

## Further changes to NSW Underquoting Laws

By Dixie Fitzclarence

A loophole in the new underquoting laws applying to the sale of NSW residential property was closed by the NSW government last week.

New underquoting laws were introduced in January 2016 to stop real estate agents understating property prices. However, a prosecution by NSW Fair Trading against real estate agency BresicWhitney for falsely understating the likely selling price of two residential properties revealed a fundamental flaw in the legislation.

BresicWhitney was able to successfully defend the prosecution on the grounds that the individual agents who made the statements were not "employees" of BresicWhitney but were employed by a subsidiary company of BresicWhitney. That case was the catalyst for the recent amendments to the legislation which now make licensed agents responsible for contraventions or statements made by employees and representative agents, while any person acting as a

contractor or employed by a subsidiary will now be considered an employee.

The underquoting laws provide that an agent is committing an underquoting offence if they state or publish a price for a property that is less than their reasonable estimate of the property's likely selling price contained in the agency agreement with the seller. The concern is that underquoting can cause interested buyers to waste time and money on inspecting properties, getting reports and attending auctions based on misleading estimates of the selling price.

Key features of the reforms that were made to the Property Stock and Business Agents Act 2002 designed to address underquoting include:

- An agent cannot state or publish a price for a property that is less than their reasonable estimate of the property's likely selling price contained in the agency agreement with the seller;



*Dixie Fitzclarence and John Clarke*

- Estimated selling price can be a single figure or a price range. If a price range is used, the highest price must not be more than 10 per cent higher than the lowest price;
- Advertisements and representations that say "offers over" or "offers above" or any similar statement are prohibited;
- Agents who commit an underquoting offence may be fined up to \$22,000 and could lose their commission and fees earned from the sale of an underquoted property.

Since the new laws came into effect in January, Fair Trading has issued more than \$53,000 in fines and 18 penalty notices for underquoting.

*Dixie Fitzclarence is Associate Solicitor of Clarke Law, with a local network of offices in Bega, Bermagui & Narooma*