

# Burchell Higgins

## PROPERTY SALES

### Making an Offer

Buying a property is often the biggest financial decision that a person will make, and making an offer is a significant step in that process. You should be prepared before submitting an offer to the agent or seller.

- First, get a copy of the sale contract as soon as possible and have it examined by either a licensed conveyancer or solicitor.
- Have your finance pre-approved
- Offers can be made verbally or in writing. Putting offers forward in writing (eg. email) may help you keep track of negotiations and confirm why an offer wasn't accepted.

### Underquoting

Before you make an offer on a property, or invest further in preparing to buy it, research prices for similar properties. Be wary if the agent's pricing information indicates underquoting.

Underquoting is when an agent falsely advertises a property or tells you that it will sell for an amount that is less than their actual estimated selling price in the agency agreement they have with the seller. This is an offence and agents can lose their fees and commissions and be fined up to \$22,000.

Under the new laws that started 1 January 2016, when an agent provides an estimated selling price, it must be reasonable and based on factors likely to influence the price. Examples include location, architectural design, future use of the property (eg. zoning, rights of way), market demand, comparable sales, seasonal and economic factors.

To make sure agents follow their responsibility to not falsely generate interest in a property through unrealistic price information, Fair Trading has issued agents with *Underquoting guidelines for residential property*. The guidelines can be accessed on the [underquoting](#) page.

If the final sale price is higher than the initial advertised price, this does not mean underquoting has taken place. This price may vary considerably from what could be reasonably predicted and may result from intense competitive pressure between buyers. Avoid relying too heavily on an advertised sale price. Treat the information as a guide and research the property and recent comparable sales in the area.

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If you suspect that an agent has breached the underquoting laws, either directly to you or through marketing material, you can lodge a complaint online or call NSW Fair Trading on 13 32 20.

## Underquoting FAQ for buyers

**If I don't have access to the agency agreement, how can I protect myself from underquoting?**

**How can I report a suspected instance of underquoting?**

**What should I be told about the likely selling price of a property I am inspecting?**

**What if the agent refuses to tell me the reserve/asking price?**

**Will the new laws result in property being advertised without any price information?**

How does Fair Trading catch agents guilty of underquoting?

## Offer accepted, but it's not yours yet

If you make an offer, you are one step closer to owning the property but it doesn't mean that you have finalised the sale. Before exchanging contracts, the seller may negotiate with other buyers for a higher offer, even if you have made an expression of interest payment. If the seller accepts another offer and exchanges contracts with that party, any prospective buyer who misses out on the property, despite a verbal agreement, is *gazumped*.

## Paying an expression of interest

Once you have made an offer, you may be asked to pay an initial deposit as an expression of interest. This won't mean that the property is yours or that it gets taken off the market. It only proves to the seller that your offer is serious.

Peta Burchell 0448 782 945  
[peta@burchellhiggins.com.au](mailto:peta@burchellhiggins.com.au)

Guy Higgins 0427 944 435  
[guy@burchellhiggins.com.au](mailto:guy@burchellhiggins.com.au)

[www.burchellhiggins.com.au](http://www.burchellhiggins.com.au)

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The seller or agent can take as many preliminary deposits as they like for the one property. However, when you pay this deposit, the agent must provide you with a receipt and tell you in writing that:

- they have no obligation to sell the property to you,
- you have no obligation to buy the property, and
- they will refund your deposit if you don't end up entering into a contract to buy the property.

The agent must also tell you if someone makes a later offer on the same property, as soon they become aware of it.

Remember that the agent selling the property is not working for you, but for the seller of the property.

There are other considerations when making an offer on a property that hasn't been constructed yet. Learn more at our [buying off the plan page](#).

## High pressure tactics

While an agent is allowed to be persistent in their attempts to secure a sale, they are not allowed to engage in high pressure tactics, harassment or unconscionable conduct. For example, an agent cannot repeatedly call you straight after you have inspected a property and demand you make an offer by the end of the day.

If you have concerns about an agent's conduct, [lodge a complaint](#) online or call NSW Fair Trading 13 32 20.

## Negotiating changes to the contract

You can ask the seller to change the terms of the contract of sale before signing it. A solicitor or licensed conveyancer can review the contract to provide important advice on what specific terms you may want to negotiate or change given your personal circumstances.

### **Need some help? - Department of Fair Trading**

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Peta Burchell 0448 782 945  
[peta@burchellhiggins.com.au](mailto:peta@burchellhiggins.com.au)

Guy Higgins 0427 944 435  
[guy@burchellhiggins.com.au](mailto:guy@burchellhiggins.com.au)

[www.burchellhiggins.com.au](http://www.burchellhiggins.com.au)