditors of solicitor's trust accounts.

Agents who have not held trust funds in the previous financial year will only be required to provide a statutory declaration on an 'as needs' basis, at the discretion of the Director of Consumer Affairs Victoria.

## Further information

About the Act go to:

**[www.consumer.vic.gov.au](http://www.consumer.vic.gov.au)**

or call

**1300 737 030**

About the licensing changes call

**1300 135 452**

## Has the definition of 'estate agent' changed?

Yes. The definition of an 'estate agent' has been amended and no longer includes the following provision: 'Someone in the business of compiling information or preparing reports on the sale purchase exchange letting taking on lease of or otherwise dealing or disposing of any real estate or business on behalf of any other person.'

## Have rules changed regarding how agents advertise themselves and their business?

Yes. The rules have been amended to include advertising on the Internet.

This document is only intended as a brief summary of the amendments to the legislation and is no substitute for professional legal advice. A more comprehensive summary, including details of the technical amendments, is available on the Consumer Affairs Victoria website [www.consumer.vic.gov.au](http://www.consumer.vic.gov.au).

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