

Rent bidding - general fact sheet

From 17 December 2022, licensed agents are prohibited from soliciting rent bidding.

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What are the changes?

A real estate agent or assistant real estate agent cannot solicit or invite an offer of rent that is higher than the advertised price for a residential rental property.

New advertisements for residential rental properties published on or after 17 December 2022, must also include a fixed price. They can no longer be advertised within a price range, or with text such as 'offers from' or 'by negotiation'.

What if the property was being advertised before 17 December?

Properties that were advertised before 17 December and are still currently being advertised do not need to meet the new requirement to advertise at a fixed price.

Who do the changes apply to?

The changes apply to licensed real estate agents who undertake leasing functions in relation to residential premises. The changes do not apply to landlords.

What is the purpose of the changes?

With rental vacancy rates dropping and rents increasing, there have been reports of tenants being urged by real estate agents to offer higher rental amounts to secure a property.

The changes aim to clarify acceptable practices for agents. They will increase transparency as a fixed price will need to be advertised, giving prospective tenants a clear idea of the rent payable and whether they can afford the property.

Can agents advertise rent as a range?

No – advertisements must include a fixed price.

Can rental advertisements include text like ‘offers from’ or ‘by negotiation’?

No – advertisements must include a fixed price.

Does a fixed price need to be included on signs placed on or near the property?

No - signs used on or near the property which advertise that the property is available for rent are not required to list a price.

Will tenants be prohibited from offering higher rents?

No – prospective tenants are able to offer higher rents for a rental premises if they do it voluntarily and freely.

How should an agent respond to prospective tenants asking if they should offer a higher rent or asking what other applicants have offered?

Agents should advise that they are not permitted to solicit or invite a person to offer more than the advertised rent.

Agents can advise that the tenant should make their own decision about the rent they wish to offer.

What is the penalty for non-compliance?

The maximum penalty that a court can award for non-compliance is \$11,000 for a corporation or \$5,500 in any other case. A fine (Penalty Infringement Notice) may also be issued - \$550 for an individual or \$1,100 for a corporation.

NSW Fair Trading will work with real estate agents to ensure they are aware of the new rules. Initially, the emphasis will be on education.

Why is this being done through the Property and Stock Agents Regulation 2022 and not the Residential Tenancies Act 2010?

This is a practice mostly engaged in by agents and therefore, the Property and Stock Agents Regulation 2022 is the appropriate vehicle to implement the changes at this time. It also allows the changes to be implemented quickly.

The Property and Stock Agents Act 2002 and the Regulation form the overarching regulatory framework for licensed property agents.

Scenarios on how an agent should respond to questions from prospective tenants

Scenario 1

A prospective tenant asks if there has been much interest in an advertised rental property.

The real estate agent responds that there has been a moderate amount of interest. The prospective tenant then asks if anyone else has offered more than the advertised price of \$650 per week.

The agent states, 'Under NSW real estate laws, agents are not permitted to solicit or invite a person to offer more than the advertised rent. I encourage you to make your own decision about the value of the property and the rent you wish to pay for it.'

The agent's response is clear and specific and complies with the new rent bidding laws. By not providing a specific answer to whether there have been higher bids, the agent has not suggested that the prospective tenant should offer more than the advertised amount.

Scenario 2

A prospective tenant approaches the real estate agent and asks "Can I offer you \$100 above the advertised fixed price for the property?"

The real estate agent responds, "Yes, you can. I will let the landlord know."

This complies with the new rent bidding laws because the prospective tenant offered a higher rent amount without any prompting or suggestion from the agent. The offer is made voluntarily and freely.

Scenario 3

A prospective tenant asks a real estate agent, "If I offer more rent, would I have a higher chance of securing the property?"

The agent responds, "Under NSW real estate laws, agents are not permitted to solicit or invite a person to offer more than the advertised rent. I encourage you to make your own decision about the value of the property and the rent you wish to pay for it. Applications are judged on multiple factors and rent offered is not the only criteria used when evaluating an application."

This response complies with NSW's new rent bidding laws.

Scenario 4

A real estate agent is working with a copywriter to develop an advertisement for a rental property that is about to come to market. The copywriter suggests advertising the rent within a price range of \$800-\$880 per week, or 'open to offers', to draw in better offers.

The agent responds that this is illegal under NSW's rent bidding laws as properties must be advertised at a fixed price. The copywriter understands and the property is advertised at \$850 per week,

This complies with NSW's new rent bidding laws.

Prev End of tenancy survey questions

<https://www.fairtrading.nsw.gov.au/resource-library/housing-and-property/rent-bidding-general-fact-sheet> 14-12-22

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